

AGREEMENT FOR PROFESSIONAL SERVICES

The following is an agreement between **Marin Municipal Water District**, hereinafter "District", and **O'Connor Environmental Inc.**, hereinafter, "Consultant".

WHEREAS, Consultant is duly qualified and experienced at conducting geomorphic and hydrologic assessments within the District's sphere of influence.

WHEREAS, the District anticipates the need for additional sediment and streambed monitoring to support ongoing restoration planning and implementation and to comply with Water Board Order WR95-17 for Lagunitas Creek.

WHEREAS, in the judgment of the Board of Directors of the District, it is necessary and desirable to employ the services of Consultant to support District's Lagunitas Creek Stewardship Plan obligations.

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 and shall not exceed \$154,443 in total.

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 District, and is not entitled to participate in any pension plan, insurance, bonus or similar benefits District provides its employees.

3. INDEMNIFICATION: District 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 District shall not operate as a waiver or release.

- a. Consultant expressly agrees to defend, indemnify and hold harmless District, its officers, agents, and employees from and against any and all loss, liability, expense, claims, suits and damages, including attorneys' fees, arising out of or pertaining or relating to Consultant's, its associates', employees', subconsultants', or other agents' negligence, recklessness, or willful misconduct, in the operation and/or performance under this Agreement.
- b. With respect to all other than professional services under this agreement, Consultant shall indemnify, hold harmless, release and defend District, 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 District.

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 District 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 October 31, 2026, provided, however, that if the performance is delayed by earthquake, flood, high water or other Act of God or by strike, lockout or similar labor disturbance ("Acts"), the time for the Consultant's performance of this contract shall be extended by a number of days equal to the number of days the Consultant has been delayed by such Acts.

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:

District: Marin Municipal Water District
Attn: Jonathan Koehler
220 Nellen Avenue
Corte Madera CA 94925

CONSULTANT: O'Connor Environmental, Inc.
Attn: Matt O'Connor
P.O. Box 794
Healdsburg, CA. 95448
Ph.# (707) 431-2810

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 District 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, District 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, District 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 District by virtue of the breach of the agreement by the Consultant.

9. TRANSFER OF RIGHTS/OWNERSHIP OF DATA: The Consultant assigns to District 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 data, plans and specifications, reports, video tapes, photographs, and 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 District 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 data, plans and specifications, reports

and documents as District may direct, and refraining from disclosing any versions of the reports and documents to any third party without first obtaining written permission of District. The Consultant will not use, or permit another to use, any data, plans and specifications, reports and documents in connection with this or any other project without first obtaining written permission of District.

All materials resulting from the efforts of District and/or the Consultant in connection with this project, 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 District. Reuse of these materials by the Consultant in any manner other than in conjunction with activities authorized by District is prohibited without written permission of District.

10. COST DISCLOSURE: In accordance with Government Code Section 7550, the Consultant agrees to state in a separate portion of any report provided District, 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 District. 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 District 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 District 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 District, Attn: Sabrina Gonzales, by certified mail."

The Workers' Compensation Insurance self-insured deductibles and retentions for both the Consultant and its subcontractors shall not exceed \$1,000.

- 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 \$1,000. Coverage in an amount not less than \$1,000,000 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 District.
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 project.

- 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. All insurance deductibles or self-insured retentions shall not exceed \$15,000. All Professional Liability Insurance policies shall be endorsed with the following specific language:
 - (i) This policy shall not be canceled without first giving thirty (30) days prior notice to District by certified mail.
- d. Documentation: The following documentation of insurance shall be submitted to District:
 - (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.
- e. Consultant hereby grants to District a waiver of any right to subrogation which any insurer of said Consultant may acquire against the District by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not District has received a waiver of subrogation endorsement from the insurer.

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

The mediation process shall continue until the case is resolved 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 District 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.

O'CONNOR ENVIRONMENTAL, INC.

Dated: _____ By _____
Matthew D. O'Connor, President

MARIN MUNICIPAL WATER DISTRICT

Dated: _____ By _____
Bennett Horenstein, General Manager

SCOPE OF WORK

At the direction of Marin Water's Fisheries Program Manager, the Consultant shall assist, as needed, with the following tasks:

Task 1 - Pre-Construction Monitoring

Task 1.1 - Consultant and District staff will collaborate to collect low-altitude aerial imagery of the streambed as soon as possible and prior to construction activities that would disturb the streambed. Consultant will prepare the reach of Lagunitas Creek for imaging by laying out and surveying ground targets to provide the geospatial references required to produce orthophoto products and relate the imagery to existing monitoring data from 2012 and 2023.

