

**MARIN MUNICIPAL WATER DISTRICT
PIPELINE EXTENSION AGREEMENT

(MMWD – MICHAEL & ELLEN DEMSON)
187 SACRAMENTO AVENUE, SAN ANSELMO**

THIS AGREEMENT is made and entered into this 9th day January, 2023, by and between **MARIN MUNICIPAL WATER DISTRICT**, hereinafter called "District"; and **MICHAEL & ELLEN DEMSON**, hereinafter called "Applicants" as follows:

For valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

Section A. Recitals

1. Applicants has requested a pipeline extension to provide water service to Assessor's Parcel Nos. 177-120-20 and 177-172-10, a single legal lot, as shown on a maps entitled, "Assessor's Map Book 177, Page 17, Scale 1"=100' dated June 2, 2021".
2. District has determined that service to said project will require the installation of 160' of 6' pipe, 1-6" hydrant and 1-1" service and other facilities as set forth in plans prepared therefor.
3. Prior to final approval by the City or County of a Subdivision Map, Precise Development Plan, Parcel Map or other land use application and recordation of a final map for the project, the Applicants shall enter into an agreement with the District and complete financial arrangements for water to each lot, unit or parcel of the project;
4. District has determined that said pipeline shall be done under the description of "Limited Purpose Line", as provided in Section 11.48.010 of the District's Code, and
5. District has determined that the above mentioned replacement lies within the boundaries of the Marin County Fire Department.

Section B. General Provisions

1. **Installation According to District Plans and Specifications:** The pipeline extension applied for and all work done in connection therewith shall be done under the supervision of and to the satisfaction of District, and shall be installed in accordance with detailed plans and specifications or supplemental plans as they may be prepared from

time to time therefor by District. District shall have absolute discretion in determining the kind and quality of the work and materials. As the work progresses, District reserves and shall have the right to amend and adapt plans and specifications to meet conditions as they develop. Any extra costs arising from any such revision of plans will be charged to and paid for by Applicants.

ATTENTION IS CALLED TO THE STANDARD SPECIFICATIONS OF DISTRICT AVAILABLE AT WWW.MARINWATER.ORG WHICH ARE REFERRED TO AND ARE INCORPORATED HEREIN BY REFERENCE AS THOUGH SET FORTH AT LENGTH. APPLICANTS AGREES THAT ALL WORK SHALL BE DONE ACCORDING TO THE PROVISIONS OF THE STANDARD SPECIFICATIONS AND THAT APPLICANTS AND HIS CONTRACTOR, AND SUBCONTRACTORS, ARE FULLY BOUND BY ALL PROVISIONS OF THE STANDARD SPECIFICATIONS.

2. **Financial Arrangements:** Prior to issuing written certification to the City, County or State that financial arrangements have been made for construction of the required water facilities, the Applicants shall complete such arrangements with the District in accordance with Paragraph 6.

3. **Construction Scheduling:** Prior to release or delivery of any materials by the District or scheduling of construction inspection by the District, the Applicants shall:

- a. Deliver to the District prints of the utility plans approved by the City or County to enable the District to prepare final water facilities contract drawings.
- b. Grant or cause to be granted to the District without cost and in form satisfactory to the District, title to all real property and rights-of-way required by Paragraph 10.
- c. Deliver to the District a written construction schedule to ensure timely withdrawal of guaranteed funds for ordering of materials to be furnished by the District and scheduling of inspection or construction.

4. **Method of Performance of Work:** Work done under this agreement shall be performed as hereinafter indicated:

Items of Work:

- Water main to be installed byA
- Fire hydrant to be installed byA
- Service connection to be installed byA

Methods of Doing Work:

- (A) Private contract to be let by Applicants or performed by Applicants's own forces.
- (B) Public contract to be let by District or performed by District's own forces.

5. **Estimated Cost of Work:** The estimated cost of the pipeline replacement applied for as determined by District is as follows:

	Column 1: Materials, Fees, and Charges	Column 2: Installation Costs	Column 3: Total
Pipeline Installation	\$8,899	\$36,500	\$45,399
Hydrant Installation	\$3,442	\$12,000	\$15,442
Service Installation	\$975	\$6,135	\$7,110
District Labor & Equipment	\$11,520	\$0	\$11,520
Connection Fee*	\$13,582	\$0	\$13,582
Pumping Charge	\$617	\$0	\$617
Storage Charge	\$361	\$0	\$361
TOTAL	\$39,396	\$54,635	\$94,031

**The connection fee is based upon an estimated annual consumption of 0.30-acre-feet for the single family dwelling.*

Said cost estimates are made solely for the convenience of District in determining required deposits, bonds, and guarantees. District makes no representations whatever, and assumes no responsibility whatever, regarding the accuracy of said estimates.

