

MISCELLANEOUS AGREEMENT 6308
REIMBURSEMENT AGREEMENT BETWEEN
THE CITY OF SAUSALITO AND MARIN MUNICIPAL WATER DISTRICT
FOR CONSTRUCTION OF THE EDWARDS AVENUE PIPELINE REPLACEMENT
PROJECT

THIS AGREEMENT is made and entered into this ____ day of _____ 2024, by and between the CITY OF SAUSALITO, hereinafter referred to as “CITY”, and the MARIN MUNICIPAL WATER DISTRICT, hereinafter referred to as “MMWD”, both located in the State of California, individually referred to as a “PARTY” and collectively referred to as the “PARTIES.”

For good and valuable consideration, the PARTIES agree as follows:

SECTION 1: RECITALS.

- A. CITY plans to conduct road improvements along Edwards Avenue starting at Alexander Avenue and continuing to the intersection with Marion Avenue, hereinafter the “ROADWAY PROJECT.”
- B. As part of the ROADWAY PROJECT the CITY will resurface the roadway along this identified portion of Edwards Avenue.
- C. MMWD currently has an eight-inch cast iron water main approximately 1,150 feet long on Edwards Avenue with 32 plastic water service laterals within the identified portion of the ROADWAY PROJECT.
- D. The plastic service laterals have a history of leaking, Edwards Avenue is a very steep road, and the cast iron main should be replaced.
- E. For the mutual benefit of the PARTIES, MMWD is requesting that the replacement of the water main and service laterals be added to the scope of work for the existing construction contract for the CITY’s ROADWAY PROJECT. As the ROADWAY PROJECT is already underway, the PARTIES hereto agree that having MMWD procure a contractor for the PIPELINE PROJECT would lead to delays in the ROADWAY PROJECT and would result in increased costs for both involved public agencies, and that that further competitive bidding would be incongruous or would not result in any advantage to either public entity in its efforts to contract for the greatest public benefit.
- F. The PARTIES wish to enter into this AGREEMENT to install a new water main and water services, hereinafter the “PIPELINE PROJECT” under the CITY’s current construction contract for the ROADWAY PROJECT. MMWD agrees to reimburse the CITY for all of the costs of the PIPELINE PROJECT.
- G. MMWD has provided the CITY with engineered stamped plans and specifications depicted in Exhibit A, attached hereto and incorporated herein by this reference, which shall be included as part of the ROADWAY PROJECT construction contract. The CITY

shall work with the construction contractor to amend said contract to incorporate the additional work of the PIPELINE PROJECT in accordance with Exhibit A.

SECTION 2: PROJECT COORDINATION

- A. All notices and other communications required or permitted to be given under this AGREEMENT to a PARTY shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, as addressed in this Section. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service.

To: MMWD
 Alex Anaya
 Marin Municipal Water District
 220 Nellen Avenue
 Corte Madera, CA 94925

To: CITY
 Andrew Davidson
 City of Sausalito
 420 Litho St.
 Sausalito, CA 94965

- B. MMWD. The General Manager shall be the representative of MMWD for all purposes under this AGREEMENT. Alex Anaya is hereby designated as the Project Director for MMWD. MMWD’s Project Director shall be responsible for all aspects of the progress and execution of this AGREEMENT on behalf of MMWD.
- C. CITY. The Public Works Director shall be the representative of CITY for all purposes under this AGREEMENT. Kevin McGowan, the Public Works Director, is hereby designated as the Project Director for CITY. CITY’s Project Director shall be responsible for all aspects of the progress and execution of this AGREEMENT on behalf of CITY.
- D. Either Party may change its designated representative by providing written notice of the same to the other PARTY.