Task 1.2 - Consultant will evaluate the aerial imagery collected in Task 1.1 to determine its utility for identification of streambed sediment facies and aquatic habitat type at existing sites M3-10, M3-12 and M3-14 that are used to characterize and monitor streambed conditions prior to construction activities. Depending on the quality of imagery with respect to the ability to distinguish between sediment facies and habitat types, Consultant will determine the most effective approach to documenting pre-construction streambed conditions at restoration sites 4, 5 and 6. This is anticipated to include a combination of field observations and aerial image interpretation as well as comparison with monitoring data from 2023. The data report will be used to help evaluate overall effects of the habitat enhancement project based on subsequent monitoring.

Deliverables:

- Memorandum summarizing our evaluation of the aerial mapping
- Data report describing baseline (pre-construction) streambed conditions

2.2 Task 2 - Post-Construction Monitoring

Task 2.1 - A below-canopy drone flight to collect post-construction video imagery will be conducted after construction activity is completed. This effort will be a collaboration between Consultant and District staff. It will ultimately be necessary to obtain aerial imagery for the habitat enhancement and monitoring reach in spring/summer 2025 and spring/summer 2026 to document conditions after the winter peak flow period following each construction year.

Task 2.2 - Spawning habitat quality will be evaluated based on sediment size distribution using the bulk sediment sampling technique per the Sediment and Streambed Monitoring Plan for Lagunitas Creek (2012). The surface sediment size distribution of each gravel patch/bar selected for bulk sediment sampling will be estimated using systematic random sampling techniques. Samples are collected from typical spawning habitats such as gravel patches that occur in pool tails (typically identified as "glide" habitat in the Lagunitas Creek monitoring protocol) or in riffles; flagging from prior years that identify redds is also used to indicate potential sample sites. Sampling would occur in summer or autumn 2024 at existing

monitoring sites M3-10, M3-12 and M3-14 and potential sample locations will be determined through a combination of field observations and aerial image interpretation. Two samples from each of the three monitoring sites will be collected in the framework of systematic random grid sampling. Additional bulk sediment sampling to characterize spawning habitat quality will be conducted in 2025. Two samples from each of M3-10, -12 and -14 sites will include samples associated with habitat enhancement structures; two samples will also be collected at each of M3-2, -6 and -8.

Task 2.3 – Streambed scour monitoring will be conducted during the winter peak flow period. Consultant will determine scour monitoring locations, focusing on existing spawning habitat in the Shafter-Irving reach and possibly including locations as far downstream as Big Bend. Scour monitoring will be conducted beginning December 2024 and December 2025 and include both new spawning habitat associated with habitat enhancement structures installed in 2024 along with other spawning habitat.

Task 2.4 - Systematic random grid sampling to characterize streambed and sediment conditions (sediment facies and habitat type) will occur in summer/autumn 2025 at existing monitoring sites M3-2, M3-6, M3-8, M3-10, M3-12 and M3-14. It is anticipated that the standard field protocol (c. 2023) will be used.

Deliverables:

- Report summarizing all pre- and post-project data spanning 2023-2025.

Task 2.5 - A census of LWM in the full project reach from Shafter to Big Bend and from Peters Dam to Shafter will be performed in summer 2025. Included in this effort will be a comparison of LWM load estimated from low-altitude aerial imagery and LWM load measured in the field census.

Task 3 - Gravel Augmentation Source Evaluation

Consultant will conduct field reconnaissance of up to three potential source locations for gravel that may be imported to Lagunitas Creek for future restoration efforts. Consultant will evaluate both quantity and quality of the potential gravel sources. Quality will be evaluated based on the surface and sub-surface size distribution of gravel using the same methods described above for characterizing spawning habitat quality. In addition, if field observations and/or the geologic origin of source materials suggest that a significant proportion of gravel clasts are susceptible to rapid breakage or attrition, sampling and testing of the durability of gravel material will be conducted to quantify the relative magnitude of attrition expected for each source area. San Geronimo Creek is the primary existing source area for gravel transport into the project reach of Lagunitas Creek; consequently, surface and sub-surface size distribution of gravel at existing monitoring sites SG-9 and SG-12 will also be evaluated.

Gravel augmentation effectiveness and adaptive management considerations will be evaluated in part based on gravel tracer studies in Lagunitas Creek associated with implementation of gravel augmentation. Gravel tracer studies will provide perspective on bedload transport rates and target augmentation rates for long-term enhancement of spawning habitat in the project reach of Lagunitas Creek. Consultant will utilize available information on gravel size distributions in Lagunitas Creek and in augmentation source areas along with available information on gravel mobility and transport in Lagunitas Creek and in comparable gravel bed

streams to develop recommendations for objectives of tracer studies, anticipated data and analyses, size and number of gravel tracers, and methods and criteria for introducing tracers.

