



**NORTH MARIN  
WATER DISTRICT**

**NORTH MARIN WATER DISTRICT  
AGENDA - REGULAR MEETING  
February 15, 2022 – 6:00 p.m.  
Location: Virtual Meeting  
Novato, California**

Information about and copies of supporting materials on agenda items are available for public review at 999 Rush Creek Place, Novato, at the Reception Desk, or by calling the District Secretary at (415) 897-4133. A fee may be charged for copies. District facilities and meetings comply with the Americans with Disabilities Act. If special accommodations are needed, please contact the District Secretary as soon as possible, but at least two days prior to the meeting.

**ATTENTION: This will be a virtual meeting of the Board pursuant to the authorizations provided by Government Code section 54953(e)."**  
There will not be a public location for participating in this meeting, but any interested member of the public can participate telephonically by utilizing the dial-in information printed on this agenda.

**Video Zoom Method**

**CLICK ON LINK BELOW:**

Go to: <https://us02web.zoom.us/j/82191971947> OR  
Password: 466521

**SIGN IN TO ZOOM:**

Meeting ID: 821 9197 1947  
Password: 466521

**Call in Method:**

Dial: +1 669 900 9128  
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Meeting ID: 821 9197 1947#

Participant ID: #

Password: 466521#

For clarity of discussion, the Public is requested to MUTE except:

1. During Open Time for public expression item.
2. Public comment period on agenda items.

*Please note: In the event of technical difficulties during the meeting, the District Secretary will adjourn the meeting and the remainder of the agenda will be rescheduled for a future special meeting which shall be open to the public and noticed pursuant to the Brown Act.*

| Est.<br>Time | Item  | Subject   |
|--------------|---|---|
| 6:00 p.m.    | <b>CALL TO ORDER</b>  |   |
|              | 1.  | <b>APPROVE MINUTES FROM REGULAR MEETING</b> , January 25, 2022  |
|              | 2.  | <b>APPROVE MINUTES FROM REGULAR MEETING</b> , February 1, 2022  |
|              | 3.  | <b>REDISTRICTING PROCESS PUBLIC HEARING NO. 2</b><br>Solicit Public Input and Consider Adopting Resolution 22-XX <span style="float: right;">Resolution</span>  |
|              | 4.  | <b>SONOMA WATER REGIONAL WATER SUPPLY RESILIENCY STUDY PRESENTATION NO. 2</b>   |
|              | 5.  | <b>GENERAL MANAGER'S REPORT</b>   |
|              | 6.  | <b>OPEN TIME: (Please observe a three-minute time limit)</b><br><br>This section of the agenda is provided so that the public may express comments on any issues not listed on the agenda that are of interest to the public and within the jurisdiction of the North Marin Water District. When comments are made about matters not on the agenda, Board members can ask questions for clarification, respond to statements or questions from members of the public, refer a matter to staff, or direct staff to place a matter of business on a future agenda. The public may also express comments on agenda items at the time of Board consideration. |
|              | 7.  | <b>STAFF/DIRECTORS REPORTS</b>  |
|              | 8.  | <b>MONTHLY PROGRESS REPORT</b>  |
|              | <b>CONSENT CALENDAR</b>   |   |
|              | The General Manager has reviewed the following items. To his knowledge, there is no opposition to the action. The items can be acted on in one consolidated motion as recommended or may be removed from the Consent Calendar and separately considered at the request of any person. |   |
|              | 9.  | <b>Consent - Approve: Re-Authorizing Meetings by Teleconference of Legislative Bodies of North Marin Water District</b> <span style="float: right;">Resolution</span>   |
|              | 10.   | <b>Approve:</b> Amend Contract with Kennedy/Jenks Consultants – General Services Agreement  |
|              | <b>ACTION CALENDAR</b>  |   |
|              | 11.   | <b>Approve:</b> NMWD Administration and Laboratory Upgrade Project – Approve Bid Advertisement  |
|              | 12.   | <b>Approve:</b> NMWD Administration and Laboratory Upgrade Project -Temporary Leases  |
|              | 13.   | <b>Approve:</b> San Marin Pump Station Battery Backup System  |
|              | <b>INFORMATION ITEMS</b>  |   |
|              | 14.   | Administration and Laboratory Upgrade Project Financing Alternatives  |
|              | 15.   | Reinstatement of Water Shut-Offs and State Water Arrearage Payment Program Status   |
|              | 16.   | Community Microgrid Enablement Program – Oceana Marin   |
|              | 17.   | NBWA Meeting – February 4, 2022   |
|              | 18.   | <b>MISCELLANEOUS</b><br>Disbursements – Dated February 3, 2022<br>Disbursements – Dated February 10, 2022<br>Reimbursement Program 2021<br>Green House Gas Emission Reduction Progress – Reporting Year 2020<br>County of Marin and City of Novato Paving Moratoriums<br>Point Reyes Light- North Marin Water District Summary of Emergency Water Conservation  |

All times are approximate and for reference only.

The Board of Directors may consider an item at a different time than set forth herein.

| <b>Est.<br/>Time</b> | <b>Item</b>  | <b>Subject</b>     |
|----------------------|--|--------------------|
|                      | Ordinance No. 39   |                    |
|                      | <u>News Articles:</u><br>Marin IJ – Districts in Marin on hunt for water – DROUGHT<br>Marin IJ – Water use rules for West Marin are eased – DROUGHT<br>Marin IJ – District close to drilling for well – WEST MARIN<br>Press Democrat – PD Editorial: A two-basin plan is still best bet for North Coast water<br>Point Reyes Light – NMWD downgraded its drought restrictions for West Marin<br>Point Reyes Light – North Marin to drill well in March, at double the cost |                    |
|                      | <u>Social Media Posts:</u><br>NMWD Web and Social Media Report – January 2022  |                    |
| 8:30 p.m.            | 19.  | <b>ADJOURNMENT</b> |

1

1 DRAFT  
2 NORTH MARIN WATER DISTRICT  
3 MINUTES OF REGULAR MEETING  
4 OF THE BOARD OF DIRECTORS  
5 January 25, 2022

6 CALL TO ORDER

7 President Petterle announced that due to the Coronavirus outbreak and pursuant to the  
8 Brown Act as modified by Assembly Bill 361, this was a virtual meeting. President Petterle called  
9 the regular meeting of the Board of Directors of North Marin Water District to order at 6:00 p.m.  
10 and the agenda was accepted as presented. President Petterle added that there was not a public  
11 location for participating in this meeting, but any interested members of the public could participate  
12 remotely by utilizing the video or phone conference dial-in method using information printed on  
13 the agenda.

14 President Petterle welcomed the public to participate in the remote meeting and asked  
15 that they mute themselves, except during open time and while making comments on the agenda  
16 items. President Petterle noted that due to the virtual nature of the meeting he will request a roll  
17 call of the Directors. A roll call was done, those in remote attendance established a quorum.  
18 Participating remotely were Directors Jack Baker, Rick Fraités, Jim Grossi, Michael Joly and  
19 Stephen Petterle.

20 President Petterle announced that in the event of technical difficulties during the meeting,  
21 the District Secretary will adjourn the meeting and the remainder of the agenda will be  
22 rescheduled for a future special meeting which shall be open to the public and noticed pursuant  
23 to the Brown Act.

24 President Petterle announced that all public attendees will be invited to speak and will  
25 need to use the raised hand icon in Zoom or dial \*9 to be called upon.

26 Mr. McIntyre performed a roll call of staff, participating remotely were Drew McIntyre  
27 (General Manager), Tony Williams (Assistant GM/Chief Engineer), Terrie Kehoe (District  
28 Secretary), Julie Blue (Auditor-Controller), Tony Arendell (Construction/Maintenance  
29 Superintendent), Robert Clark (Operations/Maintenance Superintendent) and Tim Fuelle (Senior  
30 Engineer). Also participating remotely were West Yost consultants; Rhodora Biagtan, Megan  
31 McWilliams, Anita Jain, Charles Hardy, Doug Moore, Ken Loy and Kathryn Geis; in addition to IT  
32 consultant Clay Smedshammer (Core Utilities).

33 President Petterle requested that for those joining the virtual meeting from the public to  
34 identify themselves. Attending remotely were Bob Maselli, Jim Homet, Christopher Johnson,  
35 Mark Hosletter, Hilary Maslon, Phillip Maddley, Jerry Peters and Jolly Brown.

36 **OPEN TIME**

37 President Petterle asked if anyone from the public wished to bring up an item not on the  
38 agenda and there was no response.

39 **LOCAL WATER SUPPLY ENHANCEMENT STUDY WORKSHOP**

40 Mr. Williams introduced West Yost Associates as the presenter for the workshop. He  
41 stated there will be a series of presenters that will summarize each category and will outline  
42 various water supply alternatives that would be relevant to NMWD. Mr. Williams noted the original  
43 intent was to be in sync with Sonoma Water's Regional Water Supply Resiliency study, however  
44 NMWD's local water supply study is ahead of them in this process and will probably work in  
45 parallel soon. Mr. Williams stated that the primary goal is to increase local supply to a minimum  
46 threshold of 1,000-acre feet (AF) and if we can increase it to 2,000 AF that would be even better.  
47 Mr. Williams apprised the Board that the purpose of the study was to evaluate the best alternative  
48 and the workshop is an opportunity for the Board and the public to discuss and comment on  
49 possible water supply enhancement opportunities that are presented.

50 Rhodora Biagtan of West Yost Associates began the presentation on the Local Water  
51 Supply Enhancement Study Board Workshop and provided an overview on Water Supply  
52 Alternative Options and Evaluation Criteria and Ranking. She stated the purpose of the workshop  
53 was to provide the Board and the public with a preview and discuss the following topics; developed  
54 water supply options, criteria for evaluation, criterial scoring and weights, and next steps. Ms.  
55 Biagtan added the presentation will be broken up in the following local water supply alternatives:  
56 Aquifer Storage Recovery in Novato Basin; Recycled Water System Expansion; Indirect Potable  
57 Reuse, Improve Stafford Treatment Plant Process Water Recapture Efficiency; Divert Captured  
58 Stormwater Into Stafford Lake; Increase Stafford Lake Storage Capacity and Desalination.

59 The first alternative, Aquifer Storage and Recovery in Novato Basin, was presented by  
60 Ken Loy. Mr. Loy noted aquifer storage is very low at an estimated 50-100 AF, noting this estimate  
61 accounts for potentially usable acreage of the Novato Basin, basin thickness, and aquifer  
62 characteristics. Mr. Loy reported storage and recovery rates are also low, the estimate based on  
63 existing well productions was only tens of gallons per minute and made the costs per acre-foot  
64 infeasibly high. In reference to regional aquifer storage recover, Mr. Loy stated NMWD may  
65 benefit from a regional aquifer storage recovery program, if excess treated water allocated to  
66 NMWD could be stored and recovered when needed. He added that regional groundwater  
67 banking on other basins could include Santa Rosa Plain, Sonoma Valley and Petaluma. Mr. Loy  
68 stated that the preliminary conclusions is an estimated 50-100 AF of new storage volume and  
69 noted the cost estimate for local aquifer storage recovery is still in progress. His recommendation

70 was to focus on regional groundwater recovery programs.

71 President Petterle asked if there were any comments or questions from the Directors.

72 Director Grossi asked how deep the Novato basin is, noting most wells in the area are not  
73 that deep. Mr. Loy agreed, replying fifty feet is the typical depth. Director Grossi asked if Mr. Loy  
74 meant the aquifer was 50 feet thick and 50 feet down. Mr. Loy replied the bedrock underlying the  
75 aquifer sediments is 50 feet below the ground surface and the water depth is approximately 10  
76 feet. Mr. Williams noted when looking at the regional study be aware that Sonoma Water is  
77 actively engaged in three wells in the Santa Rosa Plain, therefore there is definitely a regional  
78 opportunity.

79 President Petterle asked if there were any comments or questions from the public and there  
80 was no response.

81 The second alternative, Recycled Water System Expansion, was presented by Anita Jain.  
82 Ms. Jain stated that the focus of this effort was to evaluate expansion of the existing distribution  
83 system and explore other opportunities to increase recycled water use without expanding the  
84 existing distribution system. She evaluated the north, south and central service areas of Novato,  
85 which in total has a potential to offset an additional 220 AF of potable water. Ms. Jain also  
86 introduced other near-term opportunities that would not include an expansion of the distribution  
87 system which included: constructing additional hydrants or commercial fill stations; optimize  
88 residential fill station operations to increase use; and facilitate connection of in-fill sites and assess  
89 dual-plumbing requirements for toilet flushing. Ms. Jain also informed the Board of recycled water  
90 use opportunities for future study, which included: privately-owned recycled water storage tanks  
91 and delivery of recycled water to residential customers. She noted that livestock watering is not  
92 a consideration at this time since it is prohibited by current regulations. Ms. Jain stated the next  
93 steps would be to conduct planning level hydraulic analysis to determine: infrastructure sizing;  
94 prioritize alignments and phasing plan for construction; and develop planning level cost estimate.  
95 An additional future study would be needed to determine if recycled water supply reliability can  
96 meet future demand. In conclusion Ms. Jain reported that potential potable water offset of up to  
97 220 AF is possible with a distribution system expansion. She noted a cost estimate for expanding  
98 this system is still in process; however, she recommended to continue to assess opportunities for  
99 increasing recycled water use within the existing distribution system.

100 President Petterle asked if there were any comments or questions from the Directors.

101 Director Petterle stated he had a question for Mr. McIntyre or Mr. Williams, stating if we  
102 look at ABAG requirements for affordable housing and potential future development, what is our  
103 projected additional need. He asked in perspective of what we are looking at for short or long-

104 term needs is 1,000 AF enough. Mr. Williams replied there are always a lot of variables with  
105 development. He stated that there are the known development sites like Fireman's Fund and  
106 vacant lots and commercial developments, and the projection between now and 2035 is to be  
107 about 1,000 AF of new potable demand. Mr. Williams that noted Fireman's Fund already receives  
108 recycled water and we are looking at 900 to 1,000 AF as the range for future build out in the City  
109 of Novato. Mr. Williams added there is additional forecast information in the Urban Water  
110 Management Plan. Director Petterle replied that this gave him a sense of where the District  
111 stands. Director Joly asked on behalf of the customers that are listening, he would like to ask Mr.  
112 McIntyre or Mr. Williams when we look at water supply, how many AF do we currently supply for  
113 Novato and how big is Stafford Lake. Mr. Williams replied if Stafford Lake is filled to the spillway  
114 it can hold 4,300 AF, however we never drain it down to zero. Mr. Clark added the typical annual  
115 production goal is 2,000 AF of local treated supply and that this amount supplements water from  
116 SONOMA WATER. Mr. Williams noted that the total annual water demand is approximately 8,000  
117 AF total use in the Novato area.

118 President Petterle asked if any of the public had any comments or questions.

119 Jerry Peters commented that the District needs to do more to promote the recycled water  
120 residential fill station and expanding that program. He added there are some who are not aware  
121 of the programs available to them, and recycled water could allow us to keep our trees.

122 The third alternative, Indirect Potable Reuse, was presented by Charles Hardy. Mr. Hardy  
123 apprised the Board that state regulations allow "indirect" potable reuse through groundwater  
124 replenishment (augmentation), surface water source argumentation, noting full advanced  
125 treatment is required in this process. Mr. Hardy spoke about the feasibility of Indirect Potable  
126 Reuse (IPR) and noted IPR water cannot mix directly with potable water.

127 Mr. Hardy also informed the Board about the feasibility of indirect potable reuse (IPR). He  
128 noted IPR water cannot mix directly with potable water and there are not viable local IPR storage  
129 options in Novato in the groundwater aquifer or as surface water storage. Mr. Hardy reported  
130 groundwater augmentation in the local groundwater basin is limited to approximately 50-100 AF  
131 in storage availability. He also reviewed the surface water augmentation options at Stafford Lake.  
132 He stated regulations require a blending ratio of less than ten percent and a retention time of more  
133 than sixty days. Mr. Hardy added IPR is limited by the small volume of Stafford Lake, even if the  
134 lake is kept full, the maximum supply potential is approximately 100-400 AF. Mr. Hardy explained  
135 the indirect potable reuse infrastructure to the Board. He stated the unit cost of treatment prior to  
136 storage is at least \$3,000 per AF without economy of scale seen by other agencies. He noted  
137 that additional costs for groundwater recharge, injection and extraction wells and associated



138 infrastructure. Mr. Hardy reported a new conveyance pipeline would be required for Stafford Lake  
139 augmentation with an estimated pipeline length of 28,000 linear feet that would run from Novato  
140 Sanitary District to Stafford Lake. He added this 16-inch diameter transmission pipeline would  
141 have an estimated cost of over \$20M dollars. Mr. Hardy recommended no further analysis of  
142 local IPR is feasible with a groundwater augmentation of approximately 50-100 AF and surface  
143 water augmentation of approximately 100-400 AF. Mr. Hardy however, did note that regional IPR  
144 may be viable, potentially with approximately 3,100 AF from Novato Sanitary District. In  
145 conclusion, Mr. Hardy stated direct potable reuse would be a potentially viable option in the future  
146 as regulations and public acceptance evolve, but that would be at least ten years out.

147 President Petterle asked if there were any comments or questions from the Directors.

148 Director Grossi suggested further analysis of surface water getting into Stafford Lake,  
149 noting there is a potential for raising the capacity another 700 AF if we add it back into the lake or  
150 find another place to store the water. Director Baker asked about the treatment process for IPR  
151 and the requirement is that it must go through both microfiltration and the reverse osmosis units.  
152 Mr. Hardy confirmed, they were both part of the process. Director Baker asked if the water  
153 rejected was a significant amount. Kathryn Gies of West Yost responded it is about 5-10% of  
154 the total. Director Joly stated the AF of recycled water from Novato Sanitary District is a good  
155 supply. Director Joly asked what the prohibited cost was, and what is Novato Sanitary District  
156 capable of converting. Ms. Jain replied that would be a discussion with Novato Sanitary. Mr.  
157 Hardy added the facilities for treatment would still need to be produced.

158 President Petterle asked if any of the public had any comment or questions and there was  
159 no response.

160 The fourth alternative, Improve Stafford Treatment Plant (STP) Process Water Recapture  
161 Efficiency, was also presented by Charles Hardy. Mr. Hardy noted STP potable water production  
162 is limited by a wastewater discharge permit from Novato Sanitary District. He stated STP has  
163 several reject water streams: hydrocyclone which accounts for 80-90% of total wastewater  
164 discharge and has the potential to reduce the discharge by 50-75% with hydrocyclone  
165 modifications. He noted these modifications are subject to performance testing and regulatory  
166 approval. Mr. Hardy reported an additional yield of at least 100 AF could occur by a 50% reduction  
167 of hydrocyclone during a dry year. Additionally, he stated that there is a potential to achieve an  
168 additional yield of 600 AF during an average rainfall year or if supplemental water is stored during  
169 a dry year. Mr. Hardy explored improving the Stafford Treatment Plant process in regard to water  
170 recapture efficiency. He apprised the Board that District staff previously conducted a plant-scale  
171 study of modifying hydrocyclone return to reduce reject flow volume, however he recommended

172 an additional plant-scale study be done with external technical support to confirm  
173 capital/operations changes needed in order to change sludge diversion. He added raw water  
174 intake may also need modifications for more consistent intake water quality and the District should  
175 account for replacing the 4-inch discharge pipeline to Novato Sanitary District to reduce  
176 maintenance efforts. Mr. Hardy recommended the District should conduct additional plant-scale  
177 testing with technical support. He concluded there is a potential estimated yield of approximately  
178 100-600 AF and a cost estimate is still in progress.

179 President Petterle asked if there were any comments or questions from the Directors.

180 Director Fraites stated Jolly Brown sent in a question on the Zoom chat platform. Director  
181 Petterle read Mr. Brown's comment and a discussion ensued.

182 President Petterle asked if any of the public had any comments or questions and there  
183 was no further discussion.

184 The fifth alternative, Divert Captured Stormwater Into Stafford Lake was presented by  
185 Doug Moore. Mr. Moore reported on the watersheds in Leveroni and Bowman Canyons, he  
186 quantified the rainfall to runoff relationship to calculate the yield of the Leveroni and Bowman  
187 Canyon runoff, evaluated increased water supply to Stafford Lake and evaluated costs. In  
188 addition, he reported on possible capture of diverted stormwater in Stafford Lake. Mr. Moore  
189 stated there was no significant runoff for the first eight to ten inches of rain, however the watershed  
190 yields 353 AF per inch of rain after the first eight to ten inches. He reported the 2016-2020  
191 average watershed yield for Stafford Lake was 4,000 AF, the estimated yields for the same time  
192 period were 910 AF for Leveroni Canyon, 1,590 AF for Bowman Canyon and 2,500 AF combined.  
193 Mr. Moore noted however, this alternative only works if there is stormwater runoff available. The  
194 increased water supply to Stafford Lake could be 788 AF. Mr. Moore also reviewed the estimated  
195 total annual cost per AF, which included the capital, operations and maintenance cost. In  
196 conclusion, Mr. Moore stated that the use of Leveroni and Bowman Canyon water is cost feasible,  
197 however the use of the detention basin is cost prohibitive unless there is a cost sharing. He  
198 recommended evaluating the long-term benefit of Bowman and Leveorni Canyon flow diversion  
199 using twenty to forty years of rain data, but adjusting for future climate change. Additionally, he  
200 recommended monitoring flows and water quality from Leveroni and Bowman Canyons.

201 President Petterle asked if there were any comments or questions from the Directors.

202 Director Baker asked aside from the operational and treatment of water, does the District  
203 need to buy property or the rights of the property. Mr. Moore replied that he did not mention  
204 acquisition of property in his report. Director Baker responded that is a big deal, not only the cost,  
205 but possible environmental implications. Mr. Moore replied, that Director Baker is absolutely right,

206 the capital cost of the land and other possible issues was not included. Director Baker stated that  
207 there will be a cost associated as political and environmental issues arise. Director Fraites stated  
208 that last week he has a discussion with a county supervisor, and Bowman Canyon is Agricultural  
209 or A60 zoning. He added, the County of Marin is looking to put development in the Bowman  
210 Canyon area as they continue to get pressure from the state for more housing. Director Fraites  
211 asked if a housing development were to be constructed, how would that affect the District's ability  
212 to extract water from Bowman Canyon. Mr. Moore said the facility could be constructed on the  
213 south side of the roadway and may not be affected by a development. However, he added there  
214 would be a difference of urban runoff versus a natural watershed. Director Fraites stated it is  
215 something we should be aware of. Director Grossi stated it is a complicated analysis. He noted  
216 Bowman Canyon has been sitting there with threats of development for a long time. Director  
217 Grossi stated the analysis on Leveroni Canyon and Bowman Canyon was excellent. He added a  
218 simpler approach might be to store the water and make one reservoir, it could store the excess  
219 water and solve some of the flooding problems. Director Grossi stated there is an excess of 3,000  
220 AF of water there, noting a lot of water is running down the watershed and we should save it. He  
221 added there would be the cost for infrastructure, and building of a dam, but think of the potential  
222 possibilities. Director Grossi asked Mr. Moore how much could be held back in one or both of the  
223 canyons, and what can we do to work with the county and sanitary district to make this a multi-  
224 agency project. He also recognized there are various opinions on dams. Mr. Moore replied,  
225 Director Grossi is correct about environmental concerns. He added, from a cost perspective you  
226 would need to get storage and then have to extract the storage and that is an idea they have not  
227 put cost or volume to yet. Director Grossi stated it would be something the District should look  
228 at, especially if desalination is not feasible for this District. He noted this study has brought to  
229 light that we have a lot of sources for water; but our problem is the storage. Mr. Williams stated  
230 the disadvantage we have tonight is that we do not have the information of the Sonoma Water  
231 regional study. He noted there is a potential to physically store water in Sonoma County to provide  
232 regional storage. Director Grossi stated that we need to throw everything on the table and look at  
233 the long term with radical changes in rainfall and drought as critical factors. Director Petherle  
234 stated water rights and fishery is a concern, considering a dam in the canyon is an interesting  
235 proposition and it may be worth giving it some consideration.

236 President Petherle asked if any of the public had any comments or questions.

237 Mr. Brown (via Zoom chat) asked how long the amortization cost would be for the basin,  
238 is twenty-five years realistic or would it last longer; what would be the cost of the project. He  
239 added we don't have a drought as much as we have a storage issue. Hilary Maslon sent in a

240 Zoom chat request and asked how is it that Israel does desalination and we cannot. She asked  
241 if there is a way to store the brine, or use it for another purpose. Director Petterle replied we will  
242 look at desalination later in this study, however it is really expensive and the District's is not directly  
243 near the ocean. He reassured Ms. Maslon that the Board and staff will look at that option and it  
244 is not completely off the table. Ms. Maslon suggested staff could setup a training program for  
245 residential passive gray water use. She noted washing machines, for example could be on a  
246 simple low grey water system for low cost. Mr. McIntyre reported NMWD does offer gray water  
247 rebates and the County of Marin has a program to teach customers about gray water use and  
248 storage. He suggested Ms. Maslon contact NMWD's Water Conservation Coordinator, Ryan  
249 Grisso.

250 The sixth alternative, Increase Stafford Lake Storage Capacity, was also presented by  
251 Doug Moore. Mr. Moore discussed two options; modifying the spillway and removing sediment.  
252 He noted one way to increase the storage capacity would be to install a slide gate on the spillway  
253 "notch". He noted the increased storage volume is only useful when there is enough rain to  
254 overtop the spillway notch, however it could increase storage volume up to 726 AF. Mr. Moore  
255 stated the slide gate had an estimated total capital cost of \$710,000, adding the capital cost of  
256 increased storage volume would be around \$1,000 per AF. Another option discussed by Mr.  
257 Moore is to remove sediment by excavating the bottom of the lake. He stated the capital cost of  
258 increased storage volume for a 15-foot depth is estimated to be \$48,500 per AF. Mr. Moore noted  
259 a minor benefit of excavation is removal of nutrient rich soils that can temporarily help the  
260 treatment process. In conclusion, Mr. Moore stated the slide gate is cost feasible and the  
261 excavation of sediment from the lakebed is cost prohibitive. He noted some future considerations  
262 which included: evaluating long-term benefit of slide gate using 20-40 years of rain data, but  
263 adjusted for future climate change. Additionally, he considered evaluating the long-term benefit  
264 of slide gate combined with Leveroni and Bowman Canyon flow diversion using 20-40 years of  
265 rain data, but adjusted for future climate change.

266 President Petterle asked if there were any comments or questions from the Directors.

267 Director Grossi asked if pouring concrete to raise the level could be done instead of using  
268 a slide gate. Secondly, he asked what factors was used to generate the cost for the removal of  
269 sediment, noting it is about fifty dollars a cubic yard to remove dirt. Mr. Moore replied they used  
270 \$30 per cubic yard as an estimated cost for sediment removal. He added that the number is a  
271 reasonable value as a starting point. Mr. Moore added this option is a very expensive and not  
272 feasible. In answer to Director Grossi's question about filling the notch with concrete, Mr. Moore  
273 explained the notch is part of the flood control feature of the dam, his understanding is the notch

274 allows water to release in a controlled fashion before the water spills over the larger spillway.  
275 Director Grossi stated if you combine the storage you would end up with a complicated three-  
276 dimensional matrix. Jolly Brown Zoom chatted that the gate sounds like a great idea. Director  
277 Joly stated the gate option sounds very attractive, and asked if it would create an inundation issue  
278 when walking around the dam. Mr. Moore replied the facilities are constructed below so there  
279 should not be any potential for an issue. Director Joly stated that the average rainfall for Novato  
280 is 27 inches, and asked how many inches would it cause it to spill if analyzing inch of rain per get  
281 700 AF. Mr. Moore stated that he has not done that calculation; however, the Stafford Lake  
282 watershed yields 353 AF per inch of rain after the first 8-10 inches. He noted with two added  
283 inches, a yield of about 700 AF would be a ball park number. Director Joly asked if it would be  
284 the metric of Leveroni and Bowman Canyon, and Mr. Moore confirmed. Mr. McIntyre stated the  
285 idea of an adjustable gate is for utilization after the January-February months, so the spillway can  
286 still act as it was designed to attenuate sudden flooding events due to heavy rainfall. Mr. McIntyre  
287 added, during spring time we could have higher water levels along the perimeter of the lake, but  
288 no higher than what is experienced during major storm events. Mr. Williams stated NMWD Senior  
289 Engineer, Tim Fuelle, came up with the concept and sent it to West Yost. He added staff would  
290 have to work with the Division of Safety of Dams to approve the spillway gate and we would have  
291 more details on that later. Mr. Clark stated that in a previous report the lake generally spills 70%  
292 of the time and we would need details to see how much we would gain. Director Baker reminded  
293 the Board that 35 years ago there was a joint project initiated by Marin County Flood Control  
294 District (MCFCD) when downtown Novato flooded. He stated at that time they contributed  
295 financially to raise the top of the dam and rebuild the spillway to what it is today. Director Baker  
296 stated that the conceptual changes to modify the spillway will need to consider some standing  
297 agreements with the County of the Marin and MCFCD on who is responsible for what. Mr.  
298 Williams stated that staff has already reached out to the MCFCD and there is a benefit in this. He  
299 added when the County via the MCFCD did the Novato Watershed study, a modification of the  
300 spillway was an alternative to consider and if we decide to pursue this it will take a lot of  
301 coordination and review of any agreements in place.

302 President Petterle asked if any of the public had any comments or questions and there  
303 was no response.

304 The seventh alternative, Desalination, was presented by Kathryn Gies. Ms. Gies apprised  
305 the Board that this must be pursued as a regional partnership in order to be a viable project due  
306 to: economy of scale, environmental consideration, and the fact that there is no viable intake or  
307 brine discharge locations for NMWD. She shared some agency comparisons. Ms. Gies stated

308 that MMWD completed a desalination study in 2008 and again in 2021, and opted not to pursue.  
309 She noted MMWD is currently investigating a pipeline connection with EBMUD for emergency  
310 supply as an alternative option. Additionally, Ms. Gies added MMWD is proceeding with an EIR  
311 for the pipeline, which will look at desalination as an alternative, noting an estimated 15 MGD  
312 desalination plant has an estimated cost of \$230M. She noted that any desalination partnership  
313 would be a long-term project of fifteen or more years. Ms. Gies also reported that Sonoma Water  
314 is preparing a regional study and desalination is one option being evaluated. She added that if  
315 the Sonoma Water Study is not available, the findings will not be incorporated into NMWD's local  
316 study.

317 President Petterle asked if there were any comments or questions from the Directors.

318 Director Joly noted the study said that NMWD did not have an appropriate place to access  
319 the ocean water. He added he would be hesitant to wait for Sonoma Water's regional desalination  
320 report. Director Joly stated that there is an irony of running out of water when we are next to the  
321 largest body of water on the planet. He noted if other communities like Israel can bring on  
322 desalinated water then clearly, we should be at least studying the technology and not relying on  
323 water from the sky. Director Fraites stated that desalination is enormously expensive, but maybe  
324 we can look at the bay, Petaluma River or Blackpoint as an option, noting Petaluma River is  
325 brackish water, not sea water. Mr. McIntyre stated that with respect to desalination, whether is it  
326 ocean water or brackish water, we are too small of an agency to do it on our own, we need a  
327 partner. Mr. McIntyre added Sonoma Water's regional study is looking at brackish water  
328 desalination with the potential location in the Petaluma area. Director Joly stated we need not  
329 just regional money, but federal money. He noted the Bay Area is large and he would expect  
330 federal money would be available and it is worth pursuing. Director Grossi stated that he agrees  
331 that desalination is something we can not be the lead agency on, we don't have the money. He  
332 noted we will need to partner with others, whether it is MMWD, Sonoma Water, the state or federal  
333 government. Director Grossi added he also agrees desalination needs to be looked at and we  
334 need to keep monitoring the agencies around us. He noted, however, it will not solve our  
335 problems right now. Director Grossi stated that even if you got funding it would be fifteen years  
336 before you would be able to get water. He emphasized we need to look at options that will work  
337 for us now, and the report from West Yost is very beneficial to us. Director Petterle stated  
338 California is water rich, it was the coastal areas that were hit, which is why they took on  
339 desalination. He noted ultimately the solution is desalination, but it takes a regional coordination.  
340 Director Petterle stated that as an example look where solar was thirty years ago, we have made  
341 so many advances since then. Director Petterle stated that in thirty years we will see many

342 advances in desalination too, but we need to be realistic on the expense and the environmental  
343 consequences. Director Petterle stated we need to look at the shorter-term options, especially  
344 with ABAG decision on affordable housing units in Novato, we need solutions now.

345 President Petterle asked if any of the public had any comments or questions and there  
346 was no further discussion.

347 Rhodora Biagtan gave a presentation on Evaluation Criteria, which included: cost, water  
348 supply yield and reliability; operational impacts; regulations and permitting; public and institutional  
349 considerations and other considerations. In regards to cost Ms. Biagtan stated they considered  
350 the following: capital cost plus operations and maintenance cost estimate; cost estimates to  
351 include additional labor, material, energy and chemicals needed; compare using dollar per AF for  
352 each water supply alternative; making the cost estimate translatable to NMWD's water; noting  
353 revenue impacts that would be relative to the volume of water generated, except for new recycled  
354 water uses. In regards to water supply yield, Ms. Biagtan stated they included an estimate of the  
355 expected water supply yield. Additionally, she considered reliability and the likelihood of the water  
356 supply alternative producing the anticipated yield, noting climate change may impact the reliability.  
357 Ms. Biagtan stated that in regards to operational impacts, they evaluated the impact to  
358 distribution and treatment operations. She stated they also considered the following: challenges  
359 to blending from different supply sources; additional chemicals required to produce and  
360 maintained high-quality of water; energy intensity; and additional staff resources or special  
361 certifications required. In regards to regulations and permitting, Ms. Biagtan stated that first they  
362 need to identify the required permits and then evaluate applicable regulations and anticipated  
363 permitting requirements. She noted considerations include: environmental impacts; conformance  
364 with CEQA, permitting requirements specific to the water supply alternative and water right for  
365 alternatives that may have water rights issues. In regards to public and institutional  
366 considerations, Ms. Biagtan included: public acceptance; coordination and collaboration with  
367 other entities; need for partnerships or agreements; and required easements from other entities.  
368 In conclusion, she stated that each water supply alternative is unique and may have other  
369 important considerations that are relevant to each water supply alternative and will be discussed,  
370 but not scored.

371 President Petterle asked if there were any comments or questions from the Directors and  
372 there was no response.

373 President Petterle asked if any of the public had any comments or questions and  
374 there was no response.

375 Ms. Biagtan reviewed criteria ranking and weighting. She stated the criteria scoring was

376 based on a quantitative criterion that included cost and water supply yield. Additionally, the  
377 qualitative criteria would include: reliability; operational impacts; regulations and permitting; and  
378 public and institutional considerations. In regards to qualitative criteria priorities and weight, Ms.  
379 Biagtan stated the criteria were ranked by weight. In conclusion of the presentation, Ms. Biagtan  
380 reviewed the next steps. She stated West Yost will prepare evaluations and complete the study,  
381 they will present their findings to the Board and public in spring of 2022 and then it will be up to  
382 the Board to accept.

383 Director Petterle thanked West Yost and staff for a study, that he felt was done well beyond  
384 his expectations. He stated the study looked at many things he had not considered, it was  
385 fascinating discussion and it was absolutely an amazing presentation. Director Joly stated he  
386 couldn't agree more, noting it was extremely helpful for the Board and the public to see. He noted  
387 as a criteria water supply should be higher in weight; the allotment of percentage should be higher  
388 for water. Mr. Williams stated if we don't have supply, we don't have water. He added we want  
389 to look at the other factors, and he agrees in principal, but other impacts do have weight. Director  
390 Joly stated in reference to water enhancement, our partner Sonoma Water has a three well  
391 storage program and just got a \$9M grant. Mr. Williams replied, in talking about catchment, or  
392 water from the sky", we need to look at the regional aquifer storage and recovery, as well  
393 stormwater storage and aquifer recharge known as flood-managed aquifer recovery. He added  
394 we can take stormwater and put it back in the ground and extract it during dry periods, noting  
395 Sonoma Water is looking at this as part of the regional study.

396 **ADJOURNMENT**

397 President Petterle adjourned the meeting at 7:30 p.m.

398 Submitted by

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401 Theresa Kehoe

402 District Secretary



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**DRAFT**  
**NORTH MARIN WATER DISTRICT**  
**MINUTES OF REGULAR MEETING**  
**OF THE BOARD OF DIRECTORS**  
February 1, 2022

6 **CALL TO ORDER**

7           President Petterle announced that due to the Coronavirus outbreak and pursuant to the  
8 Brown Act as modified by Assembly Bill 361, this was a virtual meeting. President Petterle called  
9 the regular meeting of the Board of Directors of North Marin Water District to order at 6:00 p.m.  
10 and the agenda was accepted as presented. President Petterle added that there was not a public  
11 location for participating in this meeting, but any interested members of the public could participate  
12 remotely by utilizing the video or phone conference dial-in method using information printed on  
13 the agenda. President Petterle announced that in the event of technical difficulties during the  
14 meeting, the District Secretary will adjourn the meeting and the remainder of the agenda will be  
15 rescheduled for a future special meeting which shall be open to the public and noticed pursuant  
16 to the Brown Act.

17           President Petterle welcomed the public to participate in the remote meeting and asked  
18 that they mute themselves, except during open time and while making comments on the agenda  
19 items. President Petterle noted that due to the virtual nature of the meeting he will request a roll  
20 call of the Directors. A roll call was done, those in remote attendance established a quorum.  
21 Participating remotely were Directors Jack Baker, Rick Fraites, Jim Grossi, Michael Joly and  
22 Stephen Petterle.

23           President Petterle announced that all public attendees will be invited to speak and will  
24 need to use the raised hand icon in Zoom or dial \*9 to be called upon.

25           Mr. McIntyre performed a roll call of staff, participating remotely were Drew McIntyre  
26 (General Manager), Tony Williams (Assistant GM/Chief Engineer), Terrie Kehoe (District  
27 Secretary), Julie Blue (Auditor-Controller), Tony Arendell (Construction/Maintenance  
28 Superintendent), Robert Clark (Operations/Maintenance Superintendent), Ryan Grisso (Water  
29 Conservation Coordinator) and Pablo Ramudo (Water Quality Supervisor). Also participating  
30 remotely were; Morgan Biggerstaff (Legal Counsel), and IT consultant Clay Smedshammer (Core  
31 Utilities).

32           President Petterle requested that for those joining the virtual meeting from the public to  
33 identify themselves and there was no response.

34 **MINUTES**

35 On motion of Director Joly seconded by Director Baker, the Board approved the minutes  
36 from the January 18, 2022 Regular Board Meeting with minor revisions by the following vote:

37 AYES: Director Baker, Fraitess, Grossi, Joly and Petterle

38 NOES: None

39 ABSTAIN: None

40 ABSENT: None

41 **GENERAL MANAGER'S REPORT**

42 Gallagher Well No. 2 Easement

43 Mr. McIntyre announced that Jennifer Maude Carlin, Marin Agricultural Land Trust's acting  
44 Executive Director signed the Gallagher Well No. 2 easement on February 1<sup>st</sup> and the easement  
45 will be recorded soon.

46 NBWRA

47 Mr. McIntyre stated that he and Mr. Williams have a North Bay Water Reuse Authority  
48 (NBWRA) meeting on February 2<sup>nd</sup> at 1:00 p.m. He also noted that Napa Sanitation District  
49 General Manager, Tim Healy had been appointed NBWRA Technical Advisory Committee (TAC)  
50 Chair.

51 WAC/TAC Meeting

52 Mr. McIntyre reported that upcoming WAC/TAC meeting will be on Monday, February 7<sup>th</sup>  
53 at 9:00 a.m. He noted that both Director Baker and Director Grossi will be virtually participating  
54 in this meeting. Mr. McIntyre stated that a presentation will be given on the updated Jacobs  
55 Regional Water Supply Resiliency Study which will show the near-term water supply projects and  
56 address projected shortfalls over the next five years. Mr. McIntyre added that staff is working on  
57 having a similar presentation given to our Board at the February 15<sup>th</sup> NMWD Board meeting.

58 Flood Control Zone 1 Advisory Board Meeting

59 Mr. McIntyre announced that the FCZ1 AB meeting has been moved from February 3<sup>rd</sup> at  
60 6:30 p.m. to February 10<sup>th</sup> at the same time. Director Grossi stated that due to a prior commitment  
61 he will be unable to attend this meeting. Mr. McIntyre confirmed he will attend.

62 Director Baker asked when Mr. McIntyre plans on formally announcing his retirement to  
63 the other agencies. Mr. McIntyre replied in March.

64 **OPEN TIME**

65 President Petterle asked if anyone from the public wished to bring up an item not on the  
66 agenda and there was no response.

67 **STAFF/DIRECTORS REPORTS**

68 President Petterle asked if any Directors or staff wished to bring up an item not on the  
69 agenda and the following were discussed.

70 Ms. Kehoe announced that Item #11 of the agenda had a revision to include Exhibit A,  
71 and the revised information was added at the end of the agenda.

72 Director Petterle stated we are still in a drought. He reported that January is usually the  
73 wettest time of the year. Director Petterle noted that last year was the driest on record with only  
74 four inches of rain, this year we got six-tenths of an inch with no rain in site the next two weeks.  
75 Director Petterle emphasized that we must remain vigilant to conserve water and explore  
76 possibilities of water supply.

77 **QUARTERLY FINANCIAL STATEMENT**

78 The Quarterly Financial Statement for Fiscal Year 2021-22 for ending December 31, 2021  
79 was reviewed by Ms. Blue. She stated the District generated a net income of \$803,039 and noted  
80 that at year end the ratio of total cash to budgeted annual operating expense stood at 141%.

81 President Petterle asked if there were any comments or questions from the Board and the  
82 following was discussed.

83 Director Grossi stated that he went through the entire document and noted this document  
84 tells us a lot about the District. He added the report was very helpful and gave a good summary  
85 on what and how the District is doing financially. Director Joly agreed that Ms. Blue and the  
86 accounting staff did a good job putting this together and it is a tremendous help to the Board and  
87 the officers. Ms. Blue replied that it is one of the most thorough reports and gave a lot of the credit  
88 to the accounting team.

89 **CONSENT CALENDAR**

90 Director Joly asked about Item #9 Rate Hearing Schedule, inquiring if he and Director  
91 Grossi will be meeting with Mr. Hildebrand before the rate hearing. Ms. Blue stated that staff was  
92 not planning on any separate meetings, however we can consider a finance committee if that is  
93 the pleasure of the Board. Director Joly replied that it would be fine to proceed as planned.

94 On the motion of Director Fraites, and seconded by Director Baker the Board approved  
95 the following items on the consent calendar by the following vote:

96 AYES: Director Baker, Fraites, Grossi, Joly and Petterle

97 NOES: None

98 ABSTAIN: None

99 ABSENT: None

100 **AUTHORIZE SIGNATORIES ON DISTRICT ACCOUNTS**

101 The Board approved adding Tony Williams, incoming General Manager as a signor on  
102 District Accounts and Drew McIntyre will be removed upon retirement.

103 **APPROVE WEST MARIN 2021 DRY YEAR WATER CONDITIONS REPORT**

104 The Board approved the West Marin 2021 Dry Year Water Conditions Report.

105 **PROPOSED FY22/23 BUDGET REVIEW SCHEDULE**

106 The Board approved the proposed FY 2022/23 Budget Review Schedule.

107 **PROPOSED FY22/23 RATE HEARING SCHEDULE**

108 The Board approved the proposed FY 2022/23 Rate Hearing Schedule.

109 **ACTION CALENDAR**

110 **GALLAGHER WELL NO. 2 WELL INSTALLATION – AWARD CONSTRUCTION CONTRACT**  
111 **TO MAGGIORA BROS. DRILLING, INC.**

112 Mr. Williams recommended the construction contract for the Gallagher Well No. 2 well  
113 installation be awarded to Maggiora Bros. Drilling, Inc. He stated that there were only two bidders  
114 on this contract, and Nor-Cal sent a letter to the District stating they have experienced significant  
115 delays on their projects and would not protest the award of the contract to Maggiora Bros.; even  
116 though Maggiora Bros. failed to sign Addendum #2.

117 Mr. Williams reported that as mentioned at the January 18<sup>th</sup> Board Meeting, the District  
118 received a grant from the California Department of Water Resources (DWR) in the amount of  
119 \$464,019, covering both construction phases of the project. He added that staff is currently  
120 working with DWR on a grant funding agreement and will return to the Board once more details  
121 are available.

122 President Petterle asked if there were any questions or comments from the Board.

123 Director Grossi commended staff for doing a great job in getting a grant. He added that  
124 he is not worried about the difference in cost, because there are valid reason for that. Director  
125 Grossi asked if we were not delayed a year due to appeals, would that have benefitted us with  
126 the cost. Mr. Williams replied that it cost us time, but he is not sure it impacted the financial cost.  
127 He stated that well drillers were already in demand. He added the silver lining however was the  
128 delay gave us the opportunity to apply for the DWR grant. Director Baker wanted to know that all  
129 bid issues were resolved, and now that we have the letter nothing will come back on us later. Mr.  
130 Williams replied there are no concerns.

131 President Petterle asked if there were any questions or comments from the public and  
132 there was no response.

133 On the motion of Director Grossi, and seconded by Director Baker the Board approved to  
134 waive the bid irregularities in Maggiora Bros. Drilling, Inc. bid, approve award of the contract to

135 Maggiore Bros. Drilling, Inc. and authorize the General Manager to execute an agreement with  
136 Maggiore Bros. Drilling, Inc. by the following vote:

137 AYES: Director Baker, Fraites, Grossi, Joly and Petterle

138 NOES: None

139 ABSTAIN: None

140 ABSENT: None

141 **RESOLUTION 22-02 MOVING FROM STAGE 2 TO STAGE 1 OF THE WEST MARIN WATER**  
142 **SHORTAGE CONTINGENCY PLAN, DISCONTINUING THE DROUGHT SURCHARGE, AND**  
143 **AMENDING EMERGENCY WATER CONSERVATION ORDINANCE NO 39 FOR THE WEST**  
144 **MARIN SERVICE AREA.**

145 Mr. McIntyre opened the discussion by saying he wanted to add to President Petterle's  
146 earlier comment . He stated there is no question that we are still in a drought. Mr. McIntyre added  
147 that in Novato, with rainfall at 62% of average, there is still a 20% mandatory reduction in water  
148 use coupled with a drought surcharge. He added, our primary Novato Service Area supply is  
149 from Lake Sonoma which is also at 62% capacity equaling a two-year supply, however we are  
150 still below the average. Mr. McIntyre noted that in West Marin it is different as rainfall is 140%  
151 above the minimum threshold for normal water year conditions. He emphasized that water  
152 conservation is still recommended for West Marin as well. Director Joly asked if staff is still  
153 thinking about backfeeding Stafford Lake again. Mr. McIntyre replied that the backfeed target for  
154 Stafford Lake was 1,100-acre feet which would fill the lake to 50% capacity. He added, since we  
155 are at 75% capacity already, no additional backfeeding is planned for the summer.

156 Mr. Grisso reported on Resolution 22-02 which would repeal Stage 2 mandatory 25%  
157 reduction and prohibitions on non-essential water use and enact Stage 1 voluntary 15% reduction  
158 in water use under the West Marin Water Shortage Contingency Plan. Mr. Grisso stated that this  
159 revision will discontinue the drought surcharge, and amend Sections 4,5, and 6 of Ordinance No.  
160 39.

161 Director Grossi commented that we are moving in the right direction. He added we don't  
162 know what will happen in February and March, and he has stopped trying to predict the rainfall.  
163 However, Director Grossi stated that the strongest storms in Marin County were in March of 1982,  
164 which brought about enormous floods, so it is anybody's guess. He added the resiliency study is  
165 coming on at just the right time. Director Joly stated that normal conditions for West Marin is  
166 wonderful news for our West Marin customers who had to endure so much in the last year. He  
167 asked if lifting the drought surcharge gives the right message to large water users. Mr. McIntyre  
168 replied that in West Marin we are operating under normal water year conditions, noting we need

169 to be careful with our messaging when we enact a surcharge or not. Mr. McIntyre reported,  
170 historically, a surcharge was enacted due to dry year conditions with less than 28 inches of rainfall.  
171 He added there is currently over 38 inches of Kent Lake rainfall since October 1, 2021 and  
172 continuing the West Marin drought surcharge during normal water year conditions would not be  
173 consistent with our Water Shortage Contingency Plan. Director Joly replied that he can see that  
174 now and stated Mr. McIntyre's response was well articulated. Director Grossi stated that the  
175 timing could not be better to award the bid for the new Gallagher well. He added that he could  
176 see West Marin being in better shape than the rest of the county. Director Petterle stated we  
177 need to make sure whatever message we send, that it is clear that West Marin relies on MMWD  
178 flows and they had a good rainfall year. He added, Novato is not in the same situation. Director  
179 Petterle also asked if the Board would need to give permission should MMWD request to backfeed  
180 Stafford Lake. Mr. McIntyre replied yes. Director Petterle noted that his concern is that their  
181 reservoirs are at 94% and ours are not. ,

182 President Petterle asked if there were any comments or questions from the public and  
183 there was no response.

184 On the motion of Director Joly, and seconded by Director Grossi the Board approved  
185 Resolution 22-02 repealing West Marin Service Area Stage 2 mandatory 25% reduction and  
186 prohibitions on non-essential water use and enacting Stage 1 voluntary 15% reduction in water  
187 use and under the West Marin Water Shortage Contingency Plan, discontinue the drought  
188 surcharge, and amending Sections 4,5, and 6 of Ordinance No. 39 by the following vote:

189 AYES: Director Baker, Fraites, Grossi, Joly and Petterle

190 NOES: None

191 ABSTAIN: None

192 ABSENT: None

193 **EXTENSION OF PAID SICK LEAVE FOR COVID-19 RELATED REASONS.**

194 Ms. Blue requested the Board approve an extension of paid sick leave for COVID-19  
195 related reasons. She recommended to credit employees time off hours taken with any unused  
196 Supplemental Paid Sick Leave for COVID19 related reasons between October 1, 2021 through  
197 December 31, 2021.

198 President Petterle asked if there were any comments or questions from the Board.

199 Director Grossi asked if there were any employees out with COVID-19 during that period.  
200 Ms. Blue confirmed that there were. Director Grossi asked about the extent of the loss. Ms. Blue  
201 replied it will be a \$16,200 credit back, noting there was a surge of cases in the county. Director

202 Joly stated that he is happy to support staff, they are entitled to this as they have worked hard  
203 during the pandemic.

204 President Petterle asked if there were any questions or comments from the public and  
205 there was no response.

206 On the motion of Director Joly, and seconded by Director Fraites the Board approved to  
207 extend the 2021 Supplement Paid Sick Leave (SPSL) and credit employees time off hours taken  
208 with any unused SPSL for COVID-19 related reasons between October 1, 2021 through  
209 December 31, 2021 by the following vote:

210 AYES: Director Baker, Fraites, Grossi, Joly and Petterle

211 NOES: None

212 ABSTAIN: None

213 ABSENT: None

214 **INFORMATION ITEMS**

215 **NMWD ADMINISTRATION AND LABORATORY UPGRADE PROJECT UPDATE**

216 Mr. Williams and Mr. Ramudo updated the Board on the NMWD Administration and  
217 Laboratory Upgrade Project.

218 Mr. Williams presented both short-term and long-term lease evaluations, and included a  
219 timeline for Board action.

220 Mr. Williams also reported on the lease of commercial space at the Wood Hollow Office  
221 Complex. He stated that a draft lease agreement has been reviewed by staff and legal counsel  
222 and included a provision for the General Manger to sign once finalized, however, the lease would  
223 not be in effect until the Board ratifies it at a later date . Mr. Williams noted the draft lease also  
224 has a clause that required a \$5,000 non-refundable deposit upon signed by the General Manger  
225 if the lease is not ratified.

226 Mr. Ramudo discussed the lab certification process involved in moving to a temporary  
227 location. Mr. Ramudo concluded, that there are significant savings of approximately \$27,000, if  
228 the certification for the temporary lab can be in place before the expiration of the existing certificate  
229 and then letting the current certificate lapse with renewal.

230 President Petterle asked if there were any comments or questions from the Board.

231 Director Joly asked if the \$15.75M was a soft cost that included Phase 1 and Phase 2, but  
232 did not include the third phase. Mr. Williams confirmed, stating Phase 3 is another wing of the  
233 building. Director Joly asked what the additional cost would be. Mr. McIntyre responded that the  
234 cost was outlined in the 2020 Board approved Master Plan, and he also did not recall the exact  
235 amount, but it was significant enough to defer Phase 3 so as not to incur the cost now. Director



236 Joly stated that it would be helpful for the Board to know. He stated that we are still in a drought  
237 with only two years of water supply in Lake Sonoma. Director Joly added, we all understand the  
238 new building has merit, but he would like to know what the cost for additional water supply projects  
239 may be. He added his basic question was would our reserves and debt capacity support all three  
240 phases of the building and any long-term water supply projects. Director Grossi stated that water  
241 supply, storage is not cheap whether it is above or underground. He added that recycled water  
242 extension may be a better option for us. Director Grossi noted we can not do this by just borrowing  
243 the funds, the District may have to look into bonding and other options. Director Petterle thanked  
244 Directors Joly and Grossi for their comments.

245 President Petterle asked if there were any comments or questions from the public and  
246 there was no response.

247 **NBWRA MEETING – NOVEMBER 29, 2021**

248 Mr. McIntyre reported on the November 29, 2021 NBWRA Meeting.

249 President Petterle asked if the Board or the public had any comment or questions and  
250 there was no response.

251 **MISCELLANEOUS**

252 The Board received the following miscellaneous items: Disbursements – Dated January  
253 20, 2022, Disbursements – Dated January 27, 2022, Information - FY21 2<sup>ND</sup> Quarter Labor Cost  
254 Report and NOAA Three-Month Outlook Temperature and Precipitation Probability- January 20,  
255 2022.

256 The Board received the following news articles: Marin IJ – Editorial – District must carefully  
257 ease water rules; Marin IJ – Marin water officials lift drought limits, penalties and Marin IJ – Novato  
258 reviews new election district maps – FOUR PROPOSALS.

259 **ADJOURNMENT**

260 President Petterle adjourned the meeting at 7:14 p.m.

261 Submitted by

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263 Theresa Kehoe  
264 District Secretary  
265

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## MEMORANDUM

To: Board of Directors, North Marin Water District

From: Drew McIntyre, General Manager  
Morgan Biggerstaff, BPMNJ  
Tom Willis, Olson Remcho LLP

February 12, 2022

Subject: Redistricting Process Public Hearing No. 2 – Review and Receive Public Input on Proposed Map; Consider Adopting Resolution 22-XX Affirming the Current Electoral Division Boundaries, as Established in Ordinance No. 38, Shall Continue to Remain In Effect for the Next Decade

I:\gm\california voting rights act cvra- 2021\california voting rights act - 2021\staff report for 2.15.22 - or comments (00457802xae03)\_bpmnj\_final.docx

**RECOMMENDED ACTION:** Solicit Public Input and Consider Adopting Resolution 22-XX

**FINANCIAL IMPACT:** None at this time

### Background

On August 6, 2019, the Board of Directors (Board) adopted corrected Ordinance No. 38 to transition from an at-large to a division-based election system in conformance with the California Voting Rights Act of 2001 ("CVRA"). The director elections (for divisions 2, 3, and 4) in November 2020 were held under the new by-division election system.

Pursuant to California Elections Code Section 22000 *et seq.*, the Board must review its electoral division boundaries following the federal census that occurs every ten years, identify any significant demographic changes, and adjust the boundaries as necessary consistent with the US Constitution, Federal and State laws. In adjusting those boundaries, the Board is required to draw divisions that meet the following legal requirements:

- Each division shall contain nearly equal population, with any deviations justified by other traditional redistricting criteria.
- Each division shall be drawn in a manner that complies with the state and federal Constitutions, the Federal Voting Rights Act, and state law.
- Consistent with the principles established by the United States Supreme Court in *Shaw v. Reno*, 509 U.S. 630 (1993), divisions shall not be drawn with race as the predominant factor.

- Each division shall be contiguous, meaning that there are no islands or parts of the division that are not attached to the whole.

Elections Code Section 22000 provides that the Board of Directors may also take into consideration the following factors: (1) topography, (2) geography, (3) cohesiveness, contiguity, integrity and compactness of territory, and (4) community of interests of the division. Essentially, these criteria mean that the Board may consider:

- Keeping communities of interest, such as neighborhoods, school district boundaries, etc., undivided by a division boundary, to the extent feasible.
- Respecting visible natural and man-made geographical and topographical features when drawing division boundaries, as much as possible.
- Having compactness of divisions, including their shape and appearance.
- Identifying changes to the housing stock, including areas of population growth, if any, since lines were drawn in 2019, keeping in mind, however, that divisions will have to contain nearly equal population based on the 2020 Census data.
- Including public facilities in each division, to the extent feasible.
- Including commercial interests in each division, to the extent feasible.

The additional criteria may or may not be applicable or appropriate in the District's service area. The community should be encouraged to provide input on some or all of these additional criteria and may also provide input on or suggest other criteria not mentioned above.

On December 7, 2021, the Board received a report from staff and legal counsel regarding the 2020 Census data in which the District's demographer (Redistricting Partners) indicated the 2020 Census data did not reveal significant population shifts that require adjustments in division lines. In fact, the 2020 Census data indicated improved population balance among the District's five electoral divisions, meaning that the current districts as drafted comply with the constitutional requirement that the districts have equal population. The relevant standard is that a plan with total deviation of less than 10% among all districts is presumed constitutional. The current total deviation among all districts using 2020 census data is 7.7%, well within the constitutional standard. As a result, the Board directed staff to post the District's current electoral division boundaries map as the proposed draft map for the redistricting public hearings.

The Board also directed staff and legal counsel to prepare materials and invite the public to provide input on the possibility of re-adopting the current electoral divisions map. The Board set two (2) virtual public hearings where the Board would receive and respond to public comments, instruct the demographer and special counsel on any revisions to the draft map, and subsequently consider adoption of a final electoral division map. The Board approved the following schedule:

### Redistricting Process Timeline

| DATE                                    | EVENT                                 | COMMENT   |
|---|---------------------------------------|---|
| Tuesday, January 18, 2022 at 6:00 p.m.  | 1st Public Hearing (Regular Meeting). | Public hearing to receive public comments; instruct counsel and demographer on any further draft maps, if any.                |
| Tuesday, February 15, 2022 at 6:00 p.m. | 2nd Public Hearing (Regular Meeting). | Public hearing to receive public comment; Respond to comments (if any); Board vote to adopt final map of Electoral Divisions. |

On January 18, 2022, the Board held the first public hearing on redistricting. Prior to the meeting, staff posted the proposed map on the District's website. The Board received public comment and discussed the draft map. The Board did not instruct special counsel or the demographer to revise the draft map or provide any additional draft maps.

### Public Outreach

The redistricting process is informed by public input. To support the public in providing input, District staff developed a public outreach strategy to help inform the public on division-based elections and to encourage and obtain feedback and input, using the following methods:

- Established a dedicated web page on the District's website to provide information regarding the 2021 redistricting process; and
- Posted ongoing social media outreach to Facebook, Twitter, and Nextdoor; and
- Issued a press release to both the Marin IJ and Point Reyes Light newspapers to inform residents and businesses in the District's service areas about how they can participate in the process; and
- Published public notices in the Marin IJ and Point Reyes Light newspapers to inform residents and businesses in the District's service areas about how they can participate in the process.

As a result of its public outreach, on February 9, 2022, the District received two alternative draft maps from a member of the public, Mr. Zachary Griggy. Those alternative draft maps have been digitized by the District's demographer to provide the Board and public the same data as has been presented with the District's proposed map. These two alternative draft maps are included with this staff report. If the Board wishes to adopt one of these publicly-submitted draft maps as the District's final map, it would have to hold one additional public hearing on the map before adopting the map. The Board must adopt the final map by April 17, 2022.

### **Recommendation**

Staff recommends that the Board receive a summary presentation by Redistricting Partners and legal counsel, and subsequently solicit public input as part of the second public hearing. After closing the public hearing, the Board may consider adoption of Resolution 22-XX affirming the District's current electoral division boundaries, as established in Ordinance No. 38, shall continue to remain in effect for the next decade.

### **Attachments**

- Attachment 1 – Redistricting Partners PowerPoint Presentation
- Attachment 2 – Resolution 22-XX
- Attachment 3 – North Marin Water District's Proposed Draft Electoral Division Boundaries Map
- Attachments 4 and 5 – Two Publicly-Submitted Alternative Draft Maps



North Marin Water District

**Redistricting 101**

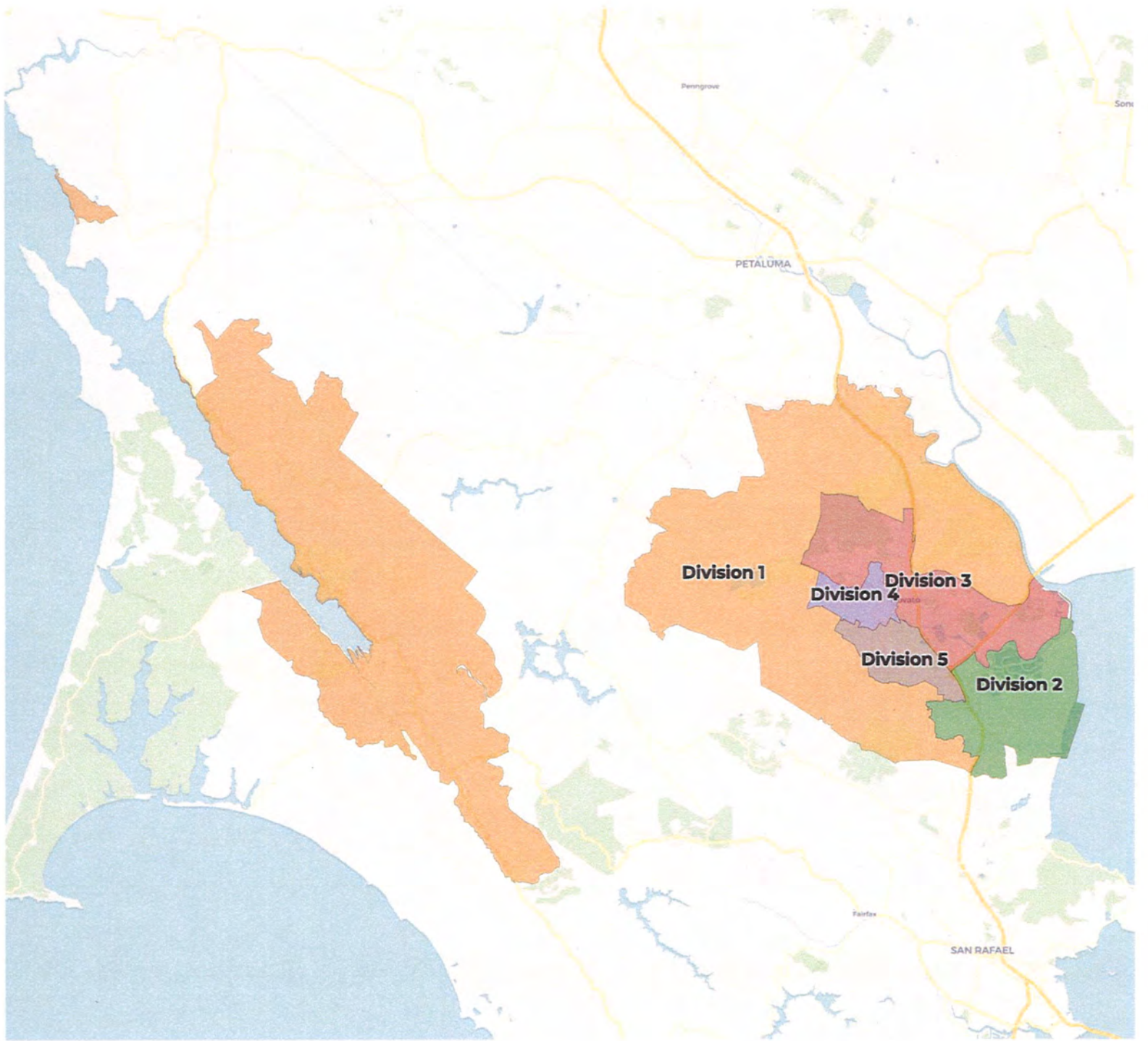
December 7, 2021

# Overview

This presentation will cover a range of topics and expand on the technical aspects of the redistricting process.

- Current District Population
- What is Districting/Redistricting?
- Traditional Redistricting Principles
- Redistricting Process & Public Input





**2010 Census**

|             | Division 1 | Division 2 | Division 3 | Division 4 | Division 5 |
|-------------|------------|------------|------------|------------|------------|
| Population  | 12,890     | 12,300     | 12,451     | 12,158     | 11,739     |
| Deviation   | 582        | -8         | 143        | -150       | -569       |
| Deviation % | 4.7%       | -0.1%      | 1.2%       | -1.2%      | -4.6%      |
| Other       | 11,011     | 7,709      | 9,482      | 8,210      | 7,822      |
| Other %     | 85.4%      | 62.7%      | 76.2%      | 67.5%      | 66.6%      |
| Latino      | 1,850      | 7,801      | 1,855      | 2,800      | 2,722      |
| Latino %    | 14.4%      | 63.4%      | 14.9%      | 23.1%      | 23.2%      |
| Asian       |            |            |            |            | 830        |
| Asian %     | 3.8%       | 6.9%       | 6.6%       | 5.9%       | 7.1%       |
| Black       | 133        | 462        | 190        | 342        | 365        |
| Black %     | 1.0%       | 3.8%       | 1.5%       | 2.8%       | 3.1%       |

Total Deviation of 9.3%

**Citizen Voting Age Population (CVAP)**

|               | Division 1 | Division 2 | Division 3 | Division 4 | Division 5 |
|---------------|------------|------------|------------|------------|------------|
| Total CVAP    | 9,292      | 7,531      | 8,508      | 7,975      | 7,737      |
| Other CVAP    | 8,194      | 5,996      | 6,973      | 6,843      | 5,810      |
| Other CVAP %  | 88.2%      | 79.6%      | 82.0%      | 85.8%      | 75.1%      |
| Latino CVAP   | 633        | 738        | 790        | 438        | 1,165      |
| Latino CVAP % | 6.8%       | 9.8%       | 9.3%       | 5.5%       | 15.1%      |
| Asian CVAP    | 333        | 613        | 622        | 438        | 504        |
| Asian CVAP %  | 3.6%       | 8.1%       | 7.3%       | 5.5%       | 6.5%       |
| Black CVAP    | 133        | 184        | 123        | 256        | 258        |
| Black CVAP %  | 1.4%       | 2.4%       | 1.5%       | 3.2%       | 3.3%       |



# North Marin Water District

## Current Lines

### 2020 Census

|             | Division 1 | Division 2 | Division 3 | Division 4 | Division 5 |
|-------------|------------|------------|------------|------------|------------|
| Population  | 13,180     | 12,321     | 13,076     | 12,535     | 12,202     |
| Deviation   | 517        | -342       | 413        | -128       | -461       |
| Deviation % | 4.1%       | -2.7%      | 3.3%       | -1.0%      | -3.6%      |
| Other       | 10,722     | 7,201      | 9,384      | 7,754      | 7,479      |
| Other %     | 81.4%      | 58.4%      | 71.8%      | 61.9%      | 61.3%      |
| Latino      | 1,878      | 7,788      | 8,581      | 7,788      | 3,372      |
| Latino %    | 14.3%      | 62.4%      | 65.7%      | 62.1%      | 27.6%      |
| Asian       |            |            |            |            | 1,074      |
| Asian %     | 4.7%       | 8.0%       | 6.7%       | 5.9%       | 8.8%       |
| Black       | 157        | 433        | 220        | 342        | 277        |
| Black %     | 1.2%       | 3.5%       | 1.7%       | 2.7%       | 2.3%       |

Total Deviation of 7.7%

### Citizen Voting Age Population (CVAP)

|               | Division 1 | Division 2 | Division 3 | Division 4 | Division 5 |
|---------------|------------|------------|------------|------------|------------|
| Total CVAP    | 10,026     | 9,096      | 10,051     | 9,641      | 8,340      |
| Other CVAP    | 8,754      | 6,800      | 8,219      | 7,985      | 6,636      |
| Other CVAP %  | 87.3%      | 74.8%      | 81.8%      | 82.8%      | 79.6%      |
| Latino CVAP   | 676        | 836        | 1,217      | 931        | 896        |
| Latino CVAP % | 6.7%       | 9.2%       | 12.1%      | 9.7%       | 10.7%      |
| Asian CVAP    | 549        | 845        | 557        | 477        | 522        |
| Asian CVAP %  | 5.5%       | 9.3%       | 5.5%       | 4.9%       | 6.3%       |
| Black CVAP    | 47         | 616        | 59         | 249        | 285        |
| Black CVAP %  | 0.5%       | 6.8%       | 0.6%       | 2.6%       | 3.4%       |

# What is Redistricting?

Redistricting is the process of adjusting district lines every 10 years after the release of the U.S. Census. The well-known examples are Congress and the Legislature.

Within the U.S., redistricting has become an extremely politicized process and has been the subject of more high-profile Supreme Court decisions than any other part of our elections system.

# What is Redistricting?

Redistricting is at its core the act of equalizing population among districts.

This is necessary in order to meet two requirements - one constitutional, one from Supreme Court precedent:

- *Equal Representation (14<sup>th</sup> Amendment)* - how effective any resident can be at advocating for themselves or being represented within a jurisdiction.
- *One Person One Vote* - equal ability to elect a candidate of choice.

# Redistricting Principles

Federal law and the Elections Code § 22000 define criteria  
Special Districts consider when redistricting:

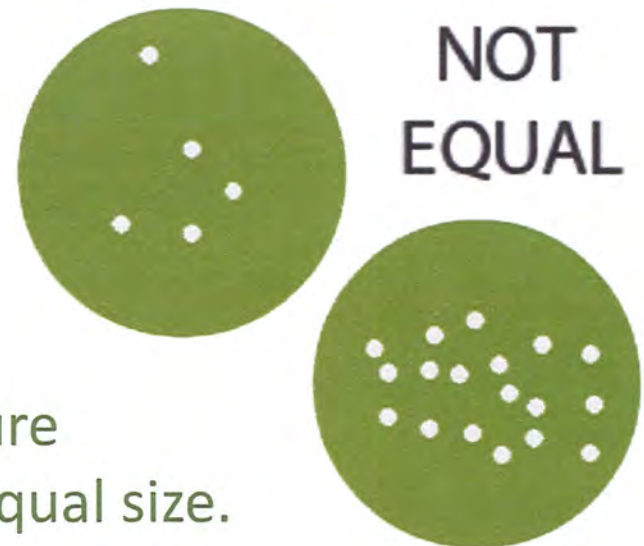
- Relatively equal population - people, not citizens
- Voting Rights Act
- *Shaw v. Reno*
- Topography
- Geography
- Cohesiveness, contiguity, integrity and compactness
- Community of interests

# Equal Population

## Utilizing the U.S. Census Decennial File

What is “equal” population has been a key subject in redistricting litigation.

