

AGREEMENT FOR PROFESSIONAL SERVICES

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

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

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

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

PART A -- SPECIFIC PROVISIONS:

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

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

PART B -- GENERAL PROVISIONS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

\$ 25,000. ←
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→ Twenty-Five
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- (i) This policy shall not be canceled without first giving thirty (30) days prior notice to MMWD by certified mail.

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

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

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

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

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

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

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

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

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

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

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


ACCLAMATION INSURANCE MANAGEMENT SERVICES, INC.

Dated: 6/17/13

By 
Dominic Russo, President

MARIN MUNICIPAL WATER DISTRICT

Dated: 6/28/13

By 
Krishna Kumar, General Manager

SCOPE OF WORK

Responsibilities of the Consultant

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

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

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

SCHEDULE OF FEES AND HOURLY RATES



SCHEDULE OF FEES AND HOURLY RATES

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

Fee Schedule: Three Year Contract

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

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



ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage: Policy _____

Policy Period _____

Automobile Liability: Policy# _____

Policy Period _____

INSURED: Name _____

Address _____

City/State/Zip _____

SCHEDULE

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

WHO IS AN INSURED

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

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

Authorized Insurance Representative

Signature

Date

Print Name and Title

COUNTY OF MARIN REQUIREMENTS

(for data provided by County of Marin)

Disclaimer of Liability and Warranties

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

ATTACHMENT E

MARIN MUNICIPAL WATER DISTRICT DATA DISCLAIMER

(for data provided by the District)

Disclaimer of Liability and Warranties

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