6. **Financial Arrangements to Be Made by the Applicants** shall consist of the following:

Materials, Fees and Charges

The Applicants shall pay to the District the total estimated cost of Materials, Fees and Charges set forth in Paragraph 5, Column 1, \$39,396.

Installation Costs

Under Method A: Applicants agrees to hire a private contractor to install the facilities, and therefore, shall provide financial guarantees satisfactory to the District in the form of a performance bond in the amount of \$54,635 guaranteeing installation of the facilities and furnishing of bulk material. Applicant's contractor shall furnish a maintenance bond in the amount of \$13,659 guaranteeing the cost of maintaining, repairing, or replacing the facilities during the first two (2) years following completion of all facilities and acceptance by the District.

The Applicants or Contractor may substitute a check in lieu of a performance bond or maintenance bond.

In addition, the Contractor shall furnish the following insurance requirements:

- a. Workers' Compensation Insurance including a waiver of subrogation in favor of the District.
- b. Public Liability - combined single limit of not less than \$1,000,000 and \$2,000,000 annual aggregate including a waiver of subrogation in favor of the District.
- c. Auto coverage of not less than state minimum requirements for all owned and non-owned auto and equipment.
- d. The policies shall specifically name Marin Municipal Water District, its officers, officials, agents, employees and volunteers as an additional insured and shall provide that said coverage is primary to any insurance carried by the District.
- e. The policies shall include a statement indicating that there shall be not less than 30 days written notice prior to cancellation.

7. **Review of Estimates:** All estimated costs set forth in this agreement shall be subject to periodic review and revision at the District's discretion. In the event the Applicants has not completed financial arrangements with the District in accordance with Paragraph 6 within 6 months from the date of this agreement, all estimated fees, costs and charges set forth in Paragraph 5 shall be reviewed and revised if necessary. In the event Applicants has not secured final land use approval for the project from the City or County, recorded a final map and diligently commenced construction of improvements required by those agencies and the District prior to expiration of one year from the date of this agreement, the District may, at its option, either retract financial certifications issued to City, County and State agencies and terminate this agreement or require amendment of this agreement and revision of all costs contained herein. The Applicants

shall pay any balance due upon demand or furnish a guarantee of such payment satisfactory to the District.

8. **Extensions of Time**: All extensions of time granted by the City or County for the Applicants to comply with conditions of land use approval or to construct improvements pursuant to a subdivision improvement agreement shall require concurrent extensions of this agreement and shall be cause for review and revision of all water facilities costs set forth in Paragraph 5 hereof. The Applicants shall apply to the District for extension of this agreement prior to approval of the Applicants's request for such extensions by either the City or the County.

9. **Delay or Failure to Complete**: If the District determines that there has been undue delay in completion of any work to be performed by Method A, or a failure to complete the same within a reasonable time, it may demand that Applicants forthwith either complete all such work or pay to District the District's estimate of the entire amount required to complete all such work. District's determination upon the question of undue delay or failure to complete shall be final and binding upon Applicants. If Applicants fails to comply with said demand within a reasonable time, District may take possession of all parts of the project and may complete it at the expense and for the account of Applicants.

10. **Property and Rights-of-Way**: Applicants must furnish District all necessary and suitable real property and rights-of-way required by Chapter 11.40 of the Marin Municipal Water District Code at least 30 days prior to start of construction, as follows:

"A deed from the fee owner(s) to District granting a pipeline and access right-of-way over the route of all facilities not falling within publicly dedicated and accepted streets. If, for any reason, such deed cannot be obtained, District will accept a final court decree (to be obtained at Applicants's sole cost and expense) establishing such pipeline and access right-of-way".

11. **Changes in Estimated Costs - Additional Deposits**: At any time or times prior to completion of installation of the facilities, whether or not the plans and specifications have been changed, District may revise its estimate of any item of estimated cost payable by Applicants to District. If a revised estimate is greater than the amount previously paid, Applicants must pay the excess to District within 30 days after District requests an additional deposit. If the revised estimate is less than the amount previously paid, District will credit the difference to any account then owed by Applicants, or if no such account exists, will refund said difference to Applicants as provided in Paragraph 14.

12. **No Work to be Done Prior to Compliance**: No work shall be performed nor installation made prior to Applicants's delivery to District of all fees, charges, deposits,

bonds, and guarantees required by Paragraph 6 nor prior to Applicants's furnishing to District all property and rights-of-way required by Paragraph 10, nor after 30 days has elapsed from District's request for additional deposit pursuant to Paragraph 11 unless said additional deposit has been made.