- Population Equality is based on “People” not citizens or voters or other metrics.
- The metric used is called “deviation” which is a measure of how close a district is to equal size.



# Voting Rights

## Voting Rights Act (1965)

- Must draw districts to ensure minority groups' ability to elect candidates of choice
- Requires majority-minority districts

## *Shaw v. Reno* (1993)

- Districts cannot be drawn with race as the predominant factor



# Local Government Lines

The existing underlying governmental structure

Water Districts often have a geographic relationship with the cities and communities they serve.

- Underlying City Boundaries
- Unincorporated County areas, that are often rural and agricultural areas

# Contiguity

Two definitions for what is contiguous

Contiguity should be thought of as “literal” and “functional.”

1. An area that is one whole piece is “literally contiguous.”
2. An area that represents how the population or how people are connected is “functionally contiguous.”



# Compactness

Determining what is “compact”

The measure of compactness can get complicated.

- Ratio of the circumference of a district and the area of a district.
- Measuring the number of distinct straight lines and the number of kinks and bends.
- Simply outlawing funny shapes.

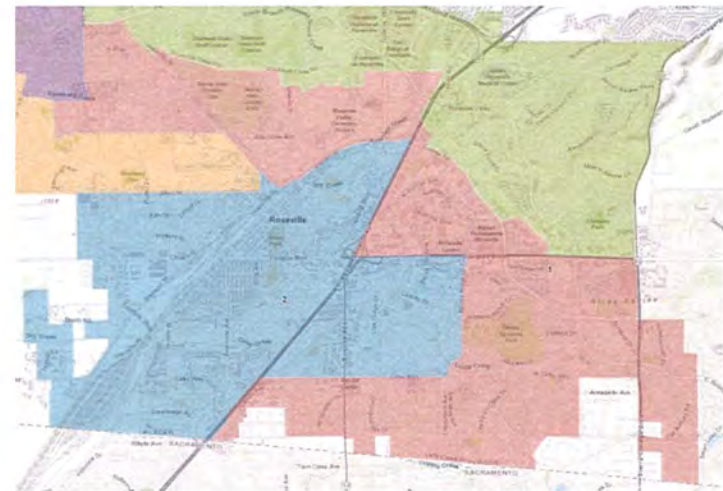
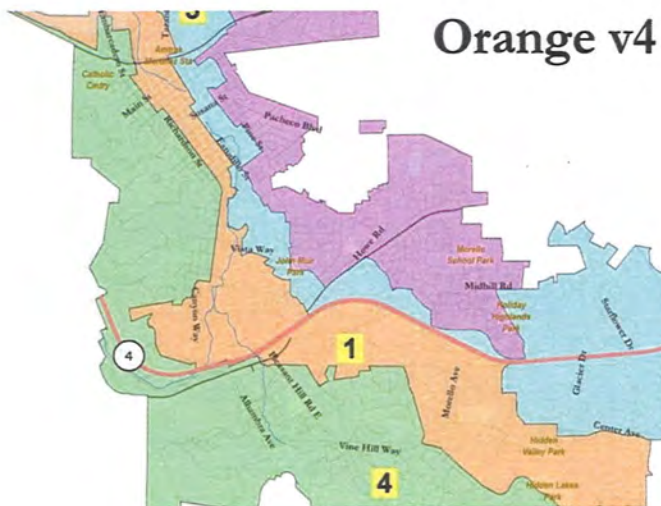


# Compactness

Determining what is “compact”

California has a rather elegant/simple definition.

- Not bypassing nearby populated areas in favor of more distant populated areas



# Communities of Interest

A community of interest is defined as:

*“a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation.”* Cal. Const. art. XXI, § 2(d)(4).

- **Examples:**
  - Senior Citizens or Students
  - Downtown / Urban
  - Rural or Agricultural
  - Homeowners or Renters

# Communities of Interest

Bringing like people together for representation

What are you looking for in trying to judge the applicability of a Community of Interest to the redistricting process?

- Group with shared culture / characteristics
- Geographic Nature / Density / Ability to be mapped
- Relationship to Agency / Policies

# Additional Redistricting Rules

## Optional, Additional Criteria

Water Districts often expand beyond these traditional principles. Examples can include:

- Taking into consideration future growth
- Balancing the rural / urban interface between districts

# North Marin Water District Redistricting

## Timeline for Upcoming Meetings

|                           |  |
|---------------------------|--|
| December 7 <sup>th</sup>  | Redistricting 101 Presentation<br>Consideration of Current Plan & 2020 Census                |
| January 15 <sup>th</sup>  | Hearing #1<br>Consideration of Draft Maps and Current Map<br>Public Hearing to receive input |
| February 18 <sup>th</sup> | Hearing #2<br>Public Hearing to receive input<br>Approval of Final Map                       |





**REDISTRICTING  
PARTNERS**

## RESOLUTION NO. 22-XX

### RESOLUTION OF THE BOARD OF DIRECTORS OF NORTH MARIN WATER DISTRICT AFFIRMING THAT THE DISTRICT'S CURRENT ELECTORAL DIVISION BOUNDARIES, AS ESTABLISHED IN DISTRICT ORDINANCE NO. 38, SHALL CONTINUE TO REMAIN IN EFFECT FOR THE NEXT DECADE

---

**WHEREAS**, at a duly held public hearing on August 6, 2019, and pursuant to California Elections Code Section 10010, the Board of Directors of North Marin Water District (Board) adopted corrected Ordinance No. 38 to transition from an at-large to a by-division election system in conformance with the California Voting Rights Act of 2001 ("CVRA") and based on the 2010 Census data; and

**WHEREAS**, in the by-division election system, a candidate for the Board must live in the division which he or she wishes to represent, and only the voters of that division are entitled to vote to decide who their representative will be; and

**WHEREAS**, the North Marin Water District (District) currently elects its Directors using this by-division election system with five (5) distinct election divisions (Divisions 1, 2, 3, 4, and 5) comprising its service areas; and

**WHEREAS**, pursuant to California Elections Code Section 22000, the District must review its electoral division boundaries following the year in which each decennial census is taken, identify any significant demographic changes, and adjust the boundaries as necessary consistent with the US and State Constitutions, and Federal and State laws; and

**WHEREAS**, the 2020 Decennial Census was conducted and the final Census data was made available in September 2021; and

**WHEREAS**, pursuant to Elections Code 22001, the District shall hold at least one (1) public hearing at which the public is invited to provide input regarding the composition of the election divisions before adopting, at a public hearing, updated boundaries of each division; and

**WHEREAS**, at the regular Board meeting on December 7, 2021, the Board received a report from its demographer regarding the 2020 Census data indicating improved population balance among the District's five electoral divisions (meaning that the current electoral divisions as drafted comply with the constitutional requirement that the divisions have equal population), and subsequently directed staff and legal counsel to prepare materials and invite the public to provide input on the possibility of affirming the current electoral divisions boundaries shall continue; and

**WHEREAS**, on December 22, 2021, the District launched a dedicated web page to provide information regarding the redistricting process and the proposal to consider affirming that the current electoral divisions boundaries shall continue, and also posted similar information on social media platforms; and

**WHEREAS**, on December 30, 2021, the District issued press releases to the Marin Independent Journal and the Point Reyes Light informing the public of two public hearings on redistricting (one on January 18, 2022, and one on February 15, 2022) and inviting local residents and businesses to participate in the process; and

**WHEREAS**, on January 6, 2022, the District published notice of public hearings in the Point Reyes Light, and January 7, 2022, the District published notice of public hearings in the Marin Independent Journal; and

**WHEREAS**, at the public hearing on January 18, 2022, the Board received public input regarding the current composition of the District divisions and the proposal to affirm that the current electoral division boundaries shall continue; and

**WHEREAS**, at the public hearing on February 15, 2022, the Board of Directors considered all oral and written information, testimony, and comments received during the public review process, including information received at the public hearings, oral and written reports from District staff and the District's demographer, exhibits, maps, and all other pertinent information prior to considering affirming that the current electoral division boundaries shall continue.

**NOW THEREFORE, BE IT RESOLVED** by the Board of Directors of the North Marin Water District as follows:

1. The above recitals are true and correct and hereby incorporated into this Resolution.
2. After considering all oral and written information, testimony, and comments received during the public review process, including information received at the public hearings, oral and written reports from District staff and the District's demographer, exhibits, maps, and all other pertinent information, the Board of Directors of North Marin Water District hereby determines the District's current electoral division boundaries are consistent with the US and State Constitutions, and Federal and State laws.
3. The Board of Directors of North Marin Water District hereby affirms that the current electoral division boundaries of the District, as established in District Ordinance No. 38, shall continue to remain in effect for the next decade.

\* \* \* \* \*

I hereby certify that the foregoing is a true and complete copy of a resolution duly and regularly adopted by the Board of Directors of NORTH MARIN WATER DISTRICT at a regular meeting of said Board held on the 15th day of February 2022 by the following vote:

AYES:

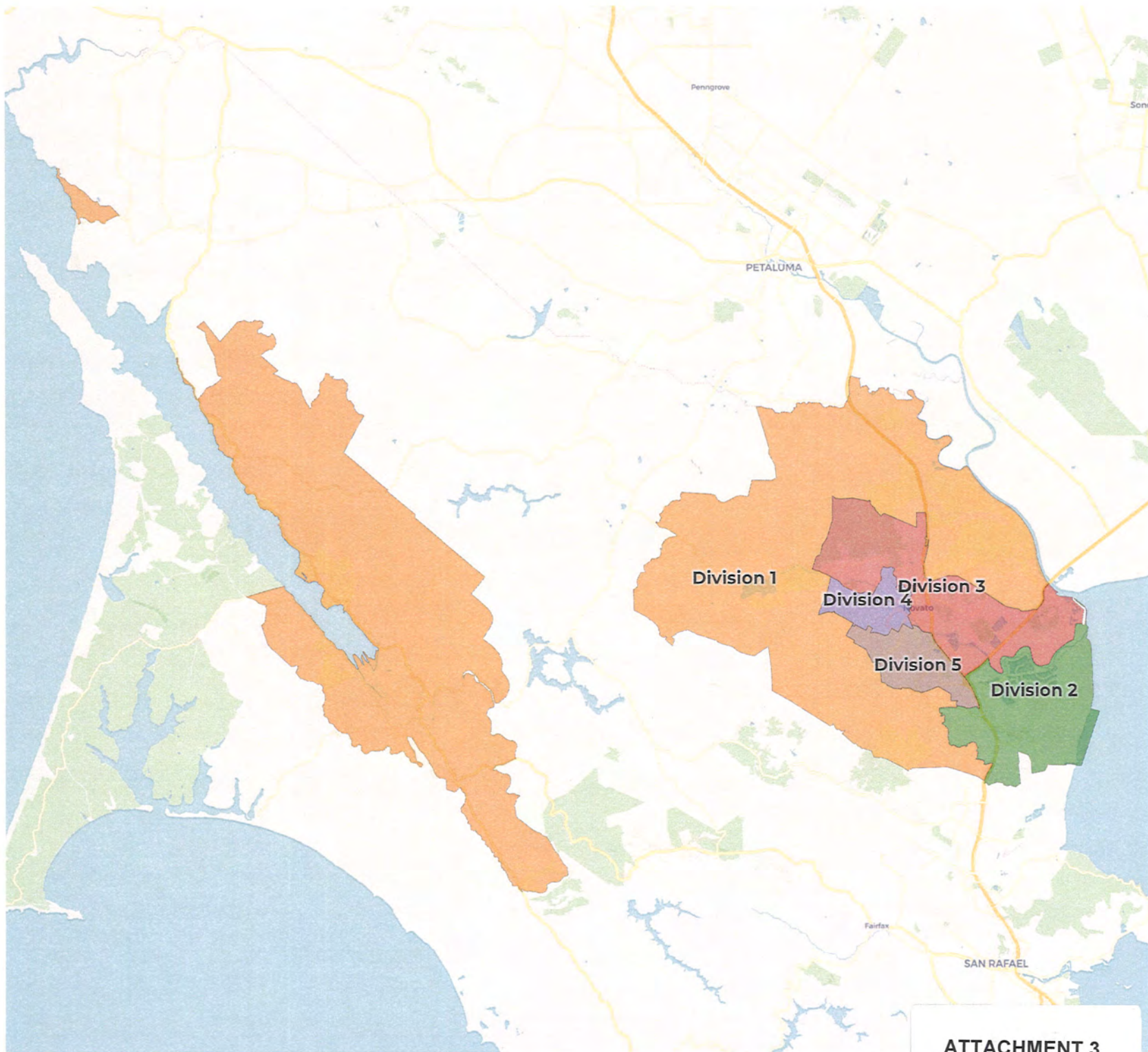
NOES:

ABSENT:

ABSTAINED:

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Theresa Kehoe, Secretary  
North Marin Water District



**2020 Census**

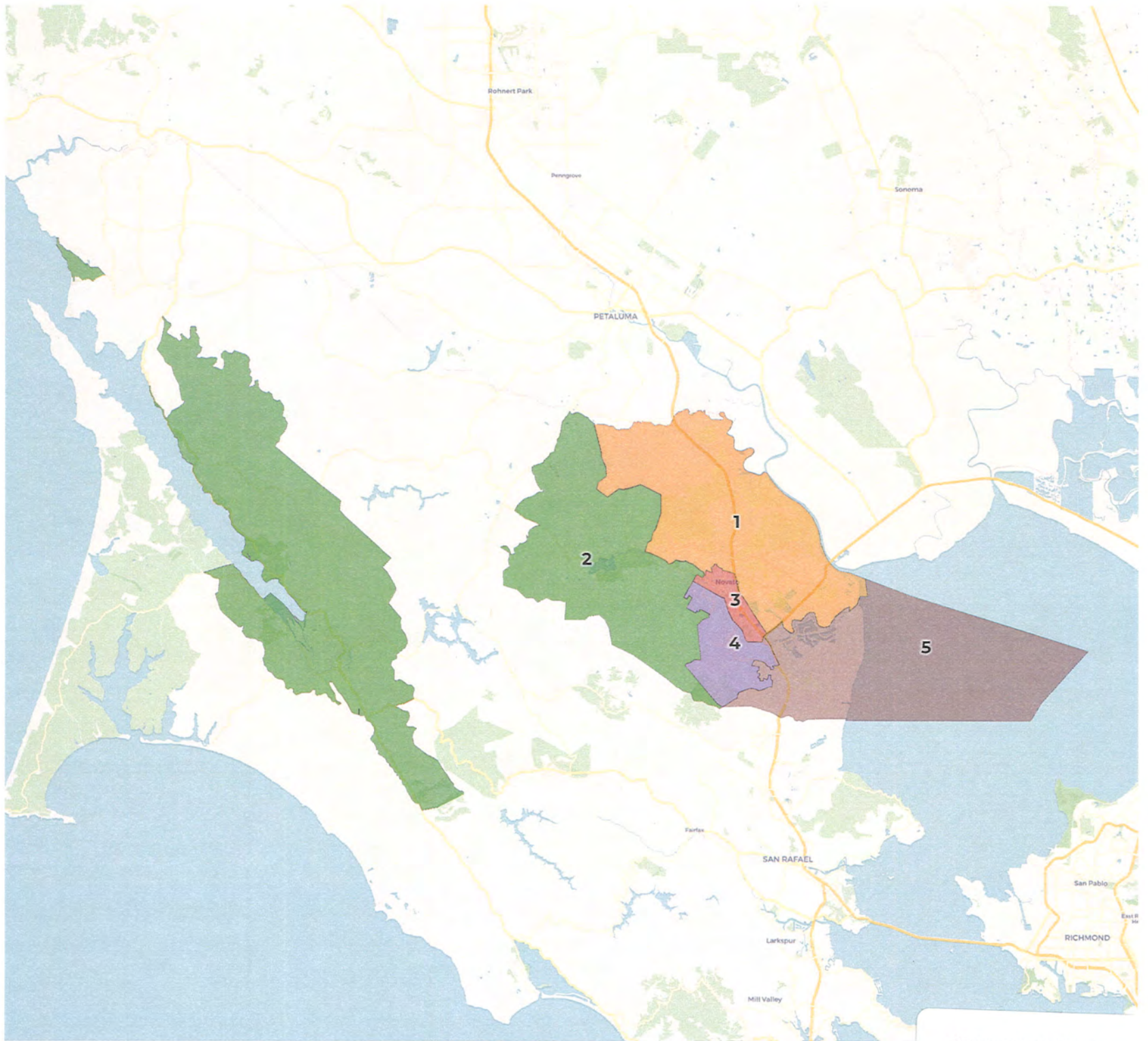
|             | Division 1 | Division 2 | Division 3 | Division 4 | Division 5 |
|-------------|------------|------------|------------|------------|------------|
| Population  | 13,180     | 12,321     | 13,076     | 12,535     | 12,202     |
| Deviation   | 517        | -342       | 413        | -128       | -461       |
| Deviation % | 4.1%       | -2.7%      | 3.3%       | -1.0%      | -3.6%      |
| Other       | 10,722     | 7,201      | 9,384      | 7,754      | 7,479      |
| Other %     | 81.4%      | 58.4%      | 71.8%      | 61.9%      | 61.3%      |
| Latino      | 1,678      | 3,706      | 2,591      | 3,702      | 3,372      |
| Latino %    | 12.7%      | 30.1%      | 19.8%      | 29.5%      | 27.6%      |
| Asian       | 623        | 981        | 881        | 737        | 1,074      |
| Asian %     | 4.7%       | 8.0%       | 6.7%       | 5.9%       | 8.8%       |
| Black       | 157        | 433        | 220        | 342        | 277        |
| Black %     | 1.2%       | 3.5%       | 1.7%       | 2.7%       | 2.3%       |

**Citizen Voting Age Population (CVAP)**

|               | Division 1 | Division 2 | Division 3 | Division 4 | Division 5 |
|---------------|------------|------------|------------|------------|------------|
| Total CVAP    | 9,844      | 9,427      | 10,530     | 9,423      | 8,749      |
| Other CVAP    | 8,576      | 6,799      | 8,497      | 7,761      | 6,864      |
| Other CVAP %  | 87.1%      | 72.1%      | 80.7%      | 82.4%      | 78.5%      |
| Latino CVAP   | 608        | 1,000      | 1,277      | 851        | 1,125      |
| Latino CVAP % | 6.2%       | 10.6%      | 12.1%      | 9.0%       | 12.9%      |
| Asian CVAP    | 547        | 851        | 499        | 566        | 593        |
| Asian CVAP %  | 5.6%       | 9.0%       | 4.7%       | 6.0%       | 6.8%       |
| Black CVAP    | 113        | 777        | 257        | 245        | 167        |
| Black CVAP %  | 1.1%       | 8.2%       | 2.4%       | 2.6%       | 1.9%       |

## ATTACHMENTS 4 AND 5

(Publicly-Submitted, Alternative Maps of Electoral Division Boundaries)





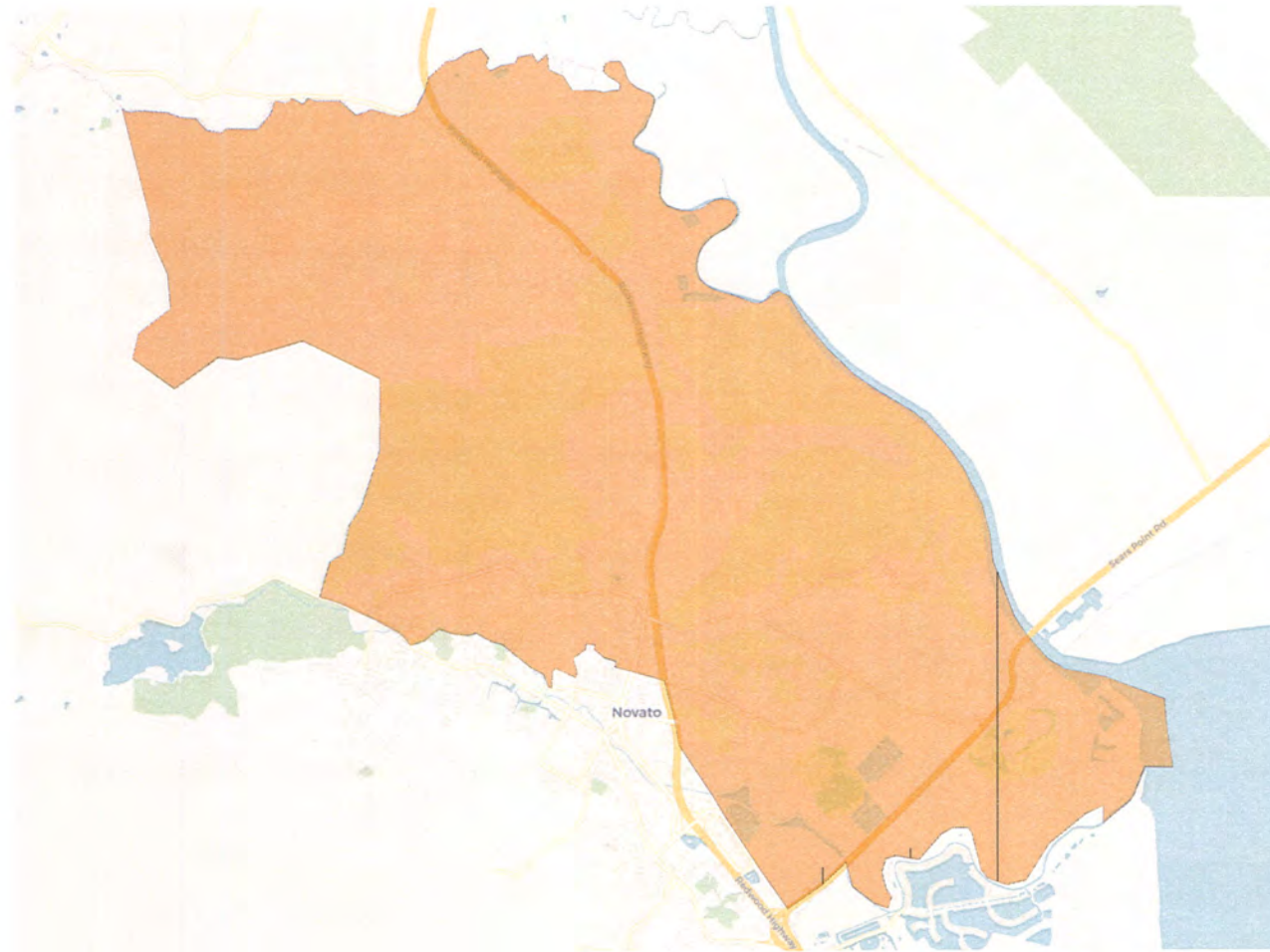
**2020 Census**

|             | 1      | 2      | 3      | 4      | 5      |
|-------------|--------|--------|--------|--------|--------|
| Population  | 13,424 | 12,731 | 12,368 | 12,505 | 12,325 |
| Deviation   | 753    | 60     | -303   | -166   | -346   |
| Deviation % | 5.9%   | 0.5%   | -2.4%  | -1.3%  | -2.7%  |
| Other       | 10,271 | 10,066 | 5,924  | 8,766  | 7,554  |
| Other %     | 76.5%  | 79.1%  | 47.9%  | 70.1%  | 61.3%  |
| Latino      | 2,030  | 2,025  | 4,921  | 2,683  | 3,388  |
| Latino %    | 15.1%  | 15.9%  | 39.8%  | 21.5%  | 27.5%  |
| Asian       | 936    | 521    | 1,055  | 816    | 968    |
| Asian %     | 7.0%   | 4.1%   | 8.5%   | 6.5%   | 7.9%   |
| Black       | 187    | 119    | 468    | 240    | 415    |
| Black %     | 1.4%   | 0.9%   | 3.8%   | 1.9%   | 3.4%   |

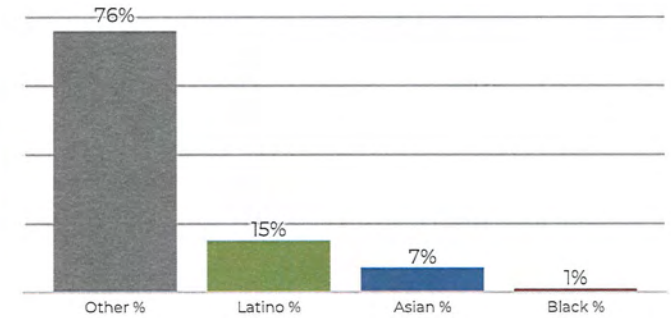
**Citizen Voting Age Population (CVAP)**

|               | 1      | 2     | 3     | 4     | 5     |
|---------------|--------|-------|-------|-------|-------|
| Total CVAP    | 11,218 | 9,985 | 7,811 | 9,541 | 9,462 |
| Other CVAP    | 9,351  | 8,926 | 5,576 | 7,665 | 7,023 |
| Other CVAP %  | 83.4%  | 89.4% | 71.4% | 80.3% | 74.2% |
| Latino CVAP   | 1,050  | 654   | 1,413 | 804   | 940   |
| Latino CVAP % | 9.4%   | 6.5%  | 18.1% | 8.4%  | 9.9%  |
| Asian CVAP    | 601    | 272   | 576   | 776   | 831   |
| Asian CVAP %  | 5.4%   | 2.7%  | 7.4%  | 8.1%  | 8.8%  |
| Black CVAP    | 216    | 133   | 246   | 296   | 668   |
| Black CVAP %  | 1.9%   | 1.3%  | 3.1%  | 3.1%  | 7.1%  |

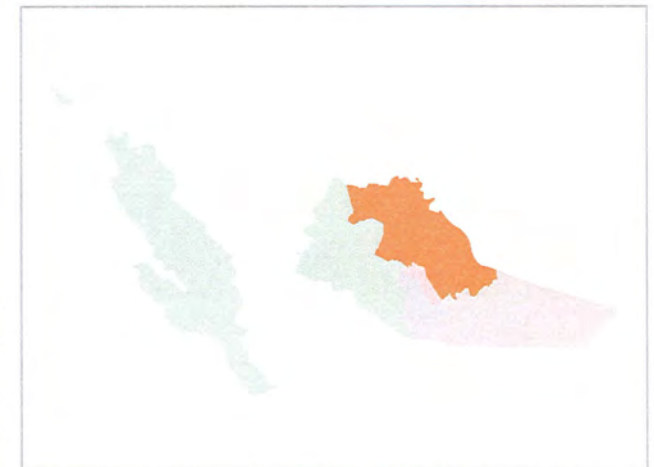
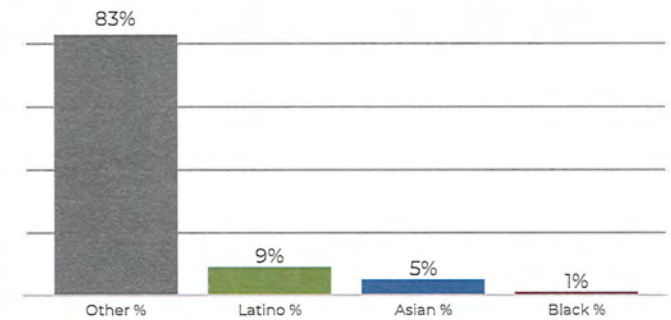
**District 1**



**2020 Census**

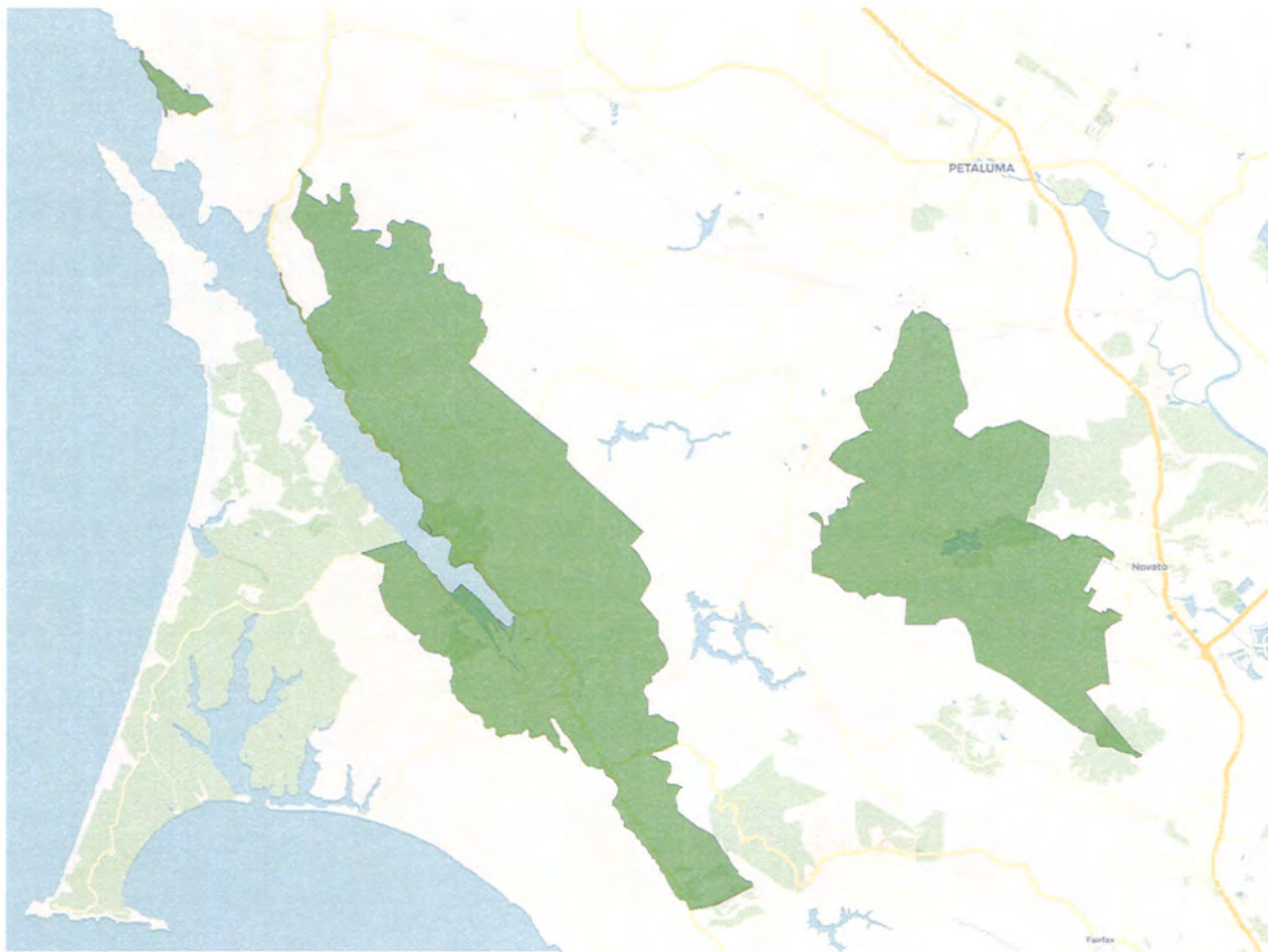


**Citizen Voting Age Population**

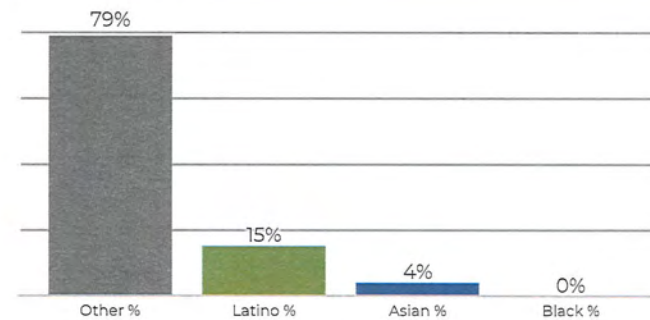


| Population | Deviation  | Deviation %  | Other       | Other %       | Latino     | Latino %     | Asian      | Asian %      | Black | Black % |
|------------|------------|--------------|-------------|---------------|------------|--------------|------------|--------------|-------|---------|
| 13,424     | 753        | 5.9%         | 10,271      | 76.5%         | 2,030      | 15.1%        | 936        | 7.0%         | 187   | 1.4%    |
| Total CVAP | Other CVAP | Other CVAP % | Latino CVAP | Latino CVAP % | Asian CVAP | Asian CVAP % | Black CVAP | Black CVAP % |       |         |
| 11,218     | 9,351      | 83.4%        | 1,050       | 9.4%          | 601        | 5.4%         | 216        | 1.9%         |       |         |

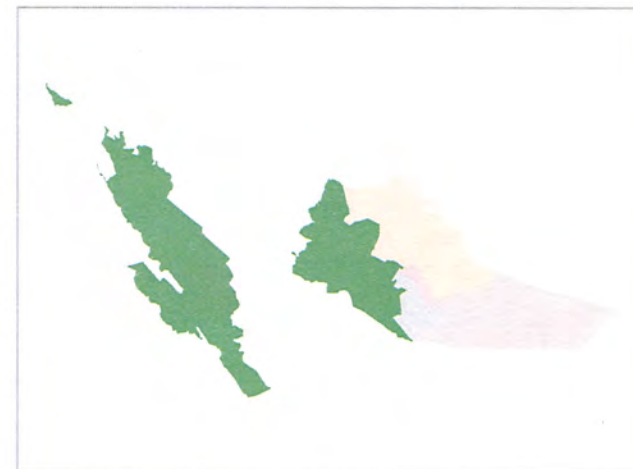
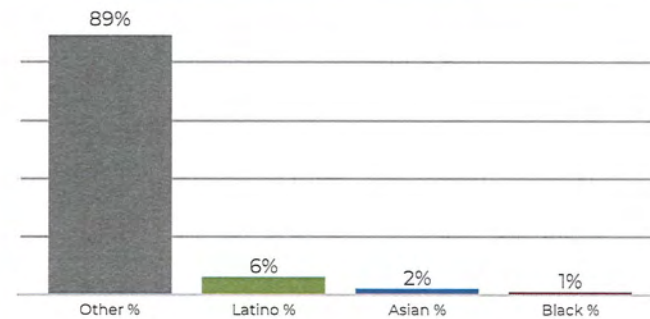
**District 2**



**2020 Census**

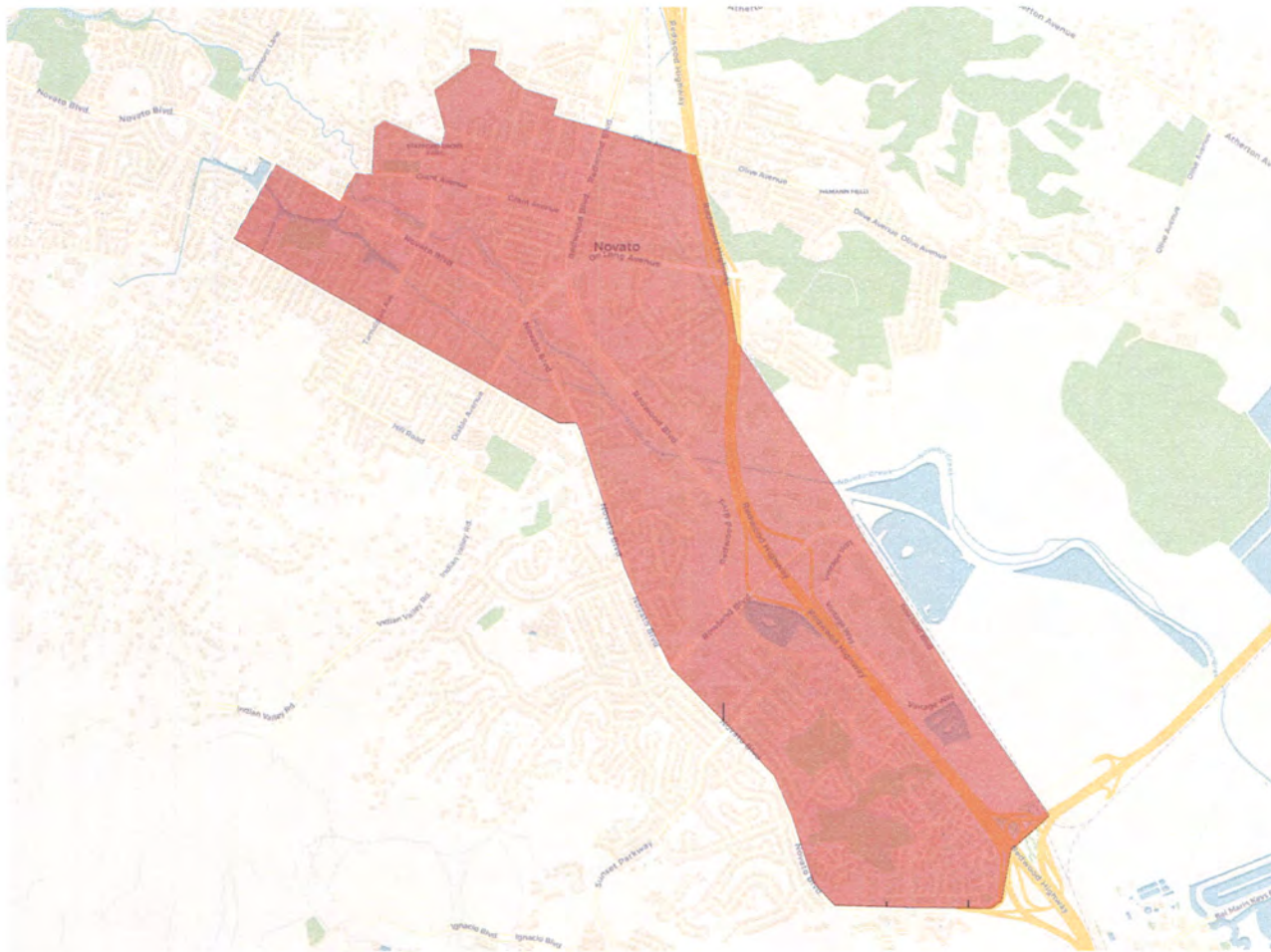


**Citizen Voting Age Population**

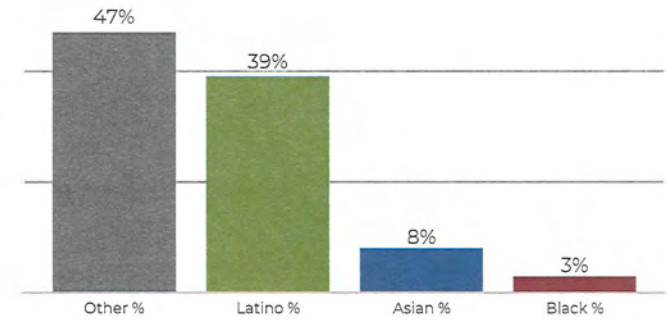


| Population | Deviation  | Deviation %  | Other       | Other %       | Latino     | Latino %     | Asian      | Asian %      | Black | Black % |
|------------|------------|--------------|-------------|---------------|------------|--------------|------------|--------------|-------|---------|
| 12,731     | 60         | 0.5%         | 10,066      | 79.1%         | 2,025      | 15.9%        | 521        | 4.1%         | 119   | 0.9%    |
| Total CVAP | Other CVAP | Other CVAP % | Latino CVAP | Latino CVAP % | Asian CVAP | Asian CVAP % | Black CVAP | Black CVAP % |       |         |
| 9,985      | 8,926      | 89.4%        | 654         | 6.5%          | 272        | 2.7%         | 133        | 1.3%         |       |         |

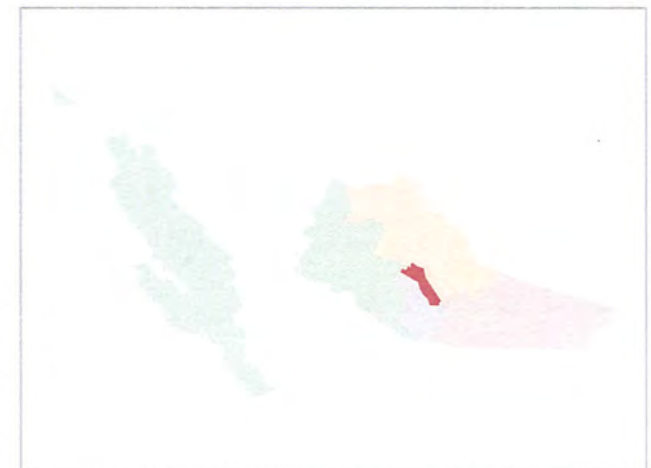
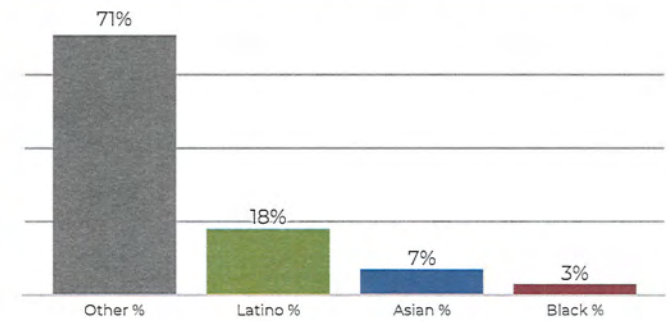
**District 3**



**2020 Census**

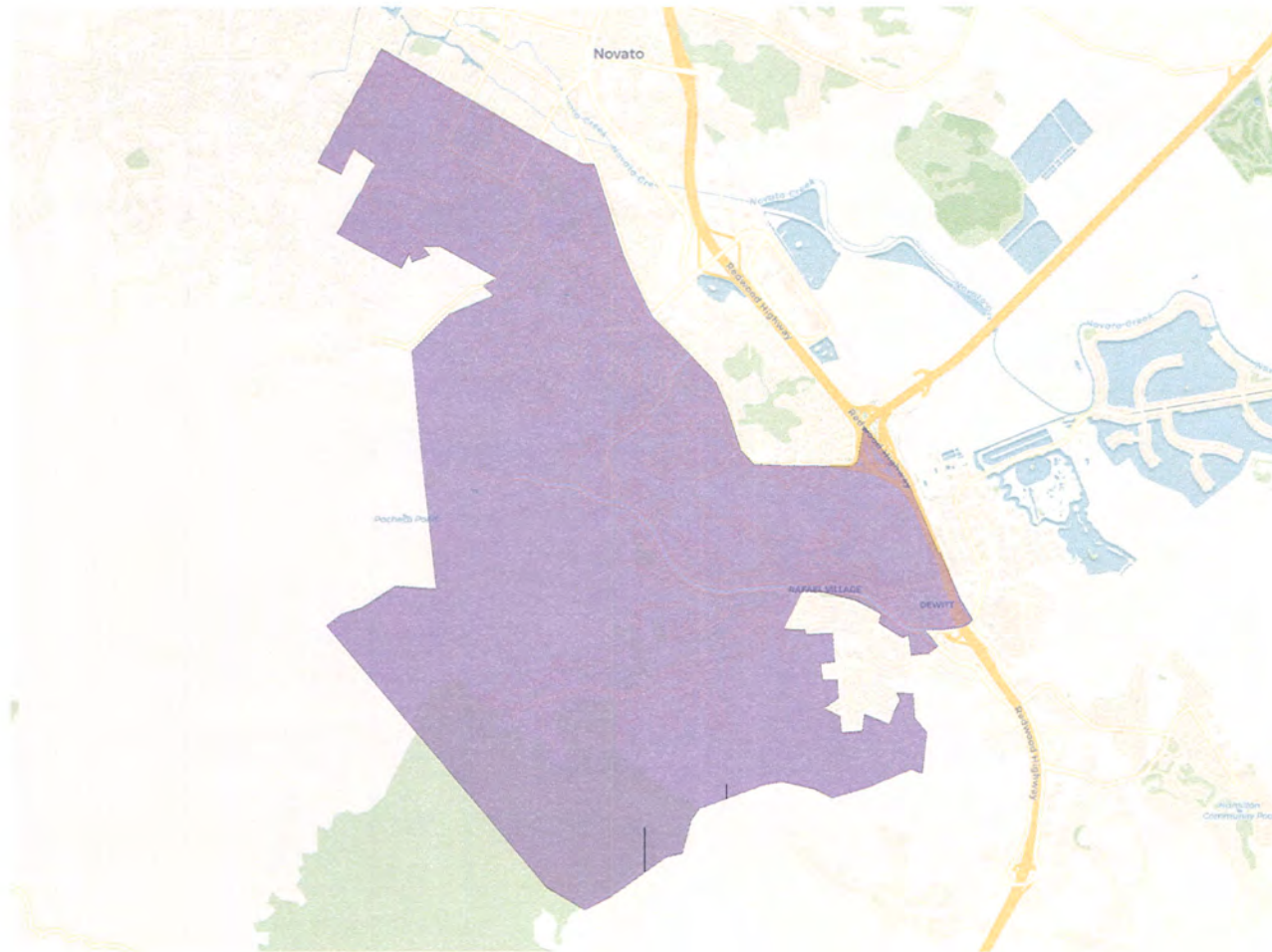


**Citizen Voting Age Population**

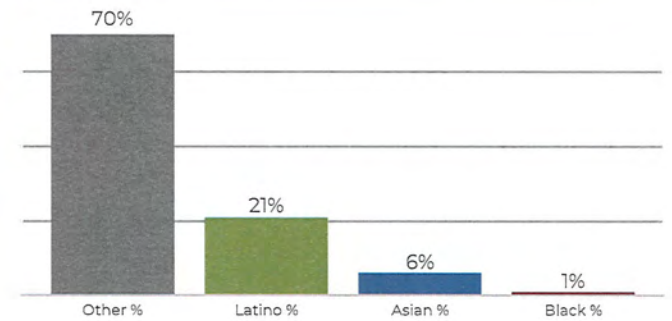


| Population | Deviation  | Deviation %  | Other       | Other %       | Latino     | Latino %     | Asian      | Asian %      | Black | Black % |
|------------|------------|--------------|-------------|---------------|------------|--------------|------------|--------------|-------|---------|
| 12,368     | -303       | -2.4%        | 5,924       | 47.9%         | 4,921      | 39.8%        | 1,055      | 8.5%         | 468   | 3.8%    |
| Total CVAP | Other CVAP | Other CVAP % | Latino CVAP | Latino CVAP % | Asian CVAP | Asian CVAP % | Black CVAP | Black CVAP % |       |         |
| 7,811      | 5,576      | 71.4%        | 1,413       | 18.1%         | 576        | 7.4%         | 246        | 3.1%         |       |         |

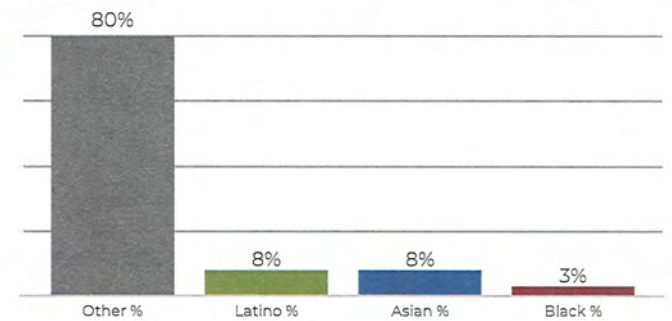
### District 4



### 2020 Census



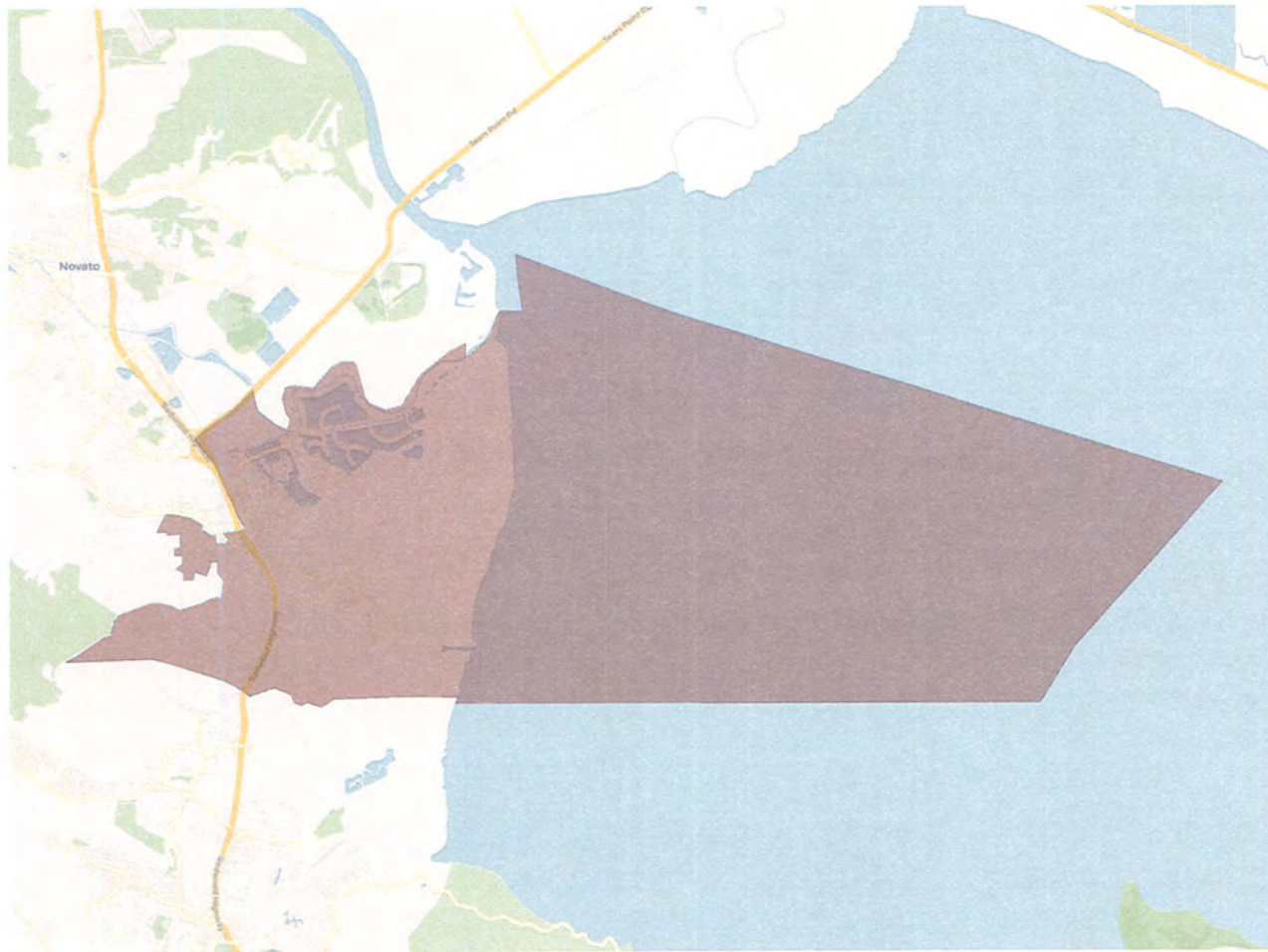
### Citizen Voting Age Population



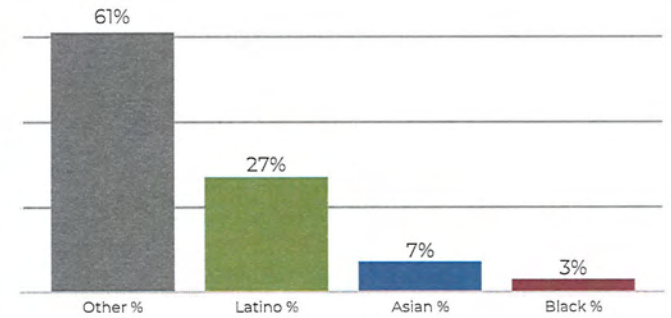
| Population | Deviation  | Deviation %  | Other       | Other %       | Latino     | Latino %     | Asian      | Asian %      | Black | Black % |
|------------|------------|--------------|-------------|---------------|------------|--------------|------------|--------------|-------|---------|
| 12,505     | -166       | -1.3%        | 8,766       | 70.1%         | 2,683      | 21.5%        | 816        | 6.5%         | 240   | 1.9%    |
| Total CVAP | Other CVAP | Other CVAP % | Latino CVAP | Latino CVAP % | Asian CVAP | Asian CVAP % | Black CVAP | Black CVAP % |       |         |
| 9,541      | 7,665      | 80.3%        | 804         | 8.4%          | 776        | 8.1%         | 296        | 3.1%         |       |         |



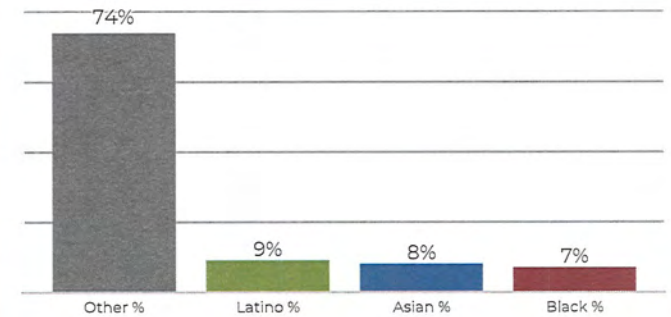
**District 5**



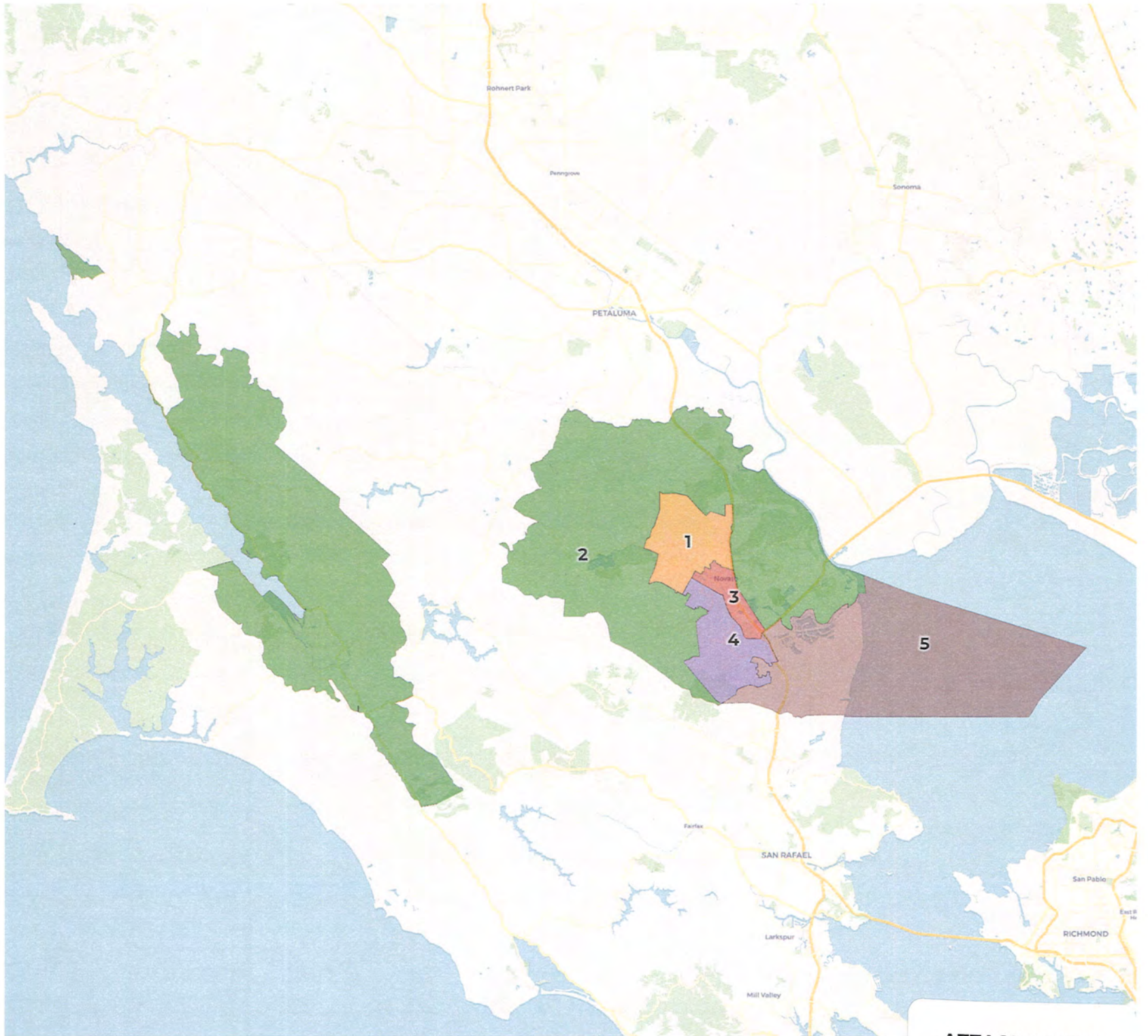
**2020 Census**



**Citizen Voting Age Population**



| Population | Deviation  | Deviation %  | Other       | Other %       | Latino     | Latino %     | Asian      | Asian %      | Black | Black % |
|------------|------------|--------------|-------------|---------------|------------|--------------|------------|--------------|-------|---------|
| 12,325     | -346       | -2.7%        | 7,554       | 61.3%         | 3,388      | 27.5%        | 968        | 7.9%         | 415   | 3.4%    |
| Total CVAP | Other CVAP | Other CVAP % | Latino CVAP | Latino CVAP % | Asian CVAP | Asian CVAP % | Black CVAP | Black CVAP % |       |         |
| 9,462      | 7,023      | 74.2%        | 940         | 9.9%          | 831        | 8.8%         | 668        | 7.1%         |       |         |



**2020 Census**

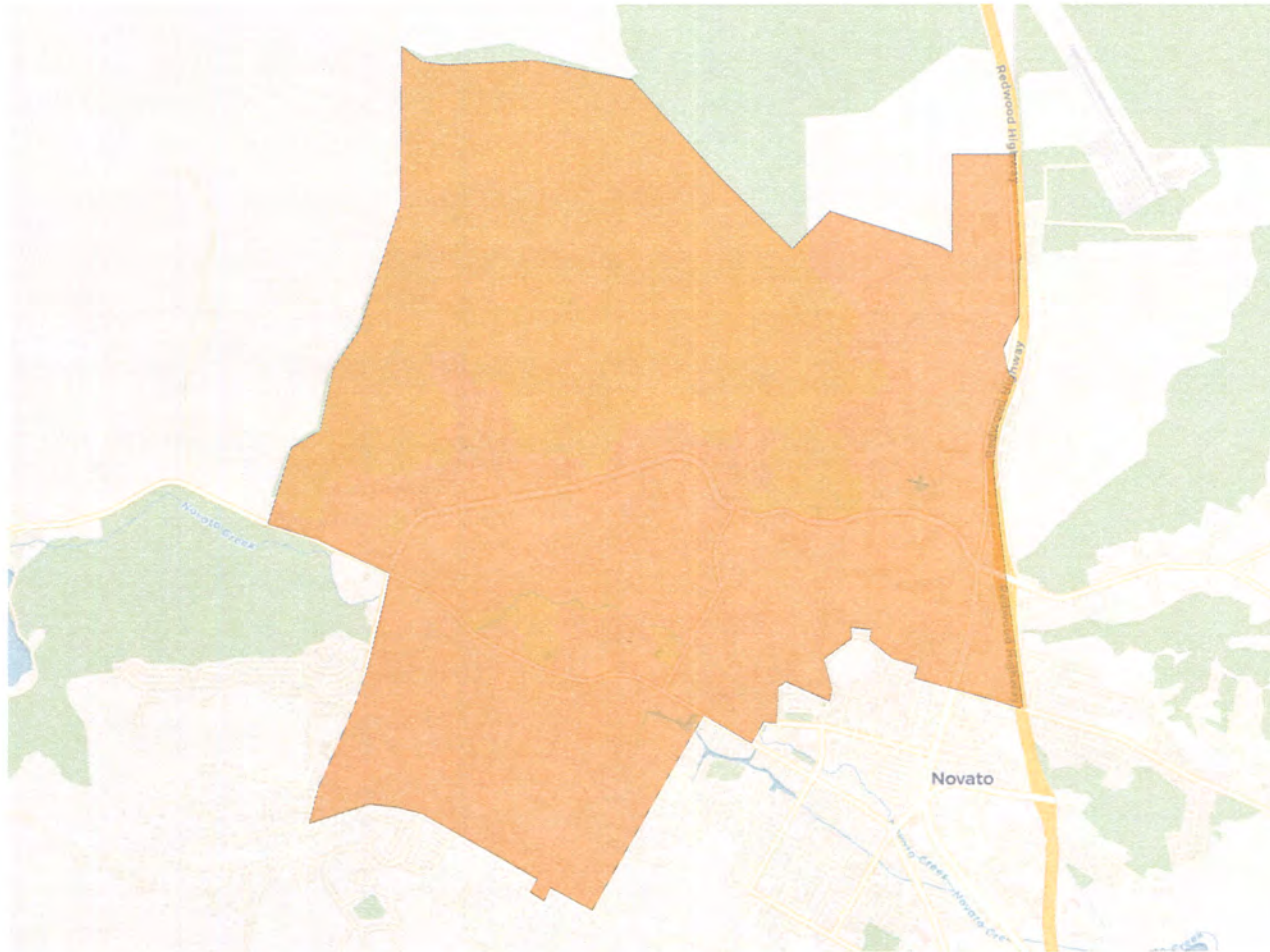
|             | 1      | 2      | 3      | 4      | 5      |
|-------------|--------|--------|--------|--------|--------|
| Population  | 13,389 | 12,766 | 12,368 | 12,505 | 12,325 |
| Deviation   | 718    | 95     | -303   | -166   | -346   |
| Deviation % | 5.7%   | 0.7%   | -2.4%  | -1.3%  | -2.7%  |
| Other       | 10,191 | 10,146 | 5,924  | 8,766  | 7,554  |
| Other %     | 76.1%  | 79.5%  | 47.9%  | 70.1%  | 61.3%  |
| Latino      | 2,133  | 1,922  | 4,921  | 2,683  | 3,388  |
| Latino %    | 15.9%  | 15.1%  | 39.8%  | 21.5%  | 27.5%  |
| Asian       | 876    | 581    | 1,055  | 816    | 968    |
| Asian %     | 6.5%   | 4.6%   | 8.5%   | 6.5%   | 7.9%   |
| Black       | 189    | 117    | 468    | 240    | 415    |
| Black %     | 1.4%   | 0.9%   | 3.8%   | 1.9%   | 3.4%   |

**Citizen Voting Age Population (CVAP)**

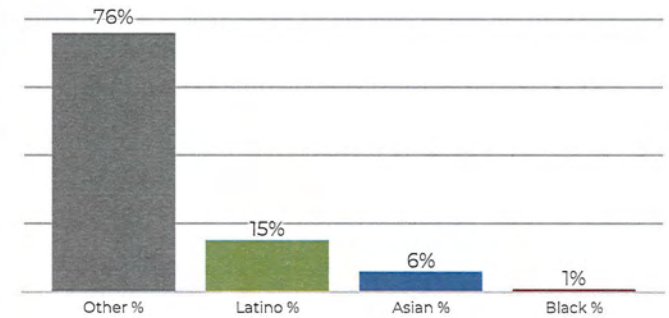
|               | 1      | 2     | 3     | 4     | 5     |
|---------------|--------|-------|-------|-------|-------|
| Total CVAP    | 11,670 | 9,533 | 7,811 | 9,541 | 9,462 |
| Other CVAP    | 10,033 | 8,244 | 5,576 | 7,665 | 7,023 |
| Other CVAP %  | 86.0%  | 86.5% | 71.4% | 80.3% | 74.2% |
| Latino CVAP   | 898    | 806   | 1,413 | 804   | 940   |
| Latino CVAP % | 7.7%   | 8.5%  | 18.1% | 8.4%  | 9.9%  |
| Asian CVAP    | 446    | 427   | 576   | 776   | 831   |
| Asian CVAP %  | 3.8%   | 4.5%  | 7.4%  | 8.1%  | 8.8%  |
| Black CVAP    | 293    | 56    | 246   | 296   | 668   |
| Black CVAP %  | 2.5%   | 0.6%  | 3.1%  | 3.1%  | 7.1%  |



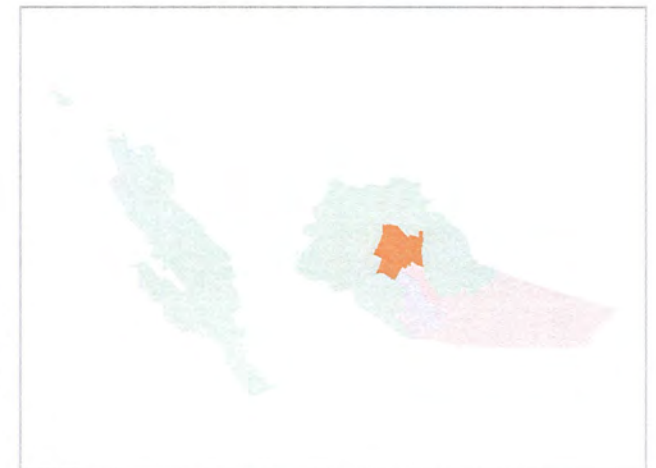
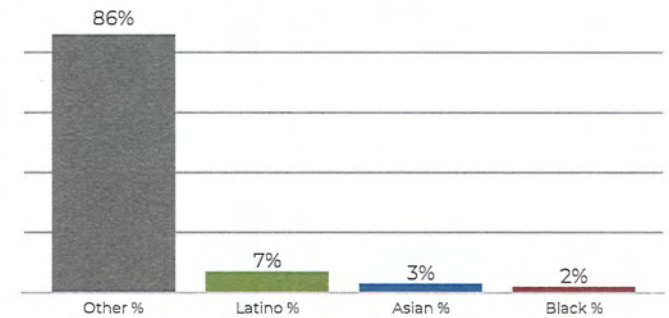
**District 1**



**2020 Census**

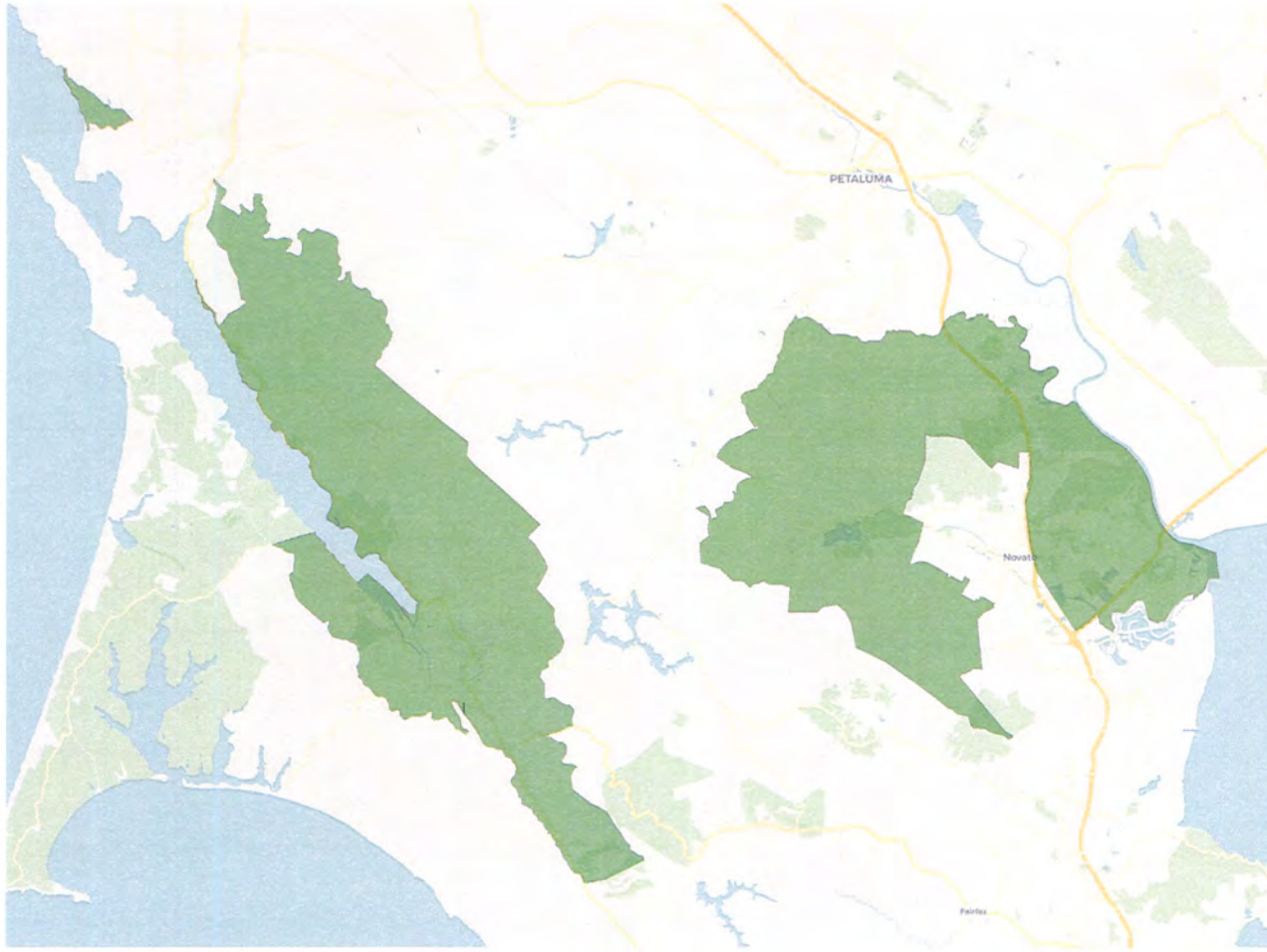


**Citizen Voting Age Population**

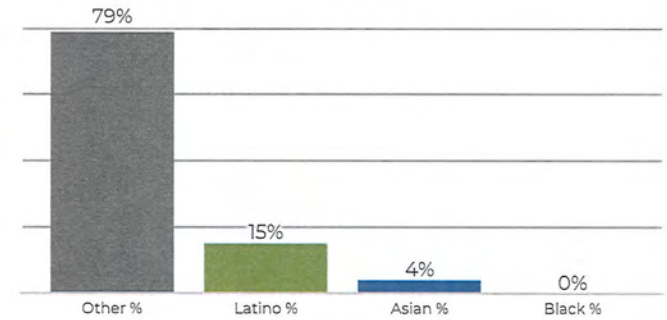


| Population | Deviation  | Deviation %  | Other       | Other %       | Latino     | Latino %     | Asian      | Asian %      | Black | Black % |
|------------|------------|--------------|-------------|---------------|------------|--------------|------------|--------------|-------|---------|
| 13,389     | 718        | 5.7%         | 10,191      | 76.1%         | 2,133      | 15.9%        | 876        | 6.5%         | 189   | 1.4%    |
| Total CVAP | Other CVAP | Other CVAP % | Latino CVAP | Latino CVAP % | Asian CVAP | Asian CVAP % | Black CVAP | Black CVAP % |       |         |
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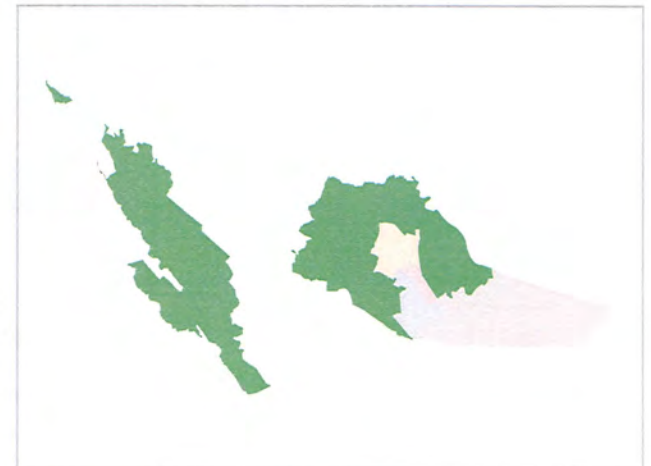
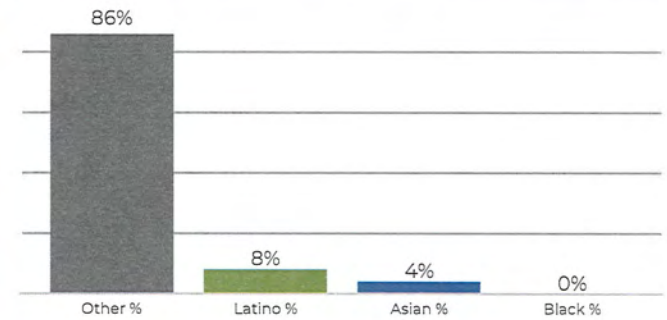
**District 2**