SECTION 3: SCOPE OF AGREEMENT

- A. The PARTIES acknowledge and agree that the sole purpose of this AGREEMENT is to set forth the PARTIES’ responsibilities regarding the construction of the PIPELINE PROJECT portion of the ROADWAY PROJECT and to set forth the amount that MMWD will reimburse the CITY for the costs associated with the construction of the PIPELINE PROJECT up to the amount of \$481,794.00 based on the bid estimate in Exhibit B with a contingency for change orders and additional work up to \$72,000, for a total not-to-exceed amount of \$553,794 for the PIPELINE PROJECT, unless the PARTIES mutually agree to an amendment in writing. In the event that the costs of the PIPELINE PROJECT exceed the amounts set forth in this section, the PARTIES agree to work diligently and in good faith towards the execution of a mutually agreeable amendment, and during such period the CITY shall have the right to unilaterally require the construction contractor, hereinafter “CONTRACTOR,” to suspend work (within any costs or expenses of such suspension and remobilization to be paid by MMWD), and in the event the PARTIES are unable to agree to an amendment, the CITY may issue the CONTRACTOR a deductive change order removing any further work on the PIPELINE PROJECT or issue the CONTRACTOR a termination for convenience with respect to the

PIPELINE PROJECT, in addition to any rights the CITY may have at law or in equity against MMWD with respect to seeking reimbursement of additional costs incurred by the CITY with respect to the PIPELINE PROJECT.

- B. The PARTIES agree that the services to be provided by the CITY for the construction of the PIPELINE PROJECT within the ROADWAY PROJECT include the tasks set forth below:
1. Advance payment to the CONTRACTOR for the PIPELINE PROJECT.
 2. Issuance of invoices for PIPELINE PROJECT to MMWD for reimbursement.
- C. The PARTIES agree that the services to be provided by MMWD for the construction of the PIPELINE PROJECT within the ROADWAY PROJECT include the tasks set forth below:
1. Submittal review of pipeline trench backfill material;
 2. Construction inspection of the PIPELINE PROJECT;
 3. Construction Management and coordination with the CITY associated with all aspects of the PIPELINE PROJECT;
 4. Material testing of pipeline trench backfill material and documentation to the CITY for its records; and
 5. Reimbursement to the CITY for PIPELINE PROJECT work, as described in Section 3A.

SECTION 4: DUTIES OF THE CITY

- A. The CITY shall administer the ROADWAY PROJECT and direct its CONTRACTOR to construct the PIPELINE PROJECT in accordance with Exhibit A as part of the CITY's ROADWAY PROJECT.
- B. The CITY shall initially pay the CONTRACTOR for the costs of the PIPELINE PROJECT as described in Section 3A. No extra work on the PIPELINE PROJECT shall be authorized by the CITY or CONTRACTOR without prior written approval by MMWD, which shall not be unreasonably withheld or delayed. The CITY will pay CONTRACTOR for MMWD's approved extra work at the unit bid prices. Where unit bid prices cannot be applied to the MMWD approved extra work, the CITY will execute a change order with the CONTRACTOR subject to the reasonable approval of MMWD and notification of such change order work shall be paid in accordance with the terms of this Agreement.
- C. The CITY shall require CONTRACTOR to name MMWD, as an additional insured on all insurance required to be obtained including but not limited to CONTRACTOR general liability and automobile policies and shall require that CONTRACTOR indemnify and defend MMWD to the same extent as the CITY under the ROADWAY PROJECT construction contract.
- D. The CITY shall be responsible for the project administration of the ROADWAY PROJECT and PIPELINE PROJECT, and the construction management of the ROADWAY PROJECT. With respect to the PIPELINE PROJECT, the CITY's responsibility for project

administration shall only be limited to payment of CONTRACTOR and issuance of monthly invoices to MMWD for reimbursement.

- E. In order to bear all costs associated with PIPELINE PROJECT, MMWD shall reimburse the CITY all of the CONTRACTORS costs for the PIPELINE PROJECT. The CITY shall prepare and submit monthly invoices for the progression of work through that month for MMWD's portion of the PIPELINE PROJECT, which shall be paid within 21 calendar days of receipt by MMWD. In addition, MMWD shall reimburse the CITY'S actual legal costs of preparing this reimbursement agreement, not to exceed \$3,000, to be paid within 30 days of invoice from the CITY.

