

MUTUAL ASSISTANCE AGREEMENT

THIS MUTUAL ASSISTANCE AGREEMENT (this "Agreement") is made and entered into effective as of October 23 2023, by and between the Marina Coast Water District, a public agency (the "MCWD"), and the Carmel Area Wastewater District, a public agency (the "CAWD").

Recitals

A. The MCWD and the CAWD have determined that it would be in their mutual best interests to periodically lend to each other equipment, supplies and personnel, and to otherwise cooperate with and assist each other in the event of an emergency or in other situations where one agency has insufficient resources to undertake a necessary public project or activity.

B. The parties desire to set forth herein the terms on which they may provide mutual assistance through the sharing of resources.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Requests for Assistance. In the event that either party to this Agreement (the "Borrower") has a need for the equipment, supplies, personnel or other resources of the other party hereto (the "Lender") for purposes of undertaking a necessary public project or activity, the Borrower may request that the Lender provide such resources. Any verbal request for assistance shall be followed with a documented request and shall become supporting documentation under this Agreement when assistance is granted. Any such request shall be submitted as follows:

If to the CAWD: Address: 3940 Rio Rd. Carmel-by-the-Sea, CA 93923
Phone: (831) 624-1248
Email: buikema@cawd.org
Attn: Barbara Buikema, General Manager

If to the MCWD: Address: 11 Reservation Road, Marina, CA 93933
Phone: (831) 384-6131
Email: rscherzinger@mcwd.org
Attn: Remleh Scherzinger, General Manager

2. Discretion by Lender. The Lender shall have the absolute discretion to approve or decline any request for assistance and shall have no liability to the Borrower for failing to provide such assistance. It is understood and agreed that the Lender will grant a request for assistance only where the Lender has determined that it has the requested resources available and will be able to meet its own needs while rendering assistance. The execution of this Agreement shall not create any duty to grant any assistance requested by the Borrower.

3. Equipment. If the Lender loans equipment to the Borrower, such as, but not limited to construction equipment, vehicles, tools, pumps or generators, such loaned equipment shall be subject to the following conditions:

- (a) If the Lender so determines, the loaned equipment shall be operated by the Lender's personnel, which personnel will then be provided with the equipment.
- (b) Unless subsection 3(c) applies, the loaned equipment shall be returned to the Lender within the first to occur of (i) 24 hours after completion of the project for which the equipment was provided, or (ii) 24 hours after the Lender delivers to the Borrower a written request that the equipment be returned.
- (c) In the event the Lender has an emergency and in its discretion requires use of the loaned equipment and/or the associated Lender employees, the Borrower will immediately return the loaned equipment and/or release the recalled employees.
- (d) The Borrower shall, at its own expense, supply all fuel, lubrication and maintenance for the equipment during the assistance period, unless other arrangements are made.
- (e) The Lender will normally charge the Borrower for costs related to the use, transportation, handling, loading and unloading of the equipment. The costs will be determined by the Lender's adopted fees for the fiscal year in which the equipment was loaned. If a piece of equipment is not listed within the Lender's fee schedule, the rate shall be based on the then-in-effect Caltrans equipment rental rates. Each party shall provide to the other party the applicable fee schedule in effect when this Agreement is approved and whenever the fee schedule changes.

- (f) In the event that loaned equipment is damaged while in the custody or use of the Borrower, the Borrower shall reimburse the Lender for the reasonable cost of repairing such damage. If the equipment cannot be repaired or has been destroyed, the Borrower shall reimburse the Lender for the full actual replacement cost of the equipment. If the same make and model is not available, the cost of a similar make and model that is agreed upon by the Lender shall be used. If the Lender is required to lease replacement equipment while the loaned equipment is being repaired or replaced by the Borrower, the Borrower shall reimburse the Lender for such lease costs. The reimbursement obligations of this section shall be independent of, and in addition to, either party's insurance requirements as set forth in this Agreement.

4. Supplies. The Borrower shall reimburse the Lender in kind or at the actual replacement cost for the use of expendable or non-returnable supplies provided by the Lender. Supplies of reusable items that are returned to the Lender in a clean and undamaged condition will not be charged to the Borrower.

5. Personnel. Wages, hours, and other terms and conditions of employment applicable to loaned personnel shall be those of the Lender. In the event that the Lender makes its personnel available to the Borrower, the Lender will normally charge the Borrower such personnel's applicable hourly rate plus fringe benefits and insurance, including workers' compensation insurance (loaded hourly rate), during the time the Lender's personnel is providing services to the Borrower, plus travel time. Personnel so loaned to the Borrower will take direction from the Borrower, but will follow work procedures and safety rules of the Lender at all times and remain under the direct supervision and control of the supervisory personnel of the Lender.

Each party shall provide to the other party the applicable loaded hourly rates in effect when this Agreement is approved and