**2020 Census**

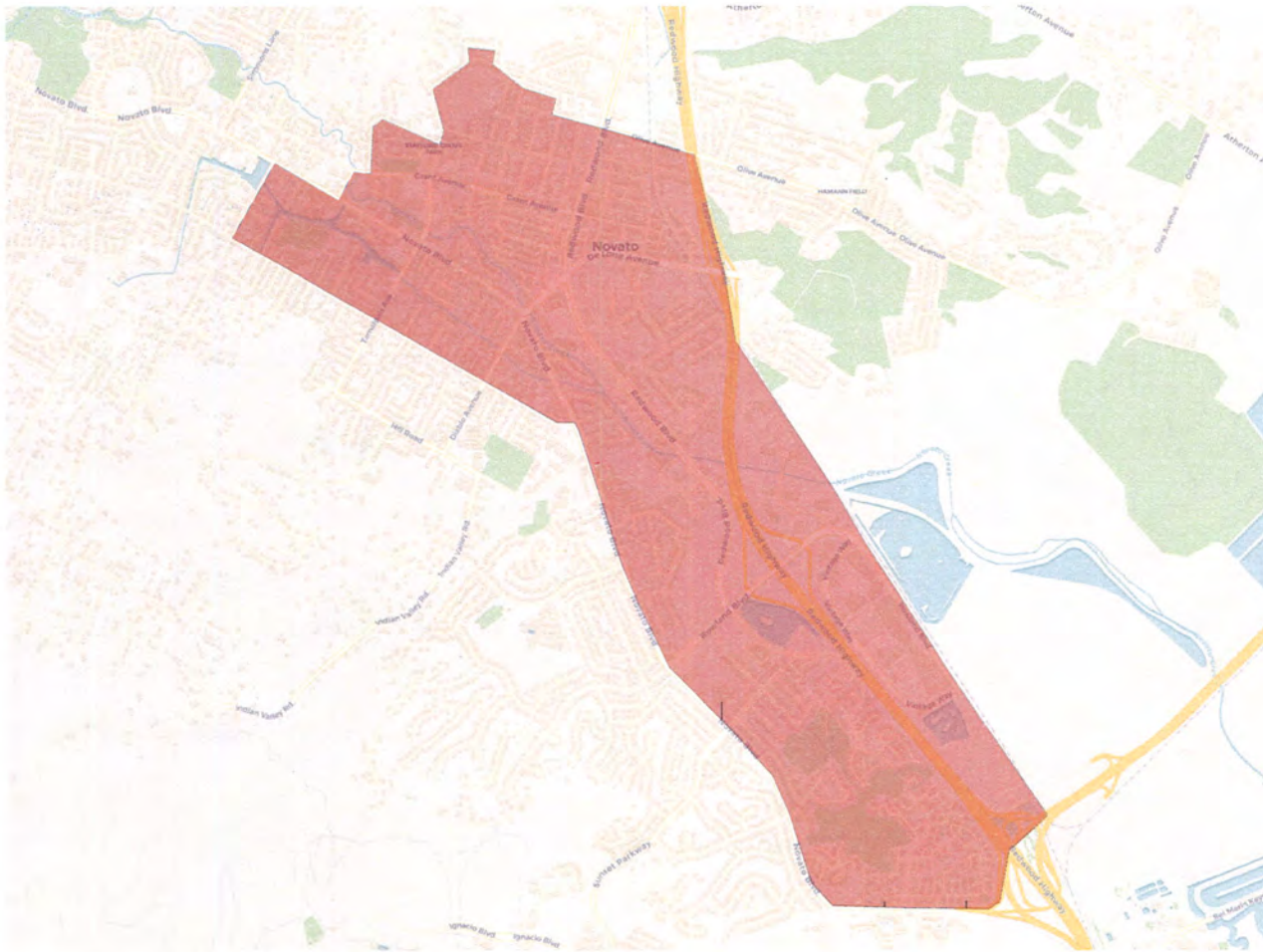


**Citizen Voting Age Population**

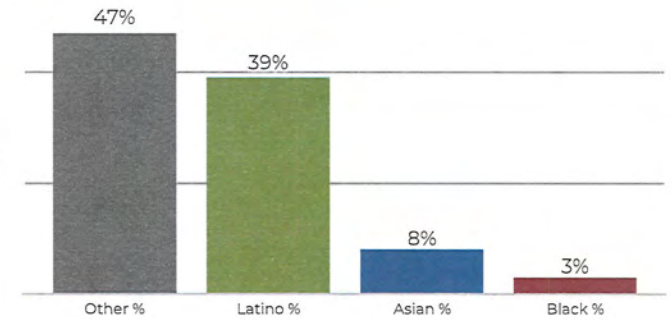


| Population | Deviation  | Deviation %  | Other       | Other %       | Latino     | Latino %     | Asian      | Asian %      | Black | Black % |
|------------|------------|--------------|-------------|---------------|------------|--------------|------------|--------------|-------|---------|
| 12,766     | 95         | 0.7%         | 10,146      | 79.5%         | 1,922      | 15.1%        | 581        | 4.6%         | 117   | 0.9%    |
| Total CVAP | Other CVAP | Other CVAP % | Latino CVAP | Latino CVAP % | Asian CVAP | Asian CVAP % | Black CVAP | Black CVAP % |       |         |
| 9,533      | 8,244      | 86.5%        | 806         | 8.5%          | 427        | 4.5%         | 56         | 0.6%         |       |         |

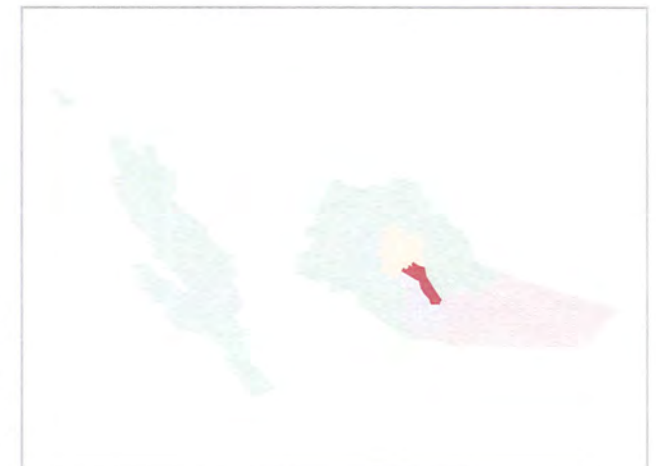
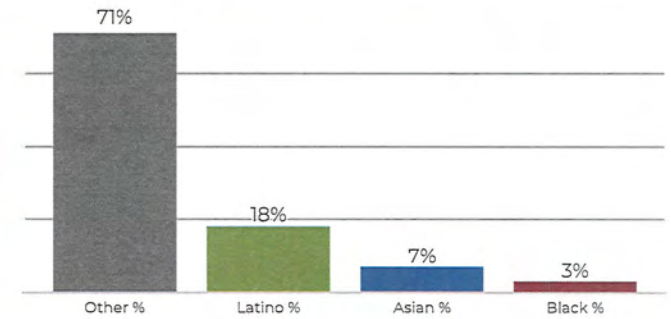
### District 3



### 2020 Census

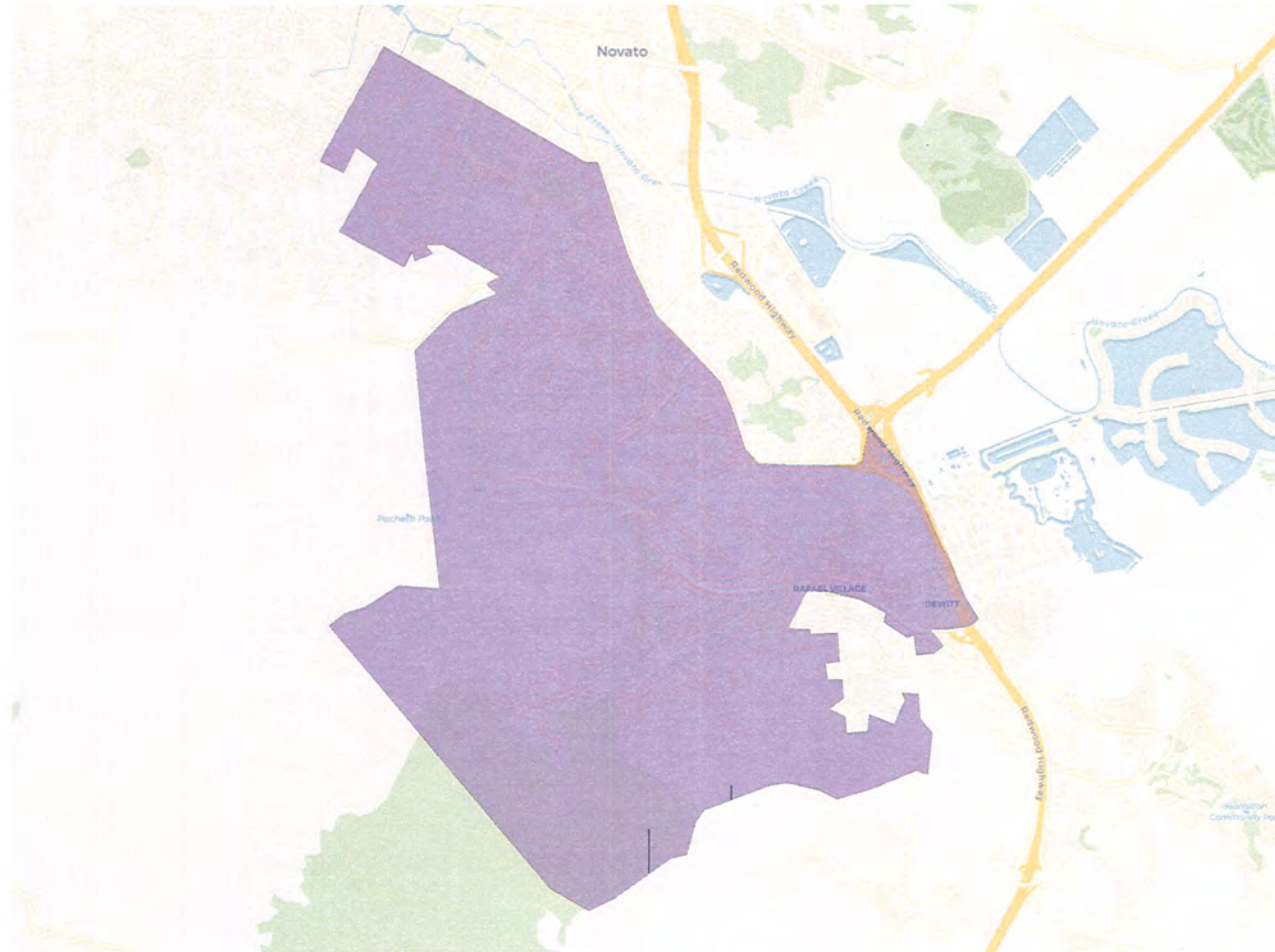


### Citizen Voting Age Population

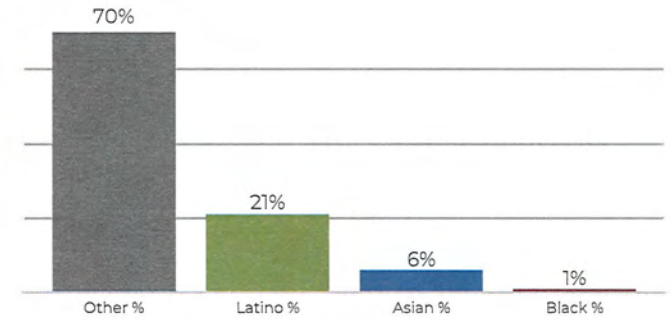


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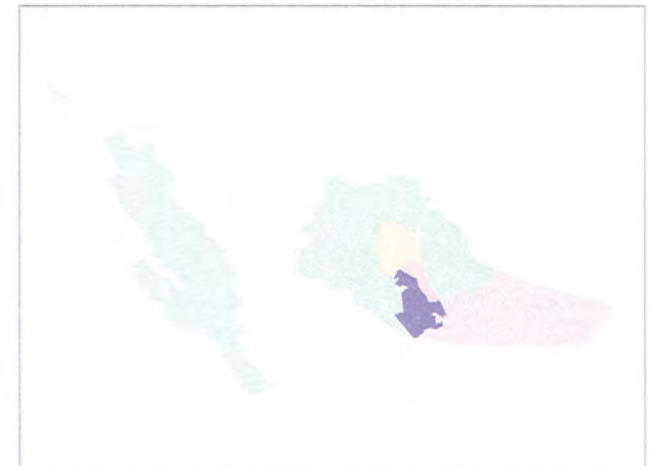
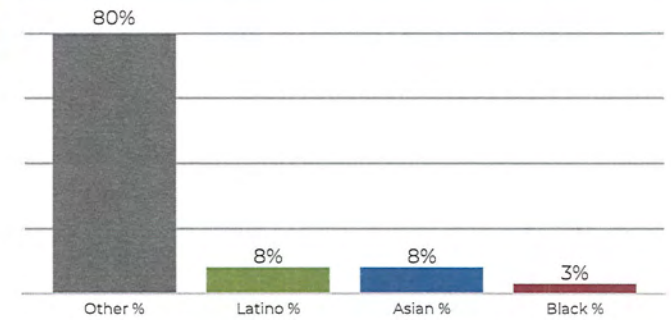
**District 4**



**2020 Census**

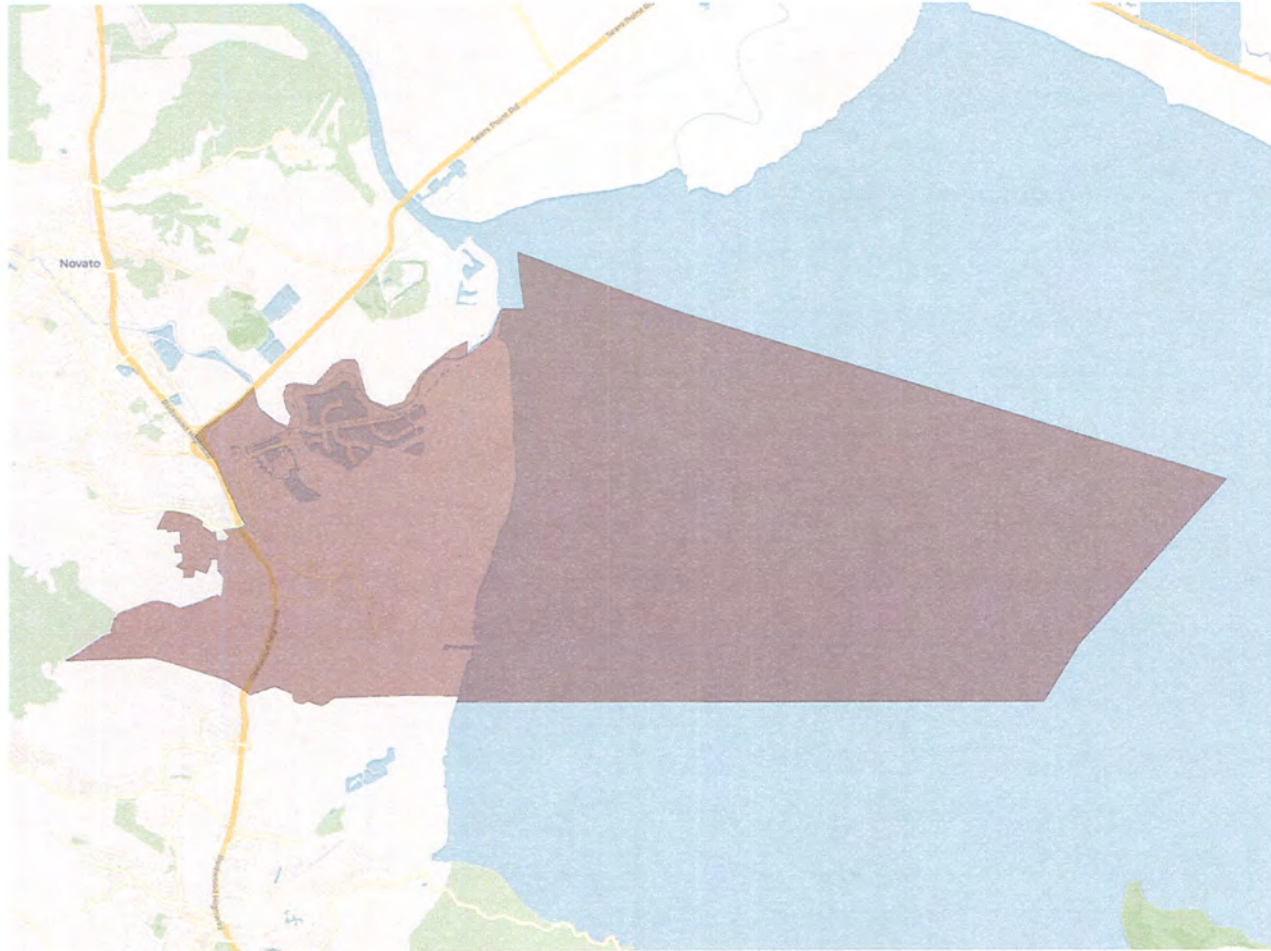


**Citizen Voting Age Population**

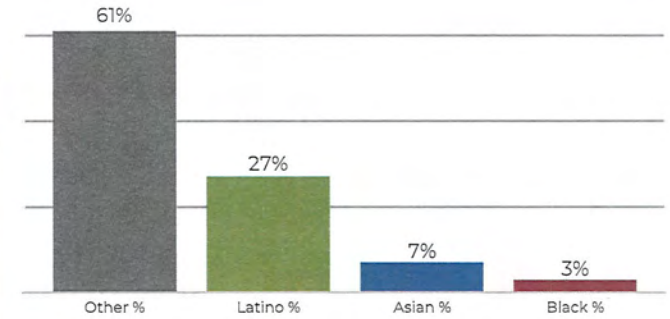


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| 9,541      | 7,665      | 80.3%        | 804         | 8.4%          | 776        | 8.1%         | 296        | 3.1%         |       |         |

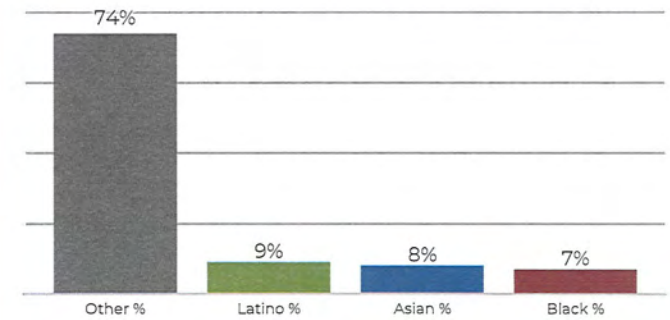
**District 5**



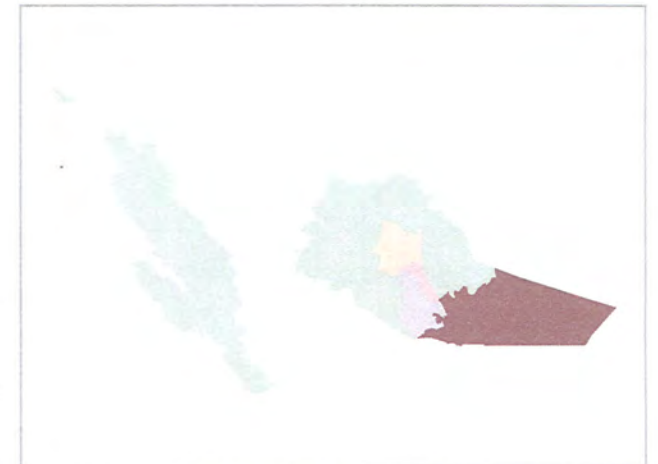
**2020 Census**



**Citizen Voting Age Population**



| Population | Deviation  | Deviation %  | Other       | Other %       | Latino     | Latino %     | Asian      | Asian %      | Black | Black % |
|------------|------------|--------------|-------------|---------------|------------|--------------|------------|--------------|-------|---------|
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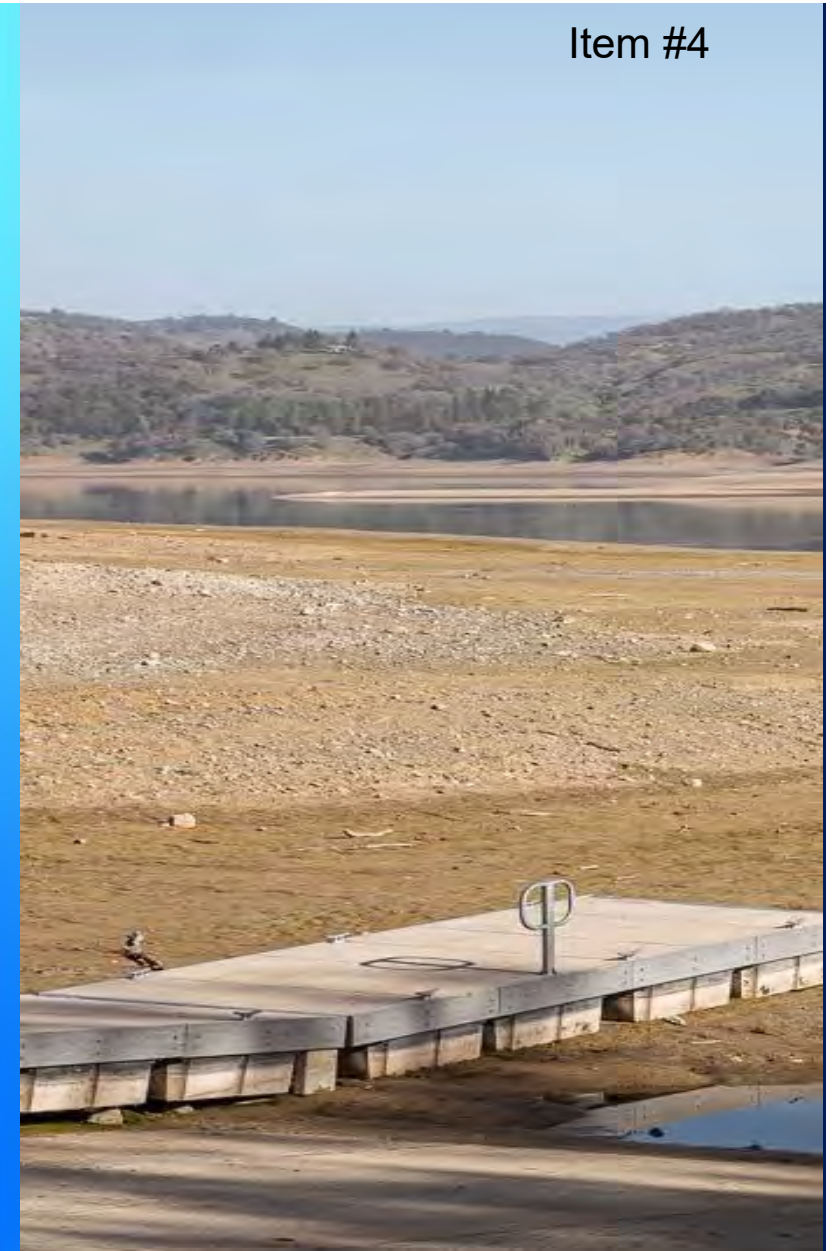
**4**

# Sonoma Water Resiliency Study

## Drought Management Option Updates

North Marin Water District Briefing  
February 15, 2022

Item #4

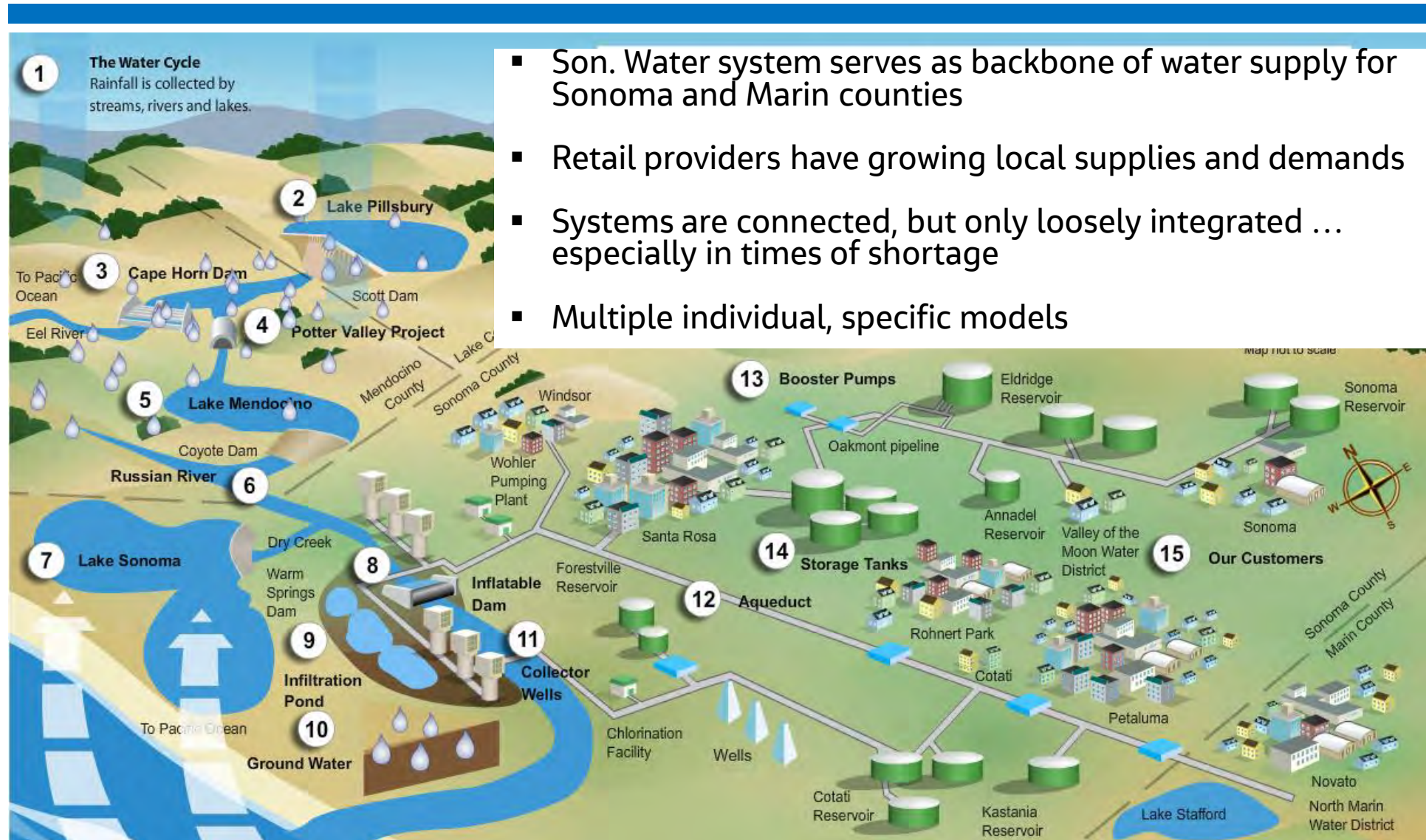


# Meeting Agenda

- Resiliency Study Background
  - Decision Support Model
  - Drought Management Options
  - Summary and Recommendations
-

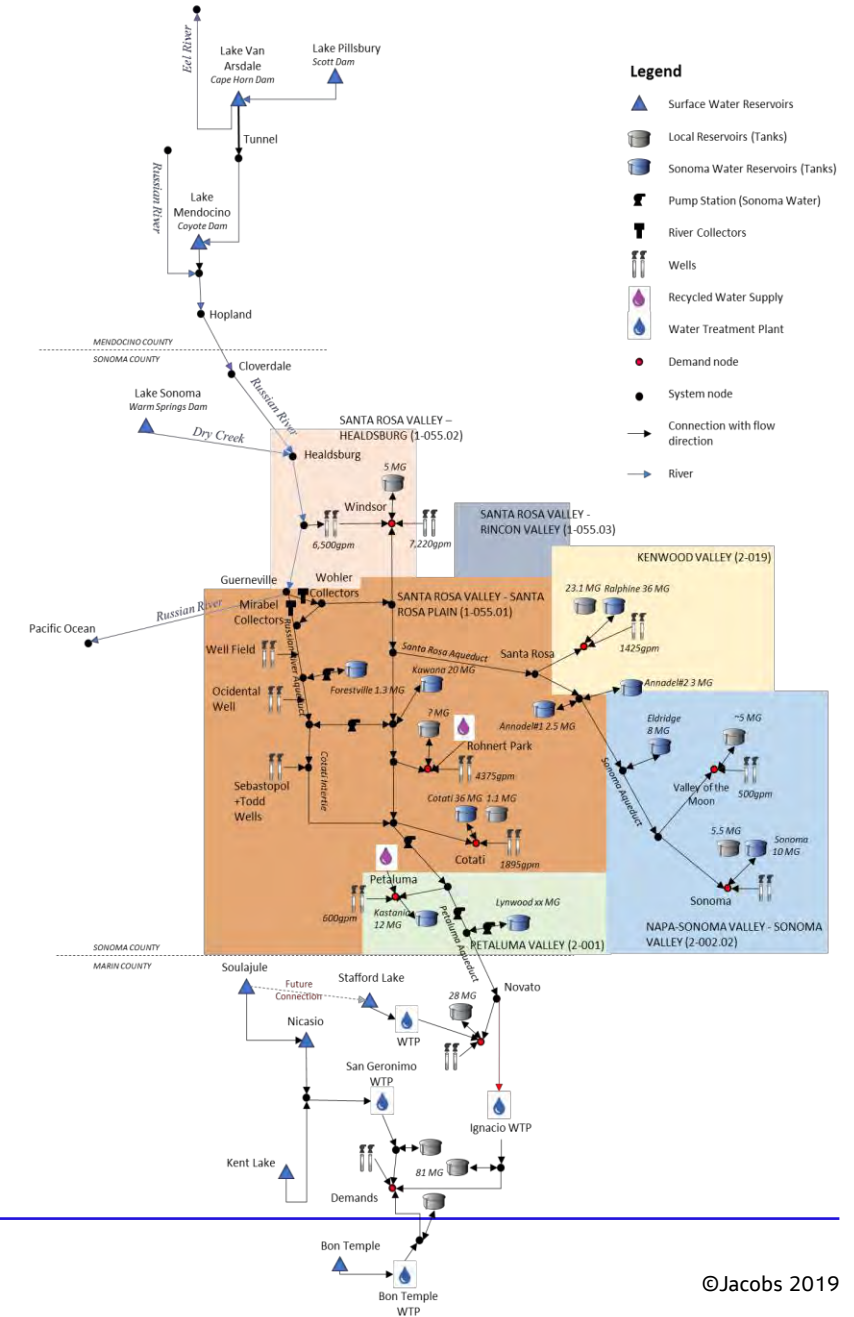


# Complex Inter-Connected System



# Sonoma Water Resiliency Study

- Resiliency Study seeks to:
  - identify the key factors impacting regional water supply resiliency,
  - evaluate the current levels of resiliency,
  - develop a decision support framework model and process, and
  - identify promising opportunities for Sonoma Water and its retail customers to improve regional resilience in the future
- First of a kind look at the Integrated Regional System
  - Russian River & Potter Valley Project (Eel River)
  - Sonoma Water “backbone” system
  - 9 retail customer systems
  - 6 groundwater basins
  - local supplies and recycled water
  - multiple risk drivers
  - decision support model



# Resiliency Study Project Overview

**PHASE 1:**  
Work Plan and  
Scoping Document

**PHASE 2:**  
Development and  
Implementation  
of Decision Support Tool

**PHASE 3:**  
Modification and Maintenance  
of Decision Support Tool

6 -9 months

18 months

24 months

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# **Decision Support Model Update**



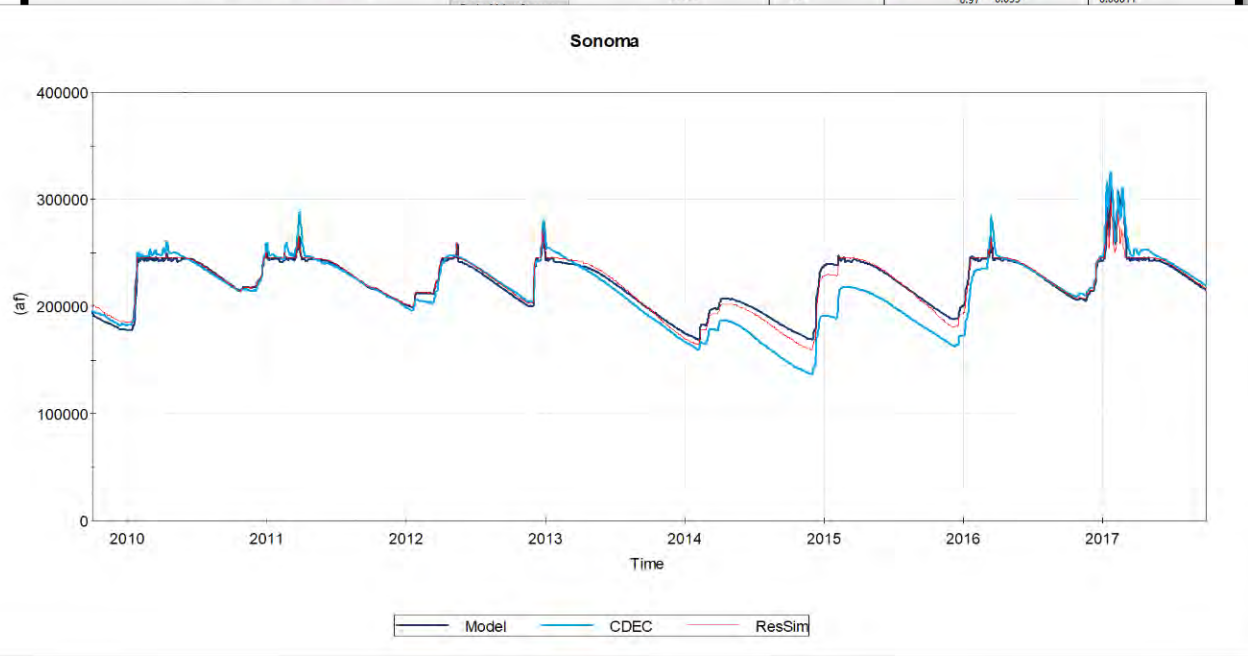
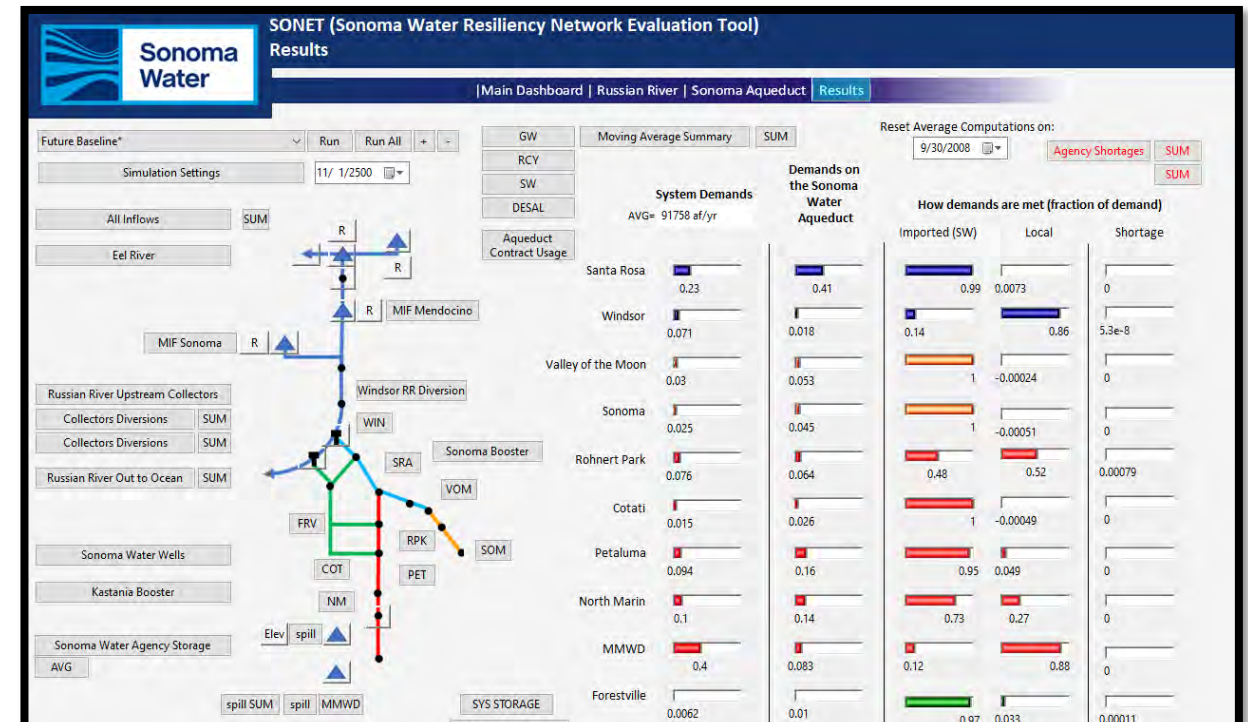
# Decision Support Model Scope and Operational Overview

- Model that Integrates 3 major systems,
  - Russian River and Potter Valley Project
  - Sonoma Transmission System
  - Retail Customer Systems
- Main Model Inputs
  - Reservoir and river flows
  - Member agency demands
  - Maximum Member Agency local supplies available
- Model rules deliver supplies to member agencies
  - Rules decide priority of supplies used by member agencies



# DSM Validation

- Validation period 2009 – 2017
- Member agencies local **supplies** (groundwater, recycled water) were set to what was **delivered**
- Historical inflow to the system provided by HEC-ResSim model and MMWD GoldSim Model
- Historical member agencies deliveries used as model demands
- Validation of storage, diversions, and deliveries



# Future Baseline Projections



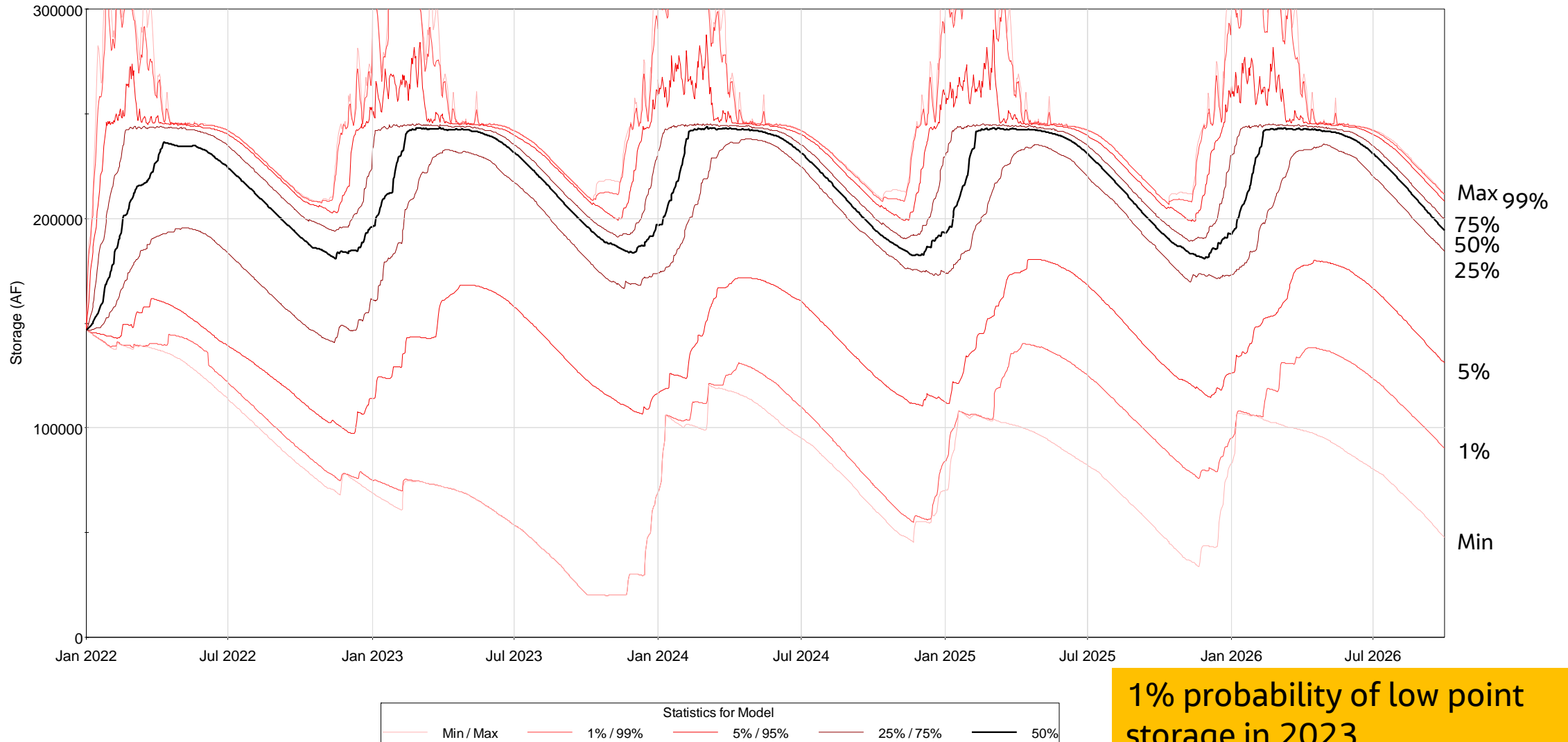
# Future Baseline Simulations

- Assumptions
  - Conditions as of Nov 1, Dec 1, and Jan 1
  - No Actions taken to mitigate drought impacts
  - UWMP demand assumptions
  - Historical hydrology 1910-2017
  - 5-year future simulations: WY 2022-2026
- Stochastic Simulations
  - Simulations using 108 traces of historical hydrology
  - Index sequential method maintains the hydrological sequences of the past
  - Probabilities of storage and shortage conditions derived from traces
- Stress Test Hydrology
  - WY 1976-980 hydrology represents the most severe conditions in the historical record
  - Represents a severe 2-year drought following the current drought
  - Used as stress test hydrology for evaluating the resilience of the system and management actions



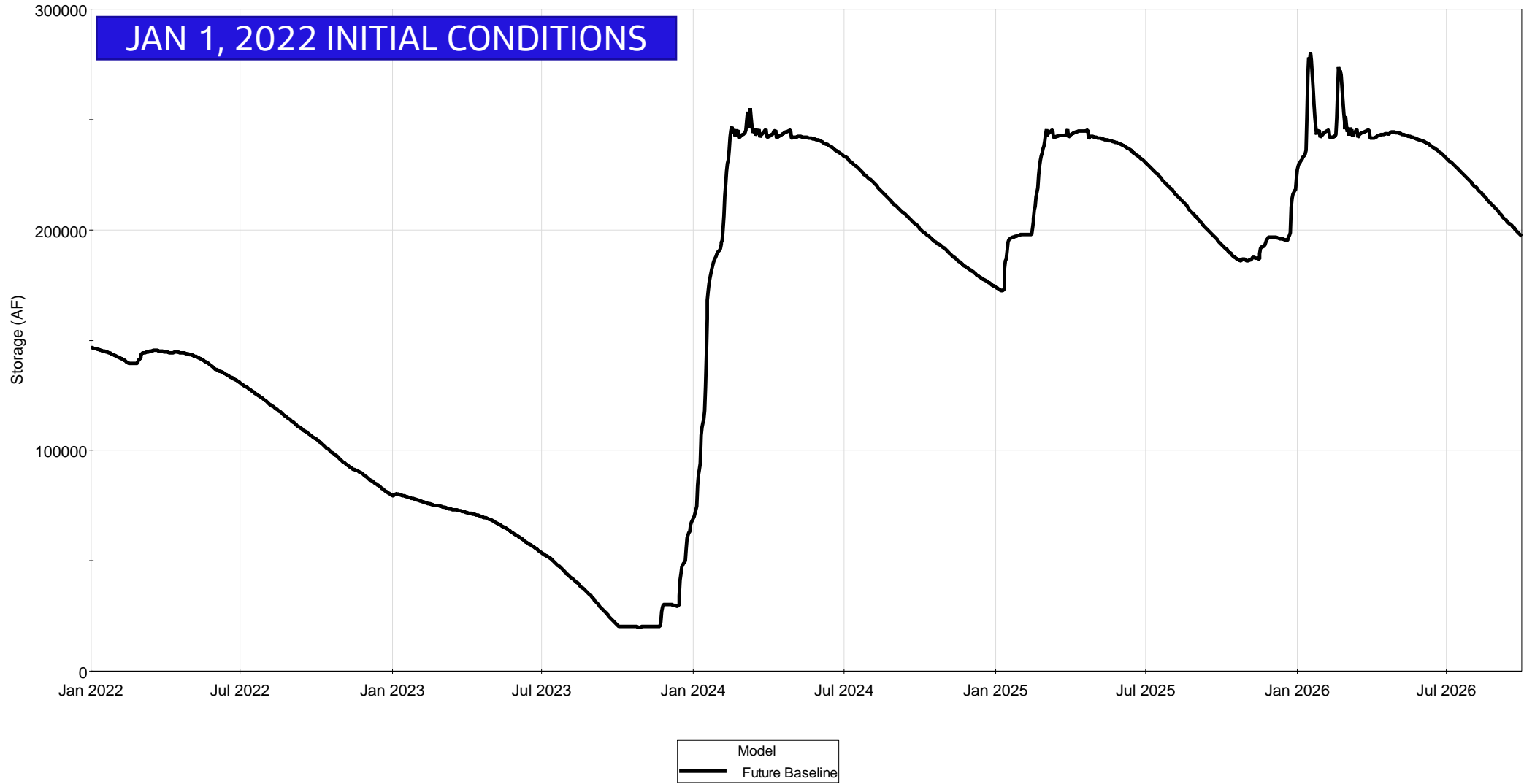
# Lake Sonoma Storage – Probabilities from 108 Historical Hydrological Traces

Lake Sonoma Storage



# Lake Sonoma – WY 1976-1980 Stress Test Hydrology

Lake Sonoma Storage



# Near-Term Drought Risk has Lessened, but Not Eliminated

- Outlook improved with December storms, but dry January and likely continual dry conditions in February suggest drought risk is still a possibility
- Action is still needed to address residual risks of a continued dry seasonal outlook

| Initial Storage Conditions | NO ACTION<br>Projected 5-Year Shortage Total | Shortage as % of<br>Sonoma Water Delivery* | Shortage as % of Total<br>Water Demand* |
|----------------------------|--|--|---|
| Nov 1, 2021                | 25,600 AF                                    | 25%  | 13%                                     |
| Dec 1, 2021                | 23,200 AF                                    | 23%  | 12%                                     |
| Jan 1, 2022                | 6,900 AF                                     | 7%   | 4%                                      |

\* Percentages estimated from shortage and delivery over the critical 2-year period of 2023-2024

# **Drought Management Options**



# Survey of Range of Drought Management Options

- Jacobs met with most retail customers to develop ideas on range of drought management options
- Synthesized options into 4 major categories
  - Increase supply
  - Reduce demand
  - Improve operations
  - Modify policy and regulations



# Synthesis of Drought Water Management Options

## ▪ **Increase Supply**

- Increase groundwater production (new or rehabilitated wells)
- Winter water diversion
- Regional groundwater bank (Santa Rosa Plain, Sonoma Valley, Petaluma)
- Alexander Valley FloodMAR
- Sonoma Developmental Center water supply and forebay for groundwater recharge
- Expand recycled water supply
- Ocean desalination and/or brackish water desalination
- Interconnection with Bay Area supplies (water transfers)

## ▪ **Reduce Demand**

- Water conservation and water use efficiency in agricultural, municipal, and CII sectors

## ▪ **Improve Operations**

- Kastania Pump Station improvements
- Expand surface storage (Lake Stafford weir, sediment removal)
- Lake Sonoma Forecast Informed Reservoir Operations (FIRO)
- Increase recycled water storage
- Storage operational management levels
- Lake Mendocino variable gates and outlet channel improvements

## ▪ **Modify Policy and Regulations**

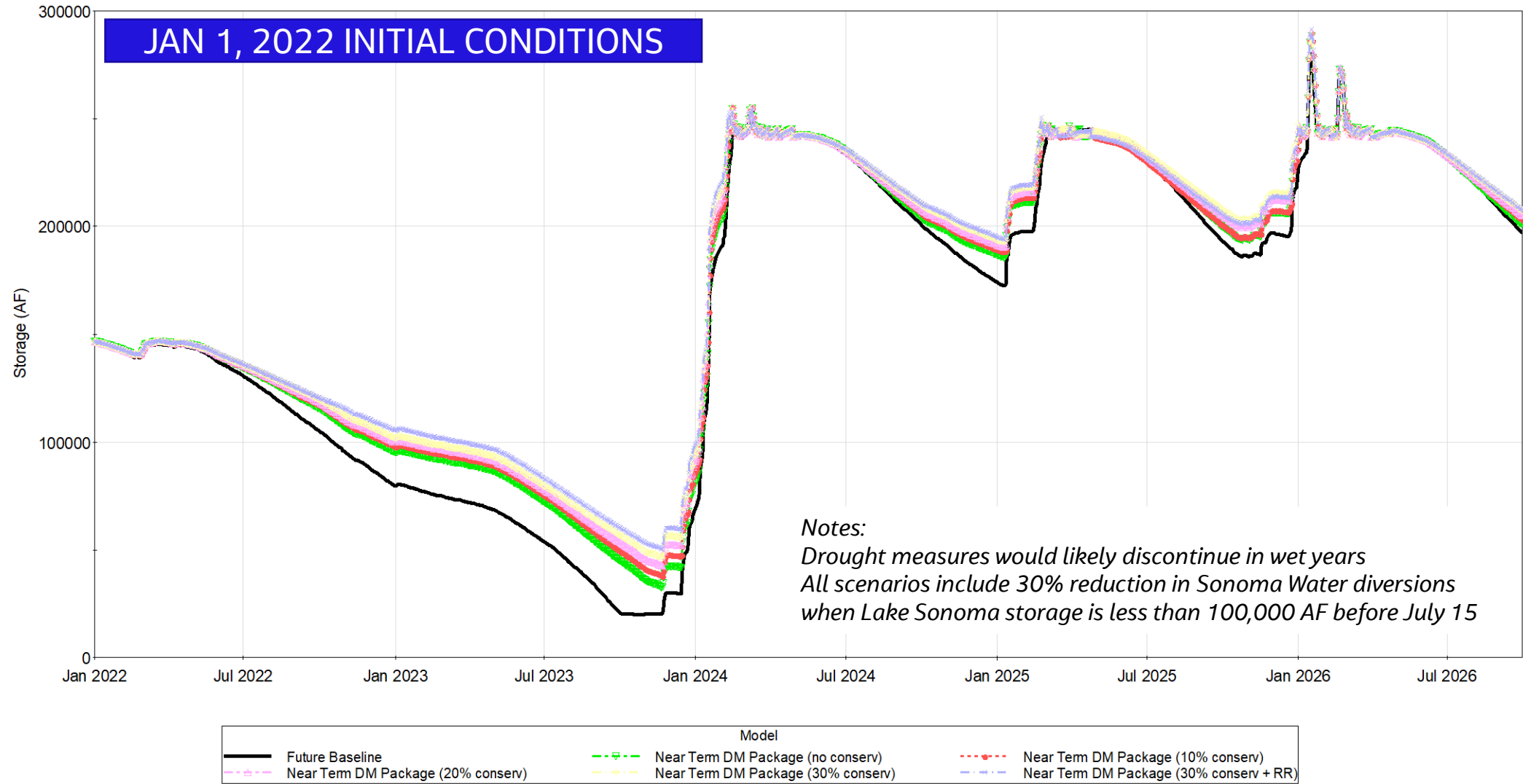
- Regulatory flexibility through TUCPs

# Near-Term Drought Resiliency/Response Actions

- Maximize delivery of natural flows from Russian River system
- Kastania Booster Station rehabilitation
- Increase groundwater production (Sonoma Water)
- Increase groundwater production (Retail Customers)
- Regulatory flexibility through TUCPs
- Water conservation and water use efficiency (Retail Customers and diverters)

# Lake Sonoma – WY 1976-1980 Stress Test Hydrology

Lake Sonoma Storage

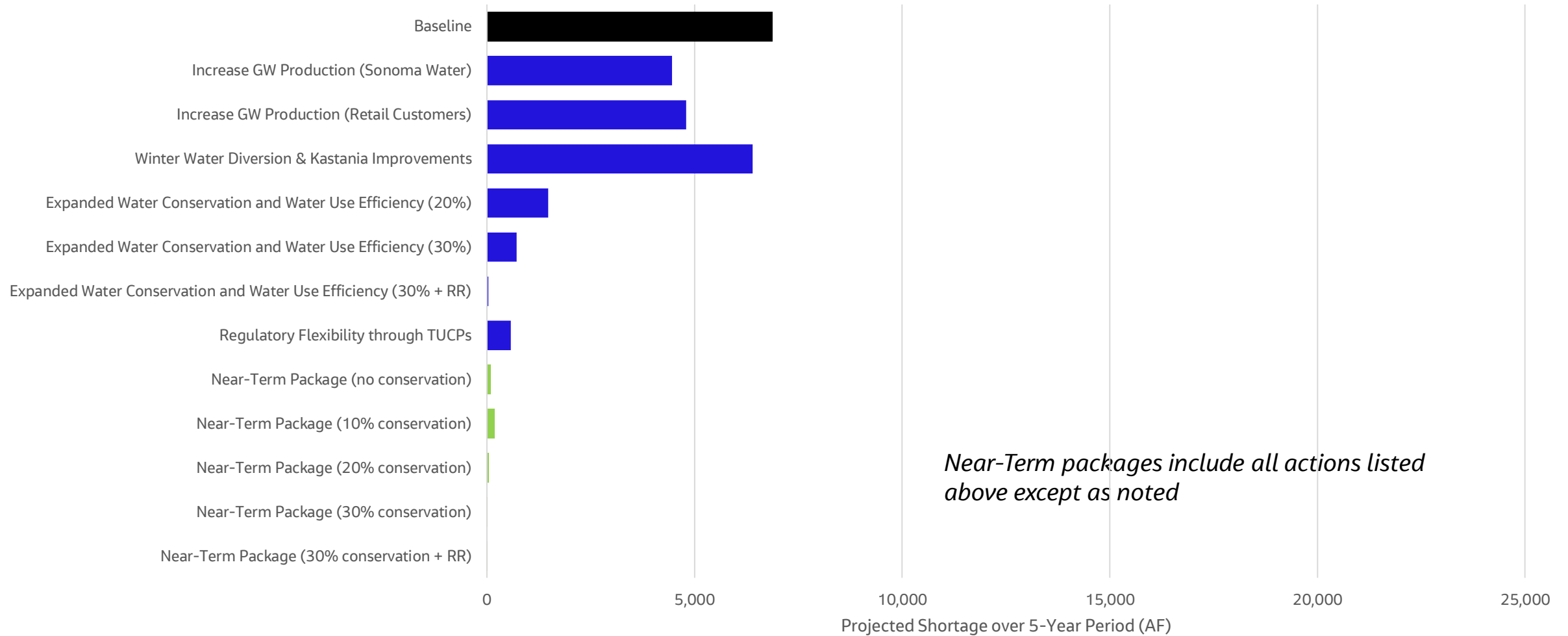




# Simulation Results – Near-Term Package Resolves Stress Test Shortages

JAN 1, 2022 INITIAL CONDITIONS

Summary of Projected Shortages over Period 2022-2026 Using 1976-80 Stress Test Hydrology



# Planning for Longer-Term Droughts

- Early Actions Offer Immediate Opportunities for Resiliency Benefits
  - Water conservation
  - Flexibility through TUCPs
  - Increasing groundwater production (Sonoma Water and Retail Customers)
  - Kastania Pump Station improvements
- Longer-Term Actions Offer Potential for Resiliency during Prolonged, Extreme Droughts
  - Lake Sonoma FIRO
  - Regional groundwater bank
  - Expand winter water diversion
  - SDC water supply
  - Ocean and brackish Desalination
  - Water transfers with Bay Area water agencies
  - Expand surface storage
  - Expand recycled water supply
  - Alexander Valley Flood-Managed Aquifer Recharge

# Summary and Recommendations

- DSM Model
  - Russian River, Transmission System, and Retail Customer Systems have been interconnected
  - DSM has been validated for system water supply and operations
  - Representation of retail customer systems is adequate for this level of analysis
  - DSM can simulate individual years or stochastic simulations involving ensemble of hydrology
- Drought Risks
  - Existing hydrologic conditions continue to be challenging
  - December storms have altered near-term drought outlook
  - Unlikely, but possible risk to Lake Mendocino storage and Lake Sonoma storage (2023), and delivery (2023-24)
  - Stress test hydrology of WY 1976-1980 is used to test drought options
- Drought Management Options
  - Near-term package of options resolves stress test shortages
  - *Winter water diversions* and *groundwater production* helps resolve shortages
  - *Conservation* and *regulatory flexibility under TUCPs* is most important in bolstering Lake Sonoma and Mendocino storage
  - Longer-term actions of *regional groundwater bank* and *Lake Sonoma FIRO* will provide benefit for future droughts but require initial wet period to begin storage phase

**Next Steps**



## Next Steps

- Technical memorandum on drought assessment
  - Continued updates to the WAC/TAC
  - Further review of long-term drought management strategies
  - Continue with assessment of resiliency in response to other identified risks (seismic, wildfire, power, water quality, etc)
-

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**7**



8

**NORTH MARIN WATER DISTRICT**  
**MONTHLY PROGRESS REPORT FOR January 2022**  
February 15, 2022

1.

**Novato Potable Water Prod\* - RR & STP Combined - in Million Gallons - FYTD**

| Month             | FY21/22        | FY20/21        | FY19/20        | FY18/19        | FY17/18        | 22 vs 21 %  |
|-------------------|----------------|----------------|----------------|----------------|----------------|-------------|
| July              | 282.9          | 341.7          | 317.7          | 341.1          | 331.0          | -17%        |
| August            | 212.4          | 290.1          | 287.1          | 300.9          | 303.0          | -27%        |
| September         | 214.5          | 225.6          | 280.5          | 255.0          | 292.4          | -5%         |
| October           | 198.5          | 307.8          | 286.0          | 265.6          | 273.7          | -36%        |
| November          | 94.1           | 201.6          | 226.3          | 170.1          | 163.9          | -53%        |
| December          | 137.1          | 183.0          | 141.2          | 157.8          | 152.1          | -25%        |
| January           | 118.3          | 156.6          | 111.9          | 114.7          | 130.6          | -24%        |
| <b>FYTD Total</b> | <b>1,257.8</b> | <b>1,706.2</b> | <b>1,650.6</b> | <b>1,605.1</b> | <b>1,646.6</b> | <b>-26%</b> |

\*Excludes water backfed into Stafford Lake: FY22=12.82 MG

**West Marin Potable Water Production - in Million Gallons - FY to Date**

| Month             | FY21/22     | FY20/21     | FY19/20     | FY18/19     | FY17/18     | 22 vs 21 %  |
|-------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| July              | 6.0         | 8.2         | 8.9         | 10.2        | 9.5         | -26%        |
| August            | 5.7         | 9.2         | 8.4         | 9.9         | 8.8         | -38%        |
| September         | 5.9         | 7.9         | 7.8         | 9.5         | 8.4         | -26%        |
| October           | 5.1         | 6.7         | 7.5         | 8.3         | 7.9         | -25%        |
| November          | 3.5         | 5.8         | 6.7         | 7.3         | 5.4         | -39%        |
| December          | 4.0         | 5.1         | 4.8         | 5.7         | 5.1         | -21%        |
| January           | 3.8         | 4.2         | 4.1         | 5.0         | 4.5         | -11%        |
| <b>FYTD Total</b> | <b>34.0</b> | <b>47.1</b> | <b>48.3</b> | <b>55.8</b> | <b>49.6</b> | <b>-28%</b> |

**Stafford Treatment Plant Production - in Million Gallons - FY to Date**

| Month             | FY21/22      | FY20/21      | FY19/20      | FY18/19      | FY17/18      | 22 vs 21 %  |
|-------------------|--------------|--------------|--------------|--------------|--------------|-------------|
| July              | 67.0         | 105.8        | 68.2         | 78.6         | 112.6        | -37%        |
| August            | 31.3         | 81.1         | 103.8        | 79.3         | 81.5         | -61%        |
| September         | 41.7         | 16.1         | 115.0        | 60.5         | 122.7        | 159%        |
| October           | 28.2         | 7.7          | 103.4        | 74.5         | 102.3        | 266%        |
| November          | 0.0          | 0.6          | 102.8        | 0.0          | 53.6         | -100%       |
| December          | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          | -           |
| January           | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          | -           |
| <b>FYTD Total</b> | <b>168.1</b> | <b>211.3</b> | <b>493.0</b> | <b>292.9</b> | <b>472.6</b> | <b>-20%</b> |

**Recycled Water Production\* - in Million Gallons - FY to Date**

| Month              | FY21/22      | FY20/21      | FY19/20      | FY18/19      | FY17/18      | 22 vs 21 % |
|--------------------|--------------|--------------|--------------|--------------|--------------|------------|
| July               | 42.9         | 39.0         | 36.5         | 30.2         | 27.7         | 10%        |
| August             | 41.4         | 43.2         | 33.3         | 30.6         | 26.1         | -4%        |
| September          | 39.6         | 29.5         | 29.7         | 33.5         | 25.0         | 35%        |
| October            | 18.3         | 22.8         | 26.6         | 20.1         | 19.1         | -20%       |
| November           | 0.8          | 10.9         | 10.8         | 12.7         | 2.5          | -92%       |
| December           | 0.3          | 0.2          | 0.5          | 1.5          | 0.8          | 50%        |
| January            | 0.7          | 0.3          | 0.6          | 0.9          | 1.0          | 120%       |
| <b>FYTD Total*</b> | <b>144.1</b> | <b>145.9</b> | <b>138.1</b> | <b>129.4</b> | <b>102.2</b> | <b>-1%</b> |

\*Excludes potable water input to the RW system: FY22=3.9 MG; FY21=24.7 MG; FY20=16.7; FY19=20.0 MG; FY18=15.8 MG

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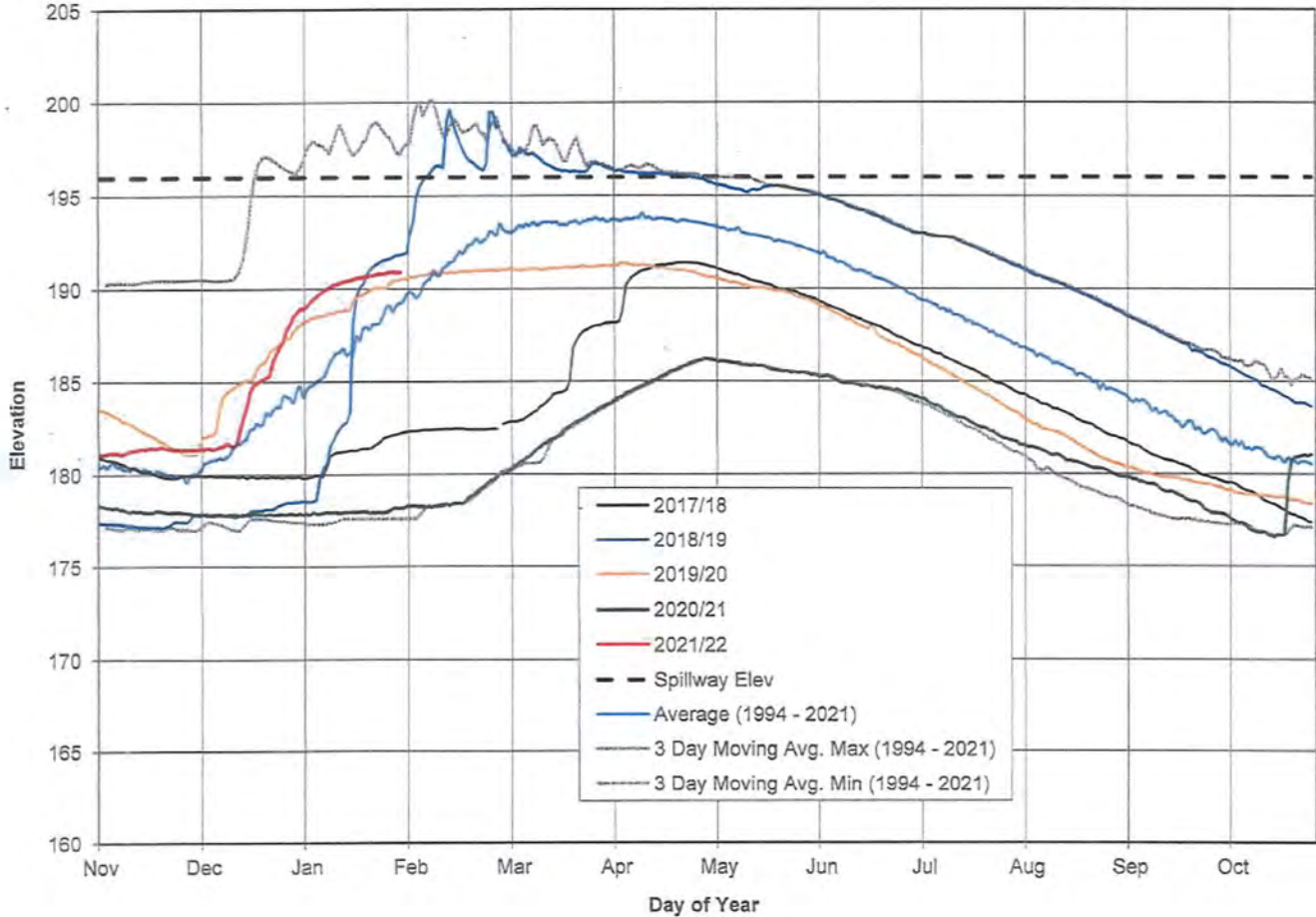
**2. Stafford Lake Data**

|                          | January Average | January 2022 | January 2021 |
|--------------------------|-----------------|--------------|--------------|
| Rainfall this month      | 5.66 Inches     | 0.48 Inches  | 3.77 Inches  |
| Rainfall this FY to date | 15.66 Inches    | 16.18 Inches | 5.76 Inches  |
| Lake elevation*          | 188.2 Feet      | 190.9 Feet   | 178.2 Feet   |
| Lake storage**           | 871 MG          | 1038 MG      | 401 MG       |

\* Spillway elevation is 196.0 feet

\*\* Lake storage less 390 MG = quantity available for normal delivery

Stafford Lake Elevations  
 1994 through 2022  
 Excluding Non-Operation Period



**Temperature (in degrees)**

|                       | <b>Minimum</b> | <b>Maximum</b> | <b>Average</b> |
|-----------------------|----------------|----------------|----------------|
| January 2022 (Novato) | 41             | 87             | 65             |
| January 2021 (Novato) | 46             | 64             | 55             |

**3. Number of Services**

| <b>January 31</b>      | <b>Novato Water</b> |        |        | <b>Recycled Water</b> |      |        | <b>West Marin Water</b> |      |        | <b>Oceana Marin Swr</b> |      |        |
|------------------------|---------------------|--------|--------|-----------------------|------|--------|-------------------------|------|--------|-------------------------|------|--------|
|                        | FY22                | FY21   | Incr % | FY22                  | FY21 | Incr % | FY22                    | FY21 | Incr % | FY22                    | FY21 | Incr % |
| Total meters installed | 20,827              | 20,788 | 0.2%   | 99                    | 99   | 0.0%   | 799                     | 792  | 0.9%   | -                       | -    | -      |
| Total meters active    | 20,669              | 20,570 | 0.5%   | 96                    | 94   | 2.1%   | 789                     | 784  | 0.6%   | -                       | -    | -      |
| Active dwelling units  | 24,099              | 24,084 | 0.1%   | -                     | -    | -      | 837                     | 834  | 0.4%   | 235                     | 235  | 0.0%   |

**4. Oceana Marin Monthly Status Report (January)**

| <b>Description</b>              | <b>January 2022</b> | <b>January 2021</b> |
|---------------------------------|---------------------|---------------------|
| Effluent Flow Volume (MG)       | 0.610               | 0.479               |
| Irrigation Field Discharge (MG) | 0.666               | 0.000               |
| Treatment Pond Freeboard (ft)   | 5.8                 | 5.5                 |
| Storage Pond Freeboard (ft)     | 7.0                 | 8.3                 |

**5. Developer Projects Status Report (January)**

| <b>Job No.</b> | <b>Project</b>       | <b>% Complete</b> | <b>% This month</b> |
|----------------|----------------------|-------------------|---------------------|
| 1.2820.00      | Bahia Heights        | 100               | 1                   |
| 1.2831.00      | Landsea Homes        | 98                | 1                   |
| 1.2851.00      | 385 Bel Marin Keys   | 99                | 0                   |
| 1.2841.00      | Hamilton Village     | 99                | 0                   |
| 1.2821.00      | Atherton Place       | 99                | 1                   |
| 1.2836.00      | Residence Inn        | 10                | 0                   |
| 1.2835.00      | Springbrook          | 99                | 4                   |
| 1.2856.00      | Redwood Credit Union | 5                 | 0                   |
| 1.2850.00      | 59 Bridge Road       | 10                | 5                   |

**District Projects Status Report - Const. Dept. (January)**

| <b>Job No.</b> | <b>Project</b>                | <b>% Complete</b> | <b>% This month</b> |
|----------------|-------------------------------|-------------------|---------------------|
| 1.1798.00      | Replace Valves on Center Road | 5                 | 0                   |
| 1.6610.20      | STP High Service Pump Repair  | 85                | 85                  |

**Employee Hours to Date, FY 22/21**

As of Pay Period Ending January 31, 2022  
 Percent of Fiscal Year Passed = 58%

| <b>Developer Projects</b> | <b>Actual</b> | <b>Budget</b> | <b>% YTD Budget</b> | <b>District Projects</b> | <b>Actual</b> | <b>Budget</b> | <b>% YTD Budget</b> |
|---------------------------|---------------|---------------|---------------------|--------------------------|---------------|---------------|---------------------|
| Construction              | 739           | 1,400         | 53%                 | Construction             | 1,122         | 3,460         | 33%                 |
| Engineering               | 1,246         | 1,504         | 84%                 | Engineering              | 1,444         | 2,722         | 59%                 |

**6. Safety/Liability**

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| Industrial Injury with Lost Time |                           |                      |                  | Liability Claims Paid |                  |         |
|----------------------------------|---------------------------|----------------------|------------------|-----------------------|------------------|---------|
| Lost Days                        | OH Cost of Lost Days (\$) | No. of Emp. Involved | No. of Incidents | Incurred (FYTD)       | Paid (FYTD) (\$) |         |
| FY 22 through Jan                | 61                        | \$13,814             | 2                | 2                     | 0                | \$0     |
| FY 21 through Jan                | 23                        | \$10,120             | 3                | 3                     | 1                | \$6,590 |

Days since lost time accident through January 31, 2022 116 Days

**7. Energy Cost**

| FYE                           | kWh     | January |          | Fiscal Year-to-Date thru January |       |          |
|-------------------------------|---------|---------|----------|----------------------------------|-------|----------|
|                               |         | ¢/kWh   | Cost/Day | kWh                              | ¢/kWh | Cost/Day |
| 2022 Stafford TP <sup>1</sup> | 38,904  | 22.2¢   | \$279    | 276,677                          | 21.9¢ | \$282    |
| Pumping                       | 71,199  | 29.0¢   | \$645    | 771,182                          | 27.5¢ | \$992    |
| Other <sup>2</sup>            | 38,017  | 29.3¢   | \$349    | 293,117                          | 30.8¢ | \$422    |
|                               | 148,120 | 27.3¢   | \$1,272  | 1,340,976                        | 27.1¢ | \$1,695  |
| 2021 Stafford TP              | 18,884  | 25.9¢   | \$158    | 319,594                          | 21.0¢ | \$311    |
| Pumping                       | 87,198  | 25.1¢   | \$664    | 994,324                          | 25.2¢ | \$1,172  |
| Other <sup>2</sup>            | 61,342  | 22.3¢   | \$420    | 348,715                          | 27.4¢ | \$447    |
|                               | 167,424 | 24.3¢   | \$1,242  | 1,662,633                        | 22.5¢ | \$1,930  |
| 2020 Stafford TP              | 34,008  | 21.0¢   | \$231    | 535,823                          | 18.8¢ | \$470    |
| Pumping                       | 66,458  | 22.9¢   | \$507    | 906,389                          | 23.4¢ | \$995    |
| Other <sup>2</sup>            | 38,874  | 18.9¢   | \$245    | 333,844                          | 25.7¢ | \$403    |
|                               | 139,340 | 21.3¢   | \$983    | 1,776,056                        | 22.4¢ | \$1,868  |

<sup>1</sup>Actual electricity used 21,093kWh.