13. **Termination for Failure to Deliver Deposits, Bonds, Etc.:** Failure to deliver to District any fees, charges, deposit, bond, guarantee, property, or right-of-way, required by Paragraph 6 or 10 within the times set forth in said paragraphs, or failure to commence installation of facilities within the time set forth in Paragraphs 7 and 20, shall constitute a material breach of this agreement for which this agreement may be terminated by District without prior notice.

14. **Payment of Actual Costs:** Upon completion of installation of the facilities, District will determine the actual amount of its costs and expenses thereby incurred. If the actual amount exceeds the estimate previously paid, Applicants will pay to District the amount of such excess promptly upon demand. If the actual amount is less than the estimate previously paid, District will, upon completion and acceptance of the facilities, credit any excess money to any account then owed by Applicants or refund it. District's determination of such costs and expenses shall be final and binding provided that such determination shall be made upon the basis of generally accepted accounting principles consistently applied and shall be free of arithmetical error. In the event a performance bond or certificate of deposit is being held, it likewise will be released to Applicants upon acceptance of the work by District to the extent that it has not been used or required.

15. **No Interest on Deposits:** No interest shall accrue to or be paid to Applicants for any funds deposited with District pursuant to this agreement except insofar as required by Government Code 53079.

16. **Right to Approve Contractor:** In the event installation is to be made or work done under Method A, District reserves the right to approve or disapprove of the contractor or forces to be used; and no installation may be made except by those approved by District.

17. **Applicants's Responsibility:** Applicants shall take all responsibility for work under this agreement; shall bear all cost or loss resulting to him or to District on account of the nature or character of the work, through timeliness with which Applicants' contractor pursues the work, or because of the nature of the ground in or on which the work is done is different from what is assumed or expected, or on account of the weather, flood, earthquake, landslide, subsidence, unforeseen difficulties, accidents, or any other causes; and he shall assume the defense of, and indemnify and save harmless District and its officers, agents, and employees from all claims of any kind arising from the letting of bids or the performance of work under this agreement, including, but not limited to, claims for personal injury, death, property damage, loss of use, and loss of business, and

including all such claims as may be asserted by officers, agents or employees of Applicants, his contractor or subcontractors, District, or third parties.

Applicants agrees to provide in any contract entered into with any other party for the performance of work under this agreement, that all work be done pursuant to terms of the Standard Specifications of District, and that such other party indemnify and save harmless District and its officers, agents, and employees from all claims of any kind arising from performance of said contract or this agreement, including claims for personal injury, death, property damage, loss of use and loss of business, and including all such claims as may be asserted by officers, agents, or employees of Applicants, his contractor or subcontractors, District, or third parties for failure to so provide in any contract let by Applicants.

Applicants agrees to comply with that section of the Standard Specifications requiring public liability insurance which is primary and underlying to District's insurance and specifically naming District as an additional insured.

Before work is commenced, Applicants shall furnish District with a certificate of insurance demonstrating compliance with the worker's compensation insurance and public liability insurance requirements set forth in the Standard Specifications.

18. **Prevailing Wages:** Pursuant to Section 1770 et seq of the Labor Code of the State of California, the Contractor and all subcontractors under him shall pay not less than the prevailing wage rate. The Contractor shall forfeit to the District a penalty, \$25 for each laborer, workman, or mechanic employed for each calendar day or portion thereof such laborer, workman, or mechanic is paid less than the prevailing wage rate for any work done under this contract by him or by any subcontractor under him. Contractor shall submit to the District completed certified payrolls on a weekly basis.

19. **Grade Established:** No work shall be performed or installation made until street subgrades have been established and until curbs and gutters have been installed.

20. **Commencement of Installation:** Applicants must commence installation of the facilities provided for herein within one year after execution of this agreement. Applicants shall give notice to District at least two work days before initially commencing work under this agreement. District shall be notified when work is stopped and when it is started again.

21. **Furnishing of Materials:** All materials will be supplied by District at District's Corporation Yard or Pipe Yard and at replacement cost. Risk of loss of, or damage to materials shall pass to Applicants at the time and place of delivery. Replacement cost will be based on the "moving average unit price" method employed by District.

22. **Inspection by District:** District shall provide an inspector to inspect the installation of facilities. The cost of inspection shall be charged against the job. No part of the facilities installed by Applicants shall be covered or obstructed until same has been inspected and approved by the District inspector.

23. **Acceptance:** District assumes no obligation as to maintenance of the facilities included in this agreement until such time as they are formally accepted. Applicants will be notified in writing of acceptance of the work at such time as all facilities are satisfactorily installed in accordance with the plans and specifications and all paving work is completed. Any cost incurred by District necessitated by emergency or other repairs prior to final acceptance by District will be charged against Applicants.

