

**Attachment 2**

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

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

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

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

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

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

**AGREEMENT**

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

**1. SCOPE OF SERVICES**

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

**2. COMPENSATION**

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

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

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

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

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

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

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

### **3. RECORDS RETENTION**

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

### **4. INDEMNITY**

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

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

### **5. INSURANCE**

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

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

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

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

## **6. ASSIGNMENT**

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

## **7. NOTICES**

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

For District:

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

Consultant Representative:

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

## **8. INDEPENDENT CONTRACTOR**

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

not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of this Agreement, and Consultant shall be issued a Form 1099 for its services hereunder. As an independent contractor, Consultant hereby agrees to indemnify and hold District harmless from any and all claims that may be made against District based upon any contention by any of Consultant's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.

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

c. If, in the performance of this Agreement, any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision, and control of Consultant. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Consultant. It is further understood and agreed that Consultant shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Consultant's assigned personnel and subcontractors.

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

## **9. ADDITIONAL SERVICES**

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

## **10. SUCCESSORS AND ASSIGNS**

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

## **11. TERM, SUSPENSION, TERMINATION**

a. This Agreement shall become effective on the date that it is made as set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

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

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

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

## **12. TIME OF PERFORMANCE**

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

## **13. STANDARD OF PERFORMANCE**

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

#### 14. CONFLICTS OF INTEREST

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner or degree with the interests of District, or that would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of District. In the event of any actual or potential conflict of interest in Consultant representing another party in a matter, then Consultant must bring this to the attention of District and District will determine whether to waive any such actual or potential conflict before Consultant may represent such other party.

#### 15. MISCELLANEOUS

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

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

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

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

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

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

such court.

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

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

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

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

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

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

Executed as of the day and year first above stated.

**CONSULTANT:**

BEST BEST & KRIEGER LLP

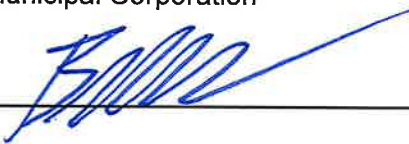
*Signatures of Authorized Person:*

By: 

Name: Sarah E. Owsowitz

Title: Attorney

**MARIN MUNICIPAL WATER DISTRICT**  
a Municipal Corporation

By: 

Name: Bret Uppendahl

Title: Acting General Manager

APPROVED AS TO FORM:

  
GENERAL COUNSEL'S OFFICE

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



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

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

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

**B. Endorsements:**

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

2. Liability, umbrella and excess policies shall provide or be endorsed to provide the following:
  - a. For any claims related to this project, Consultant's insurance coverage shall be primary and any insurance or self-insurance maintained by District shall be excess of the Consultant's insurance and shall not contribute with it; and,
  - b. **The Marin Municipal Water District, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

**C. Verification of Coverage and Certificates of Insurance:** Consultant shall furnish District with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by District before work commences and must be in effect for the duration of the Agreement. District reserves the right to require declaration pages of all required policies and endorsements.

**D. Other Insurance Provisions:**

1. No policy required by this Agreement shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Consultant and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either Consultant or District. Self-insured retentions above \$1,000,000 must be approved by District. At District's option, Consultant may be required to provide financial guarantees, in form of a statement from Consultant's Chief Financial Officer.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. District reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **Exhibit A**

### **SCOPE OF SERVICES**

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

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

**Exhibit B**

**Compensation For Legal Services**

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

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

**SCHEDULE OF HOURLY BILLING RATES**

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

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