<sup>2</sup>Other includes West Marin Facilities

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**8. Water Conservation Update**

|                                      | Month of January 2022 | Fiscal Year to Date | Program Total to Date |
|--------------------------------------|-----------------------|---------------------|-----------------------|
| High Efficiency Toilet (HET) Rebates | 11                    | 82                  | 4357                  |
| Retrofit Certificates Filed          | 17                    | 95                  | 6927                  |
| Cash for Grass Rebates               | 3                     | 50                  | 998                   |
| Washing Machine Rebates              | 2                     | 27                  | 6857                  |
| Water Smart Home Survey              | 0                     | 5                   | 3904                  |

**9. Utility Performance Metric**

| <b>SERVICE DISRUPTIONS<br/>(No. of Customers Impacted)</b> | <b>January 2022</b> | <b>January 2021</b> | <b>Fiscal Year to<br/>Date 2022</b> | <b>Fiscal Year to<br/>Date 2021</b> |
|--|---------------------|---------------------|-------------------------------------|-------------------------------------|
| <b>PLANNED</b>   |                     |                     |                                     |                                     |
| Duration Between 0.5 and 4 hours                           | 2                   | 1                   | 62                                  | 77                                  |
| Duration Between 4 and 12 hours                            |                     |                     | 17                                  |                                     |
| Duration Greater than 12 hours                             |                     |                     |                                     |                                     |
| <b>UNPLANNED</b>   |                     |                     |                                     |                                     |
| Duration Between 0.5 and 4 hours                           |                     | 4                   | 12                                  | 33                                  |
| Duration Between 4 and 12 hours                            |                     | 21                  |                                     | 23                                  |
| Duration Greater than 12 hours                             |                     |                     |                                     | 1                                   |
|  |                     |                     |                                     |                                     |
| <b>SERVICE LINES REPLACED</b>                              |                     |                     |                                     |                                     |
| Polybutylene   | 2                   | 5                   | 26                                  | 58                                  |
| Copper (Replaced or Repaired)                              |                     | 0                   | 15                                  | 4                                   |

**10. Summary of COVID-19 Costs and Water Bill Delinquency Impacts - to Date**

|  | <u>Total</u>      |
|--|-------------------|
| Increase in on-call Labor Costs                    | \$ 121,800        |
| Payroll Accounts Receivable Collection Costs       | \$ 14,000         |
| Time off to Employees for COVID related reasons* - | \$ 53,600         |
| Vendor Expenses - Including Legal Fees             | \$ 45,600         |
| Total Covid-19 Costs to Date                       | <u>\$ 235,000</u> |

\* Families First Coronavirus Response Act (FFCRA) & CA Supplemental Paid Sick Leave (SPSL)  
Allows employees to take time off for COVID medical reasons including vaccination.

**Water Bill Delinquency Impacts**

|  | <u>2 Years Ago</u> | <u>Last Year</u> | <u>This Year</u> |
|--|--------------------|------------------|------------------|
|  | 01/2020            | 01/2021          | 01/2022          |
| Customer Accounts Past Due (count)     | 1.8%               | 3.7%             | 4.0%             |
| Delinquent Balances % Due on Account   | 5.7%               | 10.6%            | 14.1%            |
| Delinquent Balances \$ Due on Account* | \$ 50,000          | \$ 144,000       | \$ 149,000       |

\* High balance on record of \$159K in 12/2021.

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# NORTH MARIN WATER DISTRICT

## Summary of Complaints & Service Orders January 2022

### Tag Breakdown:

Total: 251    Consumer: 103    Office: 148

| <u>Type</u>                     | <u>Jan-22</u>     | <u>Jan-21</u>     | <u>Added Notes</u> |
|---------------------------------|-------------------|-------------------|--------------------|
| <b><u>Billing</u></b>           |                   |                   |                    |
| High Bill                       | 1                 | 3                 |                    |
| Low Bill                        | 1                 | 0                 |                    |
| <b>Total</b>                    | <b>2</b>          | <b>3</b>          |                    |
| <b><u>Meter Replacement</u></b> |                   |                   |                    |
|                                 | 22                | 13                |                    |
| <b>Total</b>                    | <b>22</b>         | <b>13</b>         |                    |
| <b><u>Need Read</u></b>         |                   |                   |                    |
|                                 | 1                 | 0                 |                    |
| <b>Total</b>                    | <b>1</b>          | <b>0</b>          |                    |
| <b><u>No-Water</u></b>          |                   |                   |                    |
|                                 | 3                 | 0                 |                    |
| <b>Total</b>                    | <b>3</b>          | <b>0</b>          |                    |
| <b><u>Leak</u></b>              |                   |                   |                    |
| Consumer                        | 153               | 149               |                    |
| District                        | 13                | 0                 |                    |
| <b>Total</b>                    | <b>166</b>        | <b>149</b>        |                    |
| <b><u>Check Pressure</u></b>    |                   |                   |                    |
|                                 | 4                 | 1                 |                    |
| <b>Total</b>                    | <b>4</b>          | <b>1</b>          |                    |
| <b><u>Turn Off / On</u></b>     |                   |                   |                    |
|                                 | 43                | 12                |                    |
| <b>Total</b>                    | <b>43</b>         | <b>12</b>         |                    |
| <b><u>Other</u></b>             |                   |                   |                    |
|                                 | 10                | 12                |                    |
| <b>Total</b>                    | <b>10</b>         | <b>12</b>         |                    |
| <b>TOTAL FOR MONTH:</b>         | <b><u>251</u></b> | <b><u>190</u></b> | <b><u>32%</u></b>  |

### **Fiscal YTD Summary**

|                   |                   |                   |                                    |
|-------------------|-------------------|-------------------|------------------------------------|
| Billing           | 4                 | 40                | -90% Decrease in Billing           |
| Meter Replacement | 34                | 31                | 10% increase in Meter Replacements |
| Need Read         | 11                | 0                 | 100% Increase in Reads             |
| No-Water          | 4                 | 0                 | 100% Increase in No-Water          |
| Leak              | 709               | 578               | 23% Increase in Leaks              |
| Water Quality     | 1                 | 1                 | 0% No Change.                      |
| Pressure          | 5                 | 2                 | 150% Increase in Pressure          |
| Turn Off / On     | 104               | 112               | -7% Decrease in Water On/Off       |
| Other             | 19                | 24                | -21% Decrease in other tags        |
| <b>Total</b>      | <b><u>891</u></b> | <b><u>788</u></b> | <b><u>13%</u></b> Increase overall |

### **Change Primarily Due To**

**Bill Adjustments Under Board Policy:**

**January 22 vs. January 21**

|        |    |          |
|--------|----|----------|
| Jan-22 | 12 | \$9,505  |
| Jan-21 | 22 | \$18,024 |

**Fiscal Year vs Prior FY**

|          |     |          |
|----------|-----|----------|
| FY 21/22 | 107 | \$42,194 |
| FY 20/21 | 155 | \$66,101 |



**MEMORANDUM**

To: Board of Directors

February 11, 2022

From: Julie Blue, Auditor-Controller *JB*  
Nancy Williamson, Senior Accountant *NW*

Subj: Auditor-Controller's Monthly Report of Investments for January 2022  
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**RECOMMENDED ACTION:** Information

**FINANCIAL IMPACT:** None

At month end the District's Investment Portfolio had an amortized cost value (i.e., cash balance) of \$25,916,941 and a market value of \$25,914,111. During January the cash balance decreased by \$460,000. The market value of securities held decreased \$2,830 during the month. The total unrestricted cash balance at month end was \$5,258,075 and 99.23% of the Designated Cash Reserves are funded.

At January 31, 2022, 86% of the District's Portfolio was invested in California's Local Agency Investment Fund (LAIF), 9% in Time Certificates of Deposit, 4% in the Marin County Treasury, and 1% retained locally for operating purposes. The weighted average maturity of the portfolio was 31 days, compared to 26 days at the end of December. The LAIF interest rate for the month was 0.23%, compared to 0.21% the previous month. The weighted average Portfolio rate was 0.28%, compared to 0.27% for the prior month.

Investment Transactions for the month of January are listed below:

|           |                     |                    |              |                                |
|-----------|---------------------|--------------------|--------------|--------------------------------|
| 1/18/2022 | Morgan Stanley Bank | US Bank            | \$249,202.69 | TCD Matured                    |
| 1/19/2022 | US Bank             | Goldman Sachs Bank | \$249,000.00 | Purchase 0.75% TCD due 1/19/24 |
| 1/20/2022 | LAIF                | US Bank            | \$475,000.00 | Trsf from LAIF account         |

**NORTH MARIN WATER DISTRICT  
AUDITOR-CONTROLLER'S MONTHLY REPORT OF INVESTMENTS  
January 31, 2022**

| Type                               | Description                | S&P Rating | Purchase Date | Maturity Date | Cost Basis <sup>1</sup> | 1/31/2022 Market Value | Yield <sup>2</sup> | % of Portfolio |
|------------------------------------|----------------------------|------------|---------------|---------------|-------------------------|------------------------|--------------------|----------------|
| <b>LAIF</b>                        | State of CA Treasury       | AA-        | Various       | Open          | \$22,397,776            | \$22,394,946           | 0.23% <sup>3</sup> | <b>86%</b>     |
| <b>Time Certificate of Deposit</b> |                            |            |               |               |                         |                        |                    |                |
| TCD                                | Wells Fargo National Bank  | n/a        | 3/6/20        | 3/7/22        | 248,000                 | 248,000                | 1.35%              | 1%             |
| TCD                                | American Express Natl Bank | n/a        | 4/7/20        | 4/7/22        | 248,000                 | 248,000                | 1.35%              | 1%             |
| TCD                                | Synchrony Bank             | n/a        | 4/17/20       | 4/18/22       | 248,000                 | 248,000                | 1.20%              | 1%             |
| TCD                                | Pinnacle Bank              | n/a        | 5/7/20        | 5/9/22        | 248,000                 | 248,000                | 0.90%              | 1%             |
| TCD                                | Enerbank                   | n/a        | 9/25/20       | 9/25/24       | 249,000                 | 249,000                | 0.45%              | 1%             |
| TCD                                | Sallie Mae Bank            | n/a        | 8/18/21       | 8/18/23       | 249,000                 | 249,000                | 0.35%              | 1%             |
| TCD                                | UBS Bank                   | n/a        | 9/9/21        | 9/11/23       | 249,000                 | 249,000                | 0.35%              | 1%             |
| TCD                                | BMW Bank                   | n/a        | 8/20/21       | 2/20/24       | 249,000                 | 249,000                | 0.45%              | 1%             |
| TCD                                | Goldman Sachs Bank         | n/a        | 1/19/22       | 1/19/24       | 249,000                 | 249,000                | 0.75%              | 1%             |
|                                    |                            |            |               |               | <b>\$2,237,000</b>      | <b>\$2,237,000</b>     | <b>0.79%</b>       | <b>9%</b>      |
| <b>Other</b>                       |                            |            |               |               |                         |                        |                    |                |
| Agency                             | Marin Co Treasury          | AAA        | Various       | Open          | \$1,045,108             | \$1,045,108            | 0.22%              | 4%             |
| Other                              | Various                    | n/a        | Various       | Open          | 237,057                 | 237,057                | 0.41%              | 1%             |
| <b>TOTAL IN PORTFOLIO</b>          |                            |            |               |               | <b>\$25,916,941</b>     | <b>\$25,914,111</b>    | <b>0.28%</b>       | <b>100%</b>    |

Weighted Average Maturity = **31 Days**

LAIF: State of California Local Agency Investment Fund.

1%

TCD: Time Certificate of Deposit.

Agency: STP State Revolving Fund Loan Reserve.

Other: Comprised of 5 accounts used for operating purposes. US Bank Operating Account, US Bank STP SRF Loan Account, US Bank FSA Payments Account, Bank of Marin AEEP Checking Account & NMWD Petty Cash Fund.

1 Original cost less repayment of principal and amortization of premium or discount.

2 Yield defined to be annualized interest earnings to maturity as a percentage of invested funds.

3 Earnings are calculated daily - this represents the average yield for the month ending January 31, 2022.

| <b>Interest Bearing Loans</b>       | Loan Date | Maturity Date | Original Loan Amount | Principal Outstanding | Interest Rate |
|-------------------------------------|-----------|---------------|----------------------|-----------------------|---------------|
| Marin Country Club Loan             | 1/1/18    | 11/1/47       | \$1,265,295          | \$1,111,403           | 1.00%         |
| Marin Municipal Water - AEEP        | 7/1/14    | 7/1/32        | \$3,600,000          | \$1,930,238           | 2.71%         |
| Employee Housing Loans (2)          | Various   | Various       | 525,000              | 525,000               | Contingent    |
| <b>TOTAL INTEREST BEARING LOANS</b> |           |               | <b>\$5,390,295</b>   | <b>\$3,566,641</b>    |               |

**The District has the ability to meet the next six months of cash flow requirements.**

\\nmwd\files\server\admin\administration\accountants\investments\22[1221.xls]\funded % of designated cash

9

## MEMORANDUM

To: Board of Directors  
 From: Drew McIntyre, General Manager   
 Subject: Re-Authorizing – Meetings by Teleconference of Legislative Bodies of North Marin Water District

February 11, 2022

t:\gm\bod misc 2022\board of directors meetings by teleconference 2.11.2022\_final.docx

**RECOMMENDED ACTION:** Adopt Resolution No. 22-XX: "Resolution Finding Proclaimed State of Emergency, That Local Officials Continue to Recommend Physical Distancing, and that Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees; and Re-Authorizing Meetings by Teleconference of Legislative Bodies of North Marin Water District from February 15, 2022 through March 17, 2022 Pursuant to Brown Act Provisions".

**FINANCIAL IMPACT:** None

As authorized by the Governor's Executive Order N-29-20, Board meetings have been held virtually since March 17, 2020 to protect attendees, including members of public, District employees, and Board members, from potential exposure to the novel coronavirus disease 2019 ("COVID-19"). On June 11, 2021, the Governor issued Executive Order N-08-21 which rescinded these temporary modifications to the Brown Act, effective September 30, 2021. On September 16, 2021, the Governor signed Assembly Bill 361 (2021) ("AB 361") amending the Brown Act to allow local legislative bodies to continue to conduct meetings virtually under specified conditions and pursuant to special rules on notice, attendance, and other matters. AB 361 took full effect on October 1, 2021.

AB 361 authorizes the Board of Directors to meet virtually during declared states of emergency without noticing the location of individual Board Members or requiring such locations to be open to the public if certain findings are made and certain procedures are followed. Where a virtual meeting is held pursuant to AB 361, the members of the public must be able to observe and participate during the meeting.

The Governor's March 4, 2021 declaration of a State of Emergency remains in effect. On December 15, 2021, the State reinstated a universal masking requirement for all individuals while indoors to help combat the surge in COVID-19 cases due to the Omicron variant. On December 30, 2021, Marin County Health and Human Services issued new guidance changing the local rules on

Approved by GM 2/11/22  
 Date 

masking to align with the State mandate. On February 7, 2022, the State issued a new health order, effective February 16, 2022, which limits indoor masking requirements to specified indoor settings and unvaccinated individuals. However, both the State and Marin County Health and Human Services continue to recommend wearing masks while indoors. CDC, OSHA, and Cal/OSHA continue to recommend mask wearing and physical distancing of at least six feet while indoors to protect against transmission of COVID-19. Therefore, the current circumstances support a determination by the Board that meeting in person would continue to present imminent risks to the health and safety of attendees.

On October 5, 2021, the Board adopted Resolution 21-22, thereby finding a proclaimed state of emergency, that local officials continue to recommend physical distancing, and that meeting in person would present imminent risks to the health or safety of attendees; and authorizing meetings by teleconference of legislative bodies of North Marin Water District from October 5, 2021 through November 4, 2021 pursuant to Brown Act provisions.

On November 2, 2021, November 16, 2021, December 7, December 21, 2021 and January 18, 2022, the Board adopted Resolutions 21-26, -27, -28, -30 and 22-01 respectively, thereby finding a proclaimed state of emergency, that local officials continue to recommend physical distancing, and that meeting in person would present imminent risks to the health or safety of attendees; and re-authorizing meetings by teleconference of legislative bodies of North Marin Water District for 30 days pursuant to the Brown Act provisions.

If adopted, Resolution No. 22-XX will allow the Board to continue to meet virtually for another 30 days, after which the Board will need to reconsider its findings and confirm the need to hold virtual meetings. This reconsideration and confirmation will need to occur every thirty days until the Board determines it is safe to meet in person.

RECOMMENDED ACTION:

Adopt Resolution No. 22-XX: "Resolution Finding Proclaimed State of Emergency, That Local Officials Continue to Recommend Physical Distancing, and that Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees; and Re-Authorizing Meetings by Teleconference of Legislative Bodies of North Marin Water District from February 15, 2022 through March 17, 2022 Pursuant to Brown Act Provisions".

**RESOLUTION NO. 22-XX**

**RESOLUTION OF THE BOARD OF DIRECTORS OF NORTH MARIN WATER DISTRICT  
FINDING PROCLAIMED STATE OF EMERGENCY, THAT LOCAL OFFICIALS  
CONTINUE TO RECOMMEND PHYSICAL DISTANCING, AND THAT MEETING IN  
PERSON WOULD PRESENT IMMINENT RISKS TO THE HEALTH OR SAFETY OF  
ATTENDEES; AND RE-AUTHORIZING MEETINGS BY TELECONFERENCE OF  
LEGISLATIVE BODIES OF NORTH MARIN WATER DISTRICT FROM FEBRUARY 15,  
2022 THROUGH MARCH 17, 2022 PURSUANT TO BROWN ACT PROVISIONS**

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**WHEREAS**, all meetings of the legislative bodies of the North Marin Water District (“District”) are open and public, as required by the Ralph M. Brown Act (“Brown Act”), Government Code Section 54950, *et seq*, and any member of the public may observe, attend, and participate in the business of such legislative bodies; and

**WHEREAS**, on March 4, 2020, Governor Newsom declared a State of Emergency as a result of the rapid spread of the novel coronavirus disease 2019 (“COVID-19”); and

**WHEREAS**, on March 10, 2020, the Board of Supervisors of the County of Marin ratified proclamations of health and local emergency due to COVID-19; and

**WHEREAS**, on March 16, 2020, the City Council of the City of Novato ratified and confirmed a proclamation of local emergency due to COVID-19;

**WHEREAS**, on March 17, 2020, in response to the COVID-19 pandemic, Governor Newsom issued Executive Order N-29-20 suspending certain provisions of the Brown Act in order to allow local legislative bodies to conduct meetings telephonically or by other means, after which District staff implemented virtual meetings for all meetings of legislative bodies within the District; and

**WHEREAS**, on June 11, 2021, Governor Newsom issued Executive Order N-08-21, which terminated the provisions of Executive Order N-29-20 that allows local legislative bodies to conduct meetings telephonically or by other means effective September 30, 2021; and

**WHEREAS**, on September 16, 2021, Governor Newsom signed Assembly Bill 361 (2021) (“AB 361”), which amended the Brown Act to allow local legislative bodies to continue to conduct meetings by teleconference under specified conditions and pursuant to special rules on notice, attendance, and other matters; and

**WHEREAS**, AB 361 took full effect on October 1, 2021, and makes provisions under Government Code section 54953(e) for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

**WHEREAS**, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

**WHEREAS**, it is further required that state or local officials have imposed or, local officials have recommended, measures to promote social distancing, or, the legislative body must find that meeting in person would present imminent risks to the health and safety of attendees; and

**WHEREAS**, on October 5, 2021, the Board of Directors previously adopted Resolution No. 21-22, finding that the requisite conditions exist for the legislative bodies of North Marin Water District (“District”) to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of section 54953; and

**WHEREAS**, on November 2, 2021, the Board of Directors previously adopted Resolution No. 21-26, reaffirming the finding that the requisite conditions exist for the legislative bodies of North Marin Water District to continue to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of section 54953; and

**WHEREAS**, on November 16, 2021, the Board of Directors previously adopted Resolution No. 21-27, reaffirming the finding that the requisite conditions exist for the legislative bodies of North Marin Water District to continue to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of section 54953; and

**WHEREAS**, on December 7, 2021, the Board of Directors previously adopted Resolution No. 21-28, reaffirming the finding that the requisite conditions exist for the legislative bodies of North Marin Water District to continue to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of section 54953; and

**WHEREAS**, on December 21, 2021, the Board of Directors previously adopted Resolution No. 21-30, reaffirming the finding that the requisite conditions exist for the legislative bodies of North Marin Water District to continue to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of section 54953; and

**WHEREAS**, on January 18, 2022, the Board of Directors previously adopted Resolution No. 22-01, reaffirming the finding that the requisite conditions exist for the legislative bodies of North Marin Water District to continue to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of section 54953; and

**WHEREAS**, as a condition of extending the use of the provisions found in section 54953 (e), the Board of Directors must reconsider the circumstances of the state of emergency that exists in the District, and the Board of Directors has done so; and

**WHEREAS**, emergency conditions continue to persist in the District, specifically, the State of Emergency for the State of California declared by Governor Newsom as a result of the COVID-19 pandemic remains in effect; and

**WHEREAS**, the Centers for Disease Control and Prevention (“CDC) recommends physical distancing of at least six feet from unvaccinated individuals while indoors; and

**WHEREAS**, “Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace,” promulgated by the Occupational Safety and Health Administration (“OSHA”) under the United States Department of Labor, provides that “[m]aintaining physical distancing at the workplace for unvaccinated and at-risk workers is an important control to limit the spread of COVID-19” and recommends that employers train

employees about the airborne nature of COVID-19 and importance of exercising multiple layers of safety measures, including physical distancing, and that employers implement “physical distancing in all communal work areas for unvaccinated and otherwise at-risk workers,” including physical distancing from members of the public, as a “key way to protect such workers”; and

**WHEREAS**, Title 8, Section 3205, subdivision (c)(5)(D) of the California Code of Regulations, promulgated by the Division of Occupational Safety and Health of the California Department of Industrial Relations (“Cal/OSHA”), requires employers to provide instruction to employees on using a combination of “physical distancing, face coverings, increased ventilation indoors, and respiratory protection” to decrease the spread of COVID-19; and

**WHEREAS**, the Board of Directors recognizes the recommendations by state and local officials to use physical distancing as a layer of protection against COVID-19 and desires to continue to provide a safe workplace for its employees and a safe environment for the open and public meetings of the District’s legislative bodies; and

**WHEREAS**, due to the continued threat of COVID-19, the District continues to implement multiple layers of protection against COVID-19, including physical distancing, for the safety of employees and members of the public; and

**WHEREAS**, while the District believes District work-related activities may be conducted safely in person through imposition of various safety protocols, Board meetings continue to present a unique challenge due to their being open to the public generally, with limited space in the boardroom, and no ability to verify vaccination status or to provide contact tracing for potentially exposed individual attendees; and

**WHEREAS**, the Board of Directors hereby finds that the presence of COVID-19 and the increase of cases due to the Omicron variant has caused, and will continue to cause, conditions of concern to the safety of certain persons within the District, including older and immunocompromised individuals that are likely to be beyond the control of the services, personnel, equipment, and facilities of the District, and, therefore, continues to present imminent risks to the health or safety of attendees, including members of the public and District employees, should meetings of the District’s legislative bodies be held in person; and

**WHEREAS**, as a consequence of the local emergency persisting, the Board of Directors does hereby find that the legislative bodies of North Marin Water District shall continue to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall continue to comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

**WHEREAS**, the District will continue to conduct meetings for all meetings of legislative bodies within the District virtually (i.e. through the use of Zoom, or similar virtual meeting provider) and/or telephonically, in conformance with requirements under the Brown Act.



**THEREFORE, BE IT RESOLVED** by the Board of Directors of the North Marin Water District as follows:

1. The above recitals are true and correct and hereby incorporated into this Resolution.
2. In compliance with the special teleconference rules of Section 54953 of the Government Code, as established by Assembly Bill 361 (2021), the Board of Directors hereby makes the following findings:
  - a. The Board of Directors has considered the circumstances of the state of emergency; and
  - b. The states of emergency, as declared by the Governor, continue to impact directly the ability of the District's legislative bodies, as well as staff and members of the public, to safely meet in person;
  - c. The CDC, and Cal/OSHA continue to recommend physical distancing of at least six feet to protect against transmission of COVID-19; and
  - d. Meeting in person would continue to present imminent risks to the health and safety of members of the public, members of the District's legislative bodies, and District employees due to the continued presence and threat of COVID-19.
3. The District's legislative bodies may continue to meet remotely from February 15, 2022 through March 17, 2022 in compliance with the special teleconference rules of Section 54953 of the Government Code, as amended by Assembly Bill 361 (2021), in order to protect the health and safety of the public.
4. The Board of Directors will review these findings and the need to conduct meetings by teleconference within thirty (30) days of adoption of this resolution.

\* \* \* \* \*

I hereby certify that the foregoing is a true and complete copy of a resolution duly and regularly adopted by the Board of Directors of NORTH MARIN WATER DISTRICT at a regular meeting of said Board held on the 15th day of February 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

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Theresa Kehoe, Secretary  
North Marin Water District

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## MEMORANDUM

To: Board of Directors Date: February 11, 2022  
 From: Tony Williams, Assistant GM/Chief Engineer *AW*  
 Subject: Amend Contract with Kennedy/Jenks Consultants - General Services Agreement  
 R:\NON JOB No ISSUES\Consultants\Kennedy Jenks\BOD Memos\_Agmts\KJ GSA Amend 1.BOD Memo Feb 15 2022.doc

**RECOMMENDED ACTION:** That the Board authorize the General Manager to amend the General Services Agreement with Kennedy/Jenks Consultants

**FINANCIAL IMPACT:** Additional \$45,000 (no budget augmentation required)

On April 6, 2021, the Board approved a \$45,000 general services agreement with Kennedy/Jenks for hydraulic modeling services for support of both large developer projects as well as District Capital Improvement Projects (CIP). Kennedy/Jenks is capable of running a sophisticated model of the entire Novato Water System using modeling software called Infowater which has proved very valuable for analyzing large scale changes to the distribution system such as large-scale developer projects and District Capital Improvement Projects (CIP). A cost breakdown by task for the initial \$45,000 contract is summarized as follows:

|   |            |
|---|------------|
| Starting Contract Amount                                | \$45,000   |
| Projects (billings to date)                             |            |
| 777 San Marin Drive (future Fireman's Fund development) | <\$10,000> |
| Kastania Pump Station –and NMWD Zone 1 Analysis         | <\$27,450> |
| Balance on Contract                                     | \$7,550    |


The expenditures to date currently total \$37,450 leaving a balance of \$7,550 on the contract. Although the contract amount has not been completely expended, planned expenditures for the following tasks make a contract amendment necessary:

|  |                 |
|--|-----------------|
| • Lake Stafford Back-feeding Analysis <sup>(1)</sup>     | \$10,000        |
| • City of Novato/County of Marin Housing Element Updates | \$15,000        |
| • Other CIP (Lynwood PS, etc.)                           | <u>\$20,000</u> |
| Total  | \$45,000        |

<sup>(1)</sup> In support of Local Water Supply Enhancement Study

RECOMMENDATION

That the Board authorize the General Manager to amend the General Services Agreement with Kennedy/Jenks Consultants in the amount of \$45,000.

Approved by GM 

Date 2/11/22

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## MEMORANDUM

To: Board of Directors February 11, 2022

From: Tony Williams, Assistant GM/Chief Engineer *TW*  
Robert Clark, Operations/Maintenance Superintendent *RC*

Subj: NMWD Administration and Laboratory Upgrade Project - Approve Bid Advertisement  
R:\Folders by Job No\6000 jobs\6501.44 NMWD Office\_Yard Bldg Renovation\BOD Memos\Feb 15, 2022\Advertise for Construction\BOD Memo Admin\_Lab Upgrade Advertise Bid.docx

**RECOMMENDED ACTION:** That the Board authorize advertisement of the NMWD Administration and Laboratory Upgrade Project

**FINANCIAL IMPACT:** \$12,866,000 (\$3,475,000 included in FY2021-22 Budget)

### Background

As previously reported to your Board, the Project currently consists of a single construction phase, combining previously individual phases for the new Laboratory building and the renovation of the existing Administration building. The project scope also includes necessary ADA<sup>(1)</sup> accessibility improvements to the building entrances and interior spaces as well as exterior path of travel for employees and visitors from the parking areas to the building entrances. New utility services, including natural gas, electrical power, telecom, sanitary sewer and water are also included in the scope. The new laboratory and the renovated administration building will have energy efficient heating and cooling systems and a fire alarm and fire sprinkler system, a critical safety feature that the current building lacks.

As a cost control strategy, three alternate bid items are included in the project Construction Documents: 1) Landscaping and Irrigation; 2) Pavement improvements at the entrance and service driveways; and 3) an emergency back-up generator. These work items could be performed separately and will only be awarded if the overall cost of the bid is within the Project budget. District staff are separately working on the extension of the existing recycled water distribution system in Redwood Boulevard into Rush Creek Place, which would better facilitate new landscape irrigation. District staff are also coordinating with the City of Novato on a future paving project for Rush Creek Place; and the District has been approved to submit a grant application for the back-up generator.

Construction Management consultant team (Consolidated CM) continue to meet regularly to evaluate the responses to the review comments and to finalize the Project plans and specifications in anticipation of the construction bidding process. A resubmittal to the City's Building Department is planned for February 17, 2022 with anticipation of a permit issued shortly thereafter.

<sup>(1)</sup> Americans with Disabilities Act

The District performed environmental review of the proposed project pursuant to the California Environmental Quality Act (CEQA) in August of 2021. Pursuant to CEQA Guidelines Section 15301(e)(2) - Existing Facilities (see Title 14, Division 6, Chapter 3 of the California Code of Regulations), the project is exempt as a minor addition of less than 10,000 feet to an existing structure in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan, and the project is not located in an environmentally sensitive area. The exemption cited under CEQA Guidelines was reviewed and confirmed by legal counsel and presented to the Board at the September 7, 2021 meeting. A Notice of Exemption (NOE) was subsequently filed with the County on September 20, 2021 and no comments were received during a 30-day public comment period.

The following project schedule identifies key dates, including the proposed advertising date that aligns with the City's permit issuance. The timing of the project bidding is intended to occur as soon as possible to align with the future key tasks such as contract award and moving to temporary offices:

TENTATIVE SCHEDULE

|                                     |                       |
|-------------------------------------|-----------------------|
| Advertise Project                   | February 25, 2022     |
| Prebid Meeting (tentative)          | March 3, 2022         |
| Bid Opening                         | March 31, 2022        |
| Board Authorization of Award        | April 5 (or 19), 2022 |
| Contractor Notice to Proceed        | early May 2022        |
| Substantial Construction Completion | ~June 2023            |
| Project Complete                    | ~September 2023       |

Project Construction Cost and Budget

The current Project cost estimate is \$12,866,000 which includes a cost escalation factor of approximately \$495,000. The estimated cost for the three alternate items is approximately \$325,000. The FY 2021/22 Capital Improvement Program (CIP) budget includes a line item for the Project in the amount of \$3,475,000. As of December 2021, \$854,445 has been expended this fiscal year on the Project. A separate Board item addresses the financial plan for funding the Project, including soft costs.

**RECOMMENDATION**

The Board authorize bid advertisement for the NMWD Administration and Laboratory Upgrade Project.

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## MEMORANDUM

To: Board of Directors

February 11, 2022

From: Tony Williams, Assistant GM/Chief Engineer  
Pablo Ramudo, Water Quality Supervisor

Subj: NMWD Administration and Laboratory Upgrade Project – Temporary Leases

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**RECOMMENDED ACTION:**

That the Board:

1. Authorize the General Manager to execute a License and Services Agreement with the Buck Institute
2. Authorize the General Manager to sign an Office Lease Agreement with 100 Wood Hollow Drive Owner, LLC

**FINANCIAL IMPACT:**\$172,198.44 (Buck Institute Agreement – 19 months)  
\$5,000 (100 Wood Hollow Agreement - Deposit).Background

At the February 1, 2022 Board meeting, staff provided updates regarding the progress of the NMWD Administration and Laboratory Upgrade Project and the plan for temporary relocation of staff during construction. The proposed construction requires a temporary laboratory facility be in place during construction and until the new laboratory building is ready for occupancy. District staff have been coordinating the use of available lab space at the Buck Institute, which can provide the required lab facilities as well as temporary offices for District water quality staff. A draft License and Services Agreement has been negotiated with the Buck Institute and reviewed by legal counsel for a monthly cost of \$8,934 including utilities, parking, staff offices, and glass washing services. After the first 12 months, the monthly cost will increase by 3% per the agreement terms to \$9,202.

The planned duration of the temporary lab space at the Buck Institute is approximately 19 months even though the planned duration of the construction is 14 months. This additional time is necessary on the front end to allow for the state's certification process. The setup and transition to the Buck facilities would begin as soon as the attached agreement is executed (Attachment 1) to allow the water quality staff enough time to setup equipment and begin the steps toward certification prior to the start of actual construction, which includes demolition of the interior space of the existing building.

As previously reported to the Board, District staff have been negotiating the lease of available commercial space at the Wood Hollow Office Complex at 100 Wood Hollow Drive for the Administration and Engineering department staff as well as key Operations staff impacted by the project. A draft lease agreement, provided as Attachment 2, has been reviewed by staff and

legal counsel and is awaiting finalization by the owner. The draft lease includes a provision for the General Manager to sign once finalized, however, the lease would not fully come in to effect until the Board ratifies it at a later date in conjunction with or leading up to construction award, currently scheduled for early to mid-April 2022. The draft lease has a clause that requires a \$5,000 non-refundable deposit upon signing by the General Manager if the lease is not ratified.

**RECOMMENDATION**

That the Board authorize the General Manager to: 1) execute the License and Services Agreement with the Buck Institute; and 2) sign the Office Lease agreement for the Wood Hollow Office Park, once finalized.

## License and Services Agreement

This License and Services Agreement (“Agreement”), which becomes effective \_\_\_\_\_, 2022 (the “Effective Date”) between The Buck Institute for Research on Aging, a California non-profit public benefit corporation with its principal place of business at 8001 Redwood Blvd., Novato, CA 94945 (“Buck”) and North Marin Water District, a local governmental agency with its principal place of business at 999 Rush Creek Place, Novato, CA 94945 (“NMWD”).

### Recitals

Whereas, NMWD is a water district, which conducts testing at its water quality laboratory located within the NMWD administration building at 999 Rush Creek Place, Novato, CA 94945 (“NMWD Lab”); and

Whereas, NMWD anticipates renovating the NMWD Lab as part of its NMWD Headquarters Upgrade Project; and

Whereas, Buck is an expanding biomedical research institute with laboratory facilities located at 8001 Redwood Blvd., Novato, CA (“Facility”) and provides core services at the Facility, including, but not limited to a vivarium, morphology, imaging and genomics core services; and

NMWD wishes to procure access at the Facility to certain laboratory space in Building 4 of the Facility, third floor, as shown on the attached Exhibit “A” (attached hereto) as “Licensed Lab Space”, in order to conduct water quality testing for the period that the NMWD Lab is undergoing renovation; and

Whereas, Buck is willing to allow NMWD access to its Facility for these purposes, subject to the terms and conditions described below.

Now, therefore, in consideration of the foregoing premises and the mutual promises, covenants and conditions contained in this Agreement, Buck and NMWD agree as follows:

### Agreement

1. Recitals. The Recitals are incorporated into this Agreement by reference.
2. Description of Facility and Use
  - (A) Description of Facility. A diagram of the Licensed Lab Space is set forth on Exhibit A. The Facility contains various publicly accessible areas, certain private areas and certain areas where access is limited to persons with security clearances. The public areas include a parking area, an exterior entry way, as well as lobbies and publicly accessible interior entry space and hallways, toilet rooms, break areas, conference rooms and access routes for the Licensed Lab Space. (“Public Areas”); all other areas of the Facility are referred to herein as “Controlled Areas.”
  - (B) Use of Facility. NMWD will place up to four (4) full time NMWD personnel representing employees, contractor and agents (“NMWD FTEs”) at the Facility. In addition, one (1) NMWD Supervisor will visit the facility several times per week for 1-2 hours per visit. NMWD and the NMWD FTEs must comply at all times with Buck’s security measures respecting access and use of the Facility and any Controlled Areas, and neither NMWD nor any NMWD FTE may access any areas other than the Licensed Lab Space and Public

**Buck & NMWD 1**

- (A) Areas without separate written approval from Buck. Research at the Buck is approved for work up to and including biosafety level 2 (BSL2). No work above BSL2 is permitted and/or permissible.

Subject to the terms of this Agreement, NMWD may place equipment in the Licensed Lab Space for use by NMWD, including installation of an autoclave, a Barnstead water purification system, and any necessary IT-related equipment. NMWD may also install any necessary IT-related networking equipment in the main distribution frame (MDF) and space-adjacent intermediate distribution frame (IDF) located at the Facility. NMWD IT equipment may not exceed 5U of rack space in the MDF and 5U of rack space in the IDF. All such equipment shall remain the sole property of NMWD. Unless otherwise agreed to in writing, Buck shall exercise commercially reasonable efforts to preserve NMWD's security measures to limit third party access to the Licensed Lab Space. Buck shall not be obligated to hire guards or any other special security staff or equipment for such tasks and may reasonably decline any request for security arrangements.

### 3. Grant of License for Use of Facility

- (A) License. Subject to the payment of the License Fees described in Section 5 below, and to NMWD's due observation and performance of the terms and conditions of this Agreement, for the duration of the Term, Buck hereby grants a non-exclusive license to NMWD for the NMWD FTEs to use the Public Areas and an exclusive license to use the Licensed Lab Space (collectively, these licenses are referred to as the "License"). Subject to availability, NMWD FTEs may use Buck equipment placed in the Licensed Lab Space and at Public Areas. NMWD shall pay for any damage to Buck's equipment suffered as a result of its use by NMWD FTEs, agents or invitees, excluding ordinary wear and tear. NMWD will note any extraordinary damage to Buck's equipment and provide advance written notice thereof to Buck before using it if any such damage is to be excluded from NMWD's liability for such damage under this Section 3 (A). Unless specified in this or another agreement, Buck is under no obligation to furnish or to replace or repair any Buck equipment. The Licensed space is provided "as is" and, except for installation of autoclave(s), a Barnstead water purification system, and IT-related equipment, NMWD will not make any modifications to the Facility without prior, written, approval from Buck, such approval to be withheld at Buck's sole and reasonable discretion.
- (B) Limitation. This License does not give (i) NMWD any property rights whatsoever in or to the Facility or any of Buck's furniture, fixtures or equipment or its other personal property within the Facility, or (ii) Buck any property rights whatsoever in or to any of NMWD's furniture, laboratory equipment or other property, including NMWD's autoclave(s), Barnstead water purification system, and IT-related equipment placed by NMWD within the Facility during the Term of this Agreement. Absent an explicit agreement between Buck and NMWD to the contrary, neither party shall acquire any rights to any intellectual property generated in the Facility by the other party (or by such party's employees, contractors or agents).
- (C) Covenant. NMWD covenants that it will not use the Facility for any purpose other than to conduct water quality testing, and it will comply with the provisions of Section 4 (A), below.
- (D) Buck Continued Rights Regarding Licensed Areas. Nothing herein is intended to limit the rights of Buck to exercise complete control over all areas of the Facility excepting only the Licensed Lab Space. Buck may at any time alter, amend or limit access, and temporarily or permanently close off portions of the Facility in its discretion, provided that NMWD's access to and use of the Licensed Lab Space are not materially impaired. Without limiting

the foregoing sentence, at all times during the Term of this Agreement, Buck employees, agents and contractors shall retain the right to (i) enter the Licensed Lab Space to perform

- (E) the Services (as defined in Exhibit B); (ii) enter the Licensed Lab Space to access other portions of the Facility; and (iii) enter any of the licensed areas, including the exclusively licensed areas, in case of any emergency or to perform maintenance and repairs to such areas. These intrusions shall not justify any change in the License Fee payable to Buck to the extent they do not materially impair NMWD's use of the Licensed Lab Space.

#### 4. Obligations of Buck and NMWD

- (A) NMWD. In exercising its rights under the License, NMWD and its FTEs and invitees shall comply at all times with (i) animal use protocols as identified by Buck, (ii) security controls for access to Controlled Areas including controlled data areas (these can include magnetic cards, passwords, biometric recognition systems, and all other security requirements) as presented by Buck through training and other communication channels; (iii) life safety protocols, (iv) technical protocols and procedures for undertaking any research done at the Facility provided to NMWD prior to the Effective Date, ("Protocols").

In the course of its activities, NMWD may not at any time cause a nuisance condition at the Facility, nor shall it engage in any use or activities that would jeopardize the Facility's accreditation or breach the Protocols. NMWD shall advise Buck of the NMWD FTEs that it intends to locate at the Facility and provide those persons identification details in advance so that appropriate clearances can be implemented in an orderly way before such persons are granted access to the Facility. NMWD shall require each such NMWD FTE to undergo such training or briefing, as provided by the Buck and needed to reasonably ensure its FTEs at the Facility are aware of and will abide by the Protocols (as these may be amended by Buck from time to time). All of the costs of NMWD's FTEs shall be the sole responsibility of NMWD and Buck shall have no liability whatsoever for any costs associated with NMWD's personnel at the Facility.

- (B) Buck. Subject to Force Majeure, Buck shall provide NMWD FTEs access to the Facility at such times as it provides access to Buck employees of the Facility but in any event, not less than regular business hours; thus if 24 hour and 7-day access is available to Buck employees, then NMWD's FTEs will be permitted to work at the Facility for 24 hours and 7 days (i.e. continual access). Additional employees, contractors, consultants, and other agents of NMWD will only be provided access to the Facility as determined by Buck in its sole discretion. All NMWD FTEs so granted access must comply with the Protocols while in the Facility. Buck shall promptly notify NMWD of any material breaches of security or any fires that occur in the Facility. Buck shall maintain the Facility in accordance with all applicable state and federal laws, rules and regulations.
- (C) Survival. The expiration or termination of the licenses granted hereunder will not in any manner affect any obligations of the parties that accrue prior to the date of such expiration or termination, including, e.g., indemnity obligations.

#### 5. License Fee; Invoices; Payments.

- (A) License Fee. Buck will provide to NMWD the Administrative Services and the Licensed Lab Space Services as outlined on Exhibit "B", attached hereto (collectively, the "Services"). The License Fee payable quarterly, in advance, by NMWD to Buck for the use of the Facility

and the Services is set forth on Exhibit B ("License Fee"). The License Fee will remain in effect for the first twelve (12) months of the Term and thereafter shall be subject to a 3% per year increase over the immediately preceding year of the License, such 3% to take effect and be adjusted as so described on the first and each subsequent anniversary of the Effective Date.

- (B) Invoices; Payments. Within 30 days of the Effective Date and within 30 days of the beginning of each calendar quarter thereafter, NMWD shall pay to Buck the quarterly License Fee payment set forth on Exhibit B. This sum shall be prorated for any partial quarter of the Term in effect for an expired or terminated Term. All such invoices shall be addressed and sent pursuant to paragraph 15 below. NMWD shall pay each invoice within thirty (30) days of receipt.

#### 6. Representations and Warranties.

Each party represents and warrants that (i) it is duly organized and validly existing under the laws of the State of California; (ii) it has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof; (iii) this Agreement is a legal and valid obligation upon such party and is enforceable in accordance with its terms; and (iv) the execution, delivery, and performance of this Agreement by such party does not conflict with any agreement, instrument, or understanding, whether oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

#### 7. Limitations of Liability.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES CLAIMED BY A THIRD PARTY ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION 7 IS INTENDED TO LIMIT OR RESTRICT THE INSURANCE OR INDEMNIFICATION RIGHTS OR OBLIGATIONS OF ANY PARTY UNDER SECTION 9 OR DAMAGES AVAILABLE FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS IN SECTION 10.

#### 8. Insurance Coverages.

NMWD shall secure and maintain in full force and effect throughout the performance of the Term of this Agreement, insurance in the minimum amounts and with coverages as specified in Exhibit "C", attached hereto. It is hereby agreed that the insurance in Exhibit C is primary as respects the Buck, their Trustees, officers, agents and employees, and that any other insurance available to Buck is excess and non-contributing. NMWD will pay for any deductible and/or retention before said insurance would come into effect. Buck agrees to maintain workers' compensation insurance in the amount required by the laws of California, as well as the following coverages (which shall be non-contributing and secondary to any coverage provided by NMWD): \$2,000,000 for general liability coverage, \$1,000,000 for coverage of property damage and \$3,000,000 for personal injury coverage

#### 9. Indemnity.

- (A) By NMWD. Subject to the provisions limiting liability in this Agreement, NMWD agrees to indemnify, hold harmless, and defend Buck, its subsidiaries, and its affiliates, and their respective officers, employees, trustees, donors, volunteers, researchers, independent contractors, veterinary and medical doctors, agents, vendors, and directors (collectively, the "Buck Parties") against any and all third party claims, actions, proceedings, liability, loss, damage, penalty, cost or expense (including reasonable attorney's fees and expenses and cost of investigation) ("Claims") with respect to any matter resulting from the use of the Facility by NMWD or its agents or invitees under this Agreement; provided that such obligation to indemnify, hold harmless, and defend shall not apply to Claims caused by the negligence, violation of laws, or intentional acts or omissions of the Buck Parties.
- (B) By Buck. Subject to the provisions limiting liability in this Agreement, Buck agrees to indemnify, hold harmless and defend NMWD, its subsidiaries, and its affiliates, and their respective officers, directors, employees, independent contractors, consultants, and other agents (collectively, the "NMWD Parties") from and against any and all Claims, resulting from, or connected to, the condition of the Facility or the negligence, violation of laws, or intentional acts or omissions of the Buck Parties.
- (C) Covenants Respecting Cooperation. Each party's agreement to indemnify, defend and hold the other party and its respective indemnitees harmless requires the indemnified party to: (i) provide written notice to the indemnifying party of any Claim, for which it is seeking indemnification hereunder promptly after the indemnified party has knowledge of such Claim; (ii) if the indemnifying party agrees to assume full responsibility for such Claim (i.e. it has not reserved rights against the party claiming indemnification based on disputed coverage of the Claim under the terms of the indemnity) to provide reasonable authority to appropriately investigate, prepare for and defend against any such Claim; (iii) assist the indemnifying party, at the indemnifying party's reasonable expense, in the investigation of, preparation for and defense of any such Claim; and (iv) not compromise or settle such Claim or demand without the indemnifying party's written consent, which is not to be unreasonably withheld.

#### 10. Term and Termination.

- (A) Term. Unless earlier terminated pursuant to Section 11 (B), below, this Agreement shall commence on the Effective Date and continue until for 1 year and 7 months after the Effective Date (the "Term"). The Term can be extended once, for a maximum of 6 months, subject to written agreement between parties 90 days prior to the termination of the current term. The expiration or termination of the License granted hereunder will not in any manner affect any obligations of the parties that accrue prior to the date of such expiration or termination, including, e.g. indemnity obligations.
- (B) Termination for Convenience; Termination for Cause. Buck and NMWD shall each have the right to terminate this Agreement for convenience (i.e. without the necessity of cause or any form of justification) at any time during the Term, provided the terminating party gives 3 months written notice to the other party of such termination. Furthermore, it is a breach of this Agreement if a party fails to perform any obligation hereunder, and then fails to cure such default within the applicable cure period noted below, if any:

- i. The failure to pay any monetary obligation due under this Agreement, followed by a failure to cure such default within fifteen (15) days of notice of the default;
- ii. The failure to perform any other obligations required under this Agreement followed by a failure to cure such default within thirty (30) days of notice of the default (unless, despite good faith diligence, the cure will require more than thirty (30) days to cure, in which case, the default shall not become a breach unless the defaulting party fails to diligently pursue all commercially reasonable means to effect the cure);
- iii. An assignment of the Agreement without consent where consent is required.

Upon a breach of this Agreement, the party not in breach may elect to terminate this Agreement by written notice; upon any such termination all rights under the License shall immediately cease. Upon termination or expiration of this Agreement for any reason, NMWD shall be allowed to remove all of its equipment, compounds, and other materials from the Facility within fifteen (15) days of termination, after which period Buck will be allowed to remove and store such equipment, compounds, and other materials at NMWD's expense.

#### 11. Miscellaneous.

Neither party shall be liable for any failure of performance beyond its reasonable control. This Agreement constitutes the entire agreement between the parties relating to NMWD's use of the Facility and supersedes all other proposals, understandings or agreements relating to the subject matter hereof.

This Agreement may be amended or terminated only by a written agreement between the parties. The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the remainder of the Agreement, and this Agreement shall be construed and modified without such provision.

This Agreement shall be governed by the laws of California, without regard for conflicts of laws principles, and Buck and NMWD consents to California as the proper venue for settling all disputes and controversies. Nothing in this Agreement shall be deemed to create a relationship of employment or agency or to constitute the parties as partners or joint venturers. This Agreement may not be assigned without the prior written consent of the non-assigning party, except to an affiliate of the party, or upon the sale of a party's business interests in the subject matter of this Agreement. In such case either party may freely assign such interest without the prior written consent of the other party. This Agreement shall become binding when executed by an authorized officer of Buck and NMWD.

#### 12. Publicity.

Neither party will publish, present nor otherwise publicly disclose this Agreement or any information relating to this Agreement without the prior written approval of the other party. This shall not prevent Buck from advising its staff and those within the Facility of the use of the Facility by NMWD in order to reasonably implement and administer the terms of this Agreement or in order to bring or defend any action or proceeding to enforce the terms of this Agreement or to preserve its rights in the Facility. Notwithstanding the foregoing, Buck acknowledges that NMWD is subject to the California Public Records Act (Act) which requires disclosure of public records within proscribed timeframes; and that NMWD's compliance with the Act, or any lawful court order or subpoena, does not constitute a breach of any stated or unstated agreement to hold confidential any confidential information or trade secrets, including this Agreement, Buck believes



it possesses or has disclosed to NMWD; and that should NMWD receive a request pursuant to the Act for any records that may include such information, NMWD shall provide prompt notice to Buck of the request so that Buck can seek a protective order or other remedy or waive its rights prior to any disclosure pursuant to the Act; and that NMWD shall not be required, to assist in seeking a protective order or other remedy. NMWD shall provide the same notice in response to any court order or subpoena for records.

14. Force Majeure.

In the event of a delay caused by inclement weather, fire, flood, strike or other labor dispute, act of God, act of governmental officials or agencies, or any other cause beyond the control of the parties, the party or parties so affected shall be excused from performance hereunder for the commensurate period of time attributable to such delay. In the event of any such delay, the parties may, in their sole discretion, amend this Agreement, as appropriate, by mutual written agreement.

15. Notices.

Unless otherwise specifically provided, all notices required or permitted by this Agreement shall be in writing and may be delivered by facsimile or email (via PDF or other means); by personal delivery, or by first class prepaid certified mail, return receipt requested, to the following addresses:

If to NMWD:

North Marin Water District  
P.O. Box 146  
Novato, CA 94948-146  
Attn: Drew McIntyre, General Manager

If to Buck:

Buck Institute for Research on Aging  
8001 Redwood Blvd.  
Novato, CA 94945  
Attn: Business Development

The parties may alter such addresses by appropriate notices consistent with this subsection. Any notice shall be deemed to have been received as follows: (1) if by personal delivery, upon receipt; (2) if by certified mail, five (5) business days after notice is mailed through the U.S. Postal Service by the party serving notice; and (3) if by email or facsimile, on the business day following electronic confirmation that the notice has been delivered to the facsimile number or email address provided.

NMWD WARRANTS AND ACKNOWLEDGES THAT AN AUTHORIZED OFFICIAL HAS READ THIS LICENSE AND SERVICES AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

BUCK INSTITUTE FOR RESEARCH ON AGING

NORTH MARIN WATER DISTRICT

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

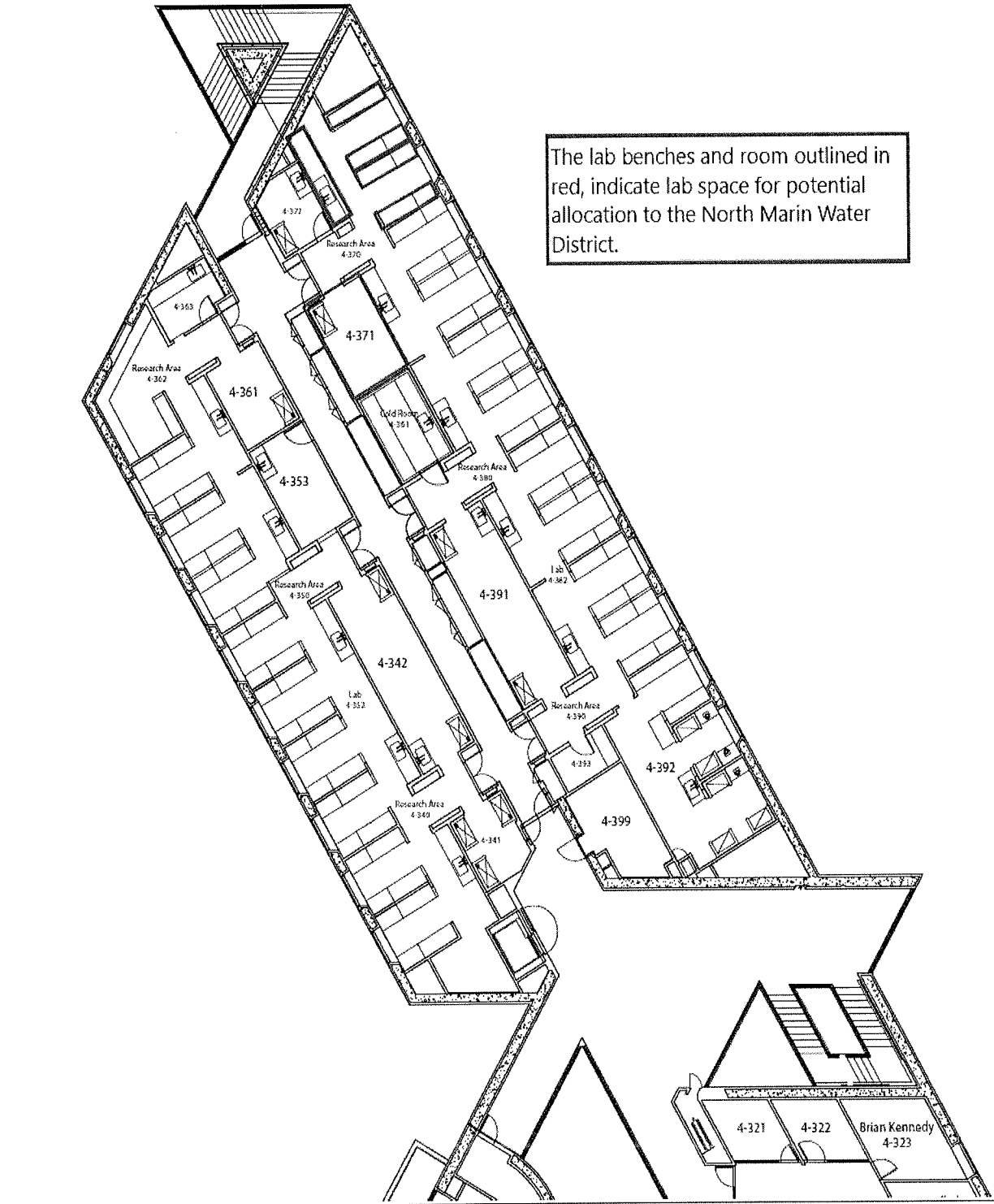
Title: \_\_\_\_\_

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

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

# Exhibit A: Buck Institute Map

Bldg. 4, 3<sup>rd</sup> Floor



**EXHIBIT B: SCOPE OF FACILITY USE AND SERVICES**

| <i>Services</i>  | <i>License Fee</i>                   |
|--|--------------------------------------|
| <b>Administrative Services</b><br>Buck security processing for personnel<br>Review of mandatory training and health clearance for NMWD personnel<br>Reception<br>Set up of Licensed Lab Space  | Included below (Lab Space)           |
| <b>Licensed Lab Space</b><br>Services Include:<br>RO/DI water<br>Shipping/Receiving<br>Maintenance<br>Waste management (not disposal)<br>Gases (CO2, LN2)<br>Glasswash<br>Utilities<br>Common Area Maintenance<br>Janitorial<br>IT support (minimal for initial set up)<br>Taxes<br>Key card | Monthly \$8,964;<br>Yearly \$107,568 |

## EXHIBIT C: INSURANCE COVERAGES TO BE PROVIDED BY NMWD

At all times during the term of this Agreement, NMWD shall maintain the following minimum levels of insurance with insurers authorized to sell insurance in California and having a Best's Insurance Financial Strength Rating (FSR) of not less than A- (Superior) and a Financial Rating of at least VII:

1. **Commercial General Liability:** (including Premises operations and broad form property damage) - \$2 million general aggregate coverage; bodily injury \$1 million per occurrence; Personal Injury \$1 million; Fire Damage - \$500,000 any one fire;

Coverage under the Commercial General Liability policy shall include contractual liability, and provide for any and all claims, demands, causes of action and liabilities of any nature arising from the acts or omissions of NMWD and its agents, licensees, and invitees in connection with the use of the Facility.

Buck shall be added as an additional insured under an ISO endorsement CG 20 10 AI (or equivalent endorsement) in form acceptable to Buck, and must provide for coverage as if separately insured for cross-liability. Such coverage shall be on an occurrence basis.

2. **Worker's Compensation Insurance:** coverage at or above California and federal statutory levels. This coverage shall be in place for all NMWD personnel or agents entering the Facility or engaged in any activities associated with the Agreement.

**OFFICE LEASE AGREEMENT**

(Wood Hollow Office Park, 100 Wood Hollow Drive, Novato, CA, Suite \_\_\_\_\_)

THIS OFFICE LEASE AGREEMENT (this "Lease") is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the Landlord and the Tenant specified in the Lease Summary below.

**LEASE SUMMARY**

This Lease shall be upon the following terms:

- 1. **Landlord:** 100 Wood Hollow Drive Owner, LLC, a Delaware limited liability company
- 2. **Tenant:** \_\_\_\_\_
- 3. **Building:** The building commonly known as 100 Wood Hollow Drive, Novato, California, and containing approximately 129,364 square feet.
- 4. **Project:** The Wood Hollow Office Park, comprised of the Building together with associated Common Areas and the land upon which the Building is situated.
- 5. **Premises:** Approximately 5,000 rentable square feet, comprising unit \_\_\_\_\_ on the third floor of the Building.
- 6. **Commencement Date:** \_\_\_\_\_, 2021.
- 7. **Expiration Date:** The last day of the month that is fifteen (15) months after the Commencement Date
- 8. **Base Rent:** [NOTE: Rent chart calculated on 5K rsf. To be adjusted if size of Premises changes]

| Period       | Monthly Base Rent/psfsf | Monthly Base Rent |
|--------------|-------------------------|-------------------|
| Months 1-12  | \$2.75/psfsf            | \$13,750          |
| Months 13-15 | \$2.89/psfsf            | \$14,450          |

- 9. **Intentionally omitted.**
- 10. **Intentionally omitted.**
- 11. **Security Deposit:** \$13,750; first installment of \$5,000 upon signing followed by the remainder upon ratification.
- 12. **Landlord Notice Address:** 100 Wood Hollow Drive Owner, c/o Align Real Estate, 255 California Street, Suite 525, San Francisco, CA, 94111
- 13. **Tenant Notice Address:** \_\_\_\_\_
- 14. **Brokers:** \_\_\_\_\_

The attached Lease Terms and Conditions are incorporated into and made a part of this Lease.

## LEASE TERMS AND CONDITIONS

### ARTICLE I LEASE

1.1 This Lease shall be on the terms set forth in the Lease Summary and all of the terms and conditions set forth in these Lease Terms and Conditions, all of which are incorporated into and made a part of this Lease. In the event of any conflict between the provisions of the Lease Summary and these Lease Terms and Conditions, these Lease Terms and Conditions shall govern. Defined terms are as defined in Rider 1 attached hereto, unless otherwise defined herein.

### ARTICLE II PREMISES

2.1 Tenant leases the Premises from Landlord for the term and upon the conditions and covenants set forth in this Lease. The lease of the Premises does not include the right to use the roof, mechanical rooms, electrical closets, janitorial closets, telephone rooms, parking areas or non-common or non-public areas of any portion of the Building or the Project, whether or not any such areas are located within the Premises. The Premises are located in the Building described in Article I, which is located on the Land owned by Landlord. Landlord and Tenant hereby agree that the rentable square feet of the Premises and rentable square feet of the Building have been agreed to by Landlord and Tenant and are as stipulated in the Lease Summary above.

2.2 Landlord shall have the right to change the location and configuration of the Premises subject to the following terms and conditions: (a) if Tenant has commenced beneficial use of the Premises, then Landlord shall provide Tenant not less than sixty (60) days' advance written notice of the date Tenant must vacate the Premises; (b) Landlord shall provide Tenant with substitute space of similar nature and size elsewhere in the Building or the Project (the "Substitute Premises"); and (c) Landlord shall at Landlord's expense (1) remove Tenant's equipment and furniture from the Premises and reinstall those items in the Substitute Premises, and (2) redecorate the Substitute Premises in a manner substantially similar to the manner in which the Premises were decorated. Within ten (10) days after the date Landlord submits an amendment of this Lease indicating the location and configuration of the Substitute Premises, Tenant shall execute such amendment.

### ARTICLE III TERM

3.1 All of the provisions of this Lease shall be in full force and effect from and after the date first above written. The term of this Lease (the "Lease Term") shall commence on the Commencement Date (as set forth in the Lease Summary) and expire at 11:59 P.M. on the Expiration Date (as set forth therein), or earlier termination date of this Lease as expressly set forth herein.

3.2 Within ten (10) business days after Landlord's written request from time to time, Tenant shall execute and deliver a commencement certificate in form reasonably requested by Landlord confirming the Delivery Date and/or the Commencement Date and other factual matters related to this Lease. Failure to execute said certificate shall not affect the commencement or expiration of the Lease Term.

3.3 The failure of Landlord to deliver possession of the Premises shall not render this Lease void or voidable, but the commencement of the Lease Term shall be delayed until the delivery of possession, unless and to the extent of delays which are caused by Tenant.

3.1 Notwithstanding anything herein to the contrary, this Lease shall be of no force or effect unless and until the North Main Marin Water District Board of Directors (the "Board") ratifies the execution of this Lease. If the Board has not ratified execution of this Lease by March 1, 2022, either Landlord or Tenant may terminate this Lease at any time thereafter upon notice to the other party; provided, however, upon such termination, Tenant shall reimburse Landlord for any costs incurred by Landlord in connection with this Lease, which amount shall not exceed \$5,000, which costs may be deducted from the Security Deposit.

3.2 Renewal Option. Subject to the provisions hereinafter set forth, Landlord hereby grants to Tenant one (1) option to extend the Lease Term (the "Renewal Option"), for a period of three (3) months (the "Renewal Period") from the expiration of the initial Lease Term, on the same terms and conditions then in effect under this Lease immediately prior to the Renewal Period, except that (i) no concessions, abatements or allowances granted with respect to the initial Lease Term, if any, shall be applicable to the Renewal Period, and (ii) Tenant shall not have any right to renew or extend the Lease Term after the end of the Renewal Period, subject to Section 3.6 below. The option shall be exercisable by written notice (the "Renewal Notice") from Tenant to Landlord given at least ninety (90) days prior to the expiration of the initial Lease Term. If the Renewal Option is not so exercised, said Renewal Option shall thereupon expire. Tenant may only exercise the Renewal Option, and an exercise thereof shall only be effective, if (i) at the time of Tenant's exercise of said Renewal Option and, at Landlord's option, at the commencement of the applicable Renewal Period, this Lease is in full force and effect and Tenant is not in default under this Lease, and (ii) inasmuch as said Renewal Option is intended only for the benefit of the original Tenant named in this Lease, the entire Premises are occupied by the original Tenant herein and said Tenant has not assigned this Lease or sublet any portion of the Premises at the time of Tenant's exercise of such Renewal Option and, at Landlord's option, at the commencement of the applicable Renewal Period. If Tenant has validly exercised the Renewal Option, within thirty (30) days after Landlord's receipt of the Renewal Notice, Landlord

and Tenant shall enter into a written amendment to this Lease extending the Lease for the Renewal Period upon the terms and conditions in this Section 3.5. Tenant's failure to timely execute such amendment shall not negate the irrevocable nature of Tenant's exercise of its option.

3.3 Conditional Renewal Option. In the event Tenant wishes to extend the Lease Term for an additional three (3) months ("Additional Renewal Period") which 3-month period shall commence immediately after the expiration of the Renewal Period, then Tenant shall notify Landlord in writing of such request ("Request for Additional Renewal Period") at least one (1) month prior to the expiration of the Renewal Period. Landlord shall respond to such Request for Additional Renewal Period within ten (10) business days after receipt thereof, and Landlord shall have the right to agree to or reject such Request for Additional Renewal Period at its sole and absolute discretion. If Landlord agrees to extend the Lease Term for the Additional Renewal Period, then the Lease shall continue for the Additional Renewal Period upon the same terms and conditions then in effect under this Lease immediately prior to the Additional Renewal Period, except that (i) Tenant shall also be responsible for Tenant's proportionate share of operating expenses, taxes and insurance at the Project during the Additional Renewal Period in addition to all other Rent, (ii) no concessions, abatements or allowances granted with respect to the Lease Term, if any, shall be applicable to the Additional Renewal Period, and (iii) Tenant shall not have any right to renew or extend the Lease Term after the end of the Renewal Period. If at the commencement of the Additional Renewal Period, this Lease is not in full force and effect, Tenant is in default under this Lease, the entire Premises is not occupied by the original Tenant herein or said Tenant has assigned this Lease or sublet any portion of the Premises, then at Landlord's option, Landlord has the right to rescind its agreement to extend the Lease Term for the Additional Renewal Period. Furthermore, within thirty (30) days after Landlord agrees to extend the Lease Term for the Additional Renewal Period, Landlord and Tenant shall enter into a written amendment to this Lease extending the Lease for the Additional Renewal Period upon the terms and conditions in this Section 3.6. Tenant's failure to timely execute such amendment shall not negate the irrevocable nature of Tenant's exercise of its conditional option. In the event Landlord does not agree to extend the Lease Term for the Additional Renewal Period, or fails to respond within such ten (10) business day period, then the Lease shall expire upon the last day of the Renewal Period and if Tenant fails to surrender the Premises in the condition required by such date, then Tenant shall be deemed to be holding over in violation of this Lease and the terms of Article XXII shall apply.