SECTION 5: DUTIES OF MMWD

- A. MMWD shall reimburse CITY for the PIPELINE PROJECT construction costs as described in Section 3A. MMWD shall reimburse CITY for any extra or changed work authorized by advanced written notice from MMWD's Project Manager, Alex Anaya. MMWD shall review CITY progress payment estimates and provide CITY written notice approving or disapproving each progress payment estimate related to the PIPELINE PROJECT within 5 business days of MMWD receiving each progress payment estimate from CITY. MMWD will remit payment to CITY within 21 calendar days following its approval of a PIPELINE PROJECT progress payment.
- B. MMWD shall review CONTRACTOR change orders for extra work on the PIPELINE PROJECT and provide CITY a written notice of approval or disapproval of extra work within three (3) days of receiving each request. MMWD shall be responsible for all costs and expenses of CONTRACTOR claims arising from MMWD's failure to timely approve or disapprove CONTRACTOR change orders for extra work, including any additional payments under prompt pay statutes. MMWD shall be responsible for the inspection and construction management of the PIPELINE PROJECT. The CITY shall bear no responsibility for the CONTRACTOR's quality or performance of work related to the PIPELINE PROJECT. To the fullest extent permissible by law, MMWD shall indemnify, defend with counsel selected by the CITY, and hold harmless the CITY and its officials, officers, employees, agents, and volunteers ("CITY PARTIES") from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of the PIPELINE PROJECT, including but not limited to the quality or character of CONTRACTOR's work on the PIPELINE PROJECT, and third-party claims under public contract code, environmental, or labor laws for the PIPELINE PROJECT (excluding any claims solely arising out of the City's compliance with such laws for the ROADWAY PROJECT). The indemnity requirements of this section shall not apply to claims arising out of the sole or active negligence, willful misconduct, or unlawful acts of the CITY PARTIES.
- C. MMWD shall be responsible for delays to the ROADWAY PROJECT which are a direct result of unforeseen delays of the PIPELINE PROJECT. Unavoidable delays in the work prosecution or completion shall mean all delays resulting from causes beyond the CONTRACTOR'S control, which CONTRACTOR could not reasonably have anticipated and mitigated or avoided by the exercise of care, prudence, foresight, and diligence and which actually and necessarily causes a delay in the completion of the whole ROADWAY

PROJECT, including the PIPELINE PROJECT. MMWD shall be responsible for any costs due to a delay which results from MMWD changes in the amount of work to be done or the quantity of material to be furnished, which are beyond those set forth in the specifications provided and attached at Exhibit A. Right-of-way delays will be considered unavoidable, and the financial responsibility of MMWD, to the extent that they actually and necessarily delay the CONTRACTOR'S completion of the whole ROADWAY PROJECT, including the PIPELINE PROJECT. Unavoidable delays do not include delays caused directly or indirectly by the default, holdup, or other breach of the CONTRACTOR or any subcontractor of CONTRACTOR. Delays due to adverse weather conditions will be regarded as unavoidable only to the extent that they actually and necessarily cause a delay in completion of the whole ROADWAY PROJECT and to the extent that such condition could not reasonably have been anticipated and mitigated or avoided by the exercise of care, prudence, foresight, and diligence of the CONTRACTOR.

- D. MMWD shall be responsible for addressing change order preparation and negotiation, scheduling review, claims negotiation, meeting attendance, project reports, labor and wage compliance, utility coordination, project documentation, and as-built plans for the PIPELINE PROJECT.
- E. With respect to any construction defect or warranty claims that may arise related to CONTRACTOR'S work on the PIPELINE PROJECT, the CITY agrees to execute any necessary documents as may be needed for the CITY to assign the rights to prosecute claims under its construction contract with CONTRACTOR to MMWD, including any rights under applicable warranties and bonds. MMWD shall be solely responsible for the prosecution of any construction defect or warranty claims related to the PIPELINE PROJECT at its sole cost and expense, and MMWD hereby releases, discharges, and covenants not to sue the CITY with respect to such claims.