24. **Title:** Immediately upon acceptance, all right, title and interest in the pipeline extension and all other facilities herein mentioned shall vest in District.

25. **Fire Hydrants:** All fire hydrants will be turned over to the local public agency having control of public fire protection in the area, to be operated and maintained by it the same as other hydrants in the area.

26. **Area Not to be Served Before Acceptance:** Nothing herein contained and no temporary service from any facility herein provided for and no installation provided for herein shall be construed as an agreement or undertaking on the part of District to serve Applicants's property prior to the time this contract shall have been performed in its entirety by Applicants and the facilities shall have been accepted by District.

27. **No Refunds:** No refunds will be made from the sale of the water from this extension.

28. **Dispute Resolution:** Any dispute or claim in law or equity between District and Applicants or Contractor 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. 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 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 Applicants or Contractor 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 and Mediation Services, Inc. The parties to an arbitration may agree in writing to use different rules and/or arbitrators.

29. **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.

30. **Attorney's Fees**: In the event of legal action by District to collect any sums due from Applicants hereunder, the prevailing party shall be entitled to reasonable attorney's fees to be set by the court.

31. **Interest on Unpaid Accounts**: Any monies owed the District shall begin accruing interest sixty days after the first billing date. Said interest will be the rate District earns on its investments plus one percent, but shall in no event exceed 10% per annum.

32. **Time of the Essence**: Time is of the essence.

33. **Non-Transferable**: This agreement applies only to the parcel(s) of land hereinabove described and may not be transferred to any other parcel(s) of land.

34. **Entire Agreement**: This document, including any exhibits or attachments, contains the entire agreement between the parties and supersedes whatever oral or written understanding the parties may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by all parties.

35. **Severability**: If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

36. **Waiver**: Neither District acceptance of, or payment for, any service performed by Applicants, nor any waiver 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.

37. **Enforcement of Agreement**: 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 located 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.

38. **Notices:** Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, 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 affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

DISTRICT:

MARIN MUNICIPAL WATER DISTRICT
Attn: Engineering Department
220 Nellen Avenue
Corte Madera CA 94925

APPLICANT:

MICHAEL & ELLEN DEMSON
255 Margarita Dr
San Rafael CA 94901

39. **Deadline to Activate Service:** The service connections covered under this agreement must be put to the use for which application was made within eight years of the completion of the facilities installed pursuant to this agreement. If activation is not achieved in the time specified, the District will cause the service to be abandoned and will refund the connection fees, less the cost of abandoning the service, to the owner of record or his designee.

40. **Water Conservation:** Applicants shall install high-efficiency toilets not to exceed 1.28 gallons per flush, showerheads that use not more than 2.0 gallons of water per minute, kitchen and lavatory faucets that use not more than 1.5 gallons of water per minute, and pressure-reducing valves set to maintain a maximum of 60 p.s.i. static pressure at the regulator outlet. Drought-tolerant landscaping and drip irrigation shall be used except where demonstrated to be infeasible. The installation of a gray water recycling system designed to reuse the maximum practicable amount of gray water on site is also required. All water conservation measures shall comply with the provisions of District rules and regulations in effect at the time water service is granted.

41. **Landscaping:** Final landscape and irrigation plans must be submitted and reviewed by District for compliance with District's current landscape water conservation

ordinance. All plans must pass ordinance review before water service is granted to any portion of this project.

42. **System Protection**: Applicants shall install and maintain backflow protection on water services if deemed necessary by District.

43. **High Pressure**: Water service to said project will be granted only under the District's "High Pressure Application".

44. **Service Connections**: The individual service connections under this agreement will be granted under the District's rules and regulations in effect at the time service is granted.

45. **Satisfaction of District**: Whenever, in this agreement, the satisfaction of District must be met and District or its Board of Directors makes a determination in good faith of satisfaction or dissatisfaction, such determination shall be final and binding upon all parties hereto.

46. **Authority; Signatures Required for Corporations**: Applicants hereby represents and warrants to the District that they are (a) a duly organized and validly existing (enter type of entity, e.g. Corporation), formed and in good standing under the laws of the State of California, (b) have the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) have all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Applicants 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 Contractor in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

APPLICANTS:

MICHAEL & ELLEN DEMSON
255 Margarita Dr
San Rafael CA 94901

TYPE OF BUSINESS ENTITY (Check one):

____ Individual/Sole Proprietor
____ Partnership
____ Corporation
____ Limited Liability Company
Other (please specify:

By _____

MARIN MUNICIPAL WATER DISTRICT

By _____
President, Board of Directors

By _____
Secretary