#### ARTICLE IV BASE RENT

4.1 From and after the Commencement Date, Tenant shall pay the Base Rent in equal monthly installments in advance on the first day of each month during a Lease Year. Tenant shall provide first month's rent to Landlord upon execution of the Lease Agreement.

4.2 Concurrently with Tenant's execution of this Lease, Tenant shall pay an amount equal to one (1) monthly installment of the Base Rent payable during the first Lease Year, which amount shall be credited toward the monthly installment of Base Rent payable. If the Commencement Date is not the first day of a month, then the Base Rent from the Commencement Date until the first day of the following month shall be prorated on a per diem basis at the rate of one-thirtieth (1/30th) of the monthly installment of the Base Rent payable during the first Lease Year, and Tenant shall pay such prorated installment of the Base Rent on the Commencement Date.

4.3 All sums payable by Tenant under this Lease shall be paid to Landlord in legal tender of the United States, without setoff, deduction or demand, at the address for payments from time to time specified by Landlord in writing. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that, following a notice to Tenant of any default, any payment in partial or full payment of any outstanding amount under this Lease shall only be made personally to the address specified in such notice of default, or in such other manner as such notice may direct. Landlord's acceptance of rent after it shall have become due and



payable shall not excuse a delay upon any subsequent occasion or constitute a waiver of any of Landlord's rights hereunder. If any sum payable by Tenant under this Lease is paid by check which is returned due to insufficient funds, stop payment order, or otherwise, then: (a) such event shall be treated as a failure to pay such sum when due; and (b) in addition to all other rights and remedies of Landlord hereunder, Landlord shall be entitled (i) to impose a returned check charge of Fifty Dollars (\$50.00) to cover Landlord's administrative expenses and overhead for processing, and (ii) to require that all future payments be remitted by wire transfer, money order, or cashier's or certified check.

4.4 Landlord and Tenant agree that no rental or other payment for the use or occupancy of the Premises is or shall be based in whole or in part on the net income or profits derived by any person or entity from the Building or the Premises. Tenant will not enter into any sublease, license, concession or other agreement for any use or occupancy of the Premises that provides for a rental or other payment for such use or occupancy based in whole or in part on the net income or profits derived by any person or entity from the Premises so leased, used or occupied. Nothing in the foregoing sentence, however, shall be construed as permitting or constituting Landlord's approval of any sublease, license, concession, or other use or occupancy agreement not otherwise approved by Landlord in accordance with the provisions of Article VII.

ARTICLE V  
INTENTIONALLY OMITTED

ARTICLE VI  
USE OF PREMISES

6.1 Tenant shall use and occupy the Premises solely for general (non-medical) office purposes and other related legal uses compatible with first class office buildings in the Building's submarket. Tenant shall not use or occupy the Premises for any unlawful purpose, or in any manner that will violate the certificate of occupancy for the Premises or the Building or the Project, or that will constitute waste, nuisance or unreasonable annoyance to Landlord or any other tenant or user of the Building or the Project, or in any manner that will increase the number of parking spaces required for the Building or the Project or its full occupancy as required by law. Landlord at its expense shall comply with all Laws to the extent the same apply directly to the Building Structure and Systems and Common Areas as a whole to the extent non-compliance would materially impair Tenant's use and occupancy of the Premises for the permitted use. Tenant shall comply with all Laws concerning the use, occupancy and condition of the Premises and all machinery, equipment, furnishings, fixtures and improvements therein, all in a timely manner at Tenant's sole expense. If any Law requires an occupancy or use permit or license for the Premises or the operation of the business conducted therein, then Tenant shall obtain and keep current such permit or license at Tenant's expense and shall promptly deliver a copy thereof to Landlord.

6.2 Tenant shall not, without Landlord's prior written consent, place a load upon any floor that exceeds the load per square foot that such floor is designed to carry. Landlord reserves the right to reasonably designate the position of all heavy machinery, equipment and fixtures within the Premises, and to place limitations on the weight thereof. Without limiting the generality of any of the foregoing: Tenant, at its expense, shall install and maintain fire extinguishers and other fire protection devices as may be required with respect to Tenant's use of the Premises from time to time by any agency having jurisdiction thereof and/or the underwriters insuring the Building and/or the Project and Tenant at its sole cost and expense shall be solely responsible for taking any and all measures which are required to comply with the ADA concerning the Premises (including suite entry doors and related items) and the business conducted therein. Any Alterations made or constructed by or for Tenant for the purpose of complying with the ADA or which otherwise require compliance with the ADA shall be done in accordance with this Lease; provided, that Landlord's consent to such Alterations shall not constitute either Landlord's assumption, in whole or in part, of Tenant's responsibility for compliance with the ADA, or representation or confirmation by Landlord that such Alterations comply with the provisions of the ADA. Use of the Premises is subject to all covenants, conditions and restrictions of record. Tenant shall not use any space in the Building or the Land for the sale of goods to the public at large or for the sale at auction of goods or property of any kind. Tenant shall not conduct any operations, sales, promotions, advertising or special events outside the Premises, in the Building, in the Project or on the Land.

6.3 Tenant shall pay before delinquency any business, rent or other taxes or fees that are now or hereafter levied, assessed or imposed upon Tenant's use or occupancy of the Premises, the conduct of Tenant's business at the Premises, or Tenant's equipment, fixtures, furnishings, inventory or personal property. If any such tax or fee is enacted or altered so that such tax or fee is levied against Landlord or so that Landlord is responsible for collection or payment thereof, then Tenant shall pay as additional rent the amount of such tax or fee.

6.4 Tenant shall not allow, cause or permit any Hazardous Materials to be generated, used, treated, released, stored or disposed of in or about the Premises, the Building or the Land, provided that Tenant may use and store normal and reasonable quantities of standard cleaning and office materials in the Premises as may be reasonably necessary for Tenant to conduct normal general office use operations in the Premises so long as such materials are properly, safely and lawfully stored and used by Tenant and the quantity of same does not equal or exceed a "reportable quantity" as defined in 40 C.F.R. 302 and 305, as amended. At the expiration or earlier termination of this Lease, with respect to conditions existing on account of Tenant's use or occupancy of the Premises or any action or inaction of Tenant or any Agent of Tenant (it being understood that the term "inaction" as used in this Section shall not impose upon Tenant any obligation to remove Hazardous Materials existing in the Premises as of the Commencement Date which were introduced into the Premises by anyone other than Tenant or any Agent of Tenant, unless

such condition is knowingly aggravated as a result of Tenant's use or occupancy of the Premises), Tenant shall surrender the Premises to Landlord free of Hazardous Materials and in compliance with all Environmental Laws. Tenant shall: (i) give Landlord immediate verbal and follow-up written notice of any actual or threatened Environmental Default with respect to conditions existing on account of Tenant's use or occupancy of the Premises or any action or inaction of Tenant or any Agent of Tenant, which Environmental Default Tenant shall cure in accordance with all Environmental Laws and only after Tenant has obtained Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed; and (ii) promptly deliver to Landlord copies of any notices or other items received from or submitted to any governmental or quasi-governmental agency, or any claim instituted or threatened by any third party, concerning the Premises, the occupancy or use thereof, or the existence or potential existence of Hazardous Materials therein. Upon any Environmental Default, in addition to all other rights available to Landlord under this Lease, at law or in equity, Landlord shall have the right but not the obligation to immediately enter the Premises, to supervise and approve any actions taken by Tenant to address the Environmental Default, and, if Tenant fails to immediately address same in accordance with this Lease, to perform, with respect to conditions existing on account of Tenant's use or occupancy of the Premises or any action or inaction of Tenant or any Agent of Tenant, at Tenant's sole cost and expense, any lawful action necessary to address same. Tenant shall reimburse (as additional rent hereunder) Landlord and Landlord's Representatives, and shall indemnify, defend upon request and hold Landlord and Landlord's Representatives harmless from and against all reasonable Costs suffered by or claimed against Landlord or any of Landlord's Representatives, directly or indirectly, based on or arising out of, in whole or in part, (i) the generation, use, treatment, and/or deposit, spill, discharge, or other release of Hazardous Materials which arises at any time from Tenant's, its employees', agents', contractors', or invitees' use or occupancy of the Premises, the Building or the Land; (ii) any failure to provide all information, make all submissions and take all steps required by all governmental under the Environmental Law; and (iii) Tenant's, its employees', agents', contractors' or invitees' breach of this Section 6.4, whether or not Tenant has acted negligently with respect to such Hazardous Materials.

ARTICLE VII  
ASSIGNMENT AND SUBLETTING

7.1 Tenant shall not directly or indirectly assign, transfer or otherwise encumber (collectively, "assign") this Lease or all or any of Tenant's rights hereunder or interest herein, or sublet or permit anyone to use or occupy (collectively, "sublet") the Premises or any part thereof, without obtaining the prior written consent of Landlord, which consent may be withheld or granted in Landlord's sole and absolute discretion (subject to the remainder of this Article VII). Notwithstanding any of the foregoing to the contrary, provided no Event of Default exists under this Lease, and subject to Landlord's rights and Tenant's obligations pursuant to Sections 7.3, 7.4 and 7.5 below, Landlord shall not unreasonably withhold, condition or delay its consent to any proposed subletting of the entire Premises or assignment of the Lease in its entirety. For purposes of the immediately preceding sentence, it shall be reasonable for Landlord to withhold its consent if, for example: (i) the proposed subtenant or assignee is engaged in a business, or the Premises will be used in a manner, that is inconsistent with the first class image of the Building and the Project; or (ii) Landlord is not reasonably satisfied with the financial condition of the proposed subtenant or assignee; or (iii) the proposed use of the Premises is not in compliance with Article VI or is not compatible with the other uses within, and the terms of other leases with respect to, the Building or the Project; or (iv) the initial Tenant does not remain fully liable as a primary obligor for the payment of all rent and other charges payable by Tenant under this Lease and for the performance of all other obligations of Tenant under this Lease; or (v) the proposed subtenant or assignee is a provider of medical services; or (vi) the holders of Mortgages encumbering any portion of the Project shall fail to consent (Landlord hereby agreeing to use commercially reasonable efforts to obtain such consent if Landlord approves such transaction); or (vii) the proposed subtenant or assignee is either (A) an existing tenant of the Project (or any parent, subsidiary or affiliate thereof) if Landlord has adequate space available in the Project for a comparable term, or (B) for a period of forty five (45) days following the submission of a written proposal for the lease of space (and thereafter if a mutual agreement such as a letter of intent is executed within such period), any other person or entity with which Landlord is in the process of negotiating for the rental of space in the Project. No assignment or right of occupancy hereunder may be effectuated by operation of law or otherwise without the prior written consent of Landlord. Any attempted assignment, transfer or other encumbrance of this Lease or all or any of Tenant's rights hereunder or interest herein, and any sublet or permission to use or occupy the Premises or any part thereof not in accordance with this Article VII, shall be void and of no force or effect. Any assignment or subletting, Landlord's consent thereto, the listing or posting of any name other than Tenant's, or Landlord's collection or acceptance of rent from any assignee or subtenant shall not be construed either as waiving or releasing Tenant from any of its liabilities or obligations under this Lease as a principal and not as a guarantor or surety, or as relieving Tenant or any assignee or subtenant from the obligation of obtaining Landlord's prior written consent to any subsequent assignment or subletting. As security for this Lease, Tenant hereby assigns to Landlord the rent due from any assignee or subtenant of Tenant. During any period that there exists an uncured Event of Default under this Lease, Tenant hereby authorizes each such assignee or subtenant to pay said rent directly to Landlord upon receipt of notice from Landlord specifying same. Landlord's collection of such rent shall not be construed as an acceptance of such assignee or subtenant as a tenant. Tenant shall not mortgage, pledge, hypothecate or encumber (collectively "mortgage") this Lease without Landlord's prior written consent, which consent may be granted or withheld in Landlord's sole and absolute discretion. Tenant shall pay to Landlord an administrative fee equal to two thousand five hundred dollars (\$2,500) plus all reasonable, out-of-pocket, third party expenses (including reasonable attorneys' fees and accounting costs) incurred by Landlord in connection with Tenant's request for Landlord to give its consent to any assignment, subletting, or mortgage, whether or not Landlord consents thereto, and Landlord's receipt of such sum shall be a condition to Landlord providing such consent. Any sublease, assignment or mortgage shall, at Landlord's option, be effected on forms reasonably approved by Landlord. Tenant shall deliver to Landlord a fully executed copy of each agreement evidencing a sublease, assignment or mortgage, and Landlord's consent thereto, within ten (10) days after execution thereof.

(a) Notwithstanding anything contained in this Article VII to the contrary, provided no Event of Default exists hereunder, Tenant may, upon not less than thirty (30) days' prior written notice to Landlord (which notice shall contain a written certificate from Tenant stating the legal and beneficial relationship of Tenant and the proposed assignee, transferee or subtenant) but without Landlord's prior written consent and without being subject to Landlord's rights and Tenant's obligations set forth in Sections 7.4 and 7.5 below, assign or transfer its entire interest in this Lease or sublease the entire or any portion of the Premises to an Affiliate of Tenant. In the event of any such assignment or subletting, Tenant shall remain fully liable as a primary obligor for the payment of all rent and other charges required hereunder and for the performance of all obligations to be performed by Tenant hereunder. Notwithstanding the foregoing, if Tenant structures an assignment or sublease to an entity that meets the definition of an Affiliate of Tenant for the purpose of circumventing the restrictions on subleases and assignments provided elsewhere in this Article VII, then such subtenant or assignee shall conclusively be deemed not to be an Affiliate and subject to all such restrictions.

7.2 If Tenant is or becomes a partnership or a limited liability company, then any event (whether voluntary, concurrent or related) resulting in a dissolution of Tenant, any withdrawal or change (whether voluntary, involuntary or by operation of law) of the partners or members, as applicable, owning, directly or indirectly, a controlling interest in Tenant (including each general partner or manager, as applicable), or any structural or other change having the effect of limiting the liability of the partners shall be deemed a prohibited assignment of this Lease subject to the provisions of this Article. If Tenant is or becomes a corporation or a partnership with a corporate general partner, then any event (whether voluntary, concurrent or related) resulting in a dissolution, merger, consolidation or other reorganization of Tenant (or such corporate general partner), or the sale or transfer or relinquishment of the interest of shareholders who, as of the date of this Lease, own, directly or indirectly, a controlling interest of the capital stock of Tenant (or such corporate general partner), shall be deemed a prohibited assignment of this Lease subject to the provisions of this Article; provided, however, that if Tenant is a corporation whose stock is traded through a national or regional exchange or over-the-counter market, then the foregoing portion of this sentence shall be applicable only if such event has or is intended to have the effect of limiting liability under this Lease. For purposes of this Section 7.2(a), "control" and "controlling" means direct or indirect ownership of 50% or more of the ownership interests in such entity or the power, directly or indirectly, to direct the management decisions of such entity.

7.3 If at any time during the Lease Term Tenant desires to assign, sublet or mortgage all or part of this Lease or the Premises, then in connection with Tenant's request to Landlord for Landlord's consent where required, Tenant shall give to Landlord a Tenant's Sublease Request Notice.

7.4 If the proposed term with respect to the Proposed Sublet Space is either (i) longer than seventy-five percent (75%) of the then remaining Lease Term or (ii) to extend (including any renewal or extension options) beyond the first (1st) day of the twelfth (12th) calendar month before the then scheduled expiration of the Lease Term, then, in either such event, except as set forth in Section 7.2(a) concerning Affiliates, Landlord shall have the right in its sole and absolute discretion to terminate this Lease with respect to the Proposed Sublet Space by sending Tenant written notice of such termination within thirty (30) days after Landlord's receipt of Tenant's Sublease Request Notice. If the Proposed Sublet Space does not constitute the entire Premises and Landlord so terminates, then (a) Tenant shall tender the Proposed Sublet Space to Landlord on the Proposed Sublease Commencement Date and such space shall thereafter be deleted from the Premises, and (b) as to that portion of the Premises which is not part of the Proposed Sublet Space, this Lease shall remain in full force and effect except that Base Rent and additional rent payable based on the square footage of the Premises shall be reduced pro rata. Tenant shall perform, at its expense, any and all construction and other work required to permit the operation of the Proposed Sublet Space separate from the balance of the Premises, or Landlord may at its option perform such work, in which event Tenant shall pay to Landlord as additional rent the costs and expenses incurred by Landlord in connection therewith. If the Proposed Sublet Space constitutes the entire Premises and Landlord so terminates, then Tenant shall tender the Proposed Sublet Space to Landlord, and this Lease shall terminate, on the Proposed Sublease Commencement Date.

7.5 If any sublease or assignment (whether by operation of law or otherwise, including an assignment pursuant to the Bankruptcy Code or any Insolvency Law) provides that the subtenant or assignee thereunder is to pay any amount in excess of the sum of (a) the rent and other charges due under this Lease plus (b) the reasonable out-of-pocket expenses (excluding, however, any costs attributable to vacancy periods or "downtime") reasonably incurred by Tenant in connection with the procurement of such sublease, assignment or other transfer (which expenses shall be amortized on a straight-line basis over the initial sublease term for the purposes hereof), then, whether such net excess be in the form of an increased monthly or annual rental, a lump sum payment, payment for the sale, transfer or lease of Tenant's fixtures, leasehold improvements, furniture and other personal property, or any other form of payment having the effect of a "disguised" rental payment (and if the subleased or assigned space does not constitute the entire Premises, the existence of such excess shall be determined on a pro rata basis), Tenant shall pay to Landlord, along with Base Rent, fifty percent (50%) of any such net excess or other premium, which amount shall be calculated and paid by Tenant to Landlord on a monthly basis as additional rent. Notwithstanding the foregoing, Landlord is not intending to receive any amounts considered to be based on the net income or profits of Tenant or any subtenant. Acceptance by Landlord of any payments due under this Section shall not be deemed to constitute approval by Landlord of any sublease or assignment, nor shall such acceptance waive any rights of Landlord hereunder. Landlord shall have the right to inspect and audit Tenant's books and records relating to any sublease or assignment.

7.6 All restrictions and obligations imposed pursuant to this Lease on Tenant shall be deemed to extend to any subtenant, assignee, licensee, concessionaire or other occupant or transferee, and Tenant shall be liable hereunder for the failure of such person to comply with such restrictions and obligations. Any assignee shall be deemed to have assumed obligations as if such

assignee had originally executed this Lease and at Landlord's request shall execute promptly a document confirming such assumption. Each sublease is subject to the condition that if the Lease Term is terminated or Landlord succeeds to Tenant's interest in the Premises by voluntary surrender or otherwise, at Landlord's option the subtenant shall be bound to Landlord for the balance of the term of such sublease and shall attorn to and recognize Landlord as its landlord under the then executory terms of such sublease.

7.7 Notwithstanding anything to the contrary in this Lease, if Tenant or any proposed subtenant or assignee claims that Landlord has unreasonably withheld or delayed its consent or otherwise has breached or acted unreasonably under this under this Article VII, the sole remedies shall be a suit for contract damages (other than damages for injury to, or interference with, Tenant's business including, without limitation, loss of profits, however occurring) or a declaratory judgment and an injunction for the relief sought, and Tenant hereby waives the provisions of Section 1995.310 of the California Civil Code, or any successor statute, and all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed subtenant or assignee.

ARTICLE VIII  
MAINTENANCE AND REPAIRS

8.1 Tenant, at Tenant's sole cost and expense, shall promptly make all repairs and replacements, and perform all maintenance, in and to the Premises to keep the Premises in good operating condition and repair, in a clean, safe and tenantable condition, well-ventilated and moisture controlled, and otherwise in accordance with all Laws and the requirements of this Lease. Tenant shall likewise maintain all fixtures, furnishings and equipment located in, or exclusively serving, the Premises and make all required repairs and replacements thereto. Tenant shall also maintain, repair and replace, at Tenant's sole cost and expense, the Tenant Items and shall keep in force customary maintenance and service contracts therefor. To the extent that there are stacks, flues and exhausts or any portion thereof exclusively servicing the Premises, Tenant shall clean and maintain the same. Tenant shall give Landlord prompt written notice of any defects or damage to the structure of, or equipment or fixtures in, the Project or any part thereof, or any mold or moisture condition, of which Tenant has knowledge. Tenant shall suffer no waste or injury to any part of the Premises, and shall, at the expiration or earlier termination of the Lease Term, surrender the Premises in an order and condition equal to or better than that on the Commencement Date, except for ordinary wear and tear and as otherwise provided in Article IX, XVII or Article XVIII. Except as otherwise provided in Article XVII, all injury, breakage and damage to the Premises and to any other part of the Building or the Land caused by any act or omission of Tenant or any Agent of Tenant, shall be repaired by and at Tenant's expense, except that if either an emergency condition exists or the Lease Term has expired or Tenant fails to commence and diligently prosecute to completion repair of any such injury, breakage or damage within a reasonable period (not to exceed ten (10) days) following Tenant's receipt of notice from Landlord, then Landlord shall have the right at Landlord's option to make any such repair and to charge Tenant for all costs and expenses incurred in connection therewith.

8.2 Except as otherwise provided in this Lease and subject to normal wear and tear, Landlord at its expense shall keep the Building Structure and Systems, clean and in good operating condition and, promptly after becoming aware of any item needing repair or replacement, will make such repair or replacement. Notwithstanding any of the foregoing to the contrary: (a) maintenance and repair of all Tenant Items shall be the sole responsibility of Tenant and shall be deemed not to be a part of the Building Structure and Systems; and (b) Landlord shall have no obligation to make any repairs whatsoever brought about by any act or omission of Tenant or any Agent. Tenant hereby waives any and all rights under and benefits of Section 1932, Subdivision 1 and Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect.

ARTICLE IX  
ALTERATIONS

9.1 Tenant shall accept the Premises in its "as is" condition as of the Commencement Date. Landlord is under no obligation to make or reimburse Tenant for any Alterations in or to the Premises.

9.2 Tenant shall not make or permit anyone to make any Alterations in or to the Premises or the Building without the prior written consent of Landlord, which consent may be withheld or granted in Landlord's sole and absolute discretion with respect to Structural and System Alterations and any Alterations which are visible from the exterior of the Premises, and which consent shall not be unreasonably withheld, conditioned or delayed with respect to all other Alterations. Notwithstanding the foregoing, Tenant shall have the right to make Cosmetic Changes within the Premises without requiring the consent of Landlord. Alterations made by Tenant shall be made: (a) in a good, workmanlike, first class and prompt manner; (b) using new or comparable materials only; (c) by a contractor reasonably approved in writing by Landlord; (d) on days and at times reasonably approved in writing by Landlord; (e) under the supervision of an architect reasonably approved in writing by Landlord; (f) in accordance with plans and specifications reasonably acceptable to Landlord, approved in writing at Landlord's standard charge; (g) in accordance with all Laws; (h) after having obtained any required consent of the holder of any Mortgage of whom Tenant has notice; (i) after obtaining public liability and worker's compensation insurance policies reasonably approved in writing by Landlord; (j) with the obligation for Tenant to deliver to Landlord written, unconditional, full or partial (as applicable) waivers of mechanics' and materialmen's liens against the Premises and the Building for all work, labor and services to be performed and materials to be furnished within ten (10) business days after the applicable portion of the Alterations are completed; and (k) upon request, after Tenant has delivered to Landlord documentation reasonably satisfactory to Landlord evidencing Tenant's financial ability to complete the Alteration in accordance with the provisions of this Lease (including, a payment or performance bond). If any lien (or a petition to establish

such lien) is filed in connection with any Alteration made by or on behalf of Tenant, such lien (or petition) shall be discharged by Tenant within ten (10) days thereafter, at Tenant's sole cost and expense, by the payment thereof or by the filing of a reasonably acceptable bond. If Landlord gives its consent to the making of any Alteration, such consent shall not be deemed to be an agreement or consent by Landlord to subject its interest in the Premises or the Building to any liens which may be filed in connection therewith. Tenant acknowledges that any Alterations are accomplished for Tenant's account, Landlord having no obligation or responsibility in respect thereof. Landlord's approval of any plans and drawings (and changes thereto) regarding any Alterations or any contractor or subcontractor performing such Alterations shall not constitute Landlord's representation that such approved plans, drawings, changes or Alterations comply with all Laws. Any deficiency in design or construction, although same had prior approval of Landlord, shall be solely the responsibility of Tenant. All Alterations involving structural, electrical, mechanical or plumbing work, the heating, ventilation and air conditioning system of the Premises or the Building, fire and life safety system, the roof of the Building, or any areas outside of the Premises shall, at Landlord's election, be performed by Landlord's designated contractor or subcontractor at Tenant's expense. In connection with any Alteration, Landlord shall be paid a construction supervision fee in an amount equal to five percent (5%) of the total cost of such Alteration. Promptly after the completion of an Alteration, Tenant at its expense shall deliver to Landlord three (3) sets of accurate as built (or record) drawings and CAD drawings showing such Alteration in place.

9.3 If any Alterations that require Landlord's consent are made without the prior written consent of Landlord, then Landlord shall have the right, at Tenant's expense, to so remove and correct such Alterations and restore the Premises and the Building. All Alterations to the Premises or the Building made by either party shall immediately become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof at the expiration or earlier termination of the Lease Term; provided, however, that (a) if Tenant is not in default under this Lease, then Tenant shall have the right to remove, prior to the expiration or earlier termination of the Lease Term, all movable furniture, furnishings and equipment installed in the Premises solely at the expense of Tenant, and (b) Tenant shall remove at its expense all Alterations and other items (including any telecommunications, security, data, computer and similar equipment, cabling and wiring) in the Premises or the Building which Landlord designates in writing for removal. Landlord shall make such designation promptly after receipt of a written request by Tenant given with Tenant's request for Landlord's approval of such Alteration. Movable furniture, furnishings and trade fixtures shall be deemed to exclude without limitation any item the removal of which might cause damage to the Premises or the Building or which would normally be removed from the Premises with the assistance of any tool or machinery other than a dolly. If such removal causes damage or injury to the Premises or the Building, then Landlord shall have the right, at Tenant's expense, to repair all damage and injury to the Premises or the Building caused by such removal as aforesaid. If such furniture, furnishings and equipment are not removed by Tenant prior to the expiration or earlier termination of the Lease Term, the same shall at Landlord's option be deemed abandoned or become the property of Landlord to be surrendered with the Premises as a part thereof; provided, however, that Landlord shall have the right at Tenant's expense to remove from the Premises any or all such items or to require Tenant to do the same, except as otherwise provided in this Section. If Tenant fails to return the Premises to Landlord as required by this Section, then Tenant shall pay to Landlord, all costs (including a construction management fee) incurred by Landlord in effectuating such return.

#### ARTICLE X SIGNS

10.1 Landlord will list, in connection with Tenant initial occupancy of the Premises and at Tenant's expense, the name of Tenant in the Building directory and will provide Building standard suite entry signage. Tenant shall not place, inscribe, paint, affix or otherwise display any sign, advertisement, picture, lettering or notice of any kind on any part of the exterior or interior of the Building (including windows and doors), or on any part of the interior of the Premises which can be seen from outside the Premises, without the prior written approval of Landlord, which may be granted or withheld in Landlord's sole and absolute discretion. If any such item that has not been approved by Landlord is so displayed, then Landlord shall have the right to remove such item and Tenant shall pay all costs and expenses incurred by Landlord in so doing, as additional rent. Landlord reserves the right to install and display signs, advertisements and notices on any part of the exterior or interior of the Building; provided, however that Landlord shall only affix, install, or display signs on the interior of the Premises which pertain to the management or operation of the Building. Subject to approval from the applicable governmental authorities, Tenant will be entitled to any external Building signage allocable to the Premises, subject to all applicable laws and Landlord's rules and regulations related to exterior Building signage. On or before the expiration or earlier termination of this Lease, Tenant shall remove all lettering, signs, advertisements and notices from the Premises, and repair any damage occasioned by such removal.

#### ARTICLE XI SECURITY DEPOSIT

11.1 Concurrent with Tenant's execution of this Lease, Tenant shall deposit with Landlord the amount set forth in Lease Summary, Item 11 herein (the "Security Deposit"). The Security Deposit shall be held by Landlord, without liability for interest, as security for the timely performance by Tenant of all the terms of this Lease that are to be observed and performed by Tenant. Landlord shall not be obligated to hold the Security Deposit as a separate fund and may commingle the Security Deposit with other funds. If any sum payable by Tenant to Landlord is unpaid, or if Landlord makes payments on behalf of Tenant, or performs any of Tenant's obligations under this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have on account thereof, apply the Security Deposit as may be necessary to compensate Landlord toward the payment of the sum payable by Tenant to Landlord for loss or damages sustained by Landlord due to such breach on the part of Tenant, and Tenant

shall, upon demand, restore the Security Deposit to the original sum deposited. If Tenant complies with all of the terms of this Lease, the Security Deposit shall be returned to Tenant within sixty (60) days following the expiration of the Lease Term, less any sums payable by Tenant to Landlord, unless specifically prohibited by law. In the event of bankruptcy or other debtor/creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of rent and other charges due Landlord for all periods prior to the filing of such proceedings. Landlord may deliver the Security Deposit to the purchaser of Landlord's interest in the Premises in the event that such interest be sold, and thereupon Landlord shall be discharged from any further liability with respect to the Security Deposit and this provision shall also apply to any subsequent transferees.

#### ARTICLE XII INSPECTION

12.1 Tenant shall permit Landlord, its agents and representatives, and the holder of any Mortgage, to enter the Premises at any time and from time to time, without charge therefor and without diminution of the rent payable by Tenant, in order to examine, inspect or protect the Premises and the Building, to make such alterations and/or repairs as in the sole but reasonable judgment of Landlord may be deemed necessary or desirable, or to exhibit the same to brokers, prospective tenants, lenders, purchasers and others. Except in the event of an emergency, Landlord shall endeavor: to give Tenant advance notice of any such entry and to permit Tenant to have a representative present at such time; and to minimize disruption to Tenant's normal business operations in the Premises in connection with any such entry but same shall not prohibit Landlord from performing maintenance and repairs during business hours and that Landlord shall have no obligation to employ overtime or other premium pay labor or other costs in connection therewith.

#### ARTICLE XIII INSURANCE

13.1 Tenant shall not conduct or permit to be conducted any activity, or place or permit to be placed any equipment or other item in or about the Premises or the Building, which will in any way increase the rate of property insurance or other insurance on the Building. If any increase in the rate of property or other insurance is due to any activity, equipment or other item of Tenant, then (whether or not Landlord has consented to such activity, equipment or other item) Tenant shall pay as additional rent due hereunder the amount of such increase. The statement of any applicable insurance company or insurance rating organization (or other organization exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions) that an increase is due to any such activity, equipment or other item shall be conclusive evidence thereof.

13.2 Throughout the Lease Term, Tenant shall obtain and maintain the following insurance coverages written with companies with an A.M. Best A-, X or better rating and S&P rating of at least A-

(i) Commercial General Liability ("CGL") insurance (written on an occurrence basis) with limits not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, Two Million Dollar (\$2,000,000) annual general aggregate (on a per location basis), Two Million Dollars (\$2,000,000) products/completed operations aggregate, One Million Dollars (\$1,000,000) personal and advertising injury liability, One Hundred Thousand Dollars (\$100,000) fire damage legal liability, and Five Thousand Dollars (\$5,000) medical payments. CGL insurance shall be written on ISO occurrence form CG 00 01 96 (or a substitute form providing equivalent or broader coverage) and shall cover liability arising from Premises, operations, independent contractors, products-completed operations, personal injury, advertising injury and liability assumed under an insured contract.

(ii) Workers Compensation insurance as required by the applicable state law, and Employers Liability insurance with limits not less than One Million Dollars (\$1,000,000) for each accident, One Million Dollars (\$1,000,000) disease-policy limit, and One Million Dollars (\$1,000,000) disease-each employee.

(iii) Commercial Auto Liability insurance (if applicable) covering automobiles owned, hired or used by Tenant in carrying on its business with limits not less than One Million Dollars (\$1,000,000) combined single limit for each accident.

(iv) Umbrella/Excess Insurance coverage on a follow form basis in excess of the CGL, Employers Liability and Commercial Auto Policy with limits not less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) annual aggregate.

(v) All Risk or Special Form Property Insurance covering Tenant's property, improvements and equipment located at the Building. If Tenant is responsible for any machinery, Tenant shall maintain boiler and machinery insurance.

(vi) Business Interruption and Extra Expenses insurance in amounts typically carried by prudent tenants engaged in similar operations, but in no event in an amount less than double the annual Base Rent then in effect. Such insurance shall reimburse Tenant for direct and indirect loss of earnings and extra expense attributable to all perils insured against.

(vii) ~~Products and completed operations liability insurance with a minimum limit of \$1,000,000 for each claim and in the aggregate;~~

(viii)(vii) Builder's Risk (or Building Constructions) insurance during the course of construction of any Alteration, including during the performance of Tenant Improvements and until completion thereof. Such insurance shall be on a form covering Landlord, Landlord's architects, Landlord's contractor or subcontractors, Tenant and Tenant's contractors, as their interest may appear, against loss or damage by fire, vandalism, and malicious mischief and other such risks as are customarily covered by the so called "broad form extended coverage endorsement" upon all Alterations or Tenant Improvements in place and all materials stored at the Premises, and all materials, equipment, supplies and temporary structures of all kinds incident to Alterations or Tenant Improvements and builder's machinery, tools and equipment, all while forming a part of, or on the Premises, or when adjacent thereto, while on drives, sidewalks, streets or alleys, all on a completed value basis for the full insurable value at all times. Said Builder's Risk Insurance shall contain an express waiver of any right of subrogation by the insurer against Landlord, its agents, employees and contractors.

(b) Tenant shall keep all glass in the Premises and in the perimeter walls thereof, the frames for such glass, and any lettering and ornamentation on such glass insured against damage (including temporary repairs) for the benefit of Landlord for the full replacement value thereof. Such insurance shall be affected, at the option of Landlord, either by Tenant paying to Landlord a proportionate share of the premium incurred by Landlord for a blanket comprehensive glass policy for the Building or the Project, or by Tenant furnishing Landlord with a separate policy or policies for such glass insurance, in such form and placed with such underwriters as may be approved by Landlord. As soon as practicable and in any event within two (2) business days after any exterior or interior glass (including mirrors) is broken or cracked, including any so-called "bulls -eye" break in the glass, Tenant shall notify Landlord of such break. Any damage or break in the glass shall be promptly repaired with glass of the same kind and quality, and the frames for such glass shall be repaired and replaced if necessary.

(c) Landlord and the Landlord Insured Parties shall be endorsed on each policy as additional insureds as it pertains to the CGL, Umbrella, and Auto policy, and coverage shall be primary and noncontributory. Landlord shall be a loss payee on the property policy in respect of Tenant's improvements. All insurance shall (1) contain an endorsement that such policy shall remain in full force and effect notwithstanding that the insured may have waived its right of action against any party prior to the occurrence of a loss (Tenant hereby waiving its right of action and recovery against and releasing Landlord and Landlord's Representatives from any and all liabilities, claims and losses for which they may otherwise be liable to the extent Tenant is covered by insurance carried or required to be carried under this Lease); (2) provide that the insurer thereunder waives all right of recovery by way of subrogation against Landlord and Landlord's Representatives in connection with any loss or damage covered by such policy(ies) required to be carried under this lease;

(3) be acceptable in form and content to Landlord; and (4) contain an endorsement prohibiting cancellation, failure to renew, reduction of amount of insurance or change in coverage without the insurer first giving Landlord thirty (30) days' prior written notice of such proposed action. No such policy shall contain any deductible provision except as otherwise approved in writing by Landlord, which approval shall not be unreasonably withheld. Landlord reserves the right from time to time to reasonably require higher minimum amounts or different types of insurance. Tenant shall deliver an Acor 25 certificate with respect to all liability and personal property insurance and an Acor 28 certificate with respect to all commercial property insurance and receipts evidencing payment therefor (and, upon request, copies of all required insurance policies, including endorsements and declarations) to Landlord on or before delivery of possession of the Premises to Tenant and at least annually thereafter. If Tenant fails to provide evidence of insurance required to be provided by Tenant hereunder, prior to commencement of the Lease Term and thereafter within thirty (30) days following Landlord's request during the Lease Term (and in any event within thirty (30) days prior to the expiration date of any such coverage, any other cure or grace period provided in this Lease not being applicable hereto), Landlord shall be authorized (but not required) after ten (10) days' prior notice to procure such coverage in the amount stated with all costs thereof to be chargeable to Tenant and payable as additional rent upon written invoice therefor.

13.3 During the Lease Term, Landlord shall carry a policy of property damage insurance providing at least fire and extended coverage insurance for the Building covering at least 80% of the insurable replace value of the improvements and any other items of value in the Building and may include individual tenant improvements. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant each hereby waive and release each other of and from any and all rights of recovery (by way of subrogation or otherwise), claim, action or cause of action against each other, for any loss or damage to property and any loss of business resulting therefrom that may occur in, on or about the Premises, regardless of cause or origin, but only to the extent covered (or required hereunder to be covered) by insurance.

#### ARTICLE XIV SERVICES AND UTILITIES

14.1 From and after the Commencement Date, Landlord will provide to the Premises: air conditioning and heating during the seasons they are required in Landlord's reasonable judgment; janitorial service after 5:00 p.m. on Monday through Friday (or, at Landlord's option, Sunday through Thursday) only (excluding New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day (and the day after Thanksgiving) and Christmas Day and any additional holidays commonly recognized by the U.S. Federal Government ("Holidays")); electric power from the utility provider sufficient for customary lighting purposes and normal office use; standard hot and cold water in Building standard bathrooms and Premises kitchen and chilled water in Building standard drinking fountains; and exterior window cleaning service. If Tenant requires air conditioning or heat beyond the Building's normal office hours (excluding Holidays) (the "Building Hours"), then Landlord will furnish the same provided Tenant gives Landlord advance notice of such requirement (by 2:00 p.m. of the same day for extra service needed Monday through Friday, and by 2:00 p.m. on Friday for extra service needed on Saturday or Sunday). Tenant shall pay for such extra service in

accordance with Landlord's then current schedule (with a one (1) hour usage minimum) provided at Landlord's option, Landlord may impose a 10% administration fee for any overtime services it provides at Tenant's request. To the extent Tenant provides or contracts for any services relating to any Building Structure or System or any service or utility being provided by Landlord to the Premises directly from the supplier (which Tenant shall not be permitted to do without Landlord's prior written consent, which consent shall not be unreasonably withheld conditioned or delayed), Tenant shall enter into and maintain a service contract therefor with a contractor licensed to do business in the jurisdiction in which the Building is located and otherwise approved by Landlord. Tenant shall have access to the Building twenty-four (24) hours per day each day of the year (except in the event of an emergency). Landlord shall provide keys or a card key (or similar type of) access system to provide access to the Building at times other than Building Hours. A reasonable number of keys, access cards or other means of access shall be provided to Tenant at Lease Term commencement at no cost to Tenant (except that Landlord may charge Tenant for replacement cards). Such keys or access cards shall be issued by Landlord to the specific individuals that are designated by Tenant. Tenant shall not permit anyone, except for Tenant's employees, permitted subtenants and assigns and authorized guests, to enter the Building at times other than the Building Hours. All persons entering or exiting the Building at times other than the normal hours of operation of the Building shall, at Landlord's discretion, be required to sign in and out. Landlord shall not have any liability to Tenant, and Tenant shall not be entitled to terminate this Lease or receive a rent abatement, in the event of Landlord's failure or inability to furnish any of the utilities or services required to be furnished by Landlord hereunder.

14.2 If Landlord reasonably determines by the use of an electrical consumption survey or by other reasonable means that Tenant is using electric current in the Premises in excess of Building standards ("Excess Electrical Usage"), then Landlord shall have the right to charge Tenant an amount equal to Landlord's reasonable estimate of Tenant's Excess Electrical Usage, and shall have the further right to install an electric current meter, sub-meter or check meter in the Premises (a "Meter") to measure the amount of electric current consumed in the Premises. The cost of such Meter, special conduits, wiring and panels needed in connection therewith and the installation, maintenance and repair thereof shall be paid by Tenant. Tenant shall pay to Landlord, from time to time, but no more frequently than monthly, for its Excess Electrical Usage at the Premises. The rate to be paid by Tenant for submetered electricity shall include any taxes or other charges in connection therewith. Tenant shall not use any electrical equipment that, in Landlord's reasonable judgment, would exceed the electrical capacity of the equipment servicing the Building or interfere with electrical service to other tenants of the Building. Tenant shall not make or perform, or permit the making or performance of, any Alterations to wiring installations or other electrical facilities in or serving the Premises without the prior consent of Landlord, in each instance, and in compliance with this Lease. Tenant shall not make or perform, or permit the making or performance of, any Alterations to wiring installations or other electrical facilities in or serving the Premises without the prior consent of Landlord, in each instance, and in compliance with this Lease.

14.3 Tenant shall reimburse Landlord as additional rent hereunder for the cost of any excess water, sewer and chiller usage in the Premises. Excess usage shall mean the excess of the estimated usage in the Premises (per square foot of rentable area) during any period over the average usage (per square foot of rentable area) during the same period for the entire Building, as reasonably calculated by Landlord in good faith.

14.4 Janitorial service shall be exclusive of any portions of the Premises used for the storage, preparation, service or consumption of food or beverage or otherwise requiring cleaning services in excess of those generally furnished to professional office areas. Tenant, at Tenant's expense, shall cause all portions of the Premises used for the storage, preparation, service or consumption of food or beverages to be cleaned daily in a manner reasonably satisfactory to Landlord, and to be exterminated against infestation by vermin, rodents or roaches regularly and, in addition, whenever there shall be evidence of any infestation. Tenant shall not permit any person to enter the Premises or the Building for the purpose of providing cleaning or extermination services, other than persons first approved by Landlord, which approval shall not be unreasonably conditioned, delayed or withheld. Any additional cleaning of the Premises done by Tenant shall be performed in a manner reasonably satisfactory to Landlord. Tenant shall pay to Landlord the cost of removal of any of Tenant's refuse and rubbish from the Premises and the Building to the extent that the same exceeds the refuse and rubbish normally accumulated in the daily routine of ordinary business office occupancy. Bills for the same shall be rendered by Landlord to Tenant at such time as Landlord may elect and shall be due and payable as additional rent.

#### ARTICLE XV LIABILITY OF LANDLORD

15.1 Landlord and Landlord's Representatives shall not be liable to Tenant or any other person or entity for any damage, injury, loss or claim based on or arising out of any cause whatsoever (except as otherwise provided in this Section), including, without limitation, the following: repair to any portion of the Premises, the Building or the Project, or the interruption in the use of the Premises, the Building or any equipment therein; any accident or damage resulting from any use or operation (by Landlord, Tenant or any other person or entity) of elevators or heating, cooling, electrical, sewage or plumbing equipment or apparatus; termination of this Lease by reason of damage to the Premises, the Building or the Project or any fire, robbery, theft, vandalism, mysterious disappearance or any other casualty; actions of any other tenant of the Building or of any other person or entity; failure or inability to furnish any service specified in this Lease; and leakage in any part of the Premises, the Building or the Project from water, rain, ice or snow that may leak into, or flow from, any part of the Premises, the Building or the Project or from drains, pipes or plumbing fixtures in the Premises, the Building or the Project. If any condition exists which may be the basis of a claim of constructive eviction, then Tenant shall give Landlord written notice thereof and a reasonable opportunity to correct such condition, and in the interim Tenant shall not claim that it has been constructively evicted or is entitled to a rent abatement. Any property placed by Tenant or any Agent in or about the Premises (including the basement area) or the Building, shall be at the sole risk of



Tenant, and Landlord shall not in any manner be held responsible therefor. Any person receiving an article delivered for Tenant shall be acting as Tenant's agent for such purpose and not as Landlord's agent. For purposes of this Article, the term "Building" shall be deemed to include the Land. Notwithstanding the foregoing provisions of this Section, Landlord and Landlord's Representatives shall not be released from liability to Tenant for any physical injury to any natural person caused by the gross negligence or willful misconduct of Landlord or Landlord's Representatives to the extent such injury is not covered by insurance either carried by Tenant (or such person) or required by this Lease to be carried by Tenant; provided, however, that neither Landlord nor any of Landlord's Representatives (nor any past, present or future board member, partner, trustee, director, member, officer, employee, agent, representative or advisor of any of them) shall under any circumstances be liable for any exemplary, punitive, consequential or indirect damages (or for any interruption of or loss to business) in connection with or relating to this Lease.

15.2 Tenant shall reimburse (as additional rent hereunder) Landlord and Landlord's Representatives, and shall indemnify, defend upon request and hold Landlord and Landlord's Representatives harmless from and against all reasonable Costs suffered by or claimed against them, directly or indirectly, based on or arising out of, in whole or in part, (i) use and occupancy of the Premises or the business conducted therein, (ii) any negligent or willful act or omission of Tenant or any Agent, (iii) any breach of Tenant's obligations under this Lease, including failure to comply with Laws or surrender the Premises upon the expiration or earlier termination of the Lease Term, or (iv) any entry by Tenant or any Agent upon the Land prior to the Commencement Date.

15.3 No landlord hereunder shall be liable for any obligation or liability based on or arising out of any event or condition occurring during the period that such landlord was not the owner of the Building or a landlord's interest therein. Within five (5) days after request, Tenant shall attorn to any transferee landlord and execute, acknowledge and deliver any document submitted to Tenant confirming such attornment provided such transferee assumes the obligations of Landlord hereunder which accrue from and after the date of the transfer.

15.4 Tenant shall not have the right to set off or deduct any amount allegedly owed to Tenant pursuant to any claim against Landlord from any rent or other sum payable to Landlord. Tenant's sole remedy for recovering upon such claim shall be to institute an independent action against Landlord, which action shall not be consolidated with any action of Landlord; provided, however, that the foregoing shall not prohibit Tenant from asserting a compulsory counterclaim in any proceeding instituted by Landlord against the Tenant that is required to be brought by applicable statute and will be deemed forever waived if not then asserted by Tenant.

15.5 Notwithstanding anything appearing to the contrary in this Lease or any other document or instrument executed in connection with this Lease, the liability of Landlord for Landlord's obligations arising in connection with or under this Lease or any other document or instrument executed in connection with this Lease shall be limited to Landlord's interest in the Building and Tenant shall not look to any other property or assets of Landlord or the property or assets of any direct or indirect partner, member, shareholder, trustee or other stakeholder of Landlord or any officer, director, agent, member, manager, personal representative, trustee or employee of any such direct or indirect partner, member, shareholder, trustee or other stakeholder (collectively, the "Parties" and each a "Party") in seeking either to enforce Landlord's obligations arising in connection with or under this Lease or to satisfy a judgment for Landlord's failure to perform such obligations. Without limiting the generality of the foregoing and notwithstanding anything appearing to the contrary in this Lease or any other document or instrument executed in connection with this Lease, no Party shall be personally liable for the performance of the obligations of, or in respect of any claims against, Landlord arising in connection with or under this Lease or any other document or instrument executed in connection with this Lease, and no personal judgment shall be sought or obtained against any Party in connection with this Lease or any other document or instrument executed in connection with this Lease.

#### ARTICLE XVI RULES

16.1 Tenant and Agents shall at all times abide by and observe the rules and regulations that Landlord may reasonably promulgate from time to time for the operation and maintenance of the Building, provided that written notice thereof is given and such rule is not inconsistent with the provisions of this Lease. The current rules and regulations are attached hereto as Exhibit B. All rules shall be binding upon Tenant and enforceable by Landlord as if they were contained herein. Nothing contained in this Lease shall be construed as imposing upon Landlord any duty or obligation to enforce such rules, or the terms, conditions or covenants contained in any other lease, as against any other tenant, and Landlord shall not be liable to Tenant for the violation of such rules by any other tenant or its employees, agents, assignees, subtenants, invitees or licensees. Landlord shall use reasonable efforts not to enforce any rule or regulation in a manner which unreasonably discriminates among similarly situated tenants.

#### ARTICLE XVII DAMAGE OR DESTRUCTION

17.1 If the Premises or the Building are totally or partially damaged or destroyed thereby rendering the Premises totally or partially inaccessible or unusable, then Landlord shall diligently repair and restore the Premises and the Building to substantially the same condition they were in prior to such damage or destruction; provided, however, that if in Landlord's reasonable judgment

such repair and restoration cannot be completed within two hundred seventy (270) days after the occurrence of such damage or destruction (taking into account the time needed for effecting a satisfactory settlement with any insurance company involved, removal of debris, preparation of plans and issuance of all required governmental permits), then Landlord shall have the right to terminate this Lease by giving written notice of termination within forty five (45) days after the occurrence of such damage or destruction. If this Lease is terminated pursuant to this Article, then rent shall be apportioned (based on the portion of the Premises which is usable or used after such damage or destruction) and paid to the date of termination, and Landlord shall be entitled to any insurance proceeds received by Tenant that are attributable to Tenant Improvements and other improvements insured or required to be insured by Tenant that would remain in the Premises at the end of the Lease Term. If this Lease is not terminated as a result of such damage or destruction, then until such repair and restoration of the Premises are substantially complete, Tenant shall be required to pay rent only for the portion of the Premises that is usable while such repair and restoration are being made; provided, however, that (x) if such damage or destruction was caused by the act or omission of Tenant or any Agent, then Tenant shall not be entitled to any such rent reduction and (y) if Tenant fails to immediately pay over to Landlord insurance proceeds when received from Tenant's insurance any such rent abatement shall end on the date when Landlord would have been able to substantially complete repair and restoration of the Premises had Tenant timely paid Landlord such insurance proceeds. After receipt of all insurance proceeds (including proceeds of insurance maintained by Tenant), Landlord shall proceed with and bear the expenses of such repair and restoration of the Premises and the Building; provided, however, that (a) if such damage or destruction was caused by the act or omission of Tenant or any Agent, then Tenant shall pay Landlord's deductible and the amount by which such expenses exceed the insurance proceeds, if any, actually received by Landlord on account of such damage or destruction (or, if Landlord fails to maintain the insurance required by Section 13.3, that Landlord would have received to the extent Landlord maintained such insurance required by Section 13.3), (b) Tenant shall pay the amount by which the cost of restoring any item which Landlord is required to restore and Tenant is required to insure exceeds the insurance proceeds received with respect thereto, and (c) Landlord shall not be required to repair or restore any tenant improvements installed in the Premises (except to the extent Landlord receives proceeds therefor from Tenant's insurance), any Alterations or any other contents of the Premises (including Tenant's trade fixtures, decorations, furnishings, equipment or personal property). Notwithstanding anything herein to the contrary, Landlord shall have the right to terminate this Lease if (1) insurance proceeds plus deductibles are insufficient to pay the full cost of such repair and restoration (so long as Landlord maintains the insurance required by Section 13.3), (2) the holder of any Mortgage fails or refuses to make such insurance proceeds available for such repair and restoration, (3) zoning or other applicable Laws or regulations do not permit such repair and restoration, or (4) the damage to the Building exceeds thirty five percent (35%) of the replacement value of the Building.

17.2 If, within forty -five (45) days after the occurrence of the damage or destruction described in Section 17.1, Landlord determines in its sole but reasonable judgment that the repairs and restoration cannot be substantially completed within two hundred seventy (270) days after the date of such damage or destruction, and provided Landlord does not elect to terminate this Lease pursuant to this Article, then Landlord shall promptly notify Tenant of such determination. For a period continuing through the later of the thirtieth (30th) day after the occurrence of the damage or destruction or the tenth (10th) day after receipt of such notice, Tenant shall have the right to terminate this Lease by providing written notice to Landlord (which date of such termination shall be not more than thirty (30) days after the date of Tenant's notice to Landlord). Notwithstanding any of the foregoing to the contrary, Tenant shall not have the right to terminate this Lease if the willful misconduct of Tenant or any Agent shall have caused the damage or destruction. Landlord and Tenant agree that their respective rights in the event of any casualty to the Premises shall be governed by the provisions set forth above in this Article, and the parties hereby waive the provisions of Section 1932, Subdivision 2, and Section 1933, Subdivision 4, of the California Civil Code and any other statute or regulation, now or hereafter in effect, with respect to any rights or obligations concerning damage or destruction to all or any part of the Premises or the Building.

#### ARTICLE XVIII CONDEMNATION

18.1 If one third or more of the Premises, or the use or occupancy thereof, shall be taken or condemned by any governmental or quasi -governmental authority for any public or quasi -public use or purpose or sold under threat of such a taking or condemnation (collectively, "condemned"), then this Lease shall terminate on the day prior to the date title thereto vests in such authority and rent shall be apportioned as of such date. If less than one third of the Premises or occupancy thereof is condemned, then this Lease shall continue in full force and effect as to the part of the Premises not so condemned, except that as of the date title vests in such authority Tenant shall not be required to pay rent with respect to the part of the Premises so condemned. Landlord shall notify Tenant of any condemnation contemplated by this Section promptly after Landlord receives notice thereof. Within ten (10) days after receipt of such notice, Tenant shall have the right to terminate this Lease with respect to the remainder of the Premises not so condemned as of the date title vests in such authority if such condemnation renders said remainder of the Premises totally unusable for their intended purpose. Notwithstanding anything herein to the contrary, if twenty five percent (25%) or more of the Land or the Building is condemned, then whether or not any portion of the Premises is condemned, Landlord shall have the right to terminate this Lease as of the date title vests in such authority.

18.2 All awards, damages and other compensation paid on account of such condemnation shall belong to Landlord, and Tenant assigns to Landlord all rights to such awards, damages and compensation. Tenant shall not make any claim against Landlord or such authority for any portion of such award, damages or compensation attributable to damage to the Premises, value of the unexpired portion of the Lease Term, loss of profits or goodwill, leasehold improvements or severance damages. Nothing contained herein, however, shall prevent Tenant from pursuing a separate claim against the authority for relocation expenses and

for the value of furnishings, equipment and trade fixtures installed in the Premises at Tenant's expense and which Tenant is entitled pursuant to this Lease to remove at the expiration or earlier termination of the Lease Term, provided that such claim shall in no way diminish the award, damages or compensation payable to or recoverable by Landlord in connection with such condemnation. Landlord and Tenant agree that their respective rights in the event of any condemnation or taking involving the Premises shall be governed by the provisions set forth above in this Article, and the parties hereby waive the provisions of Section 1265.130 of the California Code of Civil Procedure or any other law relating to termination of this Lease based on condemnation.

ARTICLE XIX  
DEFAULT

19.1 If there shall be an Event of Default, then the provisions of Section 19.2 shall apply. Any notice given by Landlord pursuant to this Article or any other provision of this Lease may be the notice required or permitted pursuant to Section 1161 et seq. of the California Code of Civil Procedure or any similar or successor statutes, and the provisions of this Lease shall not require the giving of a notice in addition to such statutory notice to terminate this Lease and Tenant's right to possession of the Premises. The periods herein specified within which Tenant is permitted to cure any default following notice from Landlord shall run concurrently with any cure period provided by applicable laws.

19.2 Upon an Event of Default, in addition to all other rights and remedies that may be available to Landlord pursuant to this Lease and applicable law, Landlord may exercise all or any one or more of the following remedies:

(a) Landlord may, at its option, terminate this Lease by written notice to Tenant and recover possession of the Premises. Following such termination, Landlord may recover from Tenant damages arising from the default and the termination of this Lease, including without limitation the following:

(i) The Worth at the Time of Award of the unpaid Base Rent and additional rent which had been earned at the time of termination; plus

(ii) The Worth at the Time of Award of the amount by which the unpaid Base Rent and additional rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) The Worth at the Time of Award of the amount by which the unpaid Base Rent and additional rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; plus

(v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State in which the Land is located.

As used in subsections (a)(i) and (ii) above, the "Worth at the Time of Award" shall be computed by allowing interest at the Default Rate. As used in subsection (a)(iii) above, the "Worth at the Time of Award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). In connection with any exercise by Landlord of the rights provided herein, Tenant waives all rights of redemption or relief from forfeiture under Sections 1174 and 1179 of the California Code of Civil Procedure and California Civil Code Section 3275 and under any other present or future law, in the event Tenant is evicted or Landlord otherwise lawfully takes possession of the Premises by reason of any default by Tenant.

(b) Landlord may exercise the remedy, described in Section 1951.4 of the California Civil Code (Landlord may continue the lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Notwithstanding any election to continue this Lease in effect, Landlord may at any time thereafter elect to terminate this Lease or in any other manner exercise its rights and remedies for Tenant's default.

19.3 Upon the occurrence of an Event of Default, whether or not this Lease and/or Tenant's right of possession is terminated, Landlord shall have the right, at its sole option, to terminate any renewal or expansion right contained in this Lease and to grant or withhold any consent or approval pursuant to this Lease in its sole and absolute discretion. The provisions contained in this Section shall be in addition to, and shall not prevent the enforcement of, any claim Landlord may have against Tenant for anticipatory breach of this Lease (including, the right of injunction and the right to invoke any remedy allowed at law or in equity as if reentry, summary proceedings and other remedies were not provided for herein). If Landlord is entitled, or Tenant is required, pursuant to any provision hereof to take any action upon the end of the Lease Term, then Landlord shall be entitled, and Tenant shall be required, to take such action also upon the termination of Tenant's right of possession.

19.4 All rights and remedies of Landlord set forth in this Lease are cumulative and in addition to all other rights and remedies available to Landlord at law or in equity, including those available as a result of any anticipatory breach of this Lease. The exercise by Landlord of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. No delay or failure by Landlord or Tenant to exercise or enforce any of its respective rights or remedies or the other party's obligations (except to the extent a time period is specified in this Lease therefor) shall constitute a waiver of any such or subsequent rights, remedies or obligations. Neither party shall be deemed to have waived any default by the other party unless such waiver expressly is set forth in a written instrument signed by the party against whom such waiver is asserted. If Landlord waives in writing any default by Tenant, such waiver shall not be construed as a waiver of any covenant, condition or agreement set forth in this Lease except as to the specific circumstances described in such written waiver.

19.5 If Landlord shall institute proceedings against Tenant and a compromise or settlement thereof shall be made, then the same shall not constitute a waiver of the same or of any other covenant, condition or agreement set forth herein, nor of any of Landlord's rights hereunder. Neither the payment by Tenant of a lesser amount than the monthly installment of Base Rent, additional rent or of any sums due hereunder nor any endorsement or statement on any check or letter accompanying a check for payment of rent or other sums payable hereunder shall be deemed an accord and satisfaction. Landlord may accept the same without prejudice to Landlord's right to recover the balance of such rent or other sums or to pursue any other remedy. Notwithstanding any request or designation by Tenant, Landlord may apply any payment received from Tenant to any payment then due. No re-entry by Landlord, and no acceptance by Landlord of keys from Tenant, shall be considered an acceptance of a surrender of this Lease.

19.6 If Tenant fails to make any payment to any third party or to do any act herein required to be made or done by Tenant, then Landlord may, after written notice to Tenant, but shall not be required to, make such payment or do such act. The taking of such action by Landlord shall not be considered a cure of such default by Tenant or prevent Landlord from pursuing any remedy it is otherwise entitled to in connection with such default. If Landlord elects to make such payment or do such act, then all expenses incurred by Landlord, plus interest thereon at the Default Rate from the date incurred by Landlord to the date of payment thereof by Tenant, shall constitute additional rent due hereunder.

19.7 If Tenant fails to make any payment of Base Rent, additional rent or any other sum on or before the date such payment is due and payable (without regard to any grace period), then Landlord shall have the right to impose upon Tenant in writing a late charge of five percent (5%) of the amount of such payment. In addition, such payment and such late fee shall bear interest at the Default Rate from the date such payment or late fee, respectively, became due to the date of payment thereof by Tenant. Such late charge and interest shall constitute additional rent due hereunder without any notice or demand.

~~19.8 As security for the performance of Tenant's obligations, Tenant grants to Landlord a lien upon and a security interest in Tenant's existing or hereafter acquired personal property, inventory, furniture, furnishings, fixtures, equipment, licenses, permits and all other tangible and intangible property, assets and accounts, and all additions, modifications, products and proceeds thereof. Such lien shall be in addition to any and all rights of Landlord available under applicable law. Tenant acknowledges and agrees that Landlord may file such financing statements and other documents as Landlord may determine to be appropriate, and Tenant, within five (5) days after request from time to time, shall execute, acknowledge and deliver to Landlord any statement or document evidencing or establishing such lien and security interest which may be requested by Landlord. During the pendency of an Event of Default, Tenant appoints Landlord as Tenant's attorney-in-fact to execute any such document for Tenant. During any period that Tenant is in default under this Lease, Tenant shall not sell, transfer or remove from the Premises any of the aforementioned tangible property without Landlord's prior written consent, unless the same shall be promptly replaced with similar items of comparable value. Intentionally Deleted.~~

~~19.8~~ 19.9 If more than one natural person or entity shall constitute Tenant, then the liability of each such person or entity shall be joint and several. If Tenant is a general partnership or other entity the partners or members of which are subject to personal liability, then the liability of each such partner or member shall be joint and several. No waiver, release or modification of the obligations of any such person or entity shall affect the obligations of any other such person or entity.

ARTICLE XX  
BANKRUPTCY

20.1 Upon occurrence of an Event of Bankruptcy, Landlord shall have all rights and remedies available pursuant to Article XIX; provided, however, that while a Case is pending, Landlord's right to terminate this Lease shall be subject, to the extent required by the Bankruptcy Code, to any rights of the Trustee to assume or assume and assign this Lease pursuant to the Bankruptcy Code. After the commencement of a Case: (i) Trustee shall perform all post petition obligations of Tenant under this Lease; and (ii) if Landlord is entitled to damages (including unpaid rent) pursuant to the terms of this Lease, then all such damages shall be entitled to administrative expense priority pursuant to the Bankruptcy Code. Tenant acknowledges that this Lease is a lease of

nonresidential real property and therefore Tenant, as the debtor in possession, or the Trustee shall not seek or request any extension of time to assume or reject this Lease or to perform any obligations of this Lease which arise from or after the order of relief. Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of assignment, and any such assignee shall upon request execute and deliver to Landlord an instrument confirming such assumption. Trustee shall not have the right to assume or assume and assign this Lease unless Trustee promptly (a) cures all defaults under this Lease, (b) compensates Landlord for damages incurred as a result of such defaults, (c) provides adequate assurance of future performance on the part of Trustee as debtor in possession or Trustee's assignee, and (d) complies with all other requirements of the Bankruptcy Code. If Trustee desires to assume and assign this Lease to any person who shall have made a bona fide offer, then Trustee shall give Landlord written notice of such proposed assignment (which notice shall set forth the name and address of such person, all of the terms and conditions of such offer, and the adequate assurance to be provided Landlord to assure such person's future performance under this Lease) no later than fifteen (15) days after receipt by Trustee of such offer, but in no event later than thirty (30) days prior to the date Trustee shall make application to the appropriate court for authority and approval to enter into such assignment and assumption, and Landlord shall thereupon have the prior right and option, to be exercised by notice to Trustee given at any time prior to the effective date of such proposed assignment, to accept (or to cause Landlord's designee to accept) an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such person, less any brokerage commissions which may be payable out of the consideration to be paid by such person for the assignment of this Lease. If Trustee fails to assume or assume and assign this Lease in accordance with the requirements of the Bankruptcy Code within sixty (60) days after the initiation of the Case (or such other period as may be provided by the Bankruptcy Code or allowed by the United States Bankruptcy Court for same), then Trustee shall be deemed to have rejected this Lease. If this Lease is rejected or deemed rejected, then Landlord shall have all rights and remedies available to it pursuant to Article XIX. At any time during the Term, upon not less than five (5) days prior written notice, Tenant shall provide Landlord with the most current financial statement for Tenant and any such person and financial statements for the two (2) years prior to the current financial statement year. Such statements are to be certified by Tenant to be true, correct and complete, prepared in accordance with generally accepted accounting principles and, if it is the normal practice of Tenant, audited by any independent certified public accountant.

#### ARTICLE XXI SUBORDINATION

21.1 This Lease is subject and subordinate to the lien, provisions, operation and effect of all Mortgages, to all funds and indebtedness intended to be secured thereby, and to all renewals, extensions, modifications, recastings or refinancings thereof. Said subordination and the provisions of this Section shall be self-operative and no further instrument of subordination shall be required to effectuate such subordination. The holder of any Mortgage to which this Lease is subordinate shall have the right (subject to any required approval of the holders of any superior Mortgage) at any time to declare this Lease to be superior to the lien, provisions, operation and effect of such Mortgage.

21.2 Tenant shall at Landlord's request promptly execute any requisite document confirming such subordination. During the pendency of an Event of Default, Tenant appoints Landlord as Tenant's attorney in fact to execute any such document for Tenant. Tenant waives the provisions of any statute or rule of law now or hereafter in effect which may give or purport to give Tenant any right to terminate or otherwise adversely affect this Lease and Tenant's obligations hereunder in the event any foreclosure proceeding is prosecuted or completed or in the event the Building, the Land or Landlord's interest therein is transferred by foreclosure, by deed in lieu of foreclosure or otherwise. If this Lease is not extinguished upon any such transfer or by the transferee following such transfer, then, at the request of such transferee and assumption of Landlord's obligations as required hereby, Tenant shall attorn to such transferee and shall recognize such transferee as the landlord under this Lease. Tenant agrees that upon any such attornment, such transferee shall not be (a) bound by or required to credit Tenant with any prepayment of the Base Rent or additional rent more than thirty (30) days in advance or any deposit, rental security or any other sums deposited with any prior landlord under the Lease (including Landlord) unless said sum is actually received by such transferee, (b) bound by any amendment, modification or termination of this Lease made without the consent of the holder of each Mortgage existing as of the date of such amendment, (c) liable for any breach, act or omission of any prior landlord under the Lease (including Landlord) or any damages arising therefrom; (d) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), (e) liable for any late completion of any construction of the Premises or tenant improvement work to the Premises commenced or agreed to by any prior landlord under the Lease (including Landlord), (f) liable for payment of any damages, fees or penalties payable by any landlord under the Lease (including Landlord) to Tenant including but not limited to fees or penalties for failure to deliver the Premises in a timely fashion, or (g) bound by any obligation which may appear in this Lease to pay any sum of money to Tenant; provided, however, that after succeeding to Landlord's interest under this Lease, such transferee shall agree to perform in accordance with the terms of this Lease all obligations of Landlord arising after the date of transfer. Within ten (10) days after the request of such transferee, Tenant shall execute, acknowledge and deliver any requisite or appropriate document submitted to Tenant confirming such attornment.

#### ARTICLE XXII HOLDING OVER

22.1 Landlord and Tenant recognize that Landlord's damages resulting from Tenant's failure to timely surrender possession of the Premises may be substantial, may exceed the amount of the Rent payable hereunder, and will be impossible to accurately

measure. Accordingly, if possession of the Premises is not surrendered to Landlord on the Expiration Date or sooner termination of this Lease, in addition to any other rights or remedies Landlord may have hereunder or at law, Tenant shall (a) pay to Landlord for each month (or any portion thereof) during which Tenant holds over in the Premises after the Expiration Date or sooner termination of this Lease, a sum equal to the greater of (i) 2 times the Rent payable under this Lease for the last full calendar month of the Term, and (ii) 2 times the rate Landlord is then asking for comparable space in the Building (or if no comparable space is then available, 2 times the fair market rental value of the Premises as reasonably determined by Landlord), (b) be liable to Landlord for (1) any payment or rent concession which Landlord may be required to make to any tenant obtained by Landlord for all or any part of the Premises (a "New Tenant") in order to induce such New Tenant not to terminate its lease by reason of the holding over by Tenant, and (2) the loss of the benefit of the bargain if any New Tenant shall terminate its lease by reason of the holding over by Tenant, and (c) indemnify Landlord against all claims for damages by any New Tenant. No holding over by Tenant, nor the payment to Landlord of the amounts specified above, shall operate to extend the Term hereof. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Premises after the Expiration Date or sooner termination of this Lease, and no acceptance by Landlord of payments from Tenant after the Expiration Date or sooner termination of this Lease shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this Section 22.1.

ARTICLE XXIII  
COVENANTS OF LANDLORD

23.1 Landlord covenants that it has the right to enter into this Lease, and that if Tenant shall perform timely all of its obligations hereunder, then, subject to the provisions of this Lease, Tenant shall during the Lease Term peaceably and quietly occupy and enjoy the full possession of the Premises (i.e., quiet enjoyment) without hindrance by Landlord, its employees or agents.

23.2 Subject to other applicable terms and provisions expressly provided in this Lease, Landlord reserves the following rights: (a) to change the street address and name of the Building provided that Tenant's access to the Premises is not permanently, materially and adversely affected; (b) to change the arrangement and location of entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets or other public parts of, and make additions to, the Building provided that Tenant's access to the Premises is not permanently, materially and adversely affected; (c) to erect, use and maintain pipes, wires, structural supports, ducts and conduits in and through the plenum areas of the Premises; (d) to grant to anyone the exclusive right to conduct any particular business in the Building which does not preclude Tenant from operating under its permitted use of the Premises; (e) to exclusively use and/or lease the roof areas, the sidewalks and other exterior areas; (f) to resubdivide the Land or to combine the Land with other lands; (g) to relocate any parking areas designated for Tenant's use, if any, provided the same are on the Land; if Tenant vacates the Premises prior to the expiration of the Lease Term, to make Alterations to or otherwise prepare the Premises for reoccupancy without relieving Tenant of its obligation to pay all Base Rent, additional rent and other sums due under this Lease through such expiration; (i) to construct improvements (including kiosks) on the Land and in the public and Common Areas of the Building; (j) to prohibit smoking in the entire Building or portions thereof (including the Premises), so long as such prohibitions are in accordance with applicable law; and (k) if any excavation or other substructure work shall be made or authorized to be made upon land adjacent to the Building or the Land, to enter the Premises for the purpose of doing such work as is required to preserve the walls of the Building and to preserve the land from injury or damage and to support such walls and land by proper foundations. Subject to the other applicable terms and provisions expressly provided in this Lease, Landlord may exercise any or all of the foregoing rights without being deemed to be guilty of an eviction, actual or constructive, or a disturbance of Tenant's business or use or occupancy of the Premises and Tenant shall have no claim against Landlord in connection therewith. With respect to (b), (c), (e), (g), (i) and (k) above, Landlord shall use reasonable efforts to minimize interference with Tenant's normal business operations in the Premises (subject, however, in all cases to governmental requirements, emergencies and/or temporary maintenance and repair activities, and in no event shall Landlord have any obligation to employ contractors or labor at overtime or other premium pay rates or incur any other overtime costs).