SECTION 6: MISCELLANEOUS TERMS

- A. Term of AGREEMENT: This AGREEMENT shall terminate upon MMWD acceptance of the completed PIPELINE PROJECT, provided that MMWD reimbursement, assignment of rights under any CONTRACTOR maintenance bond in favor of MMWD and CITY and MMWD indemnification duties shall continue following the end of such term.
- B. Termination: This AGREEMENT may be terminated with cause, by either PARTY, upon thirty (30) calendar days' advance written notice to the other PARTY following the notified PARTY'S failure to cure or correct the cause of the termination notice within thirty (30) calendar days' receipt of that notice. Payment obligations for the PIPELINE PROJECT following such termination for work performed up to the date of termination, and any contractual obligations for the PIPELINE PROJECT that CONTRACTOR refuses to release, shall be the responsibility of MMWD in accordance with the terms of this AGREEMENT.
- C. Amendment and Merger: This AGREEMENT contains all the terms and conditions made between the PARTIES to this AGREEMENT and may only be modified by written

AGREEMENT signed by all the PARTIES to this AGREEMENT or their respective successors-in-interest. This writing is intended both as a final expression of the AGREEMENT between the PARTIES hereto with respect to the included terms and as a complete and exclusive statement of the terms of this AGREEMENT. No modification of this AGREEMENT shall be effective unless and until such modification is evidenced by a writing signed by both PARTIES.

- D. Agreement Binding:** The terms and provisions of this AGREEMENT shall extend to and be binding upon and inure to the benefit of the heirs, executors, and administrators or to any approved successor, as well as to any assignee or legal successor to any PARTY to this AGREEMENT. Any term of this AGREEMENT that by its nature extends beyond the term (or termination) of this AGREEMENT shall remain in effect until fulfilled and shall apply to both PARTIES' respective successors and assigns.
- E. Cooperation:** The PARTIES pledge cooperation during the term of this AGREEMENT.
- F. No Third-Party Beneficiaries:** Nothing contained in this AGREEMENT shall be construed to create, and the PARTIES do not intend to create, any rights in third parties.
- G. Severability:** If any term, covenant or condition of this AGREEMENT or the application thereof to any person or circumstance is determined to be invalid or unenforceable, the remainder of this AGREEMENT or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this AGREEMENT shall be valid and enforceable to the fullest extent permitted by law.
- H. No Waiver:** The waiver by either of the PARTIES of any default under this AGREEMENT shall not operate as a waiver of any subsequent breach of the same or any other provision of this AGREEMENT.
- I. Time is of the Essence:** Time is of the essence with respect to the performance of every provision of this AGREEMENT for which time or performance is a factor.
- J. Mediation:** Any dispute or claim in law or equity between the CITY and MMWD arising out of this AGREEMENT, if not resolved by informal negotiation between the PARTIES, shall be mediated. 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. If mediation is unsuccessful, the PARTIES may avail themselves of any other remedies authorized by law.
- K. Applicable Law:** This AGREEMENT shall be construed and enforced in accordance with the laws of the State of California.
- L. No Presumption Regarding Drafter:** The PARTIES acknowledge and agree that the terms and provisions of this AGREEMENT have been negotiated and discussed between the PARTIES and their attorneys, and this AGREEMENT reflects their mutual AGREEMENT regarding the same. Because of the nature of the negotiations, and

discussions it would be inappropriate to deem any Party to be the drafter of this AGREEMENT. Therefore, no presumption for or against validity, or as to any interpretation hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this AGREEMENT.

M. Assistance of Counsel: Each PARTY to this AGREEMENT warrants as follows:

- a. That each PARTY had the assistance of counsel in the negotiation for, and the execution of, this AGREEMENT and all related documents; and
- b. That each PARTY has lawfully authorized the execution of this AGREEMENT.

N. Section Headings: The section headings contained in this AGREEMENT are for convenience and identification only and shall not be deemed to limit or define the contents of the sections to which they relate.

O. Counterparts and Electronic Signatures: This AGREEMENT may be executed by electronic signature and in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one document. Counterpart signature pages may be delivered by email or other means of electronic transmission.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT by their duly authorized officers as of the day and year first above written.

CITY OF SAUSALITO

MARIN MUNICIPAL WATER DISTRICT

Chris Zapata, City Manager

Ben Horenstein, General Manager

ATTEST:

ATTEST:

By: _____
Walfred Solorzano, City Clerk

Terrie Gillen, Board Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Sergio Rudin, City Attorney

Molly MacLean, General Counsel

Exhibit A
Plans and Specifications

Exhibit B
Bid Estimate