Work Schedule

Task 1 - Pre-construction Monitoring

- 1.1 Collect drone aerial imagery in collaboration with District (Summer/Autumn 2024)
- 1.2 Evaluate aerial imagery to determine its utility (Summer 2024)

Task 2-Post-construction Monitoring

- 2.1 Collect post-construction drone imagery in collaboration with District (Autumn 2024 and/or Summer/Autumn 2025)
- 2.2 Spawning habitat quality-bulk sediment sampling and surface sediment size sampling (Autumn 2024 and Summer 2025)
- 2.3 Streambed scour monitoring during the winter peak flow period (Dec. 2024-Mar. 2025 and Dec.2025-Mar. 2026)
- 2.4 Characterize streambed conditions with systematic random grid sampling at sites M3-2, M3-6, M3-8, M3-10, M3-12 and M3-14 and portions of restoration sites 4, 5 & 6 (Summer/Autumn 2025; Report Jan. 2026)
- 2.5 LWM census of project reach (Summer/Autumn 2025; Report Jan. 2026)

Task 3-Gravel Augmentation Source Evaluation

Field reconnaissance of three potential gravel source locations for future import to Lagunitas Creek, including quantity and quality of material and particle size analysis at three source locations and two existing monitoring sites in San Geronimo Creek. (Autumn 2024 or 2025)

Deliverables

Task 1 - Pre-Construction Monitoring

The consultant shall provide the following deliverables as the work products:

- Digital Aerial Maps (Oct. 2024)
- Tech. Memo - Aerial Mapping Evaluation (Nov. 2024)
- Data Report - Pre-construction Baseline Facies & Habitat (Jan. 2025)

Task 2 – Post-Construction Monitoring

The consultant shall provide the following deliverables as the work products:

- Data Report - Sediment Size Distributions for Spawning Habitat (Nov. 2025)
- Tech. Memo - Scour Monitoring #1 (May 2025)
- Tech. Memo - Scour Monitoring #2 (May 2026)
- Data Report - Post-construction Baseline Facies & Habitat (Jan. 2025)
- Data Report – LWM Census, Shafter to Big Bend plus Peters Dam to Shafter (Nov. 2025)

Task 3 – Source Evaluation for Gravel Augmentation

The consultant shall provide the following deliverables as the work products:

- Tech. Memo - Gravel Source Evaluation (Feb. 2025)

All deliverables shall be submitted in electronic format as: Adobe pdf format (the entire document); Word format (for all text and any other Word elements of the report); and Excel format (for all data and tables in Excel format for the report). In addition, the final monitoring plan and monitoring report shall be submitted as: one (1) bound copy and one (1) unbound original.

Any GIS data must be compatible with ArcGIS version 10.6.1 with coordinates in State Plane CA, feet, zone III FIPS 0403, NAD83

PROJECT COST AND BILLING

Project Cost

Per the terms established in Miscellaneous Agreement 6356, the Consultant shall invoice Marin Water for an amount not to exceed \$154,443 for field support services and expenses. The Consultant agrees to provide monthly and year-to-date direct cost summaries and supporting details to the District upon delivery of the quarterly billing statements while this Agreement is in effect. The anticipated staff hours and estimated costs for each task in the scope of work are presented in the Budget below.

BUDGET

	Principal Hydrogeologist	Geologist/Hydrologist	Ass't. Hydrologist/ Env. Scientist	Env. Tech.	Travel & Expenses	Task Total
<i>Hourly Rate</i>	\$180	\$140	\$110	\$80		
TASKS						
Task 1.1 Pre-Construction Drone Imagery	8	19	33	37	\$341	\$11,031
Task 1.2 Evaluate Imagery	26	4	58	76	\$445	\$18,145
Task 1 Subtotal					\$786	\$29,176
Task 2.1 Post-Construction Drone Imagery	3	3	19	18	\$104	\$4,594
Task 2.2 - Spawning Habitat Sampling	12	16	32	60	\$5,410	\$18,130
Task 2.3 Streambed Scour	43	25	114	102	\$2,386	\$34,326
Task 2.4 Post-Construction Streambed	72	25	81	280	\$1,304	\$49,074
Task 2.5 LWM Census	7	1	41	40	\$311	\$9,421
Task 2 Subtotal					\$9,515	\$115,545
Task 3 Gravel Source Assessment	30	0	0	26	\$2,242	\$9,722
Task 3 Subtotal					\$2,242	\$9,722
TOTAL	201	93	378	639	\$12,543	\$154,443

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 (District).

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 District.
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