ARTICLE XXIV  
ESTOPPEL CERTIFICATE

24.1 At any time and from time to time, upon not less than ten (10) days' prior written notice, Tenant and each subtenant, assignee, licensee or concessionaire or occupant of Tenant shall execute, acknowledge and deliver to Landlord and/or any other person or entity designated by Landlord, a written statement certifying: (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications); (b) the dates to which the rent and any other charges have been paid; (c) to Tenant's knowledge, whether or not Landlord is in default in the performance of any obligation, and if so, specifying the nature of such default; (d) the address to which notices to Tenant are to be sent; (e) that this Lease is subject and subordinate to all Mortgages encumbering the Building or the Land; (f) that Tenant has accepted the Premises and that all work thereto has been completed (or if such work has not been completed, specifying the incomplete work); and (g) such other matters as Landlord may reasonably request. Any such statement may be relied upon by any owner of the Building or the Land, any prospective purchaser of the Building or the Land, any holder or prospective holder of a Mortgage or any other person or entity. Tenant acknowledges that time is of the essence to the delivery of such statements and that Tenant's failure to deliver timely such statements may cause substantial damages resulting from, for example, delays in obtaining financing. Failure of Tenant to timely execute, acknowledge and deliver such estoppel certificate or other instruments shall constitute an acceptance of the Premises and an acknowledgment by Tenant that statements included in the estoppel certificate are true and correct, without exception.

ARTICLE XXV  
PARKING

25.1 During the Lease Term, Tenant and its employees, visitors and other invitees shall be entitled to use up to ~~not less than 3.8~~twenty-five (25) non-transferable, unreserved parking passes per 1,000 rentable square feet of Premises, which parking passes shall pertain to the Parking Facility and shall be subject to the standard rate as established from time to time by Landlord or the operator of the Parking Facility, subject to Landlord's rights pursuant to the remainder of this Section and such rules and regulations as Landlord may establish from time to time. Such parking shall be in non-exclusive, unassigned spaces on a self-park, attendant-park, valet or other basis, as from time to time prescribed by Landlord. Tenant shall not use the Parking Facilities for the servicing or extended storage of vehicles. Tenant shall not assign, sublet or transfer any permits hereunder. Landlord reserves the right to institute either a Parking Facilities operator system, which may include self-park, attendant-park, valet or other parking arrangements, or to otherwise change the parking system. Tenant and its employees shall observe reasonable safety precautions in the use of the Parking Facilities or any other parking area and shall at all times abide by all rules and regulations governing the use of the Parking Facilities to which Tenant is made aware of in writing. Tenant acknowledges that particular parking facilities, areas or spaces may be designated for exclusive use by particular tenants, occupants, visitors or other users, either generally or at particular times, and Tenant shall comply with all such designations and cause its employees, visitors and other invitees to do the same. Landlord reserves the right to close the Parking Facilities or any other parking area during periods of unusually inclement weather or for alterations, improvements or repairs. Landlord shall not be liable to Tenant and this Lease shall not be affected if any parking rights hereunder are impaired by any Law imposed after the Lease Commencement Date. Landlord reserves the right to determine whether the Parking Facilities are becoming crowded and to allocate and assign parking spaces among Tenant and the other tenants provided that the proportionate share allocated to Tenant is not materially reduced. It is understood and agreed that Landlord assumes no responsibility, and shall not be held liable, for any damage or loss to any automobiles parked in the Parking Facilities or to any personal property located therein, or for any injury sustained by any person in or about the Parking Facilities.

ARTICLE XXVI  
INTENTIONALLY OMITTED

ARTICLE XXVII  
INTENTIONALLY OMITTED

ARTICLE XXVIII  
GENERAL PROVISIONS

28.1 Tenant acknowledges that neither Landlord nor any broker, agent or employee of Landlord has made any representation or promise with respect to the Premises or any portion of the Building except as herein expressly set forth, and no right, privilege, easement or license is being acquired by Tenant except as herein expressly set forth.

28.2 Nothing contained in this Lease shall be construed as creating any relationship between Landlord and Tenant other than that of landlord and tenant, and no estate shall pass out of Landlord. Tenant shall not use the name of the Building for any purpose other than as the address of the business to be conducted by Tenant in the Premises, use the name of the Building as Tenant's business address after Tenant vacates the Premises, or do or permit to be done anything in connection with Tenant's business or advertising which in the reasonable judgment of Landlord may reflect unfavorably on Landlord or the Building or confuse or mislead the public as to any apparent connection or relationship between Landlord, the Building and Tenant.

28.3 Landlord and Tenant each warrants to the other that in connection with this Lease it has not employed or dealt with any broker, agent or finder, other than the Broker(s). It is understood that Landlord shall pay the Broker(s) pursuant to a separate agreement. Tenant shall indemnify and hold Landlord harmless from and against any claim for brokerage or other commissions, or for a lien under any applicable broker's lien law, asserted by any broker, agent or finder employed by Tenant or with whom Tenant has dealt, other than the Broker(s). Landlord shall indemnify and hold Tenant harmless from and against any claim for brokerage or other commissions asserted by any broker, agent or finder employed by Landlord or with whom Landlord has dealt. Tenant's and Landlord's indemnities set forth in this Section shall survive the expiration or earlier termination of the Lease Term.

28.4 TO THE MAXIMUM EXTENT PERMITTED BY LAW, LANDLORD, TENANT, ALL GUARANTORS AND ALL GENERAL PARTNERS EACH WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT HEREUNDER, OR TENANT'S USE OR OCCUPANCY OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY CLAIM OF INJURY OR DAMAGE OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY CURRENT OR FUTURE LAW, STATUTE, REGULATION, CODE OR ORDINANCE.

28.5 All notices or other communications required under this Lease shall be in writing and shall be deemed duly given and received when delivered in person (with receipt therefor), on the next business day after deposit with a recognized overnight

delivery service, or on the second day after being sent by certified or registered mail, return receipt requested, postage prepaid, to the applicable Notice Address specified in the Lease Summary. Either party may change its address for the giving of notices by written notice given in accordance with this Section. If Landlord or the holder of any Mortgage notifies Tenant in writing that a copy of any notice to Landlord shall be sent to such holder at a specified address, then Tenant shall send (in the manner specified in this Section and at the same time such notice is sent to Landlord) a copy of each such notice to such holder, and no such notice shall be considered duly sent unless such copy is so sent to such holder. Any such holder shall have thirty (30) days after receipt of such notice to cure any Landlord default before Tenant may exercise any remedy (provided that in the case of a Landlord default arising from an act or omission which cannot be reasonably remedied within said thirty (30) day period, then the holder of any Mortgage shall have as long as reasonably necessary to remedy such act or omission provided that (i) such holder commences such remedy and notifies Tenant within said thirty (30) day period of holder's desire to remedy, and (ii) holder pursues completion of such remedy with due diligence following such giving of notice and following the time when holder should have become entitled under the Mortgage to remedy the same). Any cure of Landlord's default by such holder shall be treated as performance by Landlord.

28.6 Each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then such provision shall be deemed to be replaced by the valid and enforceable provision most substantively similar to such invalid or unenforceable provision, and the remainder of this Lease and the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby. Nothing contained in this Lease shall be construed as permitting Landlord to charge or receive interest in excess of the maximum rate allowed by law.

28.7 Feminine, masculine or neuter pronouns shall be substituted for those of another form, and the plural or singular shall be substituted for the other number, in any place in which the context may require such substitution.

28.8 The provisions of this Lease shall be binding upon and inure to the benefit of the parties and each of their respective representatives, successors and assigns, subject to the provisions herein restricting assignment or subletting.

28.9 This Lease contains and embodies the entire agreement of the parties hereto and supersedes all prior agreements, negotiations, letters of intent, proposals, representations, warranties, understandings, suggestions and discussions, whether written or oral, between the parties hereto. Any representation, inducement, warranty, understanding or agreement that is not expressly set forth in this Lease shall be of no force or effect. This Lease may be modified or changed in any manner only by an instrument signed by both parties. This Lease includes and incorporates all exhibits, schedules and riders attached hereto. Tenant shall, at Landlord's request, promptly execute any requisite document, certificate or instrument that is reasonably necessary or desirable to clarify or carry out the force and effect of any terms or conditions of, or obligation of Tenant under, this Lease.

28.10 This Lease shall be governed by the Laws of the jurisdiction in which the Building is located, without regard to the application of choice of law principles. There shall be no presumption that this Lease be construed more strictly against the party who itself or through its agent prepared it (it being agreed that all parties hereto have participated in the preparation of this Lease and that each party had the opportunity to consult legal counsel before the execution of this Lease). No custom or practice which may evolve between the parties in the administration of the terms of this Lease shall be construed to waive Landlord's right to insist on Tenant's strict performance of the terms of this Lease.

28.11 Headings are used for convenience and shall not be considered when construing this Lease.

28.12 The submission of an unsigned copy of this document to Tenant shall not constitute an offer or option to lease the Premises. This Lease shall become effective and binding only upon execution and delivery by both Landlord and Tenant.

28.13 Time is of the essence with respect to each of Tenant's obligations hereunder.

28.14 This Lease may be executed in multiple counterparts, each of which shall be deemed an original and all of which together constitute one and the same document. Faxed, PDF, photocopied, or electronic signatures shall have the same binding effect as original signatures.

28.15 Neither this Lease nor a memorandum thereof shall be recorded.

28.16 Landlord reserves the right to make reasonable changes and modifications to the plans and specifications for Building without Tenant's consent, provided such changes or modifications do not materially and adversely change the character of same.

28.17 Except as otherwise provided in this Lease, any additional rent or other sum owed by Tenant to Landlord, and any cost, expense, damage or liability incurred by Landlord for which Tenant is liable, shall be considered additional rent payable pursuant to this Lease to be paid by Tenant no later than thirty (30) days after the date Landlord notifies Tenant of the amount thereof.

28.18 Tenant's liabilities and obligations with respect to the period prior to the expiration or earlier termination of the Lease Term shall survive such expiration or earlier termination. Landlord's liabilities and obligations with respect to refund of the Security Deposit, if and to the extent required by the provisions of this Lease, shall survive the expiration or earlier termination of this Lease.



28.19 If Landlord is in any way delayed or prevented from performing any obligation due to fire, act of God, governmental act or failure to act, strike, labor dispute, inability to procure materials, or any cause beyond Landlord's reasonable control (whether similar or dissimilar to the foregoing events) ("Force Majeure"), then the time for performance of such obligation shall be excused for the period of such delay or prevention and extended for a period equal to the period of such delay or prevention.

28.20 Landlord's review, approval and consent powers (including the right to review plans and specifications) are for its benefit only. Such review, approval or consent (or conditions imposed in connection therewith) shall be deemed not to constitute a representation concerning legality, safety or any other matter.

28.21 The deletion of any printed, typed or other portion of this Lease shall not evidence the parties' intention to contradict such deleted portion. Such deleted portion shall be deemed not to have been inserted in this Lease.

28.22 At the expiration or earlier termination of the Lease Term, Tenant shall deliver to Landlord all keys and security cards to the Building and the Premises, whether such keys were furnished by Landlord or otherwise procured by Tenant, and shall inform Landlord of the combination of each lock, safe and vault, if any, in the Premises.

28.23 Tenant and the person executing and delivering this Lease on Tenant's behalf each represents and warrants that such person is duly authorized to so act; that Tenant is duly organized, is qualified to do business in the jurisdiction in which the Building is located, is in good standing under the Laws of the state of its organization and the Laws of the jurisdiction in which the Building is located, and has the power and authority to enter into this Lease; that Tenant is not, and the entities or individuals constituting Tenant or which may own or control Tenant or which may be owned or controlled by Tenant are not, among the individuals or entities identified on any list compiled by the U.S. Government for the purpose of identifying suspected terrorists, and Tenant is not engaging in this transaction on behalf of any such individual or entity; that Tenant is not in violation of any anti-money laundering Law; and that all action required to authorize Tenant and such person to enter into this Lease has been duly taken.

28.24 Any elimination or shutting off of light, air, or view by any structure which may be erected on lands adjacent to the Building, or any noise in connection with activities permitted by this Lease, shall in no way effect this Lease or impose any liability on Landlord.

28.25 In the event Landlord or Tenant is required or elects to take legal action against the other party to enforce the provisions of this Lease, then the prevailing party in such action shall be entitled to collect from the other party its costs and expenses incurred in connection with the legal action (including reasonable attorneys' fees and court costs). Notwithstanding the foregoing, if Landlord shall take any legal action for collection of rent or file any eviction proceedings (whether summary or otherwise) for the non-payment of rent, and Tenant shall make payment of such rent prior to the rendering of any judgment, the Landlord shall be entitled to collect and Tenant shall pay as additional rent all filing fees and other costs in connection therewith (including reasonable attorneys' fees).

28.26 For purposes of Section 1938(a) of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that none of the Project, the Building, or the Premises has undergone inspection by a Certified Access Specialist (CASP) (defined by California Civil Code Section 55.52). Pursuant to California Civil Code Section 1938, Tenant is hereby notified that a CASp can inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, Landlord may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy of the Tenant, if requested by Tenant. Landlord and Tenant shall mutually agree on the arrangements for the time and manner of any CASp inspection, the payment of the fee for the CASp inspection and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

[End of Lease Terms and Conditions; Signature Page Follows]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date and year first above written.

LANDLORD:

100 Wood Hollow Drive Owner, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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## RIDER 1 – GENERAL DEFINITIONS

**ADA:** the Americans with Disabilities Act and the regulations promulgated thereunder, as the same may be amended from time to time.

**Affiliate of Tenant:** (i) a corporation or other business entity (a "successor corporation") into or with which Tenant shall be merged or consolidated, or to which substantially all of the assets of Tenant may be transferred or sold, provided that such successor corporation shall have a net worth and liquidity factor at least equal to the net worth and liquidity factor of Tenant as of the date hereof or otherwise reasonably acceptable to Landlord taking into account the fact that the original Tenant under this Lease is not being released, and provided that the successor corporation shall assume in writing all of the obligations and liabilities of Tenant under this Lease and the proposed use of the Premises is in compliance with Article VI; or (ii) a corporation or other business entity (a "related corporation") which shall control, be controlled by or be under common control with Tenant, shall have a net worth and liquidity factor at least equal to the net worth and liquidity factor of Tenant as of the date hereof or otherwise reasonably acceptable to Landlord taking into account the fact that the original Tenant under this Lease is not being released, and provided that such related corporation shall assume in writing all of the obligations and liabilities of Tenant under this Lease (without relieving Tenant therefrom) and the proposed use of the Premises is in compliance with Article VI. For purposes of clause (ii) above, "control" shall be deemed to be ownership of more than fifty percent (50%) of the stock or other voting interest of the controlled corporation or other business entity.

**Agents:** any agent, employee, subtenant, assignee, contractor, client, family member, licensee, customer, invitee or guest of a party.

**Alterations:** any structural or other alterations, decorations, additions, installations, demolitions, improvements or other changes.

**Bankruptcy Code:** Title 11 of the United States Code, as amended.

**Building Structure and Systems:** the exterior and common area walls, main lobby in the Building, slab floors, exterior windows, load bearing elements, foundations, roof and common areas that form a part of the Building, and the building standard mechanical, electrical, HVAC and plumbing systems, pipes and conduits that are provided by Landlord in the operation of the Building.

**Cabling:** telephone, computer and other communications and data systems and cabling.

**Case:** a formal proceeding in which Tenant is the subject debtor under the Bankruptcy Code.

**Common Areas:** those common and public areas and facilities in or serving the Building and improvements to the Land which are from time to time provided by Landlord for the use or benefit of tenants in the Building or for use or benefit by the public in general, including (a) access corridors, elevator foyers and core bathrooms, to the extent the same are not located on floors of the Building fully leased to a single tenant, and (b) Building-wide mailrooms, fire rooms, vending areas, health and fitness facilities, janitorial areas and other similar facilities of the Building, and (c) any and all non-exclusive grounds, parks, landscaped areas, plazas, outside sitting areas, sidewalks, tunnels, pedestrian ways, sky bridges, loading docks, and (d) generally all other common and public improvements on the Land.

**Cosmetic Changes:** those minor, non-structural Alterations of a decorative nature consistent with a first-class office building for which a building permit is not required and which cost (including installation) in the aggregate less than Twenty-Five Thousand Dollars (\$25,000) per project or series of related projects (as reasonably determined by Landlord), such as painting, carpeting and hanging pictures.

**Costs:** any costs, damages, claims, liabilities, expenses (including reasonable attorneys' fees), losses, penalties and court costs.

**Default Rate:** the greater of fifteen percent (15%) per annum or the rate per annum which is five (5) whole percentage points higher than the Prime Rate published in the Money Rates section of the Wall Street Journal.

**Environmental Default:** any of the following by Tenant or any Agent of Tenant: a violation of an Environmental Law; a release, spill or discharge of a Hazardous Material on or from the Premises, the Land or the Building; an environmental condition requiring responsive action; or an emergency environmental condition.

**Environmental Law:** any present and future Law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities applicable to the Building or the Land and relating to the environment and environmental conditions or to any Hazardous Material (including CERCLA, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Federal Water Pollution

Control Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 1101 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., and any so-called "Super Fund" or "Super Lien" law, any Law requiring the filing of reports and notices relating to hazardous substances, environmental laws administered by the Environmental Protection Agency, and any similar state and local Laws, all amendments thereto and all regulations, orders, decisions, and decrees now or hereafter promulgated thereunder concerning the environment, industrial hygiene or public health or safety).

**Event of Bankruptcy:** the occurrence with respect to any of Tenant, any Guarantor or any other person liable for Tenant's obligations hereunder (including any general partner of Tenant) of any of the following: (a) such person becoming insolvent, as that term is defined in the Bankruptcy Code or Insolvency Laws; (b) appointment of a receiver or custodian for any property of such person, or the institution of a foreclosure or attachment action upon any property of such person; (c) filing by such person of a voluntary petition under the provisions of the Bankruptcy Code or Insolvency Laws; (d) filing of an involuntary petition against such person as the subject debtor under the Bankruptcy Code or Insolvency Laws, which either (1) is not dismissed within sixty (60) days after filing, or (2) results in the issuance of an order for relief against the debtor; (e) such person making or consenting to an assignment for the benefit of creditors or a composition of creditors; (f) such person knowingly submitting (either before or after execution hereof) to Landlord any financial statement containing any material inaccuracy or omission; or (g) an admission by Tenant or Guarantor of its inability to pay debts as they become due.

**Event of Default:** any of the following: (a) Tenant's failure to make when due any payment of the Base Rent, additional rent or other sum, which failure shall continue for a period of three (3) days after Landlord sends Tenant written notice thereof; (b) Tenant's failure to perform or observe any other covenant or condition of this Lease, which failure shall continue for a period of ten (10) days after Landlord sends Tenant written notice thereof, provided, however, that if such cure cannot reasonably be effected within such ten (10) day period and Tenant begins such cure promptly within such ten (10) day period and is pursuing such cure in good faith and with diligence and continuity during such ten (10) day period, then, except in the event of an emergency, Tenant shall have such additional time (not to exceed ninety (90) days in total) as is reasonably necessary to effect such cure; (c) Tenant's failure to take occupancy of or occupy continuously the Premises; (d) an Event of Bankruptcy; (e) Tenant's dissolution or liquidation; (f) any Environmental Default; or (g) any sublease, assignment or mortgage not permitted by Article VII; or (h) Tenant's failure to pay any sum or perform or observe any covenant or condition of this Lease when required under this Lease (without regard to any grace period otherwise allowed) more than twice during any twelve month period during the Lease Term.

**Hazardous Materials:** (a) asbestos and any asbestos containing material and any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other applicable Law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity, (b) any petroleum and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources, (c) toxic mold, mildew or any substance that reasonably can be expected to give rise to toxic mold or mildew, or (d) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear, or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product, and any other substance whose presence could be detrimental to the Building or the Land or hazardous to health or the environment.

**including:** including, but not limited to; including, without limitation; and words of similar import.

**Insolvency Laws:** the insolvency Laws of any state.

**Land:** the site upon which the Building is constructed.

**Landlord Insured Parties:** Landlord's advisors, the managing agent of the Building and the holder of any Mortgage, in each case of whom Landlord shall have given notice to Tenant, and any other party that Landlord may reasonably designate in writing from time to time.

**Landlord's Representatives:** Landlord's affiliates, shareholders, partners, directors, officers, employees, agents and representatives.

**Laws:** all present and future laws, ordinances (including zoning ordinances and land use requirements), regulations, orders and recommendations (including those made by any public or private agency having authority over insurance rates).

**Lease Year:** a period of twelve (12) consecutive months commencing on the Commencement Date, and each successive twelve (12) month period thereafter; provided, however, that if the Commencement Date is not the first

day of a month, then the first Lease Year shall end on the last day of the calendar month in which the first anniversary of the Commencement Date occurs.

**Mortgages:** all mortgages, deeds of trust, ground leases or other security instruments which may now or hereafter encumber any portion of the Building or the Land.

**Parking Facilities:** the parking areas and facilities and other parking arrangements, if any, for the Project from time to time provided pursuant to or as permitted by any covenants, conditions and restrictions, including such valet arrangements, if any, as may be provided or permitted pursuant thereto.

**Prime Rate:** the prime rate published in the Money Rates section of the Wall Street Journal.

**Proposed Sublease Commencement Date:** the anticipated commencement date of the proposed assignment, subletting or other transaction.

**Proposed Sublet Space:** the area proposed to be assigned, sublet or otherwise encumbered.

**Structural and System Alterations:** any Alteration that will or may necessitate any changes, replacements or additions to the load-bearing or exterior walls, non-drop ceilings, partitions (load-bearing or non-demising), columns or floor, or to the fire protection, water, sewer, electrical, mechanical, plumbing, HVAC or other base building systems, of the Premises or the Building.

**Tenant Items:** all non-Building standard supplemental heating, ventilation and air conditioning equipment and systems serving exclusively the Premises and any special tenant areas, facilities and finishes; any special fire protection equipment, any telecommunications, security, data, computer and similar equipment, cabling and wiring, kitchen/galley equipment and fixtures, all other furniture, furnishings, equipment and systems of Tenant and all Alterations.

**Tenant's Sublease Request Notice:** a notice to Landlord containing: the identity of a proposed assignee, subtenant or other party and its business; the terms of the proposed assignment, subletting or other transaction (including a copy of the proposed document for same); the Proposed Sublease Commencement Date; the Proposed Sublet Space; financial statements for the prior two (2) years certified by an authorized officer of Tenant or a certified public accounting firm, or other evidence of financial responsibility of such proposed assignee, subtenant to other party; and a certification executed by Tenant and such party stating whether or not any premium or other consideration is being paid for the assignment, sublease or other transaction.

**Trustee:** a trustee-in-bankruptcy of Tenant under a Case.

EXHIBIT A  
PLAN SHOWING PREMISES

[To be attached by Landlord]

DRAFT

## EXHIBIT B

### RULES AND REGULATIONS

1. The rights of Tenant in the sidewalks, entrances, corridors, stairways, elevators and escalators of the Building are limited to ingress to and egress from the Premises for Tenant and any Agent of Tenant, and Tenant shall not invite to the Premises, nor permit the visit thereto by, persons in such numbers or under such conditions as to interfere with the use and enjoyment by others of the sidewalks, entrances, corridors, stairways, elevators, escalators or any other facilities of the Building. Fire exits and stairways are for emergency use only, and they shall not be used for any other purpose by Tenant or any Agent of Tenant. Landlord shall have the right to regulate the use of and operate the Common Areas of the Building, as well as portions furnished for the common use of tenants, in such reasonable manner as it deems best for the benefit of tenants generally.
2. In case of invasion, riot, public excitement or other commotion, Landlord may prohibit all access to the Building during the continuance of the same, by closing doors or otherwise, for the safety of tenants or protection of property in the Building. Any person, whose presence in the Building at any time shall, in the judgment of Landlord, be prejudicial to the safety, character, reputation and interests of the Building or of its tenants, may be denied access to the Building or may be ejected therefrom. Landlord may require any person leaving the Building with any package or other object to exhibit a pass from Tenant from whose Premises the package or object is being removed, but the establishment or enforcement of such requirement shall not impose any responsibility on Landlord for the protection of Tenant against the removal of property from the Premises of Tenant.
3. Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot that such floor was designed to carry and which is allowed under the Requirements. Tenant shall not move any safe, heavy equipment, freight, bulky matter or fixtures into or out of the Building without Landlord's prior consent, which will not be unreasonably withheld. If such items require special handling, Tenant shall employ only persons holding a license to do such work. No machines, machinery or electrical or electronic equipment or appliances of any kind shall be placed or operated so as to disturb other tenants. Freight, furniture, business equipment, merchandise and packages of any description shall be delivered to and removed from the Premises only in the freight elevators and through the service entrances and corridors, and only during hours and in a manner reasonably approved by Landlord. Landlord will not be responsible for loss of or damage to any such safe or property from any cause, and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of the Tenant.
4. There shall not be used in any space, or in the Common Areas of the Building, either by any Tenant or others, any hand trucks except those equipped with rubber tires and side guards. No other vehicles of any kind shall be brought by any Tenant into or kept in or about any premises in the Building.
5. No noise, including the playing of any musical instrument, radio or television, that, in the reasonable judgment of Landlord, might disturb other tenants in the Building, shall be made or permitted by Tenant. No animals (except for service dogs) shall be brought into or kept in the Building or the Premises. No dangerous, inflammable, combustible or explosive object or material shall be brought into or kept in the Building by Tenant or with the permission of Tenant, and the insurance companies insuring the Building or the property therein. Tenant shall not cause or permit any odors of cooking or other processes, or any unusual or other objectionable odors, to permeate in or emanate from the Premises.
6. Each Tenant shall see that the doors of its premises are closed and securely locked and must observe strict care and caution that all water faucets or water apparatus are entirely shut off before the Tenant or its employees leave such premises, and that all utilities shall likewise be carefully shut off, so as to prevent waste or damage. No door (other than a door in an interior partition of the Premises) shall be left open at any time.

7. Tenant shall give Landlord prompt notice of any accidents to or defects in the Building, including, but not limited to, water pipes, gas pipes, electric lights and fixtures, heating apparatus or any other service equipment. Tenant shall promptly notify Landlord of any inspection of the Premises by governmental agencies having jurisdiction over matters involving health or safety.
8. No tenant shall use, keep or permit to be used or kept in its premises any foul or noxious gas or substance or permit or suffer such premises to be occupied or used in any manner that is offensive or objectionable to Landlord in its reasonable discretion.
9. All food storage areas shall be adequately protected against vermin entry by a contractor approved in advance by Landlord.
10. Drain pipes shall be kept free of obstructions and operable at all times.
11. Exit signs shall be illuminated, and other exit identification shall be operable, at all times.
12. Emergency lighting, including battery components, shall be in good working condition at all times.
13. Tenant shall not bring or keep, or allow to be brought or kept, in the Building, any bicycles, roller blades, in line or other skates or other type of wheeled pedestrian form of locomotion.
14. Mail pick-up and delivery shall be responsibility of Tenant.
15. The Lobby directories of the Building will be provided exclusively for the display of the name and location of tenants only and Landlord reserves the right to exclude any other names therefrom. Landlord reserves the right to restrict the amount of directory space utilized by Tenant and to charge for Landlord's cost thereof.
16. No curtains, blinds, shutters, shades, screens or other coverings, hangings or decorations shall be attached to, hung or placed in, or used in connection with any window on any premises without the prior written consent of Landlord, which shall not be unreasonably withheld. In any event, with the prior written consent of Landlord, all such items shall comply with Landlord's building standards. No articles shall be placed or kept on the windowsills so as to be visible from the exterior of the Building.
17. The doors, windows, light fixtures and any lights or skylights that reflect or admit light into the halls or other portions of the Building shall not be covered or obstructed, except as expressly set forth in paragraph 16 of these Rules and Regulations.
18. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be born by the Tenant who, or whose employees or invitees, shall have caused it.
19. Except with the prior written consent of Landlord, no tenant shall sell, or permit the sale at retail of newspapers, magazines, periodicals, theater tickets or any other goods or merchandise in or on any premises, nor shall any tenant carry on, or permit or allow any employee or other person to carry on, the business of stenography, typewriting or any similar business in or from any premises for the service or accommodation of occupants of any other portion of the Building, nor shall the premises of any Tenant be used for the storage of merchandise or for the manufacturing of any kind, or the business of a public barber shop, beauty parlor, or any business or activity other than that specifically provided for in such Tenant's lease.
20. All work regarding telephone, telegraph and electrical wires and equipment shall be performed in accordance with the provisions of the Lease.
21. No tenant shall lay linoleum, tile, carpet or any other floor covering except in accordance with the provisions of the Lease. The expense of repairing any damage resulting from a violation of this rule or the removal of any floor covering shall be borne by the tenant by whom, or by whose contractors, employees or invitees, the damage shall have been caused.
22. Each Tenant shall store and dispose of all its trash and garbage in the manner provided in the Lease.
23. Canvassing, soliciting, distribution of handbills and other written materials and peddling in the Building are prohibited and each tenant shall cooperate to prevent the same.
24. Landlord, in order to comply with the requirements of California Assembly Bill Number 13 of 1994, has designated the



Building a "No Smoking" building, which prohibits smoking in the tenants' premises and all Common Areas. Tenant agrees to make reasonable efforts to enforce this prohibition on smoking among its employees and invitees.

25. Tenant shall abide by all energy conservation measures employed by Landlord in order to comply with Laws.
26. Feeding birds on any portion of the Project is strictly prohibited. Tenant agrees to make reasonable effort to enforce the prohibition among its employees and invitees.
27. Landlord reserves the right to rescind, alter or waive any rule or regulation at any time prescribed by Landlord when, in its reasonable judgment, it deems it necessary, desirable or proper for its best interest or for the best interests of tenants, and no rescission, alteration or waiver of any rule or regulation in favor of one tenant shall operate as a rescission, alteration or waiver in favor of any other tenant. Landlord shall not be responsible to Tenant for the non-observance or violation by any other tenant of any of the rules or regulations at any time prescribed by Landlord.
28. No tenant shall alter any lock or install a new or additional lock or any bolt on any door of its premises without the prior written consent of Landlord, such consent not to be unreasonably withheld. If Landlord shall give its consent, the tenant shall in each case furnish Landlord with a key for any such lock.
29. Landlord may make a reasonable charge for keys. Tenant shall not have any such keys copied or any keys made. Each tenant, upon the termination of the tenancy, shall deliver to Landlord all the keys and access cards of or to the Building, offices, rooms and toilet rooms which shall have been furnished to the Tenant or which the Tenant shall have had made.
30. Except as provided in the Lease, no sign, placard, picture, name, advertisement or notice, visible from the exterior of leased premises shall be inscribed, painted, affixed or otherwise displayed by any tenant either on its premises or any part of the Building without the prior written consent of Landlord, such consent not to be unreasonably withheld, and Landlord shall have the right to remove any such sign, placard, picture, name, advertisement or notice upon at least twenty-four (24) hours' prior notice to and at the expense of the tenant.
31. No furniture, freight, equipment, packages or merchandise will be received in the Building or carried up or down the elevators, except between such hours, through such entrances and in such elevators as shall be designated by Landlord. Landlord reserves the right to require that moves be scheduled and carried out during non-business hours of the Building. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building. Safes or other heavy objects shall, if considered necessary by Landlord, stand on wood strips of such thickness as is necessary to properly distribute the weight thereof. Landlord will not be responsible for loss of or damage to any such safe or property from any cause, and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of the Tenant.

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## MEMORANDUM

To: Board of Directors

February 11, 2022

From: Robert Clark Operations / Maintenance Superintendent *RC*  
Julie Blue, Auditor/Controller *JB*

Subj: San Marin Pump Station Battery Backup System  
x:\maint sup\2022\bod\bod san marin battery approve memo 2.11.2022.docx

**RECOMMENDED ACTION:** Approval

**FINANCIAL IMPACT:** None at this time

**Project Overview:**

At the January 18<sup>th</sup> Board of Directors meeting staff presented a report on the District's San Marin Pump Station proposed battery backup system funded through the CPUC's Self Generation Incentive Program's (SGIP). As described, Ventura Energy identified that NMWD's San Marin Pump Station is located within the program's geographic boundaries, and thus qualifies for the incentive to provide power backup for critical infrastructure facilities at no cost to the district.

Currently the pump station does not have onsite power backup system, and is therefore subject to public safety power shutdowns issued by PG&E. Additionally, the Operations department does not operate the facility during daily peak energy rate periods.

Ventura Energy, a project owner and developer of energy storage projects in California, approached District Staff with a late-stage opportunity to receive the project for no cost to the district due to the aforementioned incentive. NMWD / Ventura Energy have since been allocated the incentive funds pending submission of the Energy Services Agreement.

The proposed project will be provided to North Marin Water District free of charge, so that Ventura Energy can receive the SGIP incentive on their behalf and realize a project margin, typically around 10% of the estimated \$1,071,800 project costs.

As determined through review of the proposed project and agreement the potential liabilities include construction work that could be a nuisance for neighborhood and short-term shutdown requirements for the pump station. Staff and legal counsel have reviewed the proposed agreement, Attachment 1.

**Timeline Milestones:**

- Review agreement and propose for board approval on February 15, 2022.
- Finalize system configuration and budget.
- Provide SGIP with agreement by April 1, 2022.
- Project design commences upon approval.
- Project installation will commence once interconnection and building approval is received from PG&E and NMWD, respectively.
- Plan and execute communication campaign.
- Estimated online date: November 2022.

**Costs/Benefits:**

- No cost to District for 10-year project life.
- 10-year warranty provided by battery and inverter manufacturer (Tesla).
  - Ongoing preventative maintenance provided by manufacturer (Tesla) Annual maintenance consists of generally keeping area clear of debris and any observational issues documented.
- 10-year \$100,000 projected savings to North Marin Water District operations (based on 2021 pump run time including back feeding STP).
- Streamlined operations schedule of San Marin Pump Station – no longer bound to the lower energy cost periods.
- Power backup for 14 hours of typical operations during public safety power shutdowns, winter storm and periodic PG&E maintenance outages.

**RECOMMENDED ACTION:** Authorize General Manager to enter into contract with Ventura Energy for the installation of a Tesla Battery Energy Storage System at the San Marin Pump Station.

**Energy Services Agreement**

This Energy Services Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Service Provider below (the “**Effective Date**”).

| <b>Host Customer:</b> |   | <b>Service Provider:</b>                |   |
|-----------------------|---|---|---|
| Name and Address      | North Marin Water District<br>Attention: Robert Clark<br>Site Address: San Marin Pump Station<br>4 Spinosa Way, Novato, CA 94945          | Name and Address                        | Ventura Energy LLC<br>3400 Cottage Way Ste G2 #5025<br>Sacramento, CA 95825<br>Attention: Clara Nagy McBane |
| Phone                 | 415-897-4133  | Phone                                   | 805.901.2913  |
| Fax                   | None  | Fax                                     | None  |
| E-mail                | relark@nmwd.com   | E-mail                                  | clara@ventura.energy  |
| Premises Ownership    | Host Customer [ X ] owns [ ] leases the Premises.<br><br>List Premises Owner, if different from:<br>Host Customer: <u>      n/a      </u> | Additional Service Provider Information |   |
| Tax Status            | Tax-exempt  |   |   |
| Project Name          | Rush Pump Station   |   |   |

This Agreement sets forth the terms and conditions of the purchase and sale of the services provided from the battery energy storage system described in **Exhibit 2** (the “**System**”) and installed on the real property comprising Host Customer’s premises described or depicted in Schedule A to **Exhibit 2** (the “**Premises**”), including any buildings and other improvements on the Premises other than the System (the “**Improvements**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1** Pricing
- Exhibit 2** System Description, Delivery Point, and Premises
- Exhibit 3** Host Customer Information
- Exhibit 4** General Terms and Conditions
- Exhibit 5** Definition of Services
- Exhibit 6** Host Customer’s Release and Waiver Agreement

**Host Customer: North Marin Water District**

**Service Provider: Ventura Energy, LLC**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**EXHIBIT 1**

**Pricing**

1. **Operating Term:** Ten (10) years, beginning on the Commercial Operation Date (the “**Operating Term**”).
2. **Additional Operating Term:** Up to one (1) additional term of five (5) years at a price to be agreed by the Parties beginning on the expiration of the Initial Operating Term (the “**Additional Operating Term**”).
3. **Contract Price:** Self Generation Incentive Program (SGIP) Payments are assigned by Host Customer to Service Provider and paid by SGIP Program Administrator directly to Service Provider in accordance with the General Terms and Conditions of this Agreement. The table below delineates anticipated SGIP Payments to be paid directly to Service Provider by SGIP Program Administrator and payments paid by Host Customer to Service Provider. Host Customer shall have no obligation whatsoever to pay Service Provider amounts under the column titled “From SGIP Program Administrator to Service Provider.” Payments from Host Customer to Service Provider for shared Grid Service payments, if any, and shared Utility Bill Cost Savings are not components of Contract Price and are addressed in **Exhibit 4**

| <b>Operating Term Contract Year</b> | <b>\$/year (from SGIP Program Administrator to Service Provider)</b> | <b>\$/year (from Host Customer)</b> |
|-------------------------------------|--|-------------------------------------|
| 1                                   | \$643,080.00   | \$0                                 |
| 2                                   | \$107,180.00   | \$0                                 |
| 3                                   | \$107,180.00   | \$0                                 |
| 4                                   | \$107,180.00   | \$0                                 |
| 5                                   | \$107,180.00   | \$0                                 |
| 6                                   | \$0  | \$0                                 |
| 7                                   | \$0  | \$0                                 |
| 8                                   | \$0  | \$0                                 |
| 9                                   | \$0  | \$0                                 |
| 10                                  | \$0  | \$0                                 |
| <b>Total</b>                        | <b>\$1,071,800.00</b>  | <b>\$0</b>                          |

The first year of the Operating Term shall commence on the Commercial Operation Date, and each subsequent Operating Term Contract Year shall commence on the anniversary of the Commercial Operation Date.

4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions, revisions to these assumptions may cause consideration of a ‘Contract Price Update’ described below:
  - a. Interconnection costs for the System will not exceed **\$20,000** in the aggregate.
  - b. All prices in this Agreement are calculated based on an Upfront Payment of \$535,900.00 and a Performance Based Payment of \$107,180.00 paid shortly after the end of each of the first five Contract Years of System operations. The Service Provider posted the SGIP 5% Deposit for this System in the amount of \$53,590.00. The SGIP Program Administrator will refund this deposit directly to Service Provider shortly after the Commercial Operation Date.
  - c. The System is sized and configured as defined by **Exhibit 2**.
5. **Contract Price Exclusions.** Unless Service Provider and Host Customer have agreed otherwise in writing, and except as otherwise provided in Section (i) of **Exhibit 2**, Service Provider is not responsible for unexpected and atypical expenses unforeseen as of the Effective Date. Examples of such expenses may include, but are not limited to, unforeseen groundwork (including excavation and circumvention of underground obstacles), upgrades or repair to customer or utility electrical infrastructure (including client or utility service, transformers, substations, poles, breakers, reclosers, and disconnects) and changes in System design caused or requested by Host Customer, which materially impact installation costs and that are caused by any inaccuracy or ambiguity in information provided by Host Customer including information related to building plans and specifications.
6. **Termination Payment Schedule.** In the event of early Termination of the Agreement by Host Customer for reasons other than a Service Provider Event of Default or for delay as stated in Section 2(d) of **Exhibit 4**:

- a. if on or after the Effective Date through SGIP Program Administrator issuance of the final Incentive Claim Form (ICF) approval letter<sup>1</sup>, Host Customer must repay Service Provider the SGIP 5% Deposit indicated in Section 4(b) and reasonable and documented out-of-pocket and direct overhead costs incurred by Service Provider to advance development of the System.
- b. if after SGIP Program Administrator issuance of the final Incentive Claim Form (ICF) approval letter and commencement of the Operating Term, but prior to end of the Contract Term, the Host Customer shall pay Termination Payment that is equal to the amount in the corresponding Operating Term Contract Year listed in the Termination Payment Schedule below plus Service Provider's actual reasonable cost incurred to remove the System from the Premises. For the avoidance of doubt, Host Customer shall be obligated to pay only the amount corresponding to the year of termination. The Termination Payment obligation shall not be cumulative. Regarding System removal upon early Termination, Service Provider will provide open book accounting of any third-party costs incurred and shall not apply any margin or markup to such third-party costs.

| <b>Operating Term<br/>Contract Year</b> | <b>Termination Payment (\$)</b> |
|---|---------------------------------|
| 1                                       | \$1,071,800.00                  |
| 2                                       | \$428,720.00                    |
| 3                                       | \$321,540.00                    |
| 4                                       | \$214,360.00                    |
| 5                                       | \$107,180.00                    |
| 6                                       | \$0                             |
| 7                                       | \$0                             |
| 8                                       | \$0                             |
| 9                                       | \$0                             |
| 10                                      | \$0                             |

The first year of the Operating Term shall commence on the Commercial Operation Date, and each subsequent Operating Term Contract Year shall commence on the anniversary of the Commercial Operation Date.

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<sup>1</sup> Per the SGIP Handbook, Service Provider will submit the final Incentive Claim Form to SGIP Program Administrator after the Project is installed, interconnected and operational. SGIP Administrator may schedule and conduct a site visit before issuing the final ICF approval letter which begins the incentive payment process.

**EXHIBIT 2**

**System Description, Delivery Point, and Premises**

- a. **System Location:** 4 Spinosa Way, Novato, CA 94945
- b. **System Size (AC kW):** 271kW / 350kVA
- c. **Expected First Year Energy Capacity (kWh):** 1,083 kWh
- d. **Expected Installation: Indoor [ ] Outdoor [X] Location:**  
Units are to be placed between pumps near the utility meter a distance from the canal to impact concrete canal walls. Maintain drive aisle at the current distance. Use protective bollards around all battery, inverter, and auxiliary equipment.
- e. **Expected Battery Energy Storage System**

| <u>Manufacturer/Model</u> | <u>Quantity</u> |
|---------------------------|-----------------|
| Tesla Megapack 4h         | 1               |

- f. **Facility and System Description:**  
The facility operates three well pumps, which are located in a brick building. The Battery Energy Storage System (“Battery”) is to be installed in the smallest useable footprint plus eight feet on each side for access, on the south side of brick pump house. Battery to be fenced, with some camouflaging of the fence -either wooden, or with faux greenery on the fencing. Pumps totaling three-hundred horsepower will feed a battery load center which will power any additional auxiliary equipment. The load center will provide power to a lockable utility disconnect that will feed a panel with a main controlled disconnect that distributes the site pumps feed. Pumps are on the SCADA system with soft starts to control inrush at startup—engineer to analyze the startup sequence of the units.
- g. **Description of Delivery Point:**  
The Battery is to include a new main disconnect between the utility meter and the distribution. New main disconnect to be able to be remotely controlled by Service Provider with both a shunt trip and recloser. The Battery will connect at the far end of the new switchgear; the Battery will connect after lockable utility disconnect as a load-side connection. The Battery are to monitor the point of interconnection with two meters: one on the input from the utility and the second on the output of the Battery.
- h. **Description of back-up power capabilities in the event of loss of grid power, including any circuit relocations identified as necessary:** As described in Exhibit 5
- i. **Description of cost items not included in Contract Price, if any:** None



**EXHIBIT 3**

**Host Customer Information**

Within 10 days following the execution of this Agreement, Host Customer will supply Service Provider with the following information:

|  |               |   |                    |                  |                                |   |              |
|--|---------------|---|--------------------|------------------|--------------------------------|---|--------------|
| <b>Host Customer Information</b>                                   |               |   |                    |                  |                                |   |              |
| <b>Name: Host Customer</b><br>North Marin Water District           |               |   |                    |                  | <b>Tax ID: (if applicable)</b> |   |              |
| <b>Previous &amp; Other Names (if applicable):</b>                 |               |   |                    | <b>Website:</b>  |                                |   |              |
| <b>Address: 4 Spinosa Way</b>                                      |               |   |                    |                  |                                |   |              |
| <b>City, State, Zip</b> Novato                                     |               |   | CA                 |                  | 94945                          |   |              |
| <b>Phone Number:</b> 415-897-4133                                  |               |   |                    |                  |                                |   |              |
| <b>Entity Type</b>   | <b>S-Corp</b> | <b>C-Corp</b>   | <b>Partnership</b> | <b>Sole Prop</b> | <b>LLC</b>                     | <b>LLP</b>  | <b>Other</b> |
| <b>Check One:</b>  |               |   |                    |                  |                                |   | X            |
| <b>Property Address for Battery Installation:</b><br>Address above |               |   | <b>State:</b>      |                  | <b>Zip Code:</b>               | <b>Property Owned by Applicant</b><br>X YES<br>o NO |              |
| <b>Property Type</b><br>Water District                             |               | <b>If Not Applicant, Name of Property Owner, address, phone number and email.</b> |                    |                  |                                |   |              |

**Information Requested: Please submit the information required below via electronic format to clara@ventura.energy.com.**

Corporate Records / Formation Documentation

- Copy of Articles of Incorporation, Partnership Agreement, Fictitious Name Statement or Organizational formation documents (If applicable).

Financial Statements

- If readily available, last two (2) years of CPA audited, reviewed, compiled statements (Balance Sheet, Income Statement, Cash Flow).

Real Estate Documents

- Demonstration of Ownership of Premises or Lease with Premises Fee Owner
- Copies of Liens or Third-Party Security Interests in the Premises

If Host Customer is not Property Owner, Service Provider may request Host Customer to provide additional documentation to complete the evaluation process. Service Provider will notify Host Customer if additional information is required.

## EXHIBIT 4

### General Terms and Conditions

1. **Purchase and Sale of Services.** Host Customer shall purchase from Service Provider, and Service Provider shall sell to Host Customer, the System Services (as defined in this **Exhibit 5**) commencing on Commercial Operation Date and through the Contract Term (as defined in Section 2(a)). Electricity stored by the System shall be delivered to Host Customer at the Delivery Point.
  
2. **Term and Termination.**
  - a. **Effective Date; Contract Term.** This Agreement is effective as of the Effective Date and the Contract Term consists of two periods, a **Development Term** that starts on the Effective Date and runs up until the Commercial Operation Date and then an **Operating Term** that starts on the Commercial Operation Date and runs for a period of 10 years, unless earlier terminated as provided in this Agreement (collectively, the “**Contract Term**”).
  
  - b. **Additional Operating Term.** The Parties may agree in writing to extend this Agreement for one (1) additional five-year Operating Term at a price to be agreed between the Parties.
  
  - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time during the Development Term (i) significant additional and unanticipated costs are identified which have not previously been identified pursuant to Section 5 of **Exhibit 1** or which exceed the Contract Price assumptions pursuant to Section 4 of **Exhibit 1**, or Service Provider determines that the installation of the System will not be technically or financially viable for any other reason, and (ii) the Parties have failed to reach agreement after negotiating a Contract Price adjustment for sixty (60) days following written notice from Service Provider to Host Customer, either Party may terminate this Agreement by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of **Exhibit 1** or otherwise.
  
  - d. **Termination by Host Customer for Delay.** Service Provider will use commercially reasonable efforts to achieve Commencement of Installation at least sixty (60) days prior to the expiration of the SGIP reservation as indicated in the Conditional Reservation Letter for the System, as may be extended by the SGIP Program Administrator. If Service Provider fails to meet this deadline, Host Customer may terminate this Agreement by providing thirty (30) days’ prior written notice to Service Provider; provided that this Agreement will not terminate pursuant to this Section 2(d) if Service Provider achieves Commencement of Installation on or before the end of such thirty (30) day notice period. In addition, Host Customer shall not be liable for any damages in connection with such termination.
  
  - e. **Termination for Failure of SGIP.** The state rebate and incentive calculations Service Provider has provided to Host Customer are estimates. These estimates are based on certain assumptions that may not be applicable based on the circumstances specific to the System. However, actual rebates and incentives may vary based on changes in eligibility requirements, funding availability, and funding rates. No substantial commencement of on-site work shall begin until Service Provider has received confirmation of a successful SGIP reservation in an amount not less than 100% of the price for materials and labor for installation of the battery storage system. When Service Provider has received this reservation confirmation, Service Provider will then request an Incentive Claim Form to be signed by Host Customer. Once the Conditional Reservation Letter is obtained, listing Service Provider or a financing party determined by Service Provider as the payee, and the necessary financing is in place to fund the System, Service Provider will commence work assuming equipment availability. Host Customer shall complete and return any rebate or associated utility program participation paperwork requested by Service Provider within seven (7) days of receipt. Each Party

has the right to terminate this Agreement, without penalty or fee, if Service Provider determines after the engineering site audit of the Premises that Service Provider has misestimated the System's total cost. Such termination right will expire at the earlier of (i) one (1) week before the scheduled System installation date and (ii) one (1) month after Service Provider informs Host Customer in writing of the revised cost. Any changes to the System will be documented in a written amendment to this Agreement signed by both Host Customer and Service Provider. Host Customer authorizes Service Provider to make corrections to the utility and incentive paperwork to conform to this Agreement or any amendments to this Agreement that are signed by both Parties.

3. **Billing and Payment; Taxes.**

- a. **Charges.** In accordance with Section 11.a, Host Customer and Service Provider agree that SGIP Program shall pay Service Provider as set forth in Section 3 of **Exhibit 1** (the "**Contract Price**"), unless subject to a Contract Price Update specified in Exhibit 1, Section 4.
- b. **Invoices.** Service Provider shall invoice Host Customer annually, unless no payment is due under the terms of this Agreement. Such annual invoices shall state the rates applicable to, and charges incurred by, Host Customer under this Agreement.
- c. **Payment Terms.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars.
- d. **Taxes.** Service Provider is responsible for any incremental personal property taxes imposed on the Host due to installation of the System ("**Service Provider's Taxes**"). Service Provider shall not be responsible for taxes, if any, assessed on the sale, delivery or consumption of electricity stored by the System.

4. **Incentives and Environmental Attributes.** As the owner of the System, Service Provider is entitled to the benefit of, and will retain all ownership interests in the Incentives and Environmental Attributes applicable to the System. Host Customer shall cooperate with Service Provider in obtaining, securing and transferring all Incentives, if any. Host Customer is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Service Provider. Host Customer shall not make any filing or statements inconsistent with Service Provider's ownership interests in the Incentives and Environmental Attributes. If any Incentives are paid or delivered directly to Host Customer, Host Customer shall immediately pay or deliver such items or amounts to Service Provider. For sake of clarity, Service Provider will be responsible for payment of any deposit required to secure Incentives and if any such deposit is refunded to Host Customer rather than to Service Provider, Host Customer will immediately pay or deliver such refunded amounts to Service Provider.

"**Governmental Authority**" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

"**Incentives**" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits (including depreciation deductions) under federal, state or local law, and (iv) any other attributes, commodity, Payments stream or payment in connection with the System (such as ancillary or capacity Payments), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include Environmental Attributes.

“**Environmental Attributes**” means, with respect to the System, any and all presently existing or created in the future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the operation of the System and its displacement of conventional energy generation.

5. **Project Completion.**

- a. **Project Development.** Service Provider shall diligently pursue the development and installation of the System, subject to Section 2(c) above and the remaining provisions of this Section 5 and Section 6.
- b. **Permits and Approvals.** Service Provider shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an “**Approval**”):
  - i. any agreements and approvals from the utility necessary in order to interconnect the System to the utility’s electric distribution system.
  - ii. any zoning, land use and building permits required for Service Provider to construct, install and operate the System; and

Host Customer shall cooperate with Service Provider’s reasonable requests to assist Service Provider in obtaining such Approvals, including, without limitation the execution of documents required to be provided by Host Customer to the local utility. Service Provider shall not encumber the property or facilities of Host Customer with any agreements or other requirements which would survive the expiration or termination of this Agreement without the first obtaining the express written consent of Host Customer to enter such agreements.

- c. **System Design Approval.** Service Provider shall provide Host Customer with a copy of the System design for approval before Commencement of Installation. Host Customer shall have thirty (30) days after receipt to approve or disapprove the design. Failure by Host Customer to respond within such thirty (30) day period shall be deemed approval of the design. To disapprove the design, the Host Customer must provide commercially reasonable explanation for such disapproval and clear feedback on requested changes. Service Provider shall make commercially reasonable efforts to modify the design and resubmit it for Host Customer’s approval. If the Host Customer and Service Provider cannot reasonably agree on an economically viable System design modification, Service Provider may terminate this Agreement under Section 2(c) above.
- d. **Commencement of Installation.** Service Provider shall exercise commercially reasonable efforts to achieve Commencement of Installation as per **Exhibit 4**, Section 2(a) “**Commencement of Installation**” means the date that Service Provider or its installation contractor has begun physical installation of the System on the Premises.
- e. **Force Majeure.**
  - i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Operating Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Operating Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event.

- ii. **Extended Force Majeure.** If a Force Majeure Event for which one Party has notified the other Party under paragraph (i) above either: (x) continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period; or (y) is deemed by mutual agreement of the Parties to have rendered repairs to the System impractical; then either Party may terminate this Agreement without either Party having further liability under this Agreement except: (a) liabilities accrued before termination including Service Provider's responsibility to remove the System as required under Section 9 (but Host Customer shall reimburse Service Provider for Service Provider's removal costs if the Force Majeure Event affects Host Customer and Host Customer elects to terminate the Agreement). Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Service Provider and, before expiration of the initial one hundred eighty (180) day period, Service Provider provides written evidence to Host Customer that it is diligently pursuing such actions, then Host Customer shall not have the right to terminate this Agreement so long as Service Provider continues to diligently pursue such actions.
  - iii. **"Force Majeure Event"** means any event or circumstance beyond the reasonable control of and without the fault or negligence of Service Provider, including, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; pandemic including COVID-19, but only to the extent of direct impacts of COVID-19 (including travel restrictions, quarantine restrictions, supply chain disruptions, and labor force disruptions) of which such Party was not aware, and should not reasonably have been aware, as of the Effective Date; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out, including those related to disease or pandemic; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies or products outside of Service Provider's control or due to a Force Majeure Event.
  - iv. **Extension of Time.** If Service Provider is delayed in achieving Commencement of Installation due to a Force Majeure Event, the requirement of achievement of Commencement of Installation will be automatically extended day for day to account for the impact of the delay.
- f. **Commercial Operation.** Service Provider shall notify Host Customer in writing when it has achieved Commercial Operation (the date of such notice, the "**Commercial Operation Date**"). "**Commercial Operation**" means that the System is mechanically complete, capable of providing electricity to the Delivery Point at the nameplate capacity specified in **Exhibit 2** and has permission to operate from the relevant Governmental Authority. Service Provider shall provide Host Customer with documentation to evidence that the System is ready to begin Commercial Operation upon Host Customer's reasonable request.

## 6. **Installation, Operation and Maintenance.**

- a. **Service Provider's General Obligations Regarding the Battery Energy Storage System (BESS).** Subject to the terms and conditions of this Agreement, Service Provider shall design, engineer, install, commission, monitor, operate and maintain the BESS, including providing problem diagnosis, on-site repair and preventative maintenance, in each case in a good and workmanlike manner and in accordance with applicable law and prudent industry practices in the state in which the Premises are located. The BESS shall comply with all applicable rules, regulation, and local building codes.

- b. **BESS Repair and Maintenance.** Service Provider may suspend delivery of electricity from the BESS to the Delivery Point for the purpose of maintaining and repairing the BESS; provided that Service Provider shall use commercially reasonable efforts to minimize any interruption in service to the Host Customer. Scheduled and unscheduled maintenance and repairs shall be undertaken at Service Provider's sole cost and expense, except that Host Customer shall reimburse Service Provider for the reasonable cost of any repairs or maintenance resulting from damage caused by Host Customer, its agents, employees or contractors.
- c. **Maintenance of Premises.** Host Customer shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Host Customer, to the extent within its reasonable control, (i) shall ensure that the Premises always remains interconnected to the local utility grid; and (ii) shall not permit cessation of electric service to the Premises from the local utility. Host Customer is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Host Customer's side of the Delivery Point, including all of Host Customer's equipment that utilizes the BESS's outputs. Host Customer shall use commercially reasonable efforts to cooperate with Service Provider to comply with any technical standard of the utility providing electrical power to the Host Customer, and does not need to receive permission to operate from the utility.
- d. **No Alteration of Premises.** Not less than thirty (30) days before making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the BESS, Host Customer shall inform Service Provider in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Service Provider within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration, or Improvement result in a permanent and material adverse economic impact on the BESS, Host Customer may request relocation of the BESS under Section 8 hereof. If a temporary disconnection or removal of the BESS is necessary to perform such alterations or repairs, Service Provider shall perform such work, and any re-connection or re-installation of the BESS, at Host Customer's cost, subject to Sections 6(b) and 6(c). Service Provider shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.
- e. **Malfunctions and Emergencies:** Each Party shall notify the other Party within twenty-four (24) hours following the discovery of any emergency condition affecting, material malfunction in, or damage to, the BESS or its operation. In the event of any BESS emergency condition, or any damage or loss of the use of the Premises or the BESS, or event or condition that could reasonably be expected to result in physical damages to the Premises, Service Provider, or if necessary, Host Customer, shall undertake appropriate and necessary repairs or corrective action in an expeditious and safe manner.
- f. **Disconnection.** Host Customer shall not cause or allow a disconnection of the BESS from its utility's electrical facilities, including as a result of non-payment of bills from its utility unless directed to do so by Service Provider or in response to an emergency situation per Section 6(e).

## 7. **Miscellaneous Rights and Obligations of the Parties**

- a. **Access Rights** Host Customer hereby grants to Service Provider and to Service Provider's agents, employees, contractors and the utility (i) an exclusive lease of that portion of the Premises upon which the System is installed and constructed, and (ii) a non-exclusive license (the "Access Rights") for access to, on, over, under and across the Premises from the Effective Date until the date that is ninety (90) days following the date of expiration or earlier termination of this Agreement (the "Access Rights Term"), for the purposes of performing all of Service Provider's obligations and enforcing all of Service Provider's rights set forth in this Agreement and otherwise as required by Service Provider to perform this Agreement. During the Contract Term, Host Customer shall provide Service Provider, its employees, contractors and subcontractors with reasonable access to

the Premises at mutually agreed upon times to allow Service Provider to perform (i) the installation work, (ii) System operations and maintenance and (iii) System removal, including ingress and egress rights to the Premises and access to electrical panels and conduits to interconnect or disconnect the System with the Premises electrical wiring. All such rights of access shall be coordinated with Host Customer. At Host Customer's request, Service Provider's access shall be limited to times when a Host Customer agent or employee is present. Host Customer shall provide reasonably sufficient space for the temporary storage and staging of tools, materials and equipment during the installation and/or removal of the System. During the Access Rights Term, Host Customer shall preserve and protect Service Provider's rights under the Access Rights and Service Provider's access to the Premises and shall not interfere, or permit any third parties under Host Customer's control to interfere with such rights or access. Service Provider may record a customary memorandum of the Access Rights in the land records respecting the Access Rights.

- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Safeguarding the Premises.** Host Customer shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner or lessee of premises and improvements similar to the Premises and Improvements in nature and location. Host Customer shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Host Customer shall indemnify Service Provider for any loss or damage to the System to the extent caused by or arising out of (i) Host Customer's breach of its obligations under this Section or (ii) the acts or omissions of Host Customer or its employees, agents, invitees or separate contractors.
- d. **Use and Payment of Contractors and Subcontractors.** Service Provider shall use suitably qualified, experienced, and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Service Provider shall be responsible for the quality of the work performed by its contractors and subcontractors. Service Provider shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Service Provider under this Agreement.
- e. **Liens.**
  - i. **Reserved.**
  - ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities, and expenses resulting from any Liens filed against such other Party.

8. **Relocation of System.**

If, during the Contract Term, Host Customer ceases to conduct business operations at the Premises or vacates the Premises; the Premises have been destroyed; or the Host Customer is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Service Provider), Host Customer may propose in writing the relocation of the System, at Host Customer's cost, in lieu of termination of the Agreement by Service Provider for a Default Event by Host Customer. If such proposal is practically feasible and preserves the economic value of the agreement for Service Provider, the Parties shall seek to negotiate in good faith an agreement for the relocation of the System. If the Parties are unable to reach agreement on relocation of the System within sixty (60) days after the date of receipt of Host Customer's proposal, Service Provider may terminate this Agreement pursuant to Section 14(b)(ii).

9. **Removal of System upon Termination or Expiration.**

Upon the expiration or earlier termination of this Agreement (provided Host Customer does not exercise its purchase option under Section 17(b)), Service Provider shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than ninety (90) days after the expiration or early termination of the Contract Term. The portion of the Premises where the System is located shall be returned to substantially its original condition (excluding ordinary wear and tear), including the removal of System mounting pads or other support structures. Host Customer must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. If Service Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date, Host Customer may, at its option, remove the System to a rented warehouse with Service Provider paying reasonable rent charges and restore the Premises to its original condition (other than ordinary wear and tear) at Service Provider's cost.

10. **System Data.**

- a. **Ownership Rights.** Host Customer acknowledges that the System collects, produces, and delivers to Service Provider certain data, information, and content (collectively "Equipment Data") through the operation of the System. Service Provider shall always retain right, title and interest in all Equipment Data associated with, or resulting from, the installation and operation of the System. Service Provider may use the Equipment Data in any way it elects provided that any such use of the Equipment Data disclosed to any person other than Host Customer or an agent or affiliate of Host Customer shall be anonymized in a manner such that it is not possible to link that data to Host Customer. Service Provider acknowledges that the System will provide Host Customer with certain operational and performance data, in accordance with System Services as described in **Exhibit 5** attached hereto. Host Customer may use Equipment Data in any way it elects provided that any such use of the Equipment Data disclosed to any person other than Service Provider or an agent or affiliate of Service Provider shall not disclose any knowledge, data or information related to the System and/or Service Provider's use and ownership of the System. Any such disclosure of data collected from Host Customer shall comply with all applicable requirements of law, including those imposed by the Federal Energy Regulatory Commission, North American Electric Reliability Corporation (NERC) and other federal, state, and local regulations.
- b. **Access to Data and Systems.** To facilitate its participation in SGIP and Grid Programs (as defined in Section 11 and Section 12 of this Agreement) and to calculate Utility Bill Cost Savings (as defined in Section 13 of this Agreement), Service Provider may access and use Host Customer's data, including utility account information, usage history, and meter data. Host Customer agrees to provide Service Provider with available electrical design information about the System, its Premises, and other electrical hardware attached to its Premises, including single-line diagrams and permits. Such information shall not be shared with third parties, except as expressly approved by Host Customer, and in accordance with all applicable laws, rules, and regulations. Host Customer agrees to allow Service Provider and Service Provider affiliates, its utility, the California Integrated System Operator (CAISO), governmental bodies, and their affiliates (collectively, "Grid Service Entities") to come to its Premises at agreed-upon times to inspect and modify the System, including, as agreed-to by Host Customer, installing additional hardware on or around the System as required to comply with SGIP or Grid Program requirements. Host Customer agrees to participate in and complete all surveys received from Service Provider and its Grid Service Entities.

11. **SGIP Requirements.**

- a. **Purpose.** The System is participating in California's Self Generation Incentive Program ("SGIP"), and Host Customer authorizes Service Provider to act as Host Customer's SGIP Services Provider to facilitate Host Customer's participation in SGIP. The State may charge Host Customer an application fee ("**Application Fee**") for participating in the SGIP financial incentive programs. Costs associated with this Application Fee will be paid by Service Provider. The financial incentives issued by Host Customer's SGIP Program Administrator after the System achieves permission to



operate from the Utility is called “**SGIP Payments**”. Host Customer agrees to assign all title and interest in SGIP Payments to Service Provider, identifying Service Provider as Payee to the SGIP Program Administrator, and releases any claim to the SGIP Payments.

- b. **SGIP Payments.** SGIP Payments have two separate components. The first component is a one-time payment totaling 50% of the total SGIP Payments as reflected in **Exhibit 2 (“Upfront Payment”)**. The second component is the Performance Based Payment, the balance of the SGIP Payments paid out at a maximum of 10% per year over five years based on annual kilowatt-hours discharged and complying with all greenhouse gas (GHG) emission reduction, cycling and other system and operational requirements adopted by the California Public Utility Commission. Service Provider will monitor and manage the capabilities of the System to: a) allow the System to provide back-up power during periods of loss of grid power, and b) comply with cycling requirements for the Performance Based Payment Term, and c) reduce Host Customer electric bills by discharging energy to reduce site peak demand and/or by discharging energy during high priced time-of-use periods, and d) permit participation in Grid Services as described in Section 20. The System must discharge an average of 104 Full Cycles per year for the first five years of operation to qualify for the maximum available SGIP Payments. A “**Full Cycle**” is discharging the full energy capacity of the System, whether during a single full discharge or over multiple partial discharges. Service Provider will work with Host Customer to ensure that the System functions to meet this SGIP requirement.
- c. **Administration.** Service Provider will be responsible for administering SGIP matters, including preparing and submitting the SGIP application, liaising with SGIP administrators, preparing and submitting the incentive claim form (including documentation demonstrating utility Permission to Operate, final building inspection, final monitoring schematic/as-built, project cost affidavit and breakdown worksheet, one week dataset and 2 hour test dataset, scheduling of physical inspection) and receiving SGIP funds into a Service Provider designated account. Service Provider shall keep Host Customer reasonably informed of actions, communications, and events concerning SGIP matters, and shall provide Host Customer the opportunity to review and comment upon material filings and communications. Host Customer hereby authorizes Service Provider, as its Incentive Provider, to act on its behalf and to enroll, register, or otherwise include the System in all eligible financial incentives, including SGIP.
- d. **Further Assurances.** Service Provider shall execute such documents relating to such incentives as Service Provider has reviewed and determined reasonable, in its sole discretion, and will work collaboratively with Host Customer to process agreed upon rebate and incentive paperwork. Host Customer agrees to fully and promptly cooperate with Service Provider in its efforts secure SGIP Payments, including promptly taking any actions and providing all necessary documentation, data, access, authorizations, and any other information required by such incentive programs or by Service Provider.
- e. **Appointment as SGIP Services Provider.** Host Customer hereby appoints Service Provider, or another party designated by Service Provider, to act on its behalf as its sole and exclusive agent and provider for SGIP (“**SGIP Services Provider**”). Host Customer hereby authorizes the SGIP Services Provider to act on its behalf and to enroll, register, or otherwise cause the participation of the System in SGIP, including: (i) receiving notices from its utility and any other third parties regarding SGIP, and (ii) payments to and from its utility and any other third parties regarding SGIP. Host Customer grants to Service Provider all rights to use the System to provide SGIP Services and to otherwise participate in SGIP.
- f. **SGIP Default.** Host Customer will be in default under this Section 11 if Host Customer fails to perform any obligation under this Section 11. If Host Customer is in default, Service Provider may take any reasonable action to correct its default or to prevent Service Provider’s loss. If Host Customer defaults under this Section 11, Host Customer will reimburse Service Provider for any loss of SGIP benefits Service Provider suffers and for any return of SGIP refunds Service Provider must make to program administrators.

12. Grid Services

- a. **Purpose.** In addition to providing the System Services listed in **Exhibit 5** and the SGIP Services described in Section 11, the System can provide certain additional services to the electric grid (“**Grid Services**”, in each case provided under a “**Grid Program**”). Such Grid Services are designed to help maintain the reliability of the electrical grid, by reducing the strain placed on the electrical grid during periods of high electricity demand and/or reduce the electrical grid’s contribution to GHG emissions. Host Customer authorizes Service Provider to enroll the System to participate in any Grid Program which may from time to time become available provided that Service Provider shall operate the System under any such Grid Program in a manner that does not disrupt the provision of the System Services described in **Exhibit 5**. Service Provider will notify Host Customer if Service Provider will enroll the System in any Grid Program. Host Customer agrees to execute all documents necessary to have the System participate in the Grid Program.
- b. **Appointment as Grid Services Provider.** Host Customer hereby appoints Service Provider, or another party designated by Service Provider, to act on its behalf as its sole and exclusive agent and provider for participation in Grid Programs (“**Grid Services Provider**”). Host Customer hereby authorizes the Grid Services Provider to act on its behalf and to enroll, register, or otherwise cause the participation of the System in any Grid Program, subject to the terms of this section.
- c. **Further Assurances.** Service Provider shall execute such documents relating to enrollment and participation in Grid Programs as Service Provider has reviewed and determined reasonable, in its sole discretion, and will work collaboratively with Host Customer to process agreed upon Grid Program paperwork. Host Customer agrees to fully and promptly cooperate with Service Provider in its efforts to assist Host Customer, including promptly taking any actions and providing all necessary documentation, data, access, authorizations, and any other information required by such Grid Programs or by Service Provider.

13. **Utility Bill Cost Savings**

- a. **Electricity Bill Cost Savings.** Service Provider will operate the System to provide System Services described in **Exhibit 5**. These services include Demand Charge Management and Time-of-Use Management which are both expected to reduce the Host Customer's utility electricity bill for load served by the System. Based on Service Provider's analysis of Host Customer's historical loads and electricity bills for loads at the Premises and modeling of expected System operations, Service Provider estimates Host Customer's electric bills will be reduced by approximately \$10,000 per year. The Host Customer bills are expected to be reduced by a similar amount each year of the Contract Term.
- b. **Sharing of Demonstrated Savings.** Once per year, Host Customer will pay Service Provider a set percentage of Host Customer's demonstrated electricity bill cost savings made possible by operation of the System ("Demonstrated Savings"). Demonstrated Savings is the imputed electrical energy costs and demand charges the Host Customer would have paid the Electric Utility for electric service at the Premises but for the System operating ("the Baseline") less the actual electrical energy costs and demand charges the Host Customer paid the Electric Utility for electric service at the Premises ("Adjusted Cost"). The Demonstrated Savings will be calculated using the data from the meter installed by Service Provider in connection with the System, the utility meter at the Premises and the tariffs applicable to the Premises. In the first through fifth Contract Years of the Contract Term, Host Customer will pay to Service Provider zero percent (0%) of Demonstrated Savings. In the sixth through fifteenth Contract Years of the Contract Term, Host Customer will pay to Service Provider zero percent (0%) of the Demonstrated Savings. Host Customer will retain the balance of the Demonstrated Savings.
- c. **Electricity Bill Cost Savings Report.** Within 30 days of the end of each Contract Year, Service Provider will provide to Host Customer an Annual Electricity Bill Cost Savings Report that provides an analysis of the Host Customer's utility bills and System performance over the previous Contract Year. This report will calculate the Baseline amount, the Adjusted Cost amount, and the Demonstrated Savings amount. The report will provide data and detailed analysis showing how the System performed and whether Demonstrated Savings were secured through Demand Charge Management, Time-of-Use Management, or what combination of these services. If Host Customer has any questions about the report and the resulting Demonstrated Savings, Host Customer will provide notice to Service Provider with these questions within twenty (20) days of receiving the report. Service Provider will respond within fifteen (15) days of receipt of notice to answer Host Customer's questions. If the Parties cannot reasonably agree to the amount of the Demonstrated Savings, the Parties will settle the issue by arbitration in accord with the Dispute Resolution provisions in Section 22.b.
- d. **Tariff Change.** Host Customer retains any and all rights to choose its electric tariffs from among the options offered by the Electric Utility now or in the future. However, at least sixty (60) days before changing the electric tariff for the loads that are served by the System, Host Customer must notify Service Provider of the proposed change so that Service Provider can advise Host Customer of expected impacts on System operation and expected utility bill cost savings and so that Service Provider can, if necessary, update System operational algorithms to maximize utility bill cost savings under the new anticipated tariff while still delivering other System Services described in **Exhibit 5**.

14. **Default, Remedies and Damages.**

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a "**Defaulting Party**", the other Party is the "**Non-Defaulting Party**" and each of the following is a "**Default Event**":

- i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay (“**Payment Default**”);
- ii. failure of a Party to perform any material obligation under this Agreement not addressed elsewhere in this Section 14(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated before the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;
- iii. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within ninety (90) days); or,
- v. in the case of Host Customer as the Defaulting Party only, Host Customer (A) loses its rights to occupy and enjoy the Premises, unless (I) the Parties agree upon a relocation under Section 8 above, or (II) Host Customer pays the Termination Payment determined under Section 6 of **Exhibit 1** within thirty (30) days after written request by Service Provider; or (B) prevents Service Provider from performing any material obligation under this Agreement unless such action by Host Customer is (I) is permitted under this Agreement, or (II) is cured within ten (10) days after written notice thereof from Service Provider.
- vi. in the case of Host Customer selling its Premises but not assigning this Agreement to new Host Customer that accepts this Agreement and all its obligations and maintains electrical loads on the Premises that allow the System to continue operating.

**b. Remedies.**

- i. **Suspension.** Upon the occurrence and during the continuation of a Default Event by Host Customer, including a Payment Default, Service Provider may suspend performance of its obligations under this Agreement until the earlier to occur of the date (a) that Host Customer cures the Default Event in full, or (b) of termination of this Agreement. Service Provider’s rights under this Section 14(b)(i) are in addition to any other remedies available to it under this Agreement, at law or in equity.
- ii. **Termination.** Upon the occurrence and during the continuation of a Default Event, the Non-Defaulting Party may terminate this Agreement, by providing five (5) days prior written notice to the Defaulting Party; provided, that, in the case of a Default Event under Section 14(a)(iv), the Non-Defaulting Party may terminate this Agreement immediately.
- iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement pursuant to Section 14(b)(ii), the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the “**Termination Payment**”):
  - (1) **Termination by Service Provider.** If Service Provider terminates this Agreement for a Default Event by Host Customer, the Termination Payment payable to Service Provider shall be equal to the sum of (i) the applicable amount set forth in the Termination Payment Schedule set forth in Section 6 of **Exhibit 1**, and (ii) any other amounts

previously accrued under this Agreement and then owned by Host Customer to Service Provider.

- (2) **Termination by Host Customer.** If Service Provider is the Defaulting Party and Host Customer terminates this Agreement, the Termination Payment to Host Customer will be equal to the sum of (i) all direct costs reasonably incurred by Host Customer by reason of the termination; and (ii) any and all other amounts previously accrued under this Agreement and then owed by Service Provider to Host Customer. The Termination Payment determined under this Section 14(b)(iii)(2) cannot be less than zero.
- iv. **Liquidated Damages.** The Parties agree that, if Service Provider terminates this Agreement before the expiration of the Contract Term pursuant to Section 14(b)(ii), actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 14(b)(iii)(1) is a reasonable approximation of the damages suffered by Service Provider as a result of early termination of this Agreement and is not a penalty.
- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 14(b)(ii), then following such termination, Service Provider shall remove the equipment constituting the System in compliance with Section 9 above at the sole cost and expense of the Defaulting Party, *provided, however* that Service Provider shall not be required to remove the System following the occurrence of a Default Event by Host Customer pursuant to Section 14(a)(i), unless Host Customer pre-pays the cost of restoration reasonably estimated by Service Provider.
  - i. **Reservation of Rights.** Except in the case of a termination under Section 14(b)(ii) and payment of a Termination Payment, if any, determined pursuant to Section 14(b)(ii), nothing in this Section 14 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.
  - ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Host Customer's obligation to pay the full Termination Payment set forth in Section 6 of **Exhibit 1** following a Default Event by Host Customer.
  - iii. **No Limitation on Payments.** Nothing in this Section 14 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Host Customer but for a Host Customer breach or Default Event.

## 15. **Representations and Warranties.**

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:
  - i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).

- ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
- b. **Host Customer's Representations and Warranties.** Host Customer represents and warrants to Service Provider the following:
- i. **Licenses.** (a) Host Customer has title to or a leasehold or other valid property interest in the Premises such that Host Customer has the full right, power and authority to grant the Licenses in Section 7(a), (b) such grant of the Licenses does not violate any law, ordinance, rule or other governmental restriction applicable to Host Customer or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Host Customer is bound or that affects the Premises, and (c) if Host Customer does not own the Premises or any Improvement on which the System is to be installed, Host Customer has obtained all required consents from the owner of the Premises and/or Improvements, as the case may be, to grant the Licenses to Service Provider so that Service Provider may perform its obligations under this Agreement.
  - ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Host Customer nor the performance by Host Customer of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Host Customer is a party or by which Host Customer is bound.
  - iii. **Accuracy of Information.** All information provided by Host Customer to Service Provider, as it pertains to (a) the Premises, (b) the Improvements on which the System is to be installed, if applicable, (c) Host Customer's planned use of the Premises and any applicable Improvements, and (d) Host Customer's estimated electricity requirements, is accurate in all material respects.
  - iv. **Host Customer Status.** Host Customer is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
  - v. **SGIP.** Host Customer understands and will complete all its obligations under Section 11 related to the SGIP program.
- c. **Service Provider's Warranties.**
- i. If Service Provider damages any other part of the Premises or any Improvement , Service Provider shall repair or reimburse Host Customer for such damage, as agreed by the Parties.
- d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 15(a) AND 15(c) OF THIS AGREEMENT ARE HOST CUSTOMER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 15, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 15(a) AND 15(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT.

16. **Insurance.**

- a. **Insurance Coverage.** At all times during the Term, the Parties shall maintain the following insurance, as applicable:
- b. **Service Provider's Insurance.** Service Provider shall maintain or ensure the following is maintained (a) property insurance on the BESS for the replacement cost thereof, (b) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (c) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law. Service Provider's coverage may be provided as part of an enterprise insurance program.
- c. **Host Customer's Insurance.** Host Customer shall maintain commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- d. **Policy Provisions.** Each Party's insurance policies shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.
- e. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- f. **Deductibles.** Each Party shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

17. **Ownership.**

- a. **Ownership of System.**
  - i. **Ownership; Personal Property.** Throughout the Contract Term, Service Provider shall be the legal and beneficial owner of the System, all associated Incentives and Environmental Attributes. The System will remain the personal property of Service Provider and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Service Provider and Host Customer agree that the Service Provider is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will always retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
  - ii. **Notice to Host Customer and Lienholders.** Host Customer shall use commercially reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Host Customer shall provide a disclaimer or release from such lienholder.
  - iii. **Fixture Disclaimer.** If Host Customer is the fee owner of the Premises, Host Customer consents to the filing of a disclaimer of the System as a fixture of the Premises in the office

where real estate records are customarily filed in the jurisdiction where the Premises are located. If Host Customer is not the fee owner, Host Customer shall obtain such consent from such owner. For the avoidance of doubt, in either circumstance, Service Provider has the right to file such disclaimer.

- iv. **SNDA.** Upon request, Host Customer shall deliver to Service Provider a Subordination and Non-Disturbance Agreement (SNDA) in a form mutually acceptable to Service Provider and the provider of the subordination and non-disturbance agreement from the owner of the Premises (if the Premises are leased by Host Customer), any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.
- v. **Eviction Notice.** If Host Customer does not own the Premises or any Improvement on which the System is installed, Host Customer shall provide to Service Provider immediate written notice of receipt of notice of eviction from the Premises or applicable Improvement or termination of Host Customer's lease of the Premises and/or Improvement.

**18. Indemnification and Limitations of Liability.**

- a. **General.** Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "**Indemnified Parties**"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from (1) any Claim (as defined in Section 18(b) relating to the Indemnifying Party's breach of any representation or warranty set forth in Section 15 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 18(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 18(c).
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice of any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 18(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, past thirty (30) days of such request. The Indemnifying Party has no liability under this Section 18(b) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.**
  - i. **Service Provider Indemnity.** Service Provider shall indemnify, defend and hold harmless all of Host Customer's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance



(as defined in Section 18(c)(iii)) to the extent deposited, spilled or otherwise caused by Service Provider or any of its contractors, agents or employees.

- ii. Host Customer Indemnity. Host Customer shall indemnify, defend and hold harmless all of Service Provider's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Service Provider or any of its contractors, agents or employees.
- iii. Notice. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. "**Hazardous Substance**" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

**d. Limitations on Liability.**

- i. No Consequential Damages. Except for indemnification of third-party claims pursuant to this Section 18, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost Payments, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in Section 6 of **Exhibit 1** shall be deemed to be direct, and not indirect or consequential damages under this Section 18(d)(i).
- ii. Actual Damages. Except for indemnification of Claims pursuant to this Section 18, and coverages provided by the insurance requirements of this Agreement, except as otherwise limited in Section 19, Service Provider's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed one hundred and fifty percent (150%) of the total payments actually paid by Host Customer under this Agreement. The provisions of this Section 18(d)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.

**e. EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

**f. Comparative Negligence.** Where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

**19. Change in Law.**

- a. Impacts of Change in Law. If Service Provider determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Service Provider's rights, entitlement, obligations or costs under this Agreement, then Service Provider may so notify the Host Customer

in writing of such Change in Law. Within thirty (30) days following receipt by the Host Customer of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Service Provider may terminate this Agreement and remove the System and restore the Premises in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued before the date of termination.

- b. **Illegality or Impossibility.** If, in Service Provider's sole discretion, a Change in Law renders this Agreement, or Service Provider's performance of this Agreement, either illegal or impossible, then Service Provider may terminate this Agreement immediately upon notice to Host Customer without either Party having further liability under this Agreement except with respect to liabilities accrued before the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

## 20. **Assignment and Financing.**

### a. **Assignment.**

- i. **Restrictions on Assignment.** Subject to the remainder of this Section 20(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Host Customer may not withhold its consent to an assignment proposed by Service Provider where the proposed assignee has the financial capability and experience necessary to operate and maintain energy storage systems such as the System.
- ii. **Permitted Assignments.** Notwithstanding Section 20(a)(i):
  - 1. Service Provider may, with the prior written consent of Host Customer, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 20(b)), (B) any entity through which Service Provider is obtaining financing from a Financing Party, or (C) any affiliate of Service Provider or any person succeeding to all or substantially all of the assets of Service Provider; provided, that, Service Provider is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Service Provider's obligations hereunder by binding written instrument; and
  - 2. Host Customer may, by providing prior notice to Service Provider, assign this Agreement to an affiliate of Host Customer or a Host Customer of the Premises; provided, that, Host Customer is not released from liability hereunder by reason of the assignment unless the assignee assumes Host Customer's obligations hereunder by binding written instrument on terms satisfactory to Service Provider, including as to the assignee's creditworthiness.

Without limiting the generality of the foregoing, Host Customer will have the option to refuse the Assignment of such contract, as long as such refusal is not unreasonable.

- iii. Successors and Permitted Assignees. This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Service Provider.
- b. Financing. The Parties acknowledge that Service Provider may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each a “**Financing Party**”) for the installation, construction, ownership, operation, and maintenance of the System. In furtherance of Service Provider’s financing arrangements and in addition to any other rights or entitlements of Service Provider under this Agreement, Host Customer shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Service Provider or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.
- c. Termination Requires Consent. Service Provider and Host Customer agree that any right of Service Provider to terminate this Agreement is subject to the prior written consent of any Financing Party.

21. Confidentiality.

- a. Confidential Information. To the maximum extent permitted by applicable law, if either Party provides confidential information (“**Confidential Information**”) to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Service Provider, financing, of this Agreement. The terms of this Agreement (but not the fact of its execution or existence) are considered Confidential Information of each Party for purposes of this Section 18(a).
- b. Permitted Disclosures. Notwithstanding Section 21(a):
  - i. a Party may provide such Confidential Information to its affiliates and to its and its affiliates’ respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, “**Representatives**”), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
  - ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, (d) is subject to disclosure by Host Customer pursuant to the California Public Records Act, or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party’s efforts to limit the disclosure to the extent permitted by applicable law.
- c. Miscellaneous. All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party’s option) after the receiving Party’s need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 21 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential

Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 21. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 21, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.

- d. **Goodwill and Publicity.** Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Service Provider is entitled to place signage on the Premises reflecting its association with the System.

## 22. **General Provisions**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, “dollar” and the “\$” sign refer to United States dollars.
- b. **Choice of Law; Dispute Resolution.** The law of the state of California governs all matters arising out of this Agreement without giving effect to conflict of laws principles. Should any dispute arise under, or in connection with, this Agreement or any provision hereof (whether in contract, tort, or both), and upon the request of either Party, the Parties shall participate in nonbinding mediation before a single qualified impartial mediator in San Francisco, California that is mutually acceptable to both Parties. Each Party shall bear its own attorney’s fees and costs attendant to the mediation, except that the fees and costs of the mediator shall be borne equally between the parties. Should mediation fail to result in full resolution of the dispute, the dispute shall be submitted to non-binding arbitration at the request of either Party before a single, impartial qualified arbitrator mutually selected by the Parties. The arbitration shall be administered by JAMS in accordance with its arbitration rules, and judgment on any award rendered in such arbitration may be entered in any court of competent jurisdiction.
- c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation provisions related to billing and payment and indemnification, will survive termination of this Agreement.
- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.

- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity subject to the jurisdiction of the California Public Utilities Commission. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Agreement. If Service Provider is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Service Provider does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Service Provider may terminate this Agreement without further liability under this Agreement except for liabilities accrued before the date of termination and remove the System as allowed by Section 9 of this Agreement.
- h. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Host Customer shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of energy services delivered by the System.
- i. **No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. **Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted to best accomplish its objectives within the limits of applicable law.
- k. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- l. **No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Service Provider or Host Customer, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. **Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.

End of Exhibit 4

## EXHIBIT 5

### SYSTEM SERVICES

#### **Energy Services**

##### **Backup Power.**

The System is designed to provide backup power if a power outage occurs during which Host Customer load cannot draw electricity from the grid. The System can only power circuits that the Host Customer has selected and that Service Provider has approved and connected to the System. The System may be unable to power the entire load at the Premises during a power outage and depending on energy consumption Host Customer may have limited energy and duration of operations for the System. When Service Provider causes the System to discharge, Service Provider shall ensure that at least 20% of the System energy capacity remains after such discharge is complete. Upon receiving advance notice of planned grid outage events, Service Provider will use commercially reasonable efforts to fully charge the System in advance of planned grid outage events. Service Provider will follow Prudent Industry Practices to ensure the System is available to provide backup power as described; provided, however, that: a) the advance notice period prior to planned grid outage events does not charge during peak energy price events, or such charging will set a new demand peak, and b) Service Provider cannot guarantee the System will perform in every outage or provide backup power for an entire given outage. **In addition, if Host Customer is powering medical equipment using the System, Host Customer should also provide a secondary power source to the medical equipment and take additional measures should there be an outage and the System is not operational.**

“*Prudent Industry Practices*”, as applied to the System, means the practices, methods, acts, equipment, specifications and standards of safety, as the same may change from time to time, as are used or approved by a significant portion of the residential generation or storage industry that operate battery storage systems that are similar in size and type as the System as good, safe and prudent practices for such systems with commensurate standards of safety, performance, dependability and economy, as adjusted for the circumstances existing at the time any decision is made or action is taken, and following applicable laws, permits and equipment manufacturers’ recommendations. Prudent Industry Practices are not intended to be the same as optimum practices, methods or acts to the exclusion of all others, but rather to be within a spectrum of good and proper practices, methods, and acts.

##### **Demand Charge Management**

If Host Customer is on a rate schedule that features demand charges or changes to such a rate schedule, Service Provider will follow Prudent Industry Practices when operating the System to lower Host Customer’s monthly demand charges by discharging energy from the System during periods when the System algorithms anticipate Host Customer will be setting monthly peak demand, subject to the requirements of any utility program. Notwithstanding the foregoing, Service Provider does not guarantee savings on Host Customer’s utility bill or any specified level of performance from Service Provider’s demand charge management.

##### **Time-Of-Use Management.**

If Host Customer is on a time-of-use rate schedule or changes to such a schedule, Service Provider will follow Prudent Industry Practices when operating the System to lower Host Customer’s energy charges by discharging energy from the System during peak price periods, subject to the requirements of any utility program. Notwithstanding the foregoing, Service Provider does not guarantee savings on Host Customer’s utility bill or any specified level of performance from Service Provider’s time-of-use management.

##### **Solar Self-Consumption.**

If the System is paired with a solar energy system, Service Provider will follow Prudent Industry Practices when operating the System, subject to the requirements of any utility program. Notwithstanding the foregoing, Service Provider does not in any way guarantee that energy generated by Host Customer’s solar energy system will be available at a time later than the moment it is produced.

##### **System Performance Monitoring.**

Service Provider will install and maintain metering and monitoring equipment. Service Provider will remotely monitor, analyze, and store data about the state and performance of the System and use this data, including to: provide the System Services, support any manufacturer warranty claims, ensure and demonstrate compliance with any utility or government

requirements, including but not limited to, compliance with requirements of a utility program and any applicable incentive programs, and/or determine when repair services are necessary.

**14**



## MEMORANDUM

To: Board of Directors

February 11, 2021

From: Julie Blue, Auditor/Controller *JB*Subj: Administration and Laboratory Upgrade Project Financing Alternatives  
t:\ac\board reports\board memos\2022\headquarters upgrade financing alternatives.docx**RECOMMENDED ACTION:** Information Only**FINANCIAL IMPACT:** None at this time

In a separate agenda item, at tonight's board meeting, the Board of Directors will review a request to approve the bid advertisement for the construction of the NMWD Administrative and Laboratory Upgrade Project. The project is budgeted over a four-year span, fiscal year 21/22 through fiscal year 24/25, for a total of \$16 million, with the construction phase estimated at \$12.9 million. A total of \$855 thousand has been spent this fiscal year to date through December 2021.

The District is evaluating its options for financing the headquarters upgrade project which include renovations to the administrative building and laboratory. In order to explore all viable financing options, the District engaged a professional financial advisory firm, NHA Advisors, LLC (NHA). Attachment 1 is a memo from NHA discussing potential financing options.

Craig Hill, Managing Principal of NHA, will present the options and provide the board with further details including projected interest rates and additional debt capacity. His presentation is included as Attachment 2. After his presentation it is requested that the Board provide direction to staff and NHA to proceed with financing the Administrative and Laboratory Upgrade Project.



4040 Civic Center Drive, Suite 200  
San Rafael, CA 94903

Office: 415.785.2025  
www.NHAadvisors.com

## MEMORANDUM

Date: February 10, 2022

To: Julie Blue, Auditor-Controller

From: Craig Hill/Rob Schmidt/Christian Sprunger

RE: North Marin Water District 2022 Administration & Laboratory Upgrade – Project Financing Alternatives

### Background

The North Marin Water District (the “District”) has developed redevelopment plans for its existing administration and laboratory buildings (the “Project”). In anticipation of the proposed Project, the District incorporated a potential financing into its 2020 rate study and water rate implementation plan (the “Rate Study”).

### Project Funding Needs

Current Project cost estimates include:

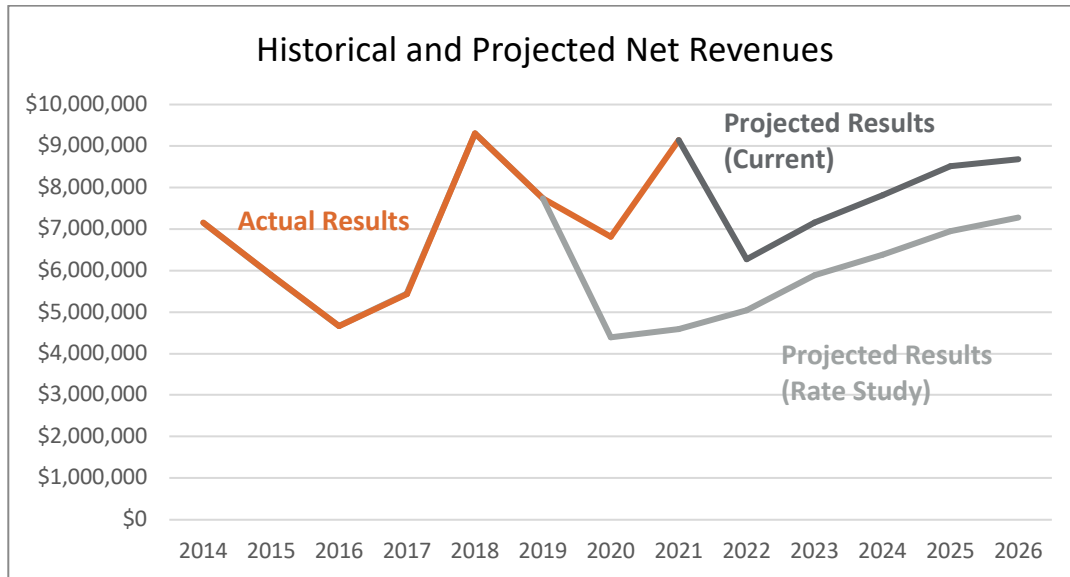
|  |                      |
|--|----------------------|
| New Laboratory Building & Support Spaces | ~\$4,581,000         |
| Site Improvement & Site Utilities        | ~\$1,658,000         |
| Renovation of Existing Building          | ~\$6,627,000         |
| <b>Estimated Hard Project Cost</b>       | <b>~\$12,866,000</b> |

In addition to the construction costs, the Project will include:

|   |                      |
|---|----------------------|
| Construction Consultants                  | ~\$1,374,573         |
| Permits & Fees                            | ~\$151,660           |
| Temporary Facilities (Office/Lab)         | ~\$540,714           |
| NMWD Supplied Work                        | ~\$7,460             |
| NMWD Supplied Furniture/Equipment         | ~\$313,832           |
| Project Contingency (5%)                  | ~\$772,712           |
| <b>Total Project Cost (for Financing)</b> | <b>~\$16,016,951</b> |

**Revenue and Expenditure Projections**

The Rate Study projected new revenues and expenditures assuming rate increases starting July 2020 (6%) and increasing annually through July 2024. Original projections and actual financial information are shown below.



The Rate Study originally estimated the Project cost at ~\$16.6M with the Project financing amortized over 20 years and an assumed interest rate of 3.10% (Rate Study assumed debt service of \$1.13M/year). The Rate Study incorporated the necessary revenues sufficient to meet operational and financing debt service costs (with debt service coverage).

Based on the above projections with the implementation of the rate increases (as approved), The District will have sufficient net revenues to make projected financing debt service payments for the Project. The District, as a public agency, has authority to enter financing agreements using tax-exempt interest rates benefiting both the District’s and the investors.

**Project Funding Sources**

Traditional capital project financing sources include; (1) water revenue bonds issued through a *public offering* (multiple bondholders participating through an underwriting), (2) entering into a *direct placement* financing with a single financial institution (bank or other financial institution), or (3) participating in a *financing authority* typically hosted by a regional or state agency. District staff has previously discussed this Project with the California Infrastructure and Economic Development Bank (“IBank”).

Based on updated Project cost estimates shown above, a 20-year repayment structure, current market rates and estimated financing requirements, the annual debt service under each structure is calculated as follows:

| 20-Year Financing                     | Public Offering | Direct Placement | Financing Authority |
|---------------------------------------|-----------------|------------------|---------------------|
| Estimated Average Annual Debt Service | \$1,060,000     | \$1,055,000      | \$1,126,000         |
| Total Debt Service                    | \$21,208,000    | \$21,099,000     | \$22,510,000        |

Daily market conditions impact the projected financing under each structure. Figures shown above are based on market rates as of January 24, 2022. As a point of reference, the interest rates for U.S. Treasury and municipal bonds has increased approximately ½ percent since January 1<sup>st</sup>. Current market trends indicate a rise in interest rates over the foreseeable future with the Federal Reserve indicating a plan to raise the discount rate multiple times through 2022. Historically, as the Federal Reserve has made changes, the capital markets have responded in a similar direction.

**Proposed Financing Process**

Each of the three structures discussed above have slightly different steps, timing requirement, and approval requirements. A summary of the structures is shown below.

**Public Offering** – The District has the legal authority to issue water revenue bonds. This process requires the engagement of specialized legal services (bond & disclosure counsel) and an underwriter to sell the bonds to bondholders. To establish the credit quality of the District’s bonds, a third-party rating agency is selected to review and “rate” the credit quality of the bonds. The District, working with the financing team, drafts an official statement (often compared to an offering memorandum) which is the disclosure document shared with all interested investors and distributed through the underwriter. This process, including formal approval by the District Board, typically takes 75-90 days and provides all the funds at the time of closing.

**Direct Placement** – The District has experience with seeking financing directly with a single bank or financial institution. Under this structure, there is no underwriter required given the direct negotiations with the investor. Legal services are still required (bond counsel), but no official statement is necessary nor the need for a rating (the bank will have its own credit committee that will do similar work as part of their due diligence). To identify the most competitive financing terms, it is recommended that a solicitation process be used to select the appropriate financial institution. A registered broker-dealer would be engaged to solicit bids. The direct placement process, including formal approval by the District Board, typically takes 60-75 days and can fully fund the Project or be structured to have a draw down as part of the Project expenditures (which potentially can save interest in the earlier part of the financing process).

**Financing Authority** – For many smaller public agencies, the process of financing projects can be overwhelming. In addition, many small public agencies have never borrowed funds or established any kind of credit rating (making their access to the capital markets limited). There are a few financing programs established to assist these types of agencies which allow access to the capital markets through their more frequent bond issuances. One example is IBank (as defined above), which performs its own credit assessment on the District, evaluates the Project scope, and decides on the viability of the Project and District ability to repay the obligation. IBank has a defined

application process which potentially requires 90+ days to get through final approvals and funding. The benefit to the District is that no services of bond or disclosure counsel, an underwriter, or a rating agency are required (those services are incorporated into the IBank application process).

### Debt Service Coverage Ratio Calculation

|  | Audited           |                   |                    | Projected          |                    |                    |
|--|-------------------|-------------------|--------------------|--------------------|--------------------|--------------------|
|  | 2021              | 2022              | 2023               | 2024               | 2025               | 2026               |
| Water Consumption Sales  | 19,546,611        | 20,663,269        | 21,843,720         | 22,883,625         | 23,973,038         | 24,657,803         |
| Bi-Monthly Meter Service Charge  | 5,210,162         | 5,507,808         | 5,822,458          | 6,099,645          | 6,390,029          | 6,572,554          |
| Connection Fees  | 3,496,089         | 840,000           | 870,000            | 870,000            | 870,000            | 870,000            |
| Developer Fees   | 1,005,939         | -                 | -                  | -                  | -                  | -                  |
| Sewer Service Charge   | 276,360           | 276,360           | 276,360            | 276,360            | 276,360            | 276,360            |
| Other Charges and Services   | 345,402           | 345,402           | 345,402            | 345,402            | 345,402            | 345,402            |
| Investment Earnings  | 143,166           | 143,166           | 143,166            | 143,166            | 143,166            | 143,166            |
| <b>Total Gross Operating Revenues</b>  | <b>29,880,563</b> | <b>27,632,839</b> | <b>29,157,939</b>  | <b>30,475,033</b>  | <b>31,854,829</b>  | <b>32,722,119</b>  |
| <b>Operating Expenditures</b>  |                   |                   |                    |                    |                    |                    |
| Source Supply  | 8,624,268         | 8,882,996         | 9,149,486          | 9,423,970          | 9,706,690          | 9,997,890          |
| Pumping  | 642,477           | 661,751           | 681,604            | 702,052            | 723,114            | 744,807            |
| Water Facilities Operations  | 1,218,090         | 1,254,633         | 1,292,272          | 1,331,040          | 1,370,971          | 1,412,100          |
| Water Treatment  | 1,917,786         | 1,975,320         | 2,034,579          | 2,095,617          | 2,158,485          | 2,223,240          |
| Transmission & Distribution  | 3,624,404         | 3,733,136         | 3,845,130          | 3,960,484          | 4,079,299          | 4,201,678          |
| Sewage Collection & Treatment  | 184,329           | 189,859           | 195,555            | 201,421            | 207,464            | 213,688            |
| Customer Service   | 470,411           | 484,523           | 499,059            | 514,031            | 529,452            | 545,335            |
| General & Administrative   | 3,658,894         | 3,768,661         | 3,881,721          | 3,998,172          | 4,118,117          | 4,241,661          |
| Water Conservation   | 396,414           | 408,306           | 420,556            | 433,172            | 446,167            | 459,552            |
| <b>Total Operating Expenditures</b>  | <b>20,737,073</b> | <b>21,359,185</b> | <b>21,999,961</b>  | <b>22,659,960</b>  | <b>23,339,758</b>  | <b>24,039,951</b>  |
| <b>Net Revenues</b>  | <b>9,143,490</b>  | <b>6,273,654</b>  | <b>7,157,979</b>   | <b>7,815,073</b>   | <b>8,515,071</b>   | <b>8,682,168</b>   |
| <b>Debt Service</b>  |                   |                   |                    |                    |                    |                    |
| 2005 DWR Loan (Novato Water)   | 1,044,474         | 1,044,474         | 1,044,475          | 1,044,474          | 1,044,475          | 1,044,475          |
| 2005 SWRCB Loan (Novato Recycled Water)  | 273,367           | 273,367           | 273,367            | 273,367            | 273,368            | 273,367            |
| 2011 SWRCB Loan (Novato Recycled Water)  | 614,299           | 614,299           | 614,299            | 614,299            | 614,299            | 614,299            |
| 2011 Bank of Marin Loan  | 552,800           | 552,800           | 552,800            | 552,800            | 552,800            | 552,800            |
| 2016 SWRCB Loan (Novato Recycled Water)  | 275,773           | 275,773           | 275,773            | 275,773            | 275,773            | 275,773            |
| 2018 JP Morgan Chase Bank Loan   | 380,290           | 378,027           | 375,630            | 378,098            | 380,297            | 377,227            |
| 2019 Capital Lease (Enterprise)  | -                 | 72,942            | 72,938             | 72,476             | 40,750             | 12,176             |
| <b>Total Current Debt Service</b>  | <b>3,141,003</b>  | <b>3,211,682</b>  | <b>3,209,281</b>   | <b>3,211,287</b>   | <b>3,181,761</b>   | <b>3,150,116</b>   |
| <b>Current Coverage</b>  | <b>2.91x</b>      | <b>1.95x</b>      | <b>2.23x</b>       | <b>2.43x</b>       | <b>2.68x</b>       | <b>2.76x</b>       |
| <i>2022 Bonds (20-Year Private Placement) Estimated Coverage for Private Placement</i> |                   | 527,483<br>1.68x  | 1,054,966<br>1.68x | 1,054,966<br>1.83x | 1,054,966<br>2.01x | 1,054,966<br>2.06x |
| <i>2022 Bonds (20-Year Public Offering) Estimated Coverage for Public Offering</i>     |                   | 530,191<br>1.68x  | 1,060,383<br>1.68x | 1,060,383<br>1.83x | 1,060,383<br>2.01x | 1,060,383<br>2.06x |
| <i>2022 Bonds (20-Year IBank) Estimated Coverage for Public Offering</i>               |                   | 562,751<br>1.66x  | 1,125,502<br>1.65x | 1,125,502<br>1.80x | 1,125,502<br>1.98x | 1,125,502<br>2.03x |

In order for the District to take on additional debt, it must represent that the “Coverage” ratio will remain above 1.20x. If the ratio drops, the District will be required to increase water rates or lower expenditures to improve the ratio.

### **District Bonding Capacity**

Based on the District’s current financial position, outstanding obligations, and previously approved rate increases, there is financial capacity beyond the proposed Project financing shown above. The bond capacity analysis below is based on two scenarios; (1) the **total** current bond capacity (assuming a single financing in 2022 which would cover the Project plus additional capital projects beyond the programmed smaller annual capital projects), and (2) the **future** remaining bonding capacity (assuming only the Project financing is completed in 2022 and a secondary financing is done in 2025).

For the purposes of maximum bonding capacity analysis, we assumed a 30-year repayment (to calculate the greatest funding amount). This assumes any capital projects funded by proceeds of the financing would have useful life expectancy greater than 30 years. While many District assets have longer useful lives (i.e., 50 years), a 30-year bond amortization is typical for public agency financings. In the event that shorter-term assets are being financed, the bonding capacity would decrease. For example, a 20-year amortization period would result in lower bonding capacity, due to 10 fewer years in the repayment schedule. As noted earlier, the Project financing is structured as a 20-year repayment to align with the original Rate Study projections but could be amortized over 30 years given the expected useful life of the building and lab improvements.

**Current Bonding Capacity** – Based on the District’s 2021/22 net revenues, a 30-year amortization, current market interest rates and the availability to budget approximately \$2M/year for debt service, the District could generate a total of \$35M for capital projects. This would fund both the Project and approximately \$19M in additional capital projects. This is in addition to the District’s planned, regular, pay-go CIP (of approximately \$4M per year allocated through the budget process).

**Future (2025) Bonding Capacity** – If the District funds the Project only as part of the 2022 financing, there is approximately \$850K/year in available net revenues starting in 2025 that could be applied to a new financing. Assuming a 30-year amortization and conservative interest rates (4.50%), the District could generate \$13M for capital projects. *Note – the reason for the lower total bonding capacity is the assumption of higher interest rates and the delay in issuing the second series of bonds.*

### **Policy/Process Considerations**

The District is moving to approve the Project plans and bid specifications and receive construction bids in early spring with the intention of starting construction in the early summer (after relocation of existing staffing to a temporary location). For the District to execute a contract for construction, it must represent the financial capacity to make the payments to the contractor. For many public agencies, this representation comes through the approval of a financing concurrently with the award of bid.

The three financing approaches discussed above include estimated process times (started once the District Board gives direction to staff and NHA Advisors). While the direct placement and public offering have established processes and timelines, the IBank application process is not controlled by the District and will have uncertainty given the IBank’s internal process. While IBank representatives have stated their process is efficient and reasonably short, it cannot be guaranteed that funding will be secure prior to the start of construction. The District does have the ability to fund initial Project expenditures from reserves and use IBank proceeds once they are available.

### **Recommendation**

Based on conversations with District staff, NHA Advisors recommends beginning the financing process soliciting financing proposals from financial institutions (direct placement) and the IBank application process with the intention of evaluating the best option within 30 days. While it may have additional transaction costs for the preliminary work required, the District can maintain the flexibility to achieve the lowest cost of financing between the IBank program and a direct placement. NHA Advisors proposes to monitor the market conditions and solicit proposals from multiple financial institutions for comparison to the IBank rates. In the event the IBank program is delayed or their rate is not competitive with the direct placement banks, the District can pivot and execute an agreement with the selected bank. IBank has indicated that there is a point in their process where the District is obligated to enter into an agreement with them, so it will be important to make the financing structure decision prior to reaching that point in their process.

## APPENDIX A

### Summary Statistics

|                            | 20-Year      |                 |                  |
|----------------------------|--------------|-----------------|------------------|
|                            | IBank        | Public Offering | Direct Placement |
| <b>Marketability</b>       | High         | High            | High             |
| <b>Par Amount</b>          | \$16,230,000 | \$15,410,000    | \$16,170,000     |
| <b>TIC</b>                 | 3.45%        | 2.71%           | 2.68%            |
| <b>All-In TIC</b>          | 3.48%        | 2.84%           | 2.78%            |
| <b>Transaction Costs</b>   | \$212,300    | \$307,460       | \$150,000        |
| <b>Annual Debt Service</b> | \$1,125,502  | \$1,060,383     | \$1,054,966      |
| <b>Variance from IBank</b> |              | (\$65,119)      | (\$70,536)       |
| <b>Total Debt Service</b>  | \$22,510,035 | \$21,207,650    | \$21,099,324     |
| <b>Variance from IBank</b> |              | (\$1,302,385)   | (\$1,410,711)    |

- Par amount reflective of premium pricing structure (bonds have higher interest rate but District receives premium from investors which allows lower total par amount of bonds)



NHA Advisors, LLC is registered as a Municipal Advisor with the SEC and Municipal Securities Rulemaking Board (“MSRB”). As such, NHA Advisors, LLC has a Fiduciary duty to the public agency and must provide both a Duty of Care and a Duty of Loyalty that entails the following.

*Duty of Care*

- a) exercise due care in performing its municipal advisory activities;
- b) possess the degree of knowledge and expertise needed to provide the public agency with informed advice;
- c) make a reasonable inquiry as to the facts that are relevant to the public agency’s determination as to whether to proceed with a course of action or that form the basis for any advice provided to the public agency; and
- d) undertake a reasonable investigation to determine that NHA Advisors, LLC is not forming any recommendation on materially inaccurate or incomplete information; NHA Advisors, LLC must have a reasonable basis for:
  - i. any advice provided to or on behalf of the public agency;
  - ii. any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the public agency, any other party involved in the municipal securities transaction or municipal financial product, or investors in the public agency securities; and
  - iii. any information provided to the public agency or other parties involved in the municipal securities transaction in connection with the preparation of an official statement.

*Duty of Loyalty*

NHA Advisors, LLC must deal honestly and with the utmost good faith with the public agency and act in the public agency’s best interests without regard to the financial or other interests of NHA Advisors, LLC. NHA Advisors, LLC will eliminate or provide full and fair disclosure (included herein) to Issuer about each material conflict of interest (as applicable). NHA Advisors, LLC will not engage in municipal advisory activities with the public agency as a municipal entity, if it cannot manage or mitigate its conflicts in a manner that will permit it to act in the public agency’s best interests.

# NORTH MARIN WATER DISTRICT 2022 ADMINISTRATION AND LABORATORY UPGRADE

*PROJECT FINANCING ALTERNATIVES*

**NHA | ADVISORS**  
Financial & Policy Strategies.  
Delivered.

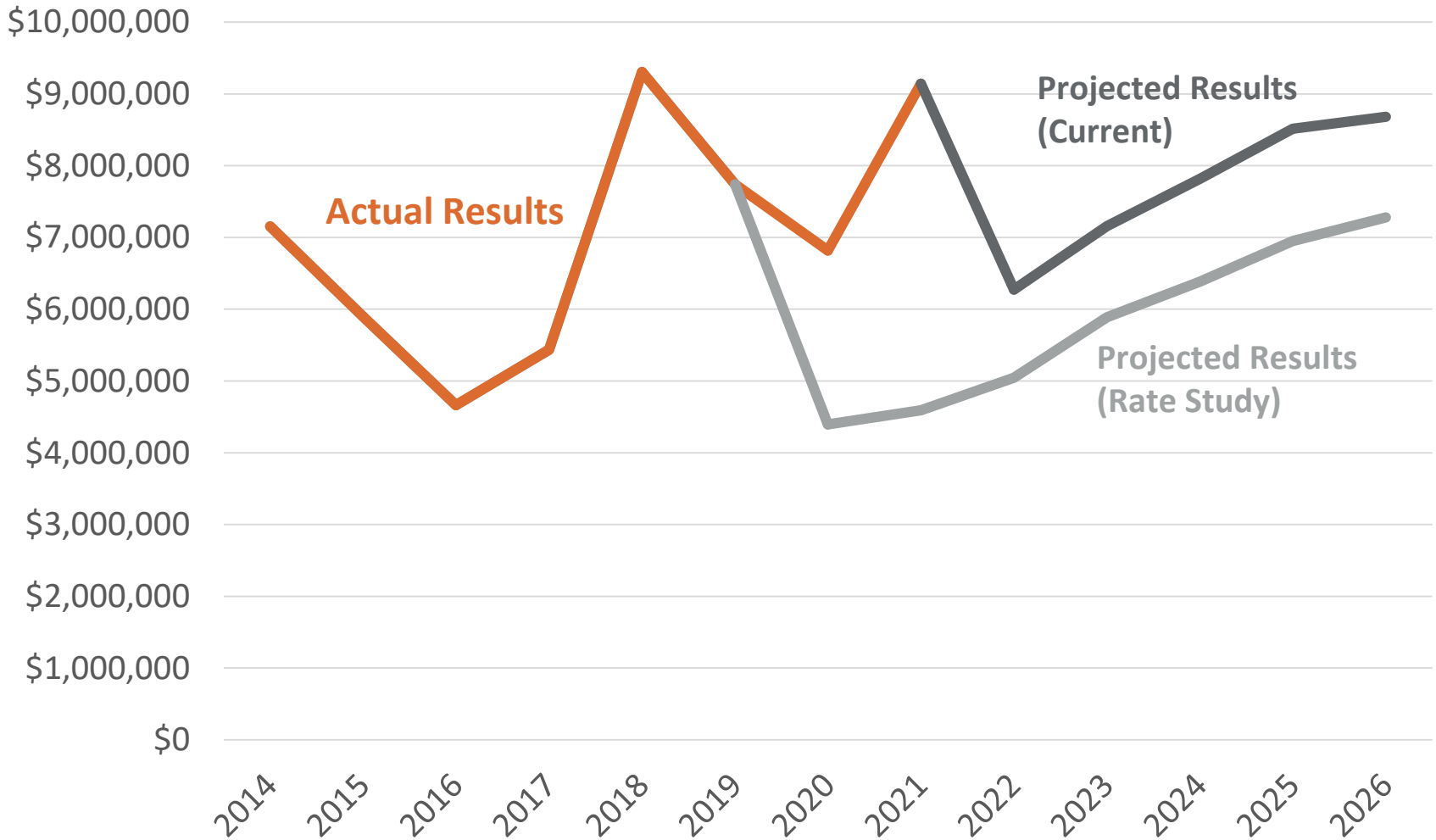
February 15, 2020

# Project Funding Needs

| <b>Estimated Funding Needs</b>           |                     |
|--|---------------------|
| New Laboratory Building & Support Spaces | \$4,581,000         |
| Site Improvement & Site Utilities        | \$1,658,000         |
| Renovation of Existing Building          | \$6,627,000         |
| <b>Estimated Hard Project Cost</b>       | <b>\$12,866,000</b> |
| Construction Consultants                 | \$1,374,573         |
| Permits & Fees                           | \$151,660           |
| Temporary Facilities (Office/Lab)        | \$540,714           |
| NMWD Supplied Work                       | \$7,460             |
| NMWD Supplied Furniture/Equipment        | \$313,832           |
| Project Contingency (5%)                 | \$772,712           |
| <b>Estimated Soft Project Costs</b>      | <b>\$3,160,951</b>  |
| <b>Total Project Cost</b>                | <b>\$16,026,951</b> |

- ▶ 2020 Rate Study assumed Project was financed (versus paid from rate revenue and reserves)

## Historical and Projected Net Revenues



# Revenue and Expenditure Projections

|                                       | Audited           |                   | Projected         |                   |                   |                   |
|---------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
|                                       | 2021              | 2022              | 2023              | 2024              | 2025              | 2026              |
| Water Consumption Sales               | 19,546,611        | 20,663,269        | 21,843,720        | 22,883,625        | 23,973,038        | 24,657,803        |
| Bi-Monthly Meter Service Charge       | 5,210,162         | 5,507,808         | 5,822,458         | 6,099,645         | 6,390,029         | 6,572,554         |
| Connection Fees                       | 3,496,089         | 840,000           | 870,000           | 870,000           | 870,000           | 870,000           |
| Developer Fees                        | 1,005,939         | -                 | -                 | -                 | -                 | -                 |
| Sewer Service Charge                  | 276,360           | 276,360           | 276,360           | 276,360           | 276,360           | 276,360           |
| Other Charges and Services            | 345,402           | 345,402           | 345,402           | 345,402           | 345,402           | 345,402           |
| Investment Earnings                   | 143,166           | 143,166           | 143,166           | 143,166           | 143,166           | 143,166           |
| <b>Total Gross Operating Revenues</b> | <b>29,880,563</b> | <b>27,632,839</b> | <b>29,157,939</b> | <b>30,475,033</b> | <b>31,854,829</b> | <b>32,722,119</b> |
| <b>Operating Expenditures</b>         |                   |                   |                   |                   |                   |                   |
| Source Supply                         | 8,624,268         | 8,882,996         | 9,149,486         | 9,423,970         | 9,706,690         | 9,997,890         |
| Pumping                               | 642,477           | 661,751           | 681,604           | 702,052           | 723,114           | 744,807           |
| Water Facilities Operations           | 1,218,090         | 1,254,633         | 1,292,272         | 1,331,040         | 1,370,971         | 1,412,100         |
| Water Treatment                       | 1,917,786         | 1,975,320         | 2,034,579         | 2,095,617         | 2,158,485         | 2,223,240         |
| Transmission & Distribution           | 3,624,404         | 3,733,136         | 3,845,130         | 3,960,484         | 4,079,299         | 4,201,678         |
| Sewage Collection & Treatment         | 184,329           | 189,859           | 195,555           | 201,421           | 207,464           | 213,688           |
| Customer Service                      | 470,411           | 484,523           | 499,059           | 514,031           | 529,452           | 545,335           |
| General & Administrative              | 3,658,894         | 3,768,661         | 3,881,721         | 3,998,172         | 4,118,117         | 4,241,661         |
| Water Conservation                    | 396,414           | 408,306           | 420,556           | 433,172           | 446,167           | 459,552           |
| <b>Total Operating Expenditures</b>   | <b>20,737,073</b> | <b>21,359,185</b> | <b>21,999,961</b> | <b>22,659,960</b> | <b>23,339,758</b> | <b>24,039,951</b> |
| <b>Net Revenues</b>                   | <b>9,143,490</b>  | <b>6,273,654</b>  | <b>7,157,979</b>  | <b>7,815,073</b>  | <b>8,515,071</b>  | <b>8,682,168</b>  |

# Projected Coverage Calculations

|  | Audited          |                  | Projected          |                    |                    |                    |
|--|------------------|------------------|--------------------|--------------------|--------------------|--------------------|
|  | 2021             | 2022             | 2023               | 2024               | 2025               | 2026               |
| <b>Net Revenues</b>  | <b>9,143,490</b> | <b>6,273,654</b> | <b>7,157,979</b>   | <b>7,815,073</b>   | <b>8,515,071</b>   | <b>8,682,168</b>   |
| <b>Debt Service</b>  |                  |                  |                    |                    |                    |                    |
| 2005 DWR Loan (Novato Water)   | 1,044,474        | 1,044,474        | 1,044,475          | 1,044,474          | 1,044,475          | 1,044,475          |
| 2005 SWRCB Loan (Novato Recycled Water)  | 273,367          | 273,367          | 273,367            | 273,367            | 273,368            | 273,367            |
| 2011 SWRCB Loan (Novato Recycled Water)  | 614,299          | 614,299          | 614,299            | 614,299            | 614,299            | 614,299            |
| 2011 Bank of Marin Loan  | 552,800          | 552,800          | 552,800            | 552,800            | 552,800            | 552,800            |
| 2016 SWRCB Loan (Novato Recycled Water)  | 275,773          | 275,773          | 275,773            | 275,773            | 275,773            | 275,773            |
| 2018 JP Morgan Chase Bank Loan   | 380,290          | 378,027          | 375,630            | 378,098            | 380,297            | 377,227            |
| 2019 Capital Lease (Enterprise)  | -                | 72,942           | 72,938             | 72,476             | 40,750             | 12,176             |
| <b>Total Current Debt Service</b>  | <b>3,141,003</b> | <b>3,211,682</b> | <b>3,209,281</b>   | <b>3,211,287</b>   | <b>3,181,761</b>   | <b>3,150,116</b>   |
| <b>Current Coverage</b>  | <b>2.91x</b>     | <b>1.95x</b>     | <b>2.23x</b>       | <b>2.43x</b>       | <b>2.68x</b>       | <b>2.76x</b>       |
| <i>2022 Bonds (20-Year Private Placement) Estimated Coverage for Private Placement</i> |                  | 527,483<br>1.68x | 1,054,966<br>1.68x | 1,054,966<br>1.83x | 1,054,966<br>2.01x | 1,054,966<br>2.06x |
| <i>2022 Bonds (20-Year Public Offering) Estimated Coverage for Public Offering</i>     |                  | 530,191<br>1.68x | 1,060,383<br>1.68x | 1,060,383<br>1.83x | 1,060,383<br>2.01x | 1,060,383<br>2.06x |
| <i>2022 Bonds (20-Year IBank) Estimated Coverage for Public Offering</i>               |                  | 562,751<br>1.66x | 1,125,502<br>1.65x | 1,125,502<br>1.80x | 1,125,502<br>1.98x | 1,125,502<br>2.03x |

# Financing Options

- ▶ **Public Offering**
  - ▶ Water Revenue Bonds sold through public underwriting
- ▶ **Direct Placement**
  - ▶ Financing agreement with single financial institution
- ▶ **Financing Authority**
  - ▶ State of California’s Infrastructure and Economic Development Bank (“IBank”)

|                            | <b>20-Year</b> |                        |                         |
|----------------------------|----------------|------------------------|-------------------------|
|                            | <b>IBank</b>   | <b>Public Offering</b> | <b>Direct Placement</b> |
| <b>Marketability</b>       | High           | High                   | High                    |
| <b>Par Amount</b>          | \$16,230,000   | \$15,410,000           | \$16,170,000            |
| <b>TIC</b>                 | 3.45%          | 2.71%                  | 2.68%                   |
| <b>All-In TIC</b>          | 3.48%          | 2.84%                  | 2.78%                   |
| <b>Transaction Costs</b>   | \$212,300      | \$307,460              | \$150,000               |
| <b>Annual Debt Service</b> | \$1,125,502    | \$1,060,383            | \$1,054,966             |
| <b>Variance from IBank</b> |                | (\$65,119)             | (\$70,536)              |
| <b>Total Debt Service</b>  | \$22,510,035   | \$21,207,650           | \$21,099,324            |
| <b>Variance from IBank</b> |                | (\$1,302,385)          | (\$1,410,711)           |

# Bonding Capacity

## Current Bonding Capacity (2022)

- ▶ Based on the calculated net revenue projections (\$2M/year and maintaining a 1.20x debt service coverage):
  - ▶ \$35,000,000 capacity
    - ▶ \$16M – Project Funding
    - ▶ \$19M – Additional Capital Projects

## Future (2025) Bonding Capacity

- ▶ Based on 2022 Project Financing
  - ▶ \$16M – Project Funding
- ▶ 2025 Financing
  - ▶ \$13,000,000 capacity
    - ▶ Additional Capital Projects

*Note: this analysis of maximum bonding capacity is in addition to the District's planned, regular pay-as-you-go CIP (approx. \$4M per year)*

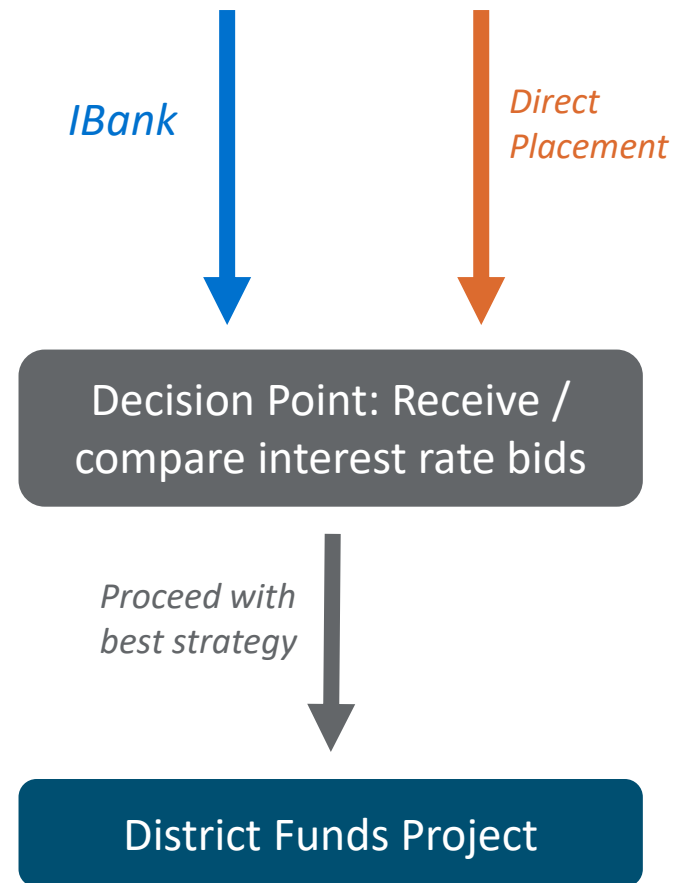


## Recommendation

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- ▶ Dual Track Process
  - ▶ Maintain options
    - ▶ IBank Application
    - ▶ Direct Placement Solicitations
- ▶ Decision will depend on interest rates and timing of funds

### Proposed Dual-Track Approach



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## MEMORANDUM

To: Board of Directors

February 11, 2022

From: Julie Blue, Auditor/Controller *JLB*

Subj: Reinstatement of Water Shut-Offs and State Water Arrearage Payment Program Status

\\nmwdfleserver\administration\ac\board reports\board memos\2022\reinstatement of water shut-offs and state water arrearage payment program status.docx**RECOMMENDED ACTION:** Information Only**FINANCIAL IMPACT:** Grant: \$80,000 towards delinquent water bills  
Outstanding Delinquency Balance: \$109,000

In response to the COVID-19 pandemic, on April 2, 2020, CA Governor Newsom signed Executive Order N-42-20 followed by Executive Order N-08-21. These orders suspended disconnection of water services for non-payment through September 30, 2021. On September 23, 2021, CA Senate Bill No. 155 was enacted which extended the suspension of shut-offs through December 31, 2021. In June 2020, the NMWD's Board of Directors approved temporary measures to the District's *Late Charge and Shut-off Policy* allowing for extended payment plans and ceasing late fees. These temporary measures have since expired and late fees and water shut-offs due to non-payment are scheduled to be reinstated.

In late 2021, the State Water Resource Control Board (SWRCB) established a program allocating funds to community water and wastewater systems for unpaid bills related to the pandemic. The California Water and Wastewater Arrearage Payment program provided \$985 million in federal funding allocated by state legislature. The funds paid for customer's outstanding water bills covering the period of March 4, 2020 through June 15, 2021.

Through this program, staff applied for funding and in early February received over \$80 thousand dollars. These funds were applied directly to the 124 customers with delinquent balances (from the applicable period). These customers were notified by mail of the payment made through the arrearages program on their behalf. This reduced the number of customers eligible for water shut-off due to non-payment to approximately 470.

Now that the arrearage payments have been applied, and the restrictions to suspend water shut-off due to non-payment have been lifted, the District will begin water shut-offs in mid to late March 2022. In the next week, all customers with balances greater than 60 days past due, will be notified via mail. The letter will provide the past due balance, total balance due, payment options, and provide information about the District's payment plans and Low-Income Rate Assistance Program. The letter will encourage customers to call in and pay their past due balances within 30 days of receipt of the letter to avoid late fees and water shut-off. Water Shut-

offs will be systematically reinstated over the next 3-6 months will the goal of reducing the shut-off list to a manageable level by the end of the fiscal year.

16

## MEMORANDUM

To: Board of Directors

February 11, 2022

From: Tony Williams, Assistant GM/Chief Engineer 

Subj: Community Microgrid Enablement Program – Oceana Marin  
R:\CHIEF ENGMisc BOD Memos\2-15-2022\2-15-22 BOD Memo Microgrid OM.docx

**RECOMMENDED ACTION:** Receive the report and direct staff

**FINANCIAL IMPACT:** None at this time.

### Background

The concept of community-based energy resilience such as the use of microgrids for electric power is gaining interest in Marin County. A microgrid is an electrical system that can operate independently from the central energy grid and the associated PG&E distribution network. Typical microgrids in Marin County would consist of solar or wind power generation with battery storage. Under PG&E's Community Microgrid Enablement Program (CMEP), communities with critical facilities such as water or wastewater facilities (e.g. a pump station) can work with PG&E to develop and construct a microgrid. The District's Tahiti Lift Station is an example of a facility that qualifies as a critical facility under the CMEP.

Members of the Dillon Beach Resources Committee (Committee) have approached District staff seeking interest in pursuing the implementation of a microgrid that would serve the Oceana Marin community. A letter of interest from the District for participation in a local microgrid project has been requested by the Committee, which is a committee under the Oceana Marin Association. This memorandum provides a high-level overview of PG&E's CMEP; staff input regarding participation; and a draft letter of interest for your Board's consideration.

### Overview of the CMEP

District staff have performed limited review of PG&E's CMEP which has three key stages and eleven associated steps in the development and implementation of a microgrid. These stages and steps are summarized below:

- **Stage 1 - Project Vetting**
  - Step 1 – Intake or expressing interest in a project
  - Step 2 – Solution evaluation including determining PG&E distribution constraints
- **Stage 2 – Project Assessment**
  - Step 3 – Formal request for technical consultation
  - Step 4 - Technical consultation by PG&E
  - Step 5 – Formal CMEP application
  - Step 6 – CMEP application review for eligibility and feasibility and hopefully acceptance.
  - Step 7 – Draft project implementation plan which includes project tasks, schedule and site plans.
  - Step 8 – Microgrid Islanding Study that further refines the design and costs

- **Stage 3 – Project Execution**

- Step 9 – Execution of a Project Special Facilities Agreement that defines ownership and provides a “permission to operate”.
- Step 10 – Execution of a Microgrid Operating Agreement which defines operations and maintenance conditions.
- Step 11 – Project Development which is the actual implementation of the Project.

As summarized above, the overall process from the time of expressing interest to PG&E to actual construction or implementation of a microgrid facility includes many steps and requires significant time and effort by the applicant. The proposed microgrid project envisioned by the community Committee is currently in Stage 1. A graphic showing the overall PG&E process is provided as Attachment 1.

#### Partnering on a Community Microgrid

In general, District staff support the concept of a community-scale microgrid facility in the Oceana Marin (OM) area. As described previously, the process for developing and constructing such a facility is very involved and requires ongoing coordination with PG&E. Due to very limited staffing and resources for the District’s OM enterprise, the level of participation in the project’s development and implementation should be limited to providing data as necessary regarding existing District facilities as well as coordination with the Committee at key times during the process. Currently the District doesn’t have a full understanding of the details and conditions for any necessary legal arrangements between the community partners or with PG&E, including but not limited to net metering arrangements or long-term operations and maintenance responsibilities. Based on the District’s experience with operating and maintaining electrical and mechanical systems as well as other physical infrastructure at OM over the last 50 plus years there is recognition of the significant impacts that the weather and the overall marine environment has on such systems and infrastructure. It is important that these conditions be considered in the design and layout of a microgrid as well as its routine maintenance and long-term maintenance.

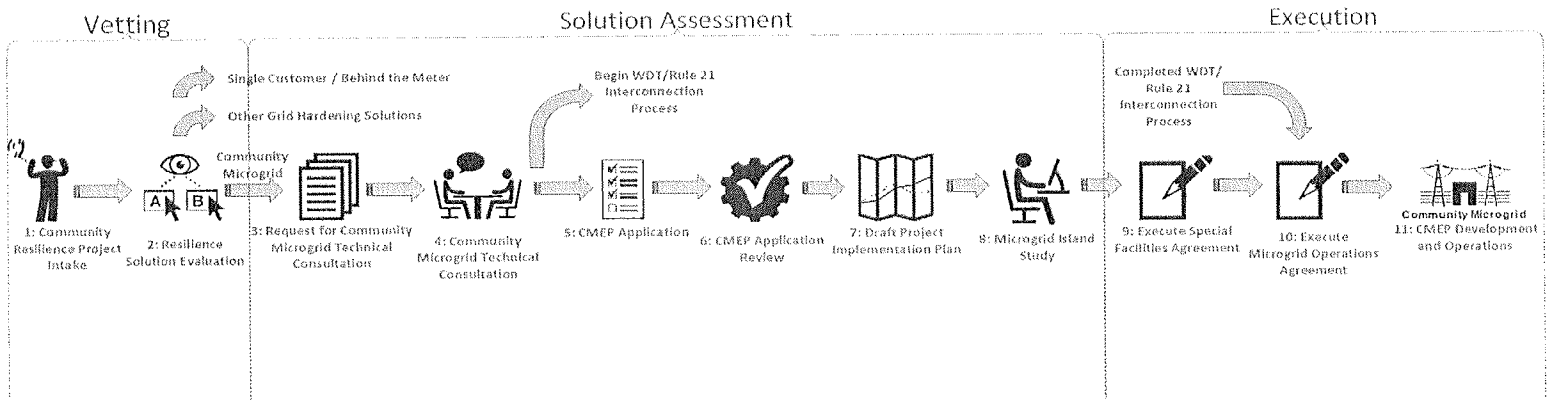
A draft letter of interest using a template provided by PG&E is included in Attachment 2. Minor edits to the template, shown in tracked changes format, better reflect the current status of the District interest at this stage of the process and the importance of the overall cooperation with local stakeholders. The assumption is that the community Committee will take the lead for all the necessary stages and steps with PG&E under the CMEP.

#### RECOMMENDATION

The Board direct staff on how to respond to the request for a letter of support for PG&E’s CMEP and provide any Board considerations or comments at this early stage of the process.

## APPENDIX B

### CMEP Implementation Workflow





DRAFT

February 16, 2022

Dear PG&E Community Microgrid Enablement Program Staff:

We are writing as representatives of North Marin Water District to express our interest in participating in the developing development of a of a Dillon Beach local microgrid in association with our community partners.

We have reviewed PG&E's Community Microgrid Enablement Program (CMEP) on PG&E's website and are seeking critical facility energy resilience along with our community partners for extreme weather, Public Safety Power Shutoff events or other events.

There is significant potential for a microgrid in our Oceana Marin wastewater service area (within Dillon Beach area), within PG&E's electric service territory, with Project Resources interconnected to PG&E's electric distribution system. This microgrid would serve our critical facilities consisting of such as water and wastewater systems.

Our area is eligible for PG&E's CMEP in that it meets at least one of the following criteria:

- a) In a Tier 2 or 3 HFTD at the time of CMEP application,
- b) **In an area that has been impacted by a Public Safety Power Shutoff (PSPS) event,** or
- c) In an area prone to outages, defined as the top 1% Worst Performing Circuits excluding Major Event Days, from PG&E's Annual Electric Reliability Report in the AIDI or AIFI category, in either of the last 2 years.

We look forward to discussing with PG&E and our local partners the potential for a microgrid in Dillon Beach, which can provide substantial community and environmental benefit. Please let us how we-we and our community partners can proceed with such discussion with you. I can be reached at 1-415-761-8945 or twilliams@nmwd.com.

Sincerely,

Anthony Williams  
Assistant GM/Chief Engineer

AW:edm  
\\nmwd\files\server\engineering\NON JOB No ISSUES\Oceana Marin Misc\Micro-grid\Ltr to PGE re Dillon Beach Microgrid Project Jan 2022.docx

ATTACHMENT 2

**17**

**North Bay Watershed Association**  
**Board Meeting - Agenda**  
**February 4, 2022 | 9:30 – 11:30 a.m.**

PENDING PASSAGE OF RESOLUTION ITEM B ON THE AGENDA, THIS MEETING WILL BE HELD VIRTUALLY VIA REMOTE CONFERENCING SERVICE— NO PHYSICAL MEETING LOCATION

**Zoom Webinar:**

<https://us02web.zoom.us/j/81630673971?pwd=dm94TXJCRWMyWFBLc3U5V2pTSmNRZz09>

**Webinar ID: 816 3067 3971 Password: 216460**

Agenda and materials will be available the day of the meeting at:  
[www.nbwatershed.org](http://www.nbwatershed.org)

**AGENDA**

| <b>Time</b> | <b>Agenda Item</b>   | <b>Proposed Action</b> |
|-------------|--|------------------------|
| 9:30        | <b>Welcome and Call to Order – Roll Call and Introductions</b><br><i>Jack Gibson, Chair</i>  | <i>N/A</i>             |
| 9:35        | <b>General Public Comments</b><br>This time is reserved for the public to address the Committee about matters NOT on the agenda and within the jurisdiction of the Committee.  | <i>N/A</i>             |
| 9:40        | <b>Agenda and Past Meeting Minutes Review</b><br><i>Jack Gibson, Chair</i>   | <i>Approve</i>         |
| 9:45        | <b>Treasure's Report</b><br><i>Jack Gibson, Chair</i>  | <i>Accept</i>          |
| 9:50        | <b>Guest Presentation—State Route 37, Baylands Group Updates</b><br><i>Jessica Davenport, Deputy Program Manager, Bay Area Program, State Coastal Conservancy</i><br><br>Jessica will provide a perspective from the conservation community on SR 37 planning activities, describing the SR 37-Baylands Group's focus on integrating transportation and restoration planning, protecting and enhancing ecosystem function, and promoting landscape-scale resilience. | <i>Presentation</i>    |
| 10:40       | <b>Guest Presentation—Updates from the Third Senate District</b><br><i>Logan Pitts, Senior Field Representative, State Senator Bill Dodd</i>   | <i>Presentation</i>    |

|       |   |   |
|-------|---|---|
| 10:55 | <p><b>Executive Director Report</b><br/> <i>Andy Rodgers, Executive Director</i></p> <p>Andy will provide an update on active projects, recent meetings, communications, committees, activities, and developing initiatives since the December 3 Board meeting. Andy will outline ideas for next and future Board meeting topics and solicit feedback</p> | <p><i>ED updates,<br/>         Board questions<br/>         and input</i></p> |
| 11:10 | <p><b>Board Information Exchange and Drought Updates</b><br/> <i>Members</i></p> <p>Members will highlight issues and share items of interest.</p>  | <p><i>N/A</i></p>   |
| 11:30 | <p><b>Announcements/Adjourn</b><br/> <b>Next Board Meeting: March 4, 2022</b></p>   | <p><i>N/A</i></p>   |

18

**DISBURSEMENTS - DATED FEBRUARY 3, 2022****Item #18**

Date Prepared 1/31/22

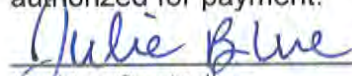

The following demands made against the District are listed for approval and authorization for payment in accordance with Section 31302 of the California Water Code, being a part of the California Water District Law:

| <u>Seq</u> | <u>Payable To</u>             | <u>For</u>  | <u>Amount</u> |
|------------|-------------------------------|---|---------------|
| 90456*     | US Bank Card                  | CA Society of Municipal Finance Officers Conf (\$470) & Membership (\$110), Safety Supplies (\$1,217), AWWA-Drought Webinar (\$20), Latches ('09 Peterbilt) (\$183), Microsoft Licenses (\$559), Nat'l Assoc of Corrosion Engineer Int'l Course (\$1,899), Chips for Holiday Lunch (\$30), CA Water Environment "Lab Calculations" Webinar (\$50), Zoom for Board Meetings (\$47) & Aatrix-DE9 & 941 (\$49) | \$4,633.16    |
| 60308*     | City of Novato                | Annual Encroachment Permit  | 6,000.00      |
| 1          | Ackley, Meredith              | Refund Bill Adjustment on Open Account  | 2,706.64      |
| 2          | Arrow Benefits Group          | January 2022 Dental Admin Fees  | 265.55        |
| 3          | Asbury Environmental Services | Used Oil Filter Disposal  | 55.00         |
| 4          | AT&T                          | January Internet Services PRTP  | 90.25         |
| 5          | AT&T                          | Telephone (\$66), Fax (\$22), Leased Lines (\$142) & Data (\$219)   | 448.56        |
| 6          | Backflow Distributors         | Freezer Bags (5)  | 496.44        |
| 7          | Bay Area Barricade Service    | Orange Cones (20)   | 281.23        |
| 8          | Bearings & Hydraulics         | Trailer Jack Foot   | 38.55         |
| 9          | Bold & Polisner               | Dec Legal Fees-General (\$13,673) & Potter Valley FERC-NMWD Portion (\$945)   | 14,617.50     |
| 10         | Consolidated CM               | Prog Pymt#7: Construction Management Services for NMWD Building Renovation Project (Balance Remaining on Contract \$54,747)   | 16,415.00     |
| 11         | Cordeiro, Jeanne              | Novato "Toilet Rebate" Program  | 125.00        |
| 12         | Core & Main                   | Elbow   | 251.72        |
| 13         | Davenport, Colin              | Exp Reimb: Hotel & Meals for Conference in Sacramento (1/18-1/20) (\$337) & D3 Exam Fee   | 436.60        |

| Seq | Payable To                     | For  | Amount    |
|-----|--------------------------------|--|-----------|
| 14  |                                | Vision Reimbursement   | 185.00    |
| 15  | EKI Environment & Water, Inc.  | Prog Pymt#3: Recycled Water Demand & Expansion Analysis for NMWD (Balance Remaining on Contract \$792)   | 2,206.10  |
| 16  | Evoqua Water Technologies LLC  | Service on Deionization System   | 328.99    |
| 17  | Ferguson Waterworks            | 6" Compound Meter w/6' Antenna (\$6,271), Neptune Antenna & Base (\$243)   | 6,514.34  |
| 18  | Fisher Scientific              | Zinc Standard (Lab)  | 56.70     |
| 19  | Fong, Victoria                 | Novato "Toilet Rebate" Program   | 250.00    |
| 20  | Freyer & Laureta, Inc.         | Prog Pymt#4: Provide Engineering & Design Services for NMWD Hydropneumatic Pressure Stations (Balance Remaining on Contract \$56,210)                    | 6,442.50  |
| 21  | Gallagher Ranch LLC            | Gallagher Ranch Well No. 2 Easement Payment  | 50,000.00 |
| 22  | Grainger                       | Water Hose Assembly (\$405) (STP), Parts for PRE1 Eye Wash (\$584), Blower w/Battery Pack (\$359) & Miscellaneous Maintenance Tools & Supplies (\$1,300) | 2,648.14  |
| 23  | Greenhalgh, Daniel and Thobile | Refund Overpayment on Closed Account   | 92.17     |
| 24  | Harrington Industrial Plastics | Rebuilt Kits for STP Pumps (4)   | 438.44    |
| 25  | Hieu N Dang DDS Inc            | Refund Overpayment on Closed Account   | 65.37     |
| 26  | Intellaprint Systems           | Large Format Printer (Eng)   | 11,929.58 |
| 27  | Jensen Instrument Company      | Flow Meter for STP   | 3,880.67  |
| 28  | Kehoe, Theresa                 | Exp Reimb: Mileage, Notary Fees (\$43) & Certified Mail  | 73.83     |
| 29  | Kelly Services, Inc.           | Organic Chemist Temp Services (Lab) (30 hrs)   | 1,857.27  |
| 30  | Marin Independent Journal      | New Water Supply Public Outreach Ads (12/3 & 12/17)  | 530.00    |
| 31  | McLellan Co, WK                | Misc Paving  | 8,654.58  |
| 32  | New Resources Group            | Dye Tab Leak Detection Tablets (8,000)   | 465.82    |
| 33  | Noonan, Kathleen               | Novato "Toilet Rebate" Program   | 125.00    |

| Seq | Payable To                  | For  | Amount                     |
|-----|-----------------------------|--|----------------------------|
| 34  | Novato Sanitary District    | Treatment & Disposal of Discharge from Stafford Lake Water Treatment Plant                           | 2,790.25                   |
| 35  | NTT Training                | Instrumentation & Process Control Conference Training (Davenport & Lemos) (1/18-1/20)                | 3,090.00                   |
| 36  | Office Depot                | Miscellaneous Office Supplies  | 568.63                     |
| 37  | Pace Supply                 | Seal Tape (30) (\$255) & Meter Adaptors (3)  | 312.61                     |
| 38  | Preferred Alliance, Inc.    | Pre-Employment Physical Test (Lawrence & Moniz)  | 84.00                      |
| 39  | Prunuske Chatham Inc        | Prog Pymt#13: Leveroni Creek Embankment Repair (Balance Remaining on Contract \$7,081)               | 4,855.00                   |
| 40  | Quest UCCS                  | Quarterly Phone System Maintenance   | 446.70                     |
| 41  | Red Wing Business Advantage | Safety Boots (Bynum, Roberto & Davenport)  | 600.00                     |
| 42  | Steckmest, Lawrence         | Novato "Cash for Grass" Rebate Program   | 800.00                     |
| 43  | US Bank                     | December Safekeeping Treasury Securities   | 52.50                      |
| 44  | VWR International LLC       | Phosphate, Lauryl Tryptose Broth (\$90), Copper Standard, Zinc & Buffer Reference Standard (Lab)     | 214.26                     |
| 45  | Waste Management            | Green Waste Disposal   | 151.41                     |
| 46  | Wood Rodgers, Inc.          | Prog Pymt#4: Provide Engineering & Hydrogeological Services (Balance Remaining on Contract \$21,989) | 2,392.50                   |
| 47  | West Yost Associates        | Prog Pymt#4: Provide Local Water Enhancement Study (Balance Remaining on Contract \$114,720)         | 12,343.00                  |
| 48  | ZORO                        | Hook & Loop Fastener & Eye Wash Station (PRE #1) (\$523)   | 557.60                     |
|     |                             | <b>TOTAL DISBURSEMENTS</b>   | <b><u>\$172,864.16</u></b> |

The foregoing payroll and accounts payable vouchers totaling \$172,864.16 are hereby approved and authorized for payment.


01/31/2022  
 Auditor-Controller Date  

1/31/2022  
 General Manager Date



## **DISBURSEMENTS - DATED FEBRUARY 10, 2022**

Date Prepared 2/7/22

The following demands made against the District are listed for approval and authorization for payment in accordance with Section 31302 of the California Water Code, being a part of the California Water District Law:

| Seq    | Payable To                    | For  | Amount       |
|--------|-------------------------------|--|--------------|
| P/R*   | Employees                     | Net Payroll PPE 1/31/22  | \$157,943.37 |
| 90457* | Internal Revenue Service      | Federal & FICA Taxes PPE 1/31/22   | 72,384.94    |
| 90458* | State of California           | State Taxes & SDI PPE 1/31/22  | 16,155.85    |
| 90459* | CalPERS                       | Pension Contribution PPE 1/31/22   | 42,085.54    |
| 1      | Advanced Infrastructure Tech. | Metal Detector (Construction)  | 640.62       |
| 2      | Alpha Analytical Labs         | Lab Testing  | 55.00        |
| 3      | Automation Direct             | Wire for Controls (\$152), Analog Input Modules (2) (\$234) & PLC Breakers   | 440.51       |
| 4      | Bay Area Crane Services, Inc. | Crane Services on 1/28 (Pump Station @ STP)  | 1,440.00     |
| 5      | Buck's Saw Service            | Chain Saw Parts (\$755) & Miscellaneous Maintenance Tools & Supplies (\$241)   | 996.49       |
| 6      | Caltest Analytical Laboratory | Lab Testing (O.M.)   | 95.80        |
| 7      | Casey, Erin                   | Refund Overpayment on Open Account   | 5,697.23     |
| 8      | Clyde, Karen                  | Exp Reimb: Safety Supplies   | 156.27       |
| 9      | Consolidated CM               | Reissue Payment-Original Check Lost in Mail (Pymt#5-Construction Management Services)  | 7,714.00     |
| 10     | Core & Main                   | Hydrant Buries (7) (\$3,768), Flange Setter (\$649), Bushings (10), Hydrant Extensions (4) (\$690), Nipples (2) (\$76), Mechanical Joint Accessory Set (\$423), Elbow & 6" Megalug Accessory Set (\$1,194) | 6,977.66     |
| 11     | DataTree                      | January Subscription to Parcel Data Info   | 100.00       |
| 12     | Direct Line Inc               | February Telephone Answering Service   | 169.00       |
| 13     | Evoqua Water Technologies LLC | Service on Ionization System (Lab)   | 328.99       |
| 14     | Fiserv/Bastogne Inc.          | Account Closed-Return Payment  | 120.00       |

| Seq | Payable To                        | For   | Amount    |
|-----|-----------------------------------|---|-----------|
| 15  | Fishman Supply Co                 | Miscellaneous Safety Supplies   | 820.86    |
| 16  | Grainger                          | Miscellaneous Maintenance Tools & Supplies  | 688.26    |
| 17  | Hildebrand Consulting LLC         | Prog Pymt#1: Drought Surcharge Study-Novato & West Marin (\$9,200) & Prog Pymt#2: (\$1,840) (Balance Remaining on Contract            | 11,040.00 |
| 18  | Kelly Services, Inc.              | Organic Chemist Temp Services (Lab) (31 hrs)  | 1,903.44  |
| 19  | Kiosk Creative LLC                | Prog Pymt#10: Website & Social Media Support (Balance Remaining on Contract   | 4,854.28  |
| 20  | Lincoln Life Employer Serv        | Deferred Compensation PPE 1/31/22   | 15,523.30 |
| 21  | Long, Jack                        | Refund Overpayment on Open Account  | 2,502.98  |
| 22  | County of Marin                   | Encroachment Permit (472 Wilson Ave)  | 448.54    |
| 23  | Munsee, Bruce                     | Novato "Toilet Rebate" Ultra High Efficiency Program (3)  | 600.00    |
| 24  | Nationwide Retirement Solution    | Deferred Compensation PPE 1/31/22   | 995.00    |
| 25  | Novato Builders Supply            | Lumber (\$195), Parts for O.M. Ponds (\$66) & Wood Working Tools (\$340)  | 600.47    |
| 26  | Office Depot                      | First Aid Kit & Misc Office Supplies (\$232)  | 260.15    |
| 27  | Pearlman, Avram                   | Exp Reimb: Dec 2021-Feb 1, 2022 Mileage   | 101.03    |
| 28  | PG&E                              | Power: Bldg/Yard (\$4,959), Other (\$207), Pumping (\$26,663), Rect/Cont (\$633) & Treatment (\$146)                                  | 32,607.95 |
| 29  | Point Reyes Vacation Rentals      | Compensation for 2 Weeks Loss of Rental of 420 Drakes View Dr., Inverness During Completion of PRE 4B Tank Removal & Driveway Grading | 6,600.00  |
| 30  | Professional Financial Investors, | Return Payment-City of Petaluma Customer  | 5.43      |
| 31  | Rauch Communication Consultant    | Prog Pymt#14: Consulting Services Outreach Services Support (Balance Remaining on Contract \$15,535)                                  | 1,511.25  |
| 32  | Russell, Tim and/or Anne          | Refund Overpayment on Open Account  | 199.56    |
| 33  | Scott Technology Group            | Monthly Maintenance on Engineering Copier   | 205.59    |
| 34  | Staples Business Credit           | Misc Office Supplies  | 367.59    |



**MEMORANDUM**

To: Board of Directors  
From: Nancy Williamson – Sr. Accountant *NW*  
Subj: Reimbursement Program 2021  
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February 11, 2022

**RECOMMENDED ACTION:** Information Only  
**FINANCIAL IMPACT:** \$0 Reimbursement Payment to Developers

Regulation 30 (attached), Reimbursement for Extension of Pipelines that Benefit Others, allows developers to receive reimbursement for pipelines they are required to install which are not within the developer's property. Reimbursement eligibility is determined by the District prior to execution of the Water Service Agreement, and is based upon the benefit to be derived from other potential users of the extended pipeline. The reimbursement entitlement is available only for installation of six-inch diameter pipeline and larger, and the first one hundred feet of said pipeline and fittings are not eligible for reimbursement.

Regulation 30 provides that each year following the first full year after completion of the extension, the District pays to each developer having a reimbursement entitlement a pro-rata share of all Reimbursement Fund Charges held by the District in its Reimbursement Fund Account. Reimbursement fund charges in Novato are \$420 for a 5/8" residential meter and \$1,055 for a 1" residential meter. Reimbursement fund charges in West Marin are \$1,950 for a 5/8" residential meter and \$4,950 for a 1" residential meter. Reimbursement Fund Charges received and reimbursement entitlements are accounted for separately for the Novato and West Marin Service Areas (the current year schedule is attached). A developer's reimbursement entitlement expires upon payment thereof by the District in full without interest, or on the tenth year of payment, whichever occurs first.

There were no participants in the Novato Reimbursement Program in 2021. There was \$149,327 remaining in the Reimbursement Fund in 2020. We collected \$203,186 in Reimbursement Fund Charges during calendar year 2021 which leaves a balance of \$352,513 in the Novato Reimbursement Fund.

There were no participants in the Reimbursement Program for West Marin in 2021. The balance in the West Marin Reimbursement fund was \$11,100 at December 31, 2020 and we collected \$5,850 in additional Reimbursement Fund Charges in 2021. That leaves a balance of \$16,950 that will be carried over to next year's Reimbursement Program.

## NORTH MARIN WATER DISTRICT

### REGULATION 30

#### REIMBURSEMENT FOR EXTENSION OF PIPELINES THAT BENEFIT OTHERS

a. Reimbursement Entitlement for Off Tract Pipelines

The Reimbursement Entitlement for pipelines paid for by the Applicant but not within the Applicant's property shall be based upon the benefit to be derived by other potential users of said pipelines as estimated and determined by the District in its sole discretion. Reimbursement Entitlement will be considered only for pipelines and fittings of six-inch diameter and larger. The first one hundred feet of said pipelines and fittings except for the oversized portion are not eligible for Reimbursement Entitlement. In determining the Reimbursement Entitlement any pipeline footage traversing land in other water service zones or paralleling an existing water main shall not be considered eligible for reimbursement unless the District determines that such footage can reasonably be expected to be of benefit to abutting lands. The maximum Reimbursement Entitlement shall not exceed the maximum potential benefit to be derived by other users of the facilities paid for by the Applicant as determined by the District in its sole discretion.

b. Reimbursement Payments

In January of each year following the first full year after completion of the extension, the District will pay to each Applicant having a Reimbursement Entitlement, a portion of the total amount of Reimbursement Fund Charges established by Regulation 1.c. and received by the District from Applicants located within the same service area during the previous calendar year. Said portion shall be determined by multiplying said total amount of Reimbursement Fund Charges received by the quotient obtained by dividing the Applicant's unexpired reimbursement entitlement by the total of all unexpired reimbursement entitlements within the same service area. For the purpose of this Regulation, the Point Reyes and Paradise Ranch Estates Service Areas shall be considered one service area called the West Marin Service Area. Reimbursement Fund Charges received and unexpired Reimbursement Entitlements shall be accounted for separately for the Novato and West Marin Service Areas.

c. Expiration of Reimbursement Entitlement

The Applicant's unexpired Reimbursement Entitlement for a given year shall be determined by subtracting all prior reimbursement payments made to said Applicant from said Applicants' Reimbursement Entitlement. An Applicant's Reimbursement Entitlement shall expire and become invalid upon payment thereof by the District in full without interest, or on December 31 of the tenth year of payment on account thereof pursuant to Regulation 30.b. whichever shall first occur.

d. Acknowledgment of Necessity

Anyone who pays, deposits or agrees to pay all or part of the cost of any extension or improvement of the District's Water Distribution system hereby acknowledges that such extension or improvement is necessary and reasonable and releases the District from any liability based on a claim that a determination made by the District pursuant to Regulation 21 is or was unnecessary or unreasonable.

e. Assignment of Reimbursement Entitlement

The District will not recognize any assignment or attempted assignment of a Reimbursement Entitlement unless the assignment is in a form satisfactory to and approved in writing by the District and is signed and acknowledged by the assignor. The District will furnish forms of assignment on request. Except with the prior written approval of the District, no assignment of a Reimbursement Entitlement shall be effective until the first payment thereon from the reimbursement fund is paid or payable.

f. Liens of Reimbursement Entitlement

The District shall have a lien upon all money payable as a Reimbursement Entitlement for any indebtedness to the District of the holder of said entitlement. The District may exercise said lien without notice by transferring the appropriate amount from Reimbursement Fund Charges paid to the District at the time annual reimbursement payments are made.

g. Non-Applicability

This Regulation 30 shall not apply to extension or construction of recycled water facilities. The District may, however, enter into reimbursement arrangements for recycled water systems it deems reasonable and fair on a case by base basis.

**NORTH MARIN WATER DISTRICT  
REIMBURSEMENT PROGRAM - 2021  
Allocation Calculations  
GL Acct 22700-01**

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| Job Number     | PROJECT        | FIRST YEAR | FINAL YEAR | ORIGINAL ENTITLEMENT | TOTAL PRIOR REIMB PAID | = ENTITLEMENT REMAINING at 12/31/2021 | REIMB PAID This year (pd in 2022 for 2021) | GRAND TOTAL REIMB PAID | ENTITLEMENT REMAINING at 12/31/2021 |
|----------------|----------------|------------|------------|----------------------|------------------------|---------------------------------------|--|------------------------|-------------------------------------|
| <b>NOVATO:</b> |                |            |            |                      |                        |                                       |  |                        |                                     |
|                |                |            |            | \$0.00               | \$0.00                 | \$0.00                                | \$0.00                                     | \$0.00                 | \$0.00                              |
|                |                |            |            | \$0.00               | \$0.00                 | \$0.00                                | \$0.00                                     | \$0.00                 | \$0.00                              |
|                |                |            |            | \$0.00               | \$0.00                 | \$0.00                                | \$0.00                                     | \$0.00                 | \$0.00                              |
|                | Total Invested |            |            | \$0.00               | \$0.00                 | \$0.00                                | \$0.00                                     | \$0.00                 | \$0.00                              |
|                | % Earned       |            |            |                      |                        |                                       | Entitlements Expiring this year            |                        | \$0.00                              |
|                |                |            |            |                      |                        |                                       | <b>Remaining Entitlement Balance</b>       |                        | <b>\$0.00</b>                       |

|  |              |
|--|--------------|
| Amt Remaining in Reimb Acct from 2020        | \$149,326.94 |
| Reimb collected 1/1/21 - 12/31/21 (22700-01) | 203,186.00   |
| Balance in Reimb Fund at 12/31/21            | 352,512.94   |
| Paid out this year                           | 0.00         |
| Remaining in Reimb Acct after payments       | \$352,512.94 |

**There were no entitlements remaining in the Novato Reimbursement program last year.  
No new entitlements to add in 2021.**

**WEST MARIN:**

|  |                |  |  |        |        |        |                                      |        |               |
|--|----------------|--|--|--------|--------|--------|--------------------------------------|--------|---------------|
|  |                |  |  | \$0.00 | \$0.00 | \$0.00 | \$0.00                               | \$0.00 | \$0.00        |
|  |                |  |  | \$0.00 | \$0.00 | \$0.00 | \$0.00                               | \$0.00 | \$0.00        |
|  | Total Invested |  |  | \$0.00 | \$0.00 | \$0.00 | \$0.00                               | \$0.00 | \$0.00        |
|  | % Earned       |  |  |        |        |        | Entitlements Expiring this year      |        | \$0.00        |
|  |                |  |  |        |        |        | <b>Remaining Entitlement Balance</b> |        | <b>\$0.00</b> |

|  |             |
|--|-------------|
| Amt Remaining in Reimb Acct from 2020        | \$11,100.00 |
| Reimb collected 1/1/21 - 12/31/21 (22700-02) | 5,850.00    |
| Balance in Reimb Fund at 12/31/21            | 16,950.00   |
| Paid out this year                           | 0.00        |
| Remining amount in reimbursement account     | \$16,950.00 |

**There have been no new entitlements added to the West Marin Reimbursement Program, since the last two that expired in 2016.**

**MEMORANDUM**

To: Board of Directors

February 11, 2022

From: David Ladd, Operations / Program Assistant II *DL*

Subject: Green House Gas Emission Reduction Progress – Reporting Year 2020  
x:\o&m tech\climate registry\cris 2020\memo ghg cy2020.docx

**RECOMMENDED ACTION:** Information

**FINANCIAL IMPACT:** None

In 2006, California enacted the Global Warming Solution Act (AB 32), which set into law the greenhouse gas (GHG) emissions reductions goal – to reduce emissions to the 1990 level by 2020. The California Air Resources Board (CARB) was directed to develop action plans to reduce GHG emissions for the 2020 targets, and identified nine discreet, early action measures, including regulations affecting landfills, motor vehicle fuels, refrigerants in cars, tire pressure and port operations.

North Marin Water District has been committed to reducing its GHG emissions since 2006 by becoming a member of the California Climate Action Registry (CCAR). First efforts included the identification of the 1990 emission levels for establishing a baseline. After review of NMWD records, it was determined that the 1990 records were incomplete and the most complete records were from 1996. The 1996 records were then entered into the CCAR program and NMWD’s baseline GHG emission levels were developed in seven areas of operation for fleet and electric power emission contributions. The seven areas of operation are: District Headquarter buildings, Novato Water Distribution, Stafford Treatment Plant, West Marin Water Distribution, Point Reyes Treatment Plant, Oceana Marin Operations and District Fleet.

For CY2020 all electric usage and fleet fuel usage has been uploaded into The Climate Registry’s CRIS reporting software where the GHG emissions amounts are calculated. In the attached spreadsheet, GHG emission amounts are being tracked by NMWD. 1996 values are being used to determine the targets shown for the fleet and electric GHG contributions. To the left are the annual CO2 emission measurements in tons, with targets listed in the middle (highlighted in yellow), and our progress towards the various targets listed on the right side of the chart. In addition to the AB 32 original goals, AB 32 has been expanded to year 2050, and California’s previous Governor, along with Marin County officials, have adopted more rigorous goals which have not yet been enacted into law, but are being tracked. Those values with parenthesis (XX) indicate that the District has met that particular target. At the bottom of the table are proposed projects to be completed to help NMWD meet the future targets, as well as projects completed to date.



## Summary

NMWD has met its future GHG reduction targets for electric use with the STP Solar project and the Marin Clean Energy program. In three of the past ten years, the District met the 2020 GHG reduction target for the fleet use. For CY2020 the 2050 Fleet goal was reached but it is worth noting that COVID modified work schedules and limited construction jobs have reduced fleet usage and that number may rebound in the future.

With our Enterprise Fleet Management program, we are trending better and will continue to work towards the 2050 target. Other efficiency improvements are expected with the design and implementation of the District Headquarters remodel.



Good Water  
Good Service  
Good Value  
Safe Place to Work

Date Last Updated 1/20/2022

Date Printed 2/1/2022

### Green House Gas Emission Tracking

| Measurements (#)<br>Tons of CO2 |       |                               |                     | AB 32<br>Targets (*) |          | CA and Marin<br>Co. Targets (**) |          | Progress to 2010<br>AB 32 Target |          | Progress to 2010<br>CA/Marin Target |          | Progress to 2015<br>CA/Marin Target |          | Progress to 2020<br>AB 32 Target |          | Progress to 2050<br>32 Target |          | Progress to 2050<br>CA/Marin Target |          |
|---------------------------------|-------|-------------------------------|---------------------|----------------------|----------|----------------------------------|----------|----------------------------------|----------|-------------------------------------|----------|-------------------------------------|----------|----------------------------------|----------|-------------------------------|----------|-------------------------------------|----------|
| Year                            | Fleet | Electric<br>(Market<br>Based) | Employee<br>Commute | Fleet                | Electric | Fleet                            | Electric | Fleet                            | Electric | Fleet                               | Electric | Fleet                               | Electric | Fleet                            | Electric | Fleet                         | Electric | Fleet                               | Electric |
| 1996                            | 236   | 862                           |                     |                      |          |                                  |          |                                  |          |                                     |          |                                     |          |                                  |          |                               |          |                                     |          |
| 2000                            | 272   | 1055                          |                     | 272                  | 1055     | 224                              | 819      |                                  |          |                                     |          |                                     |          |                                  |          |                               |          |                                     |          |
| 2006                            | 283   | 1009                          | 110                 |                      |          |                                  |          | 11                               | (46)     | 59                                  |          |                                     |          | 47                               | 147      | 94                            | 320      |                                     |          |
| 2007                            | 298   | 1315                          | 113                 |                      |          |                                  |          | 25                               | 260      | 73                                  |          |                                     |          | 61                               | 453      | 108                           | 626      |                                     |          |
| 2008                            | 290   | 1098                          | 113                 |                      |          |                                  |          | 17                               | 43       | 66                                  |          |                                     |          | 53                               | 236      | 101                           | 409      |                                     |          |
| 2009                            | 261   | 910                           | 97                  |                      |          |                                  |          | (12)                             | (145)    | 37                                  |          |                                     |          | 24                               | 48       | 72                            | 221      |                                     |          |
| 2010                            | 253   | 649                           | 81                  |                      |          |                                  |          | (19)                             | (406)    | 29                                  | (170)    | 35                                  | (195)    | 17                               | (213)    | 64                            | (41)     | 199                                 | 438      |
| 2011                            | 242   | 795                           | 107                 |                      |          |                                  |          |                                  |          |                                     |          | 24                                  | (49)     | 6                                | (67)     | 53                            | 105      | 188                                 | 584      |
| 2012                            | 236   | 523                           | 105                 |                      |          | 218                              | 844      |                                  |          |                                     |          | 18                                  | (321)    | (0)                              | (339)    | 47                            | (167)    | 182                                 | 312      |
| 2013                            | 241   | 500                           | 83                  |                      |          |                                  |          |                                  |          |                                     |          | 23                                  | (344)    | 5                                | (362)    | 52                            | (190)    | 187                                 | 289      |
| 2014                            | NA    | NA                            |                     |                      |          |                                  |          |                                  |          |                                     |          |                                     |          |                                  |          |                               |          |                                     |          |
| 2015                            | 253   | 244                           |                     |                      |          |                                  |          |                                  |          |                                     |          |                                     |          | 17                               | (618)    | 64                            | (446)    | 199                                 | 33       |
| 2016                            | 250   | 290                           |                     |                      |          |                                  |          |                                  |          |                                     |          |                                     |          | 14                               | (572)    | 61                            | (400)    | 196                                 | 79       |
| 2017                            | 228   | 271                           |                     |                      |          |                                  |          |                                  |          |                                     |          |                                     |          | (8)                              | (591)    | 39                            | (419)    | 174                                 | 60       |
| 2018                            | 257   | 222                           |                     |                      |          |                                  |          |                                  |          |                                     |          |                                     |          | 21                               | (640)    | 68                            | (468)    | 203                                 | 11       |
| 2019                            | 237   | 188                           |                     |                      |          |                                  |          |                                  |          |                                     |          |                                     |          | 1                                | (674)    | 48                            | (502)    | 183                                 | (23)     |
| 2020                            | 164   | 187                           |                     | 236                  | 862      |                                  |          |                                  |          |                                     |          |                                     |          | (72)                             | (675)    | (25)                          | (503)    | 110                                 | (24)     |
| 2021                            |       |                               |                     |                      |          |                                  |          |                                  |          |                                     |          |                                     |          |                                  |          |                               |          |                                     |          |
| 2050                            |       |                               |                     | 189                  | 690      | 54                               | 211      |                                  |          |                                     |          |                                     |          |                                  |          |                               |          |                                     |          |

Notes:

All Values are in Metric Tons

(green) numbers indicate measurements below targets.

(#) Measurements are from The Climate Registry CRIS reporting tool (formerly known as California Climate Action Registry CARROT Tool)

(\*) Targets are from California AB 32 compliance goals (2010 = 2000 levels, 2020 = 1996 levels, 2050 = 80% of 1996 levels)

(\*\*) Targets are California Governor's and Marin Co, goals (2010 = 95% of 1990 levels, 2015 = 80% of 2000, 2050 = 20% of 2000 levels)

(xxx) Numbers in parenthesis indicate that NMWD is below its target

Proposed Projects to Reduce GHG Emissions

- 1) Maintain NMWD fleet alternative fuel and efficiency portfolio to keep on the 2020 target. This includes a goal of 25% hybrid fuel vehicles and 50% alternative fuel vehicles for the 2050 target.
- 2) Continue to promote alternative transportation methods for NMWD employees. Car pool with the take home vehicle program, bike to work, public transportation, alternative work weeks.
- 3) Continue to promote water conservation activities.
- 4) Carry out plan for energy efficiency improvements in the Main Office Building Renovation.

Completed Projects to Reduce GHG Emissions

- 1) Added three hybrid vehicles to fleet and eliminated idle operations of construction fleet and replaced gas for diesel trucks.
- 2) Placed the high Novato high-use pump stations onto PG&E time of use.
- 3) Joined Marin Clean Energy for West Marin facilities at the dark green level (100% renewable energy portfolio)
- 4) Promoted alternative transportation/alternative work weeks and carpooling for employee commute.
- 5) Water conservation efforts since 2008 have led to a reduction in pumping requirements.
- 6) Built a 360kW Solar facility to support Stafford Water Treatment Plant in 2012.
- 7) Joined Marin Clean Energy for our Novato time of use facilities at the light green level (60% renewable energy portfolio as of 2022)
- 8) Executed a Fleet management relationship with Enterprise Fleet Management to improve the fleet overall efficiency.
- 9) Placed order for first all electric vehicle for fleet expected to arrive Spring of 2022.

## MEMORANDUM

To: Board of Directors

February 11, 2022

From: Lia Solar, Engineering Services Representative   
Tony Williams, Assistant General Manager/Chief Engineer 

Subject: County of Marin and City of Novato Paving Moratoriums  
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**RECOMMENDED ACTION:** Information Only

**FINANCIAL IMPACT:** None

Standard practice by the County of Marin and City of Novato is to adopt a five-year street cut (excavation) prohibition immediately following a street pavement rehabilitation project. The City of Novato has it outlined in the Novato Municipal Code Chapter XV, Section 15-2.54 and the County of Marin Department of Public Works maintains a current list of moratorium streets. These excavation prohibitions, also known as paving moratoriums, can have a negative impact on District customers undergoing major remodels due to the need to upsize water service to meet fire sprinkling requirements. This information is made available from each agency's website, local newspapers and also by mail (via public notice). The District will continue coordinate with both agencies, as is past practice, on upcoming potential projects. When the District receives paving moratorium updates, we first transfer the information to the District's facility maps located at the Engineering Department counter. This allows both staff and customers the opportunity to see the actual areas affected by the moratorium as well as the dates the moratorium remains in effect.

Annually, the District sends a direct mailing to all those consumers with properties that will be affected by the upcoming paving moratorium. This year the District after consultation with the paving program managers at each agency, has decided to discontinue sending out notices due to confusion it causes from those affected consumers receiving multiple notices (both agencies send out notices with the same messaging). The upcoming paving moratorium has an approximate start date of June 2022 and will last at least five years.

NORTH MARIN WATER DISTRICT

Summary of Emergency Water Conservation Ordinance No. 39  
West Marin Service Area, as Amended on February 1, 2022

The Board amended Ordinance No. 39 by resolution at the February 1, 2022 Board meeting. Ordinance No. 39 as currently amended by Resolution 22-02: repeals Stage 2 mandatory 25% reduction and prohibitions on non-essential water use and enacts Stage 1 voluntary 15% reduction in water use under the West Marin Water Shortage Contingency Plan, discontinues the drought surcharge, and amends Sections 4, 5, and 6 of Ordinance No. 39.

A full version of Ordinance No. 39, as amended can be found on the District website at <https://nmtwd.com/save-water/drought/west-marin-service-area-guide/>

# Districts in Marin on hunt for water

DROUGHT

**Marin Independent Journal**

By Will Houston

[whouston@marinij.com](mailto:whouston@marinij.com)

After facing critical water shortages last year, Marin County's two largest water agencies are exploring new supply options.

Connecting to other water agencies, desalination, capturing more rainwater and raising existing dams are among the options being explored by Marin Municipal Water District, which serves 191,000 residents in central and southern Marin, and the North Marin Water District, which serves about 62,000 residents in Novato and West Marin.

The two agencies met this month to discuss what new sources of supply could be added.

While recent rainfall has provided a short reprieve, both districts said they must plan for unpredictable rainfall, especially in the face of climate change.

Jay Lund, co-director of the Center for Watershed Sciences at the University of California, Davis, said most of the easy options for adding new sources of water have already been implemented. As a result, any new sources will likely require a more rigorous review and come at a higher price.

“As we look forward into the future, things get increasingly expensive and increasingly awkward in terms of regulations and logistics,” Lund said. “I think the state is going to understand this, that Marin is not going to be the only place that has these problems. I think people are going to have to be understanding over time. I think it will be a mix of things done over time, not just expanding water supplies and water sources but also further efforts to reduce water use.”

The Marin Municipal Water District, which faced the possibility last year of depleting its local reservoirs by this summer, plans to hold three public workshops between March and June to discuss what sources of supply should be considered and

prioritized. From these meetings, the district plans to draft a report with the aid of a consultant detailing the various pros and cons of the options.

“I think we have to have absolute bluntness about the challenges and opportunities so that we can really weigh what these options are,” board member Monty Schmitt said during the board’s Jan. 18 discussion.

District staffers said their intent is to explore a wide range of options. Some of these have already been studied or are being considered, such as a pipeline over the Richmond-San Rafael Bridge; desalination; buying more water from Sonoma County during the rainy season; groundwater banking; expanding the recycled water system; and more water use restrictions for landscaping and development.

Other options that have not received as much attention include dredging local reservoirs or raising dams; fog capture; selective removal of vegetation to increase runoff into reservoirs; and cloud seeding to promote more rainfall.

The district has about a two-year supply of water in its seven local reservoirs, which provide about 75% of its supply. The other 25% comes from Russian River water imports from the Sonoma Water agency.

The district has not increased reservoir supplies since it created the Soulajule Reservoir and doubled the size of the Kent Lake reservoir in the early 1980s. At the Jan. 18 meeting, some district board members were surprised to hear staff proposing the option of raising dams.

“It just feels like a very significant shift from what we’ve been hearing from management in the past 12 years,” board member Cynthia Koehler said.

One of the primary reasons the district has not considered expanding reservoir storage stems from a 1995 state order. The order requires about half of the new water supply built at Kent Lake be released into Lagunitas Creek for the benefit of endangered coho salmon, threatened steelhead trout and other species. A similar order is in place for Soulajule Reservoir.

While the 1995 order does not address future reservoir expansion, staff said there had been a reluctance to open the door on water rights because of the possibility of the state imposing more restrictions. While acknowledging this would be uncharted territory, staff said it is at least worth looking into.

“We really do just feel like we need to explore it and not just accept the historical reference that it’s not going to go well for us,” Paul Sellier, the district operations director, told the board.

Larry Russell, the board president, said it is important to know that taking this step would be like “walking on eggshells.”

“Let’s not get our users all fired up that we’ve got a door that’s going to open here because it may slam on our fingers harder than we wish,” Russell said.

Larkspur resident James Holmes said the district should make every effort to free itself from what he called a “Draconian” order.

“This board should not treat the terrible 1995 order as the immutable barrier but rather as an obstacle to be overcome and overcome as quickly as possible,” Holmes told the board.

Another option the district is considering is pumping water out of its second smallest reservoir, Phoenix Lake, which has issues with sedimentation and low alkalinity. The lake holds about a half-percent of the district’s water supply.

Rather than pumping that water directly to the Bon Tempe Treatment Plant, the district would pump the water into the nearby Bon Tempe Reservoir, where it would be diluted and then treated.

Board member Larry Bragman said that as the district considers larger projects, such as a pipeline over the Richmond- San Rafael Bridge, he said he is “very much interested in increasing the efficiency of what we have.”

For desalination, district staff said they will be able to rely on past studies of a proposed plant along San Francisco Bay near San Rafael. The district had previously tested pilot desalination plants in the early 1990s and early 2000s but chose not to proceed with the project in 2010.

Other options include partnering with neighboring water agencies in the Bay Area to create a desalination plant that could provide water for the region.

One obstacle the district has in building its own desalination plant is a 2010 voter-approved measure that requires voter approval for financing and construction of a plant. Staff said the board could direct staff to look into rescinding this requirement.

District customer Paul Deuter said the board needs to set a specific target on how much more water it wants to add.

“I think part of the problem is we kind of don’t know how much we need,” Deuter told the board.

Schmitt, who has called for a three-year water supply, agreed.

“Without knowing what our goal is, it’s boundless,” Schmitt said during the meeting. “It makes it very hard to determine whether there is one project that meets our needs.

At North Marin Water District, a study is already underway to identify new sources of water, including increasing the capacity of its Stafford Lake reservoir and capturing more rainfall from nearby canyons.

The district’s 60,000 residents in the greater Novato area get 75% of their water from the Sonoma Water imports with the remaining 25% coming from the district’s only reservoir, Stafford Lake. Stafford Lake would have gone dry last summer had the district not purchased and pumped in Russian River water during the winter of 2020-2021.

The study by the West Yost engineering firm recommended options such as installing a slide gate on the spillway at Stafford Lake dam, which would allow it to hold an additional 700 acre-feet of water, or about 16% of the lake’s current capacity of 4,300 acre-feet. An acre-foot is the amount of water it takes to submerge 1 acre under a foot of water.

That project is estimated to cost about \$710,000 to build, or about \$1,000 per acre-foot of new supply, as opposed to dredging the lake, which was estimated to add 550 acre-feet of water at a cost of \$26.7 million, or \$48,500 per acre-foot of new supply.

But this project’s effectiveness in bolstering supplies would rely on the district receiving rainfall. Another option presented to the district is capturing rainfall in the nearby Leveroni and Bowman canyons just north of the lake. The study found about 628 acre-feet of water could be added at a cost of about \$101 per acre-foot, not including treatment costs.

“This study is really bringing to light that we have a lot of different sources of water, but our big problem is storage,” said district board member Jim Grossi said during the board’s Jan. 25 meeting. “I think that needs to be looked at.”



Other options were deemed infeasible by the study. Recharging groundwater in the Novato basin, for example, would only yield a small amount of water at a high cost compared to other groundwater basins in California. The Novato basin is thin and can only hold about 50 to 100 acre-feet of water. Groundwater could be extracted from or recharged into the basin at a rate of tens of gallons per minute, while other basins have a rate in the low hundreds or thousands of gallons per minute, according to West Yost.

However, the district could partner with other groundwater storage project in the region, such as one being studied by the Sonoma Water agency.

Desalination was deemed infeasible given the high cost and the district's size. However, the district could collaborate with other agencies for a regional desalination plant. West Yost estimated it would likely be 15 years before such a project would be completed.

Board member Mike Joly said the district should not wait to begin looking into the potential for a regional desalination plant.

“Clearly, we should be at least studying certain technologies that do not just rely on water coming from the sky,” Joly said.

While he said desalination will ultimately be a solution in the future, board president Stephen Petterle said completing such a project will not solve short term water needs that will be exacerbated by state mandated housing development and large projects in Novato, such as the proposal to build more than 1,000 homes at the former Fireman's Fund Insurance campus.

“I think ultimately, the solution is desalination, but that's a long way away,” Petterle said. “It takes regional coordination; which California has never had with water.”

The district plans to review more detailed cost estimates this spring and eventually prioritize which projects to begin.



Water rushes down the spillway this month at Kent Lake, part of the Marin Municipal Water District's reservoir system. The utility is considering raising dams and other ways to boost supply.

DOUGLAS ZIMMERMAN/SPECIAL TO THE MARIN INDEPENDENT JOURNAL

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Monday, 01/31/2022 Page .A01Copyright Terms and Terms

# Water use rules for West Marin are eased

## DROUGHT

Supplier to continue some conservation restrictions

### **Marin Independent Journal**

**By Will Houston**

[whouston@marinij.com](mailto:whouston@marinij.com)

After nearly two years of being under mandatory water use restrictions because of the drought, West Marin residents are finally getting some relief following last year's rainfall.

The North Marin Water District voted this week to relax water use restrictions that have been in place since early 2020 for Point Reyes Station, Inverness Park, Paradise Ranch Estates, Bear Valley and Olema.

Residents will be asked to voluntarily conserve by 15% compared to the last normal water year of 2013. Previously, these residents were required to cut back water use by 25%.

However, some water use restrictions will remain in place because of the ongoing drought conditions statewide.

"We're not over all of this yet," board member Jim Gross said during a board meeting this week. "Talk to some of the old farmers and ranchers around and you'll get the same opinion."

West Marin ratepayers will still be barred from watering lawns in a way that causes excessive runoff; washing off hard surfaces such as driveways and sidewalks; washing vehicles with a hose without using a shutoff nozzle; watering ornamental street medians; and serving water at restaurants unless upon request.

The changes also incorporate new state drought restrictions that bar people from watering their lawns 48 hours after rainfall. The state allows agencies to charge up to \$500 for violations.

Ratepayers in the district's West Marin service area, which covers about 1,800 residents, stepped up to the call to conserve, often exceeding the mandatory 25% conservation by a large amount.

Point Reyes Village Association president Ken Levin said West Marin residents will continue to meet any conservation requirements as needed.

"Folks out here are traditionally living closer to the earth and aware of their surroundings and understand the need for balance," Levin said.

The district relaxed the West Marin rules based on the significant rainfall it received last year. The West Marin ratepayers are served by well water in the Lagunitas Creek watershed.

The district uses rainfall data at the Kent Lake reservoir on Lagunitas Creek to gauge whether it needs to impose drought restrictions.

The lake has recorded nearly 39 inches of rain since storms in late October, 11 inches more than is required for the district to rescind the water use restrictions for West Marin.

The district's larger Novato service area, which includes 60,000 residents, is still required to adhere to its 20% mandatory conservation target and restrictions such as not watering lawns more than twice per week.

About 75% of the water for the Novato area is sourced from Sonoma Water's reservoirs at Lake Sonoma and Lake Mendocino. The remaining 25% is from the Stafford Lake reservoir in Novato.

Lake Sonoma is still below average storage of this time year. The lake is at 62% of capacity when it normally is more than 80% full at this time.

"There is no question at the staff level for our Novato system we're still in a drought," said Drew McIntyre, district general manager.

The larger Marin Municipal Water District might also relax some of its drought restrictions in the coming weeks.

The district, which serves about 191,000 residents in central and southern Marin, is set to discuss which rules to retain at a meeting at 6 p.m. Tuesday.

Last month, the district rescinded water use allocations and associated water rate penalties because rainfall in late 2021 nearly refilled its reservoirs. But many rules remain in effect, such as a prohibition on outdoor sprinkler use.

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Saturday, 02/05/2022 Page .A01

# District close to drilling for well

WEST MARIN

Utility advances effort to fix saltwater influx

**Marin Independent Journal**

**By Will Houston**

<mailto:whouston@marinij.com> *whouston@marinij.com*

A project to address saltwater contamination affecting the West Marin water supply is set to begin after nearly a year's delay — and at a much higher price.

The North Marin Water District has approved a \$192,000 construction contract to build a new well that would be free from saltwater contamination that has affected two-thirds of its wells. The contamination was so bad last year that the district had to set up an emergency water station for the first time for residents who have salt-restrictive diets. “We’re all glad that the thing is finally being drilled,” said Point Reyes Station Village Association president Ken Levin.

The new well is expected to be completed by September.

The 1,800 residents in the district's West Marin

service area get their water exclusively from three wells. Two of the wells on a former U.S. Coast Guard property are at a lower elevation next to Tomales Bay, causing saltwater to infiltrate their supply during dry years.

The frequency of this contamination is expected to worsen with climate change through prolonged drought periods and sea-level rise.

The third well is on the Gallagher Ranch east of Point Reyes Station and is unaffected by saltwater. However, the well only produces half of the water originally intended.

To address this, the district plans to build a second well at Gallagher Ranch for around \$1 million that would provide more water without the threat of further saltwater contamination.

At its meeting on Feb. 1, the water district's board voted unanimously to approve a construction contract with the Watsonville- based Maggiora Bros. Drilling Inc. for about \$192,300.

The cost is more than double the initial district estimate of \$75,000 to \$80,000. Tony Williams, assistant executive director, attributed the higher than- expected price to several factors, including the high demand for well drilling throughout California during the drought, high fluctuations in prices for materials and the remote location of the site.

The project was set to be completed last summer, but it was delayed after challenges by the Inverness- based Save Our Seashore environmental group and its president, Gordon Bennett. The group argued the district did not adequately study the environmental impacts on endangered fish in the Lagunitas Creek watershed if another well draws water from the creek.

The county and the California Coastal Commission rejected

Bennett's challenges to the project last year.

While the challenges cost a "significant amount of time," Williams told the board that the delay likely would have not changed the construction cost given the high demand for drilling statewide.

The delay did allow the district time to secure a \$464,000 grant from the California Department of Water Resources for the project, which will cover a significant portion of the cost.

"There is a little bit of silver lining there," Williams told the board.

Construction of the well is set to take place in two phases beginning with the drilling in March. After that, the district will need to install a new pipe to connect the well to its transmission system. Water quality tests are then required to take place.

"It's a huge milestone," Williams said of the project on Friday. "We're not quite there, there is still a little bit more to go, but it's really going to help once we're up and running."

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Monday, 02/07/2022 Page .A01



## PD Editorial: A two-basin plan is still best bet for North Coast water



The Eel River pours from Van Arsdale Reservoir over the top of Cape Horn Dam, part of PG&E's Potter Valley Project. (PG&E)

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THE EDITORIAL BOARD, February 6, 2022

The clock is winding down on the Potter Valley Project. PG&E wants to abandon the century-old power plant in Mendocino County, and a coalition of North Coast water interests has now abandoned their long-shot takeover bid.

But football games don't end after three quarters, and the Potter Valley saga isn't over either.



It's now a near certainty that the money-losing power plant will be decommissioned and dismantled. But keeping the plant open was only an ancillary consideration, a means to an end. As is so often the case in California, this is really about water.

Water in the Russian River.

Water in the Eel River.

Water in Lake Mendocino.

Water in Lake Pillsbury.

Since 1908, water from the Eel has flowed through a tunnel 8 feet in diameter and dropped 450 feet through penstocks to spin the turbines at the Potter Valley powerhouse. From there, the water flows into the East Fork of the Russian River.

Plumbing for the hydropower project provided a year-round water supply that transformed the upper Russian River basin. But two dams that pool water for the diversion tunnel created an impassable barrier for salmon and steelhead on the Eel.

A battle over the project's future has been brewing for years, with a showdown anticipated this year when PG&E's operating license came up for renewal.

Farmers and cities in Mendocino and Sonoma counties rely on water flowing into the Russian, conservationists say restoring the Eel is crucial to endangered fisheries, and property owners at Lake Pillsbury, a Lake County reservoir formed by Scott Dam, also have a stake in the outcome.

PG&E bought the hydroelectric plant in 1930 and offered it for sale in 2018. There were no takers, and the utility announced plans to surrender the license in 2019.

Enter the Two-Basin Solution Partnership, a coalition including Sonoma, Mendocino and Humboldt counties, California Trout and the Round Valley Indian tribes formed to explore acquisition of the license and re-engineering of the infrastructure to keep water flowing into the Russian River during wet winter months while reopening the headwaters of the Eel to migratory fish.

The two-basin plan was never going to satisfy all the stakeholders, but its failure was the product of insurmountable costs and deadlines. The partnership was unable to obtain \$18 million needed for preliminary studies, and the Federal Energy Regulatory Commission refused to extend an April 14 deadline to submit a license application. Had they succeeded, they would have acquired a power plant that loses \$9 million a year.

With the plant out of the equation, negotiations can focus on the needs of the Eel and Russian river watersheds. The two-basin approach mediated by Rep. Jared Huffman, D-San Rafael, remains the most equitable and viable solution.

PG&E holds the water rights, which could become a bargaining chip as decommissioning plans for the power plant and, presumably, removal of Scott and Cape Horn dams advance. The

process could take five years or more, with PG&E continuing to operate the plant on one-year license extensions.

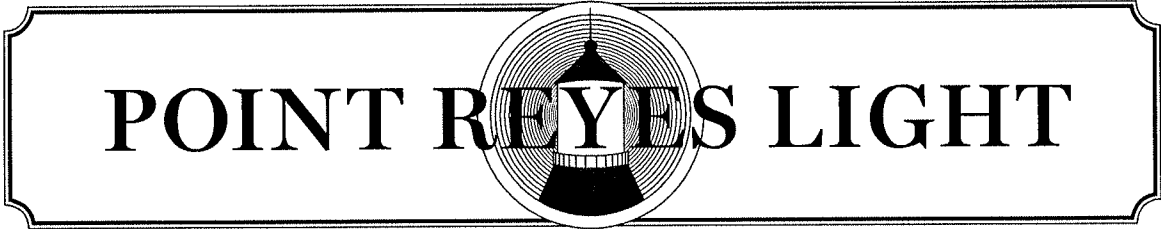
The announcement that the Two-Basin Partnership will not seek the license after all wasn't the only big development this past week. PG&E will replace a damaged transformer that has necessitated a drastic reduction in water flowing through the Potter Valley plant, PG&E spokesman Paul Moreno confirmed Friday.

The repairs could take a couple of years, which may extend cutbacks for upper Russian River water users. It also provides time to complete a two-basin agreement and ensure that any hardships aren't permanent. Don't let the clock run out.

You can send letters to the editor to [letters@pressdemocrat.com](mailto:letters@pressdemocrat.com).

February 3, 2022 POINT REYES LIGHT

North Marin Water District downgraded its drought restrictions for West Marin on Tuesday, discontinuing the drought surcharge and cutting conservation requirements in response to improved supply from Lagunitas Creek. But after heavy early rains, last month was bone dry, underscoring the ongoing drought. N.M.W.D. kept its drought ordinance in place, recommending a 15 percent voluntary reduction in use.



NEWS

# North Marin to drill well in March, at double the cost

by **Ike Allen**  
February 9, 2022

Contractors will begin drilling a new well on the Gallagher ranch outside Point Reyes Station in March, part of North Marin Water District’s plan to shift away from longstanding wells increasingly impacted by saltwater. The new well, delayed for months by an environmental appeal process, will cost more than double the district’s estimate, at \$192,000. North Marin’s chief engineer, Tony Williams, wrote in a staff report that high demand, fluctuating materials costs and the remoteness of the site accounted for a higher-than-expected drilling estimate from the contractor, Maggiora Bros. Drilling. The second phase of construction, which will install a 500-foot pipeline to connect the new well to a transmission line leading to another well on the ranch that has not performed as expected since it was built in 1992, will involve a separate bidding process. The district secured a \$464,000 small community drought relief grant from the California Department of Water Resources last month and will use it to cover some of the cost; the rest will be covered under the district’s annual budget, which is largely funded by water sales. High salinity levels in North Marin’s

two Coast Guard wells have plagued West Marin customers since 2020 and recently led the district to truck in water for those on low-salt diets. The district believes the new Gallagher well will generate somewhere between 144,000 and 216,000 gallons a day; when combined with the old Gallagher well, this would meet the average demand in West Marin without tapping into the Coast Guard wells. The project, originally set to be completed last summer, was held up when Inverness Park resident Gordon Bennett appealed it, first to the county and then to the California Coastal Commission, over concerns it would impact streamflows in Lagunitas Creek and harm salmon spawning habitat. Mr. Bennett contended the well wouldn't be necessary if the district promoted better conservation.

© 2022 Point Reyes Light.



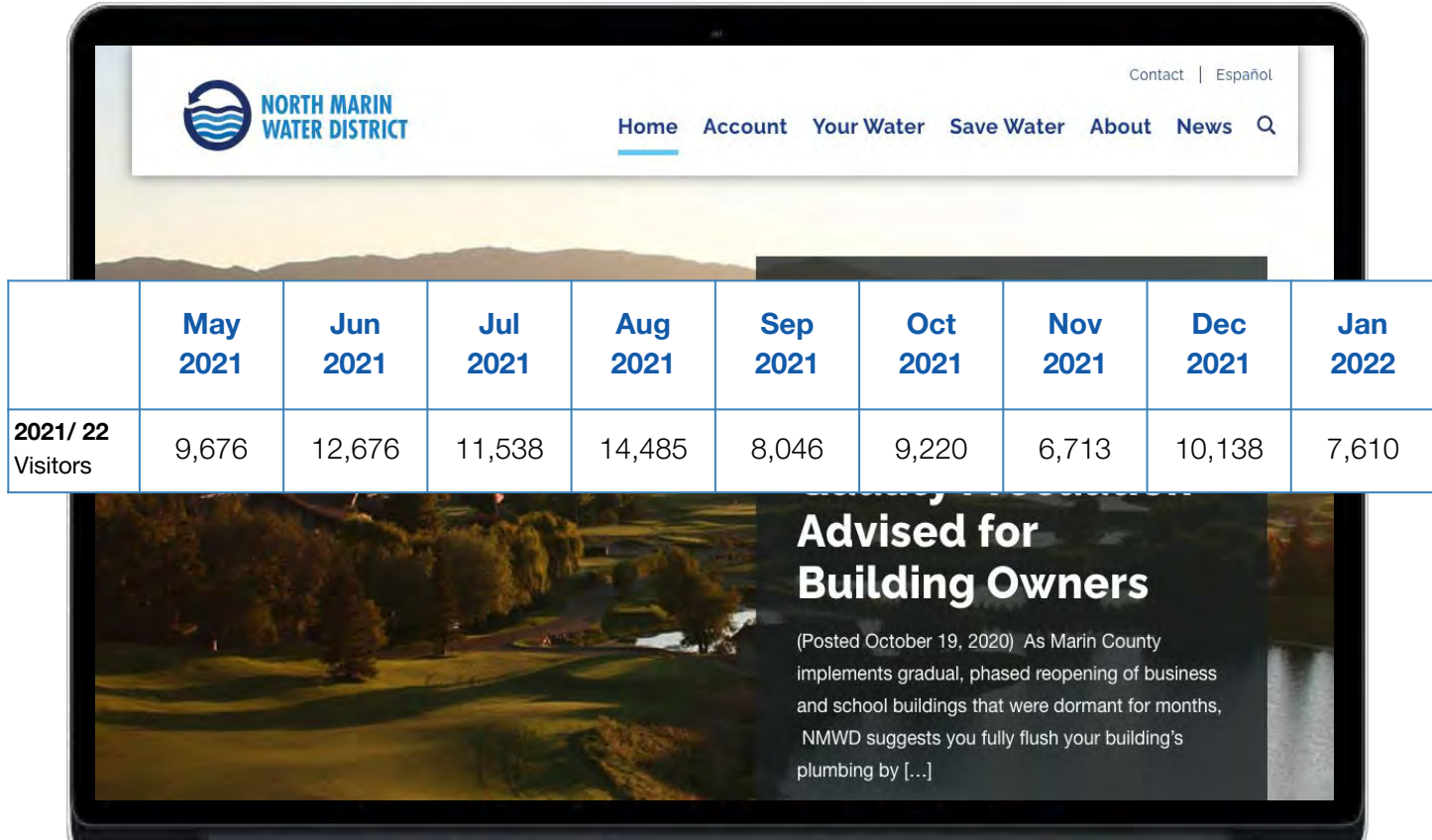
**NORTH MARIN  
WATER DISTRICT**

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# **Web & Social Media Report**

January 2022

# Website Statistics



# Social Media Followers

|   | May-2021 | Jun-2021 | Jul-2021 | Aug-2021 | Sep-2021 | Oct-2021 | Nov-2021 | Dec-2021 | Jan-2022 |
|---|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| <br>Facebook<br>Followers  | 1,181    | 1,178    | 1,181    | 1,191    | 1,291    | 1,313    | 1,338    | 1,376    | 1,454    |
| <br>Twitter<br>Followers   | 35       | 42       | 44       | 52       | 57       | 61       | 63       | 65       | 66       |
| <br>Instagram<br>Followers | 497      | 516      | 536      | 549      | 573      | 593      | 599      | 611      | 618      |





## NMWD Most Visited Pages

| Pages   | Unique Pageviews | % of Total |
|---|------------------|------------|
| <a href="#">Home</a>                                | 4,190            | 31.21%     |
| <a href="#">Online Billing</a>                      | 1,901            | 15.38%     |
| <a href="#">Weather &amp; Production Statistics</a> | 1,428            | 11.18%     |
| <a href="#">Watersmart</a>                          | 1,010            | 7.68%      |
| <a href="#">Novato Water</a>                        | 217              | 1.54%      |
| <a href="#">Contact</a>                             | 215              | 1.51%      |
| <a href="#">Meetings 2022</a>                       | 178              | 1.34%      |
| <a href="#">Employment Opportunities</a>            | 155              | 1.27%      |
| <a href="#">Human Resources</a>                     | 152              | 1.27%      |
| <a href="#">About NMWD</a>                          | 145              | 1.24%      |



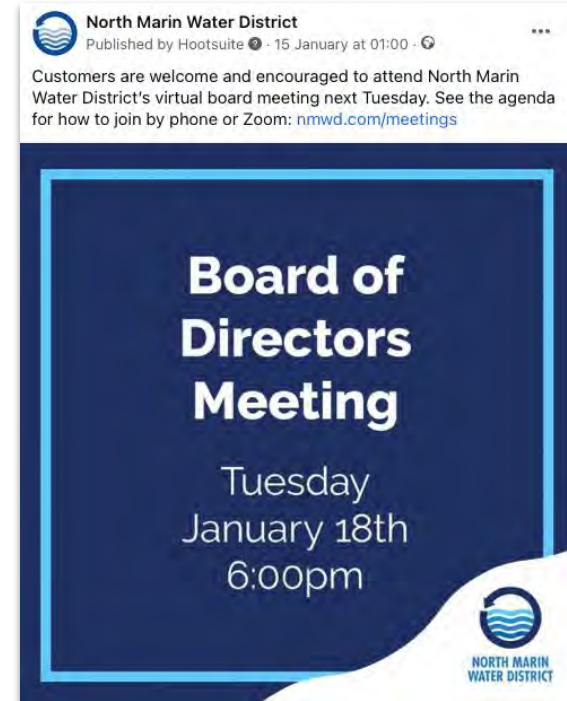


## January Social Media Highlights | Facebook



117 people reached | 2 engagements

*Engagements include likes, reactions, clicks and comments*



88 people reached | 1 engagement





# January Social Media Highlights | Facebook

North Marin Water District  
Published by Hootsuite · 18 January at 17:00 · 🌐

Customers are welcome to attend the public hearing today to discuss redistricting using 2020 census data. Visit <https://nmwd.com/.../2021-redistricting-using-2020.../> for more information.

**Redistricting  
using 2020  
census data**

Public hearing  
scheduled for  
January 18, 2022

61 people reached | 1 engagement

*Engagements include likes, reactions, clicks and comments*

North Marin Water District  
Published by Hootsuite · 20 January at 00:30 · 🌐

Join us online for a virtual workshop on potential new water solutions on Tuesday, January 25. Share your ideas and get answers to your questions about how to make our community more drought resistant. Visit <https://nmwd.com/save-water/new-water-supplies/> for more information and how to join.

**Virtual  
Community  
Workshop**

Potential new  
water solutions.

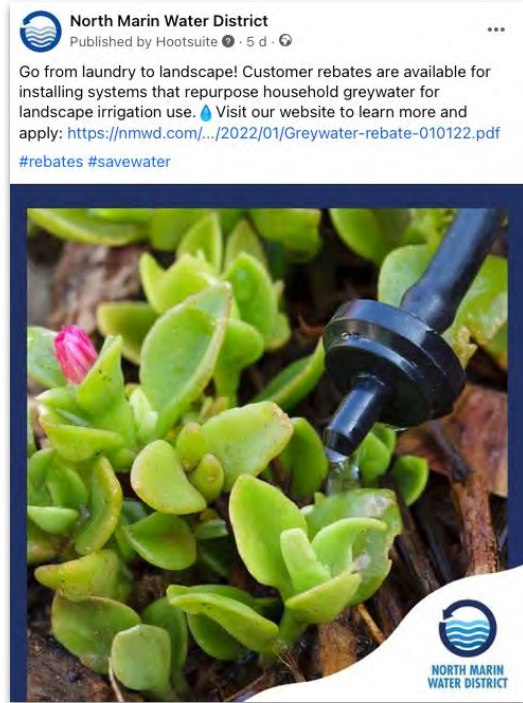
**Tuesday  
January 25**  
6pm to 7:30pm

4120 people reached | 64 engagements



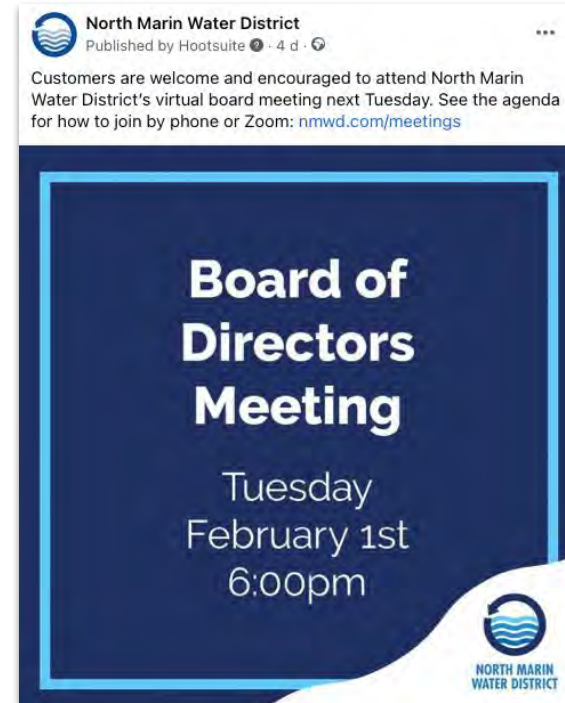


## January Social Media Highlights | Facebook



108 people reached | 4 engagements

*Engagements include likes, reactions, clicks and comments*



69 people reached | 1 engagement





# January Social Media Highlights | Twitter



**North Marin Water District** @NorthMarinWater · Jan 13

Stephen Petterle, who has served on North Marin Water District's board since 2001, was recently sworn in as President of the board. Read about our Board of Directors on our website at [nmwd.com/board](https://nmwd.com/board)



**North Marin Water District** @NorthMarinWater · Jan 15

Customers are welcome and encouraged to attend North Marin Water District's virtual board meeting next Tuesday. See the agenda for how to join by phone or Zoom: [nmwd.com/meetings](https://nmwd.com/meetings)





## January Social Media Highlights | Twitter



**North Marin Water District** @NorthMarinWater · Jan 18

Customers are welcome to attend the public hearing today to discuss redistricting using 2020 census data. Visit [nmwd.com/2021redistrict...](https://nmwd.com/2021redistrict...) for more information.

**Redistricting using  
2020 census data**

Public hearing scheduled  
for January 18, 2022



**North Marin Water District** @NorthMarinWater · Jan 20

Join us online for a virtual workshop on potential new water solutions on Tuesday, January 25. Share your ideas and get answers to your questions about how to make our community more drought resistant. Visit [nmwd.com/workshop](https://nmwd.com/workshop) for more information and how to join.

**Virtual  
Community  
Workshop**

Potential new  
water solutions.

**Tuesday  
January 25  
6pm to 7:30pm**





## January Social Media Highlights | Twitter



**North Marin Water District** @NorthMarinWater · Jan 22

Customers are welcome and encouraged to attend North Marin Water District's virtual board meeting next Tuesday. See the agenda for how to join by phone or Zoom: [nmwd.com/meetings](https://nmwd.com/meetings)

### Board of Directors Meeting

Tuesday, January 25th  
6:00pm



**North Marin Water District** @NorthMarinWater · Jan 28

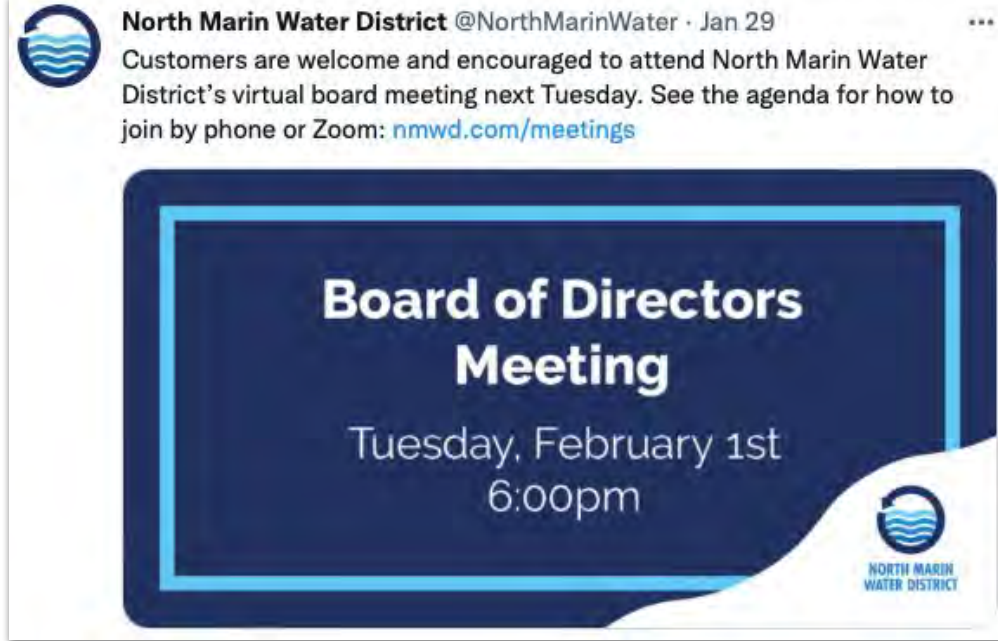
Go from laundry to landscape! Customer rebates are available for installing systems that repurpose household greywater for landscape irrigation use. Visit our website to learn more and apply: [nmwd.com/wp-content/upl...](https://nmwd.com/wp-content/upl...)

#rebates #savewater





## January Social Media Highlights | Twitter




A screenshot of a Twitter post from the North Marin Water District (@NorthMarinWater) dated January 29. The post features a dark blue graphic with white text announcing a Board of Directors Meeting on Tuesday, February 1st at 6:00pm. The graphic includes the North Marin Water District logo and name in the bottom right corner. The tweet text encourages customers to attend the virtual meeting and provides a link to the agenda: [nmwd.com/meetings](https://nmwd.com/meetings).

**North Marin Water District** @NorthMarinWater · Jan 29

Customers are welcome and encouraged to attend North Marin Water District's virtual board meeting next Tuesday. See the agenda for how to join by phone or Zoom: [nmwd.com/meetings](https://nmwd.com/meetings)

**Board of Directors Meeting**

Tuesday, February 1st  
6:00pm

  
NORTH MARIN  
WATER DISTRICT



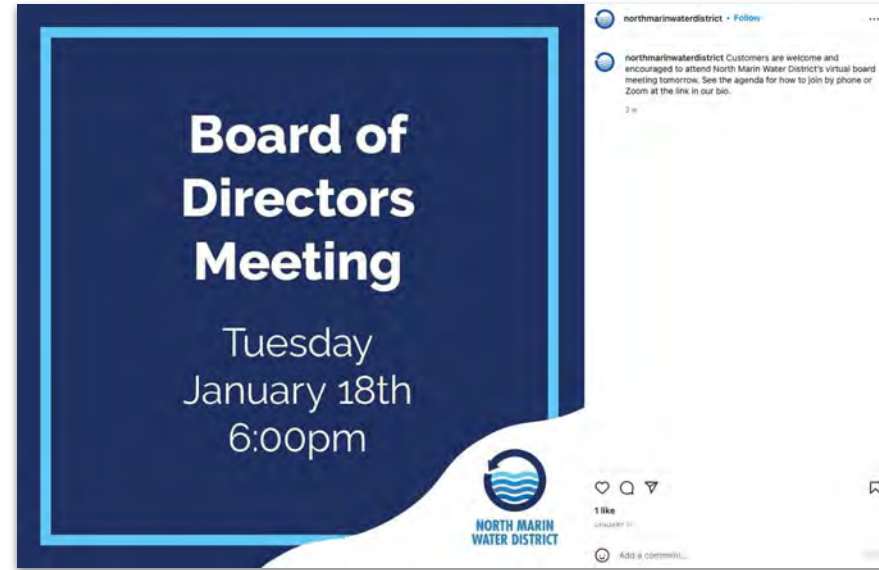




# January Social Media Highlights | Instagram



12 likes



1 like





# January Social Media Highlights | Instagram



4 likes

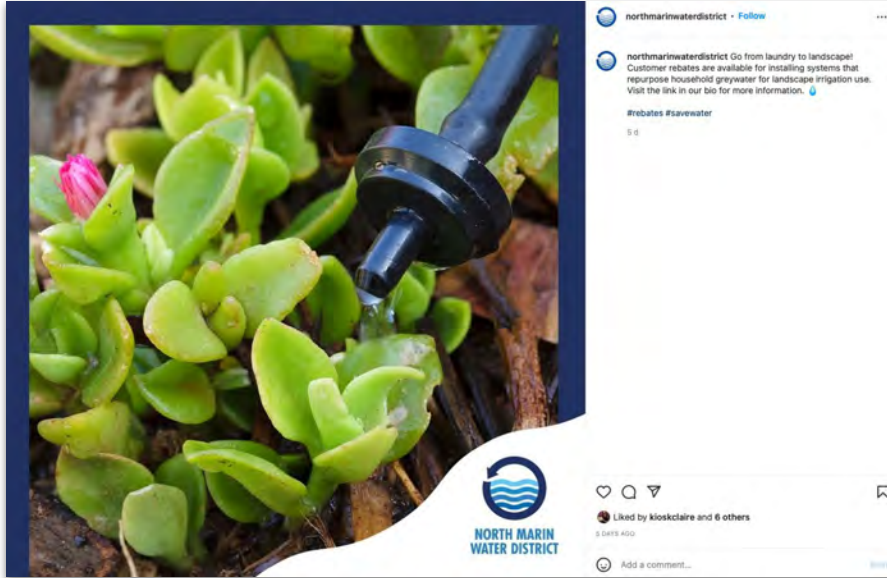


5 likes





# January Social Media Highlights | Instagram



7 likes



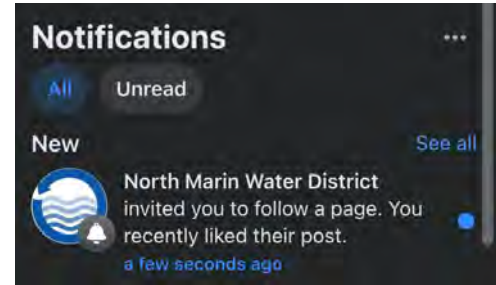
5 likes



# Facebook Likes Campaign - January Report



We are running an evergreen ad which encourages residents in the NMWD service areas to 'like' (follow) the NMWD Facebook page.



| <b>Spend in January 2022</b> | <b>Reach</b><br>(Number of people who saw the ad) | <b>Impressions</b> | <b>Results</b><br>(New Page Likes) | <b>Cost Per New Page Like</b> |
|------------------------------|---|--------------------|------------------------------------|-------------------------------|
| \$50.45                      | 3,543   | 8,316              | 73                                 | \$0.69                        |

*This month, we were able to reach **3,543** people with the Likes Campaign*



# News Stories - January

## Water Supply Workshop January 25 (Recap)

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We are working to develop new water sources to ensure reliable long-term water supplies for our customers and to minimize the impacts of future droughts. The Local Water Supply Enhancement Study explores numerous local water supply options, including expanding water recycling, adding desalination, capturing and storing stormwater, increasing Stafford Lake's capacity, and storing water in underground basins in wet years and saving it for dry years. A community workshop to learn about these potential new water supply solutions was held on January 25, 2022 (virtual from 6pm to 7:30pm). For more information from the workshop click [Here](#).

[Water Supply Workshop January 25 \(Recap\)](#)

## What's Next?

- Kiosk creating an ad for the Novato City Guide 2022
- Continue to post Social Media for SMSWP
- Continued updates to the 2022 Redistricting Pages
- Posts to celebrate National Engineers Week (Feb 20-26, 2022)



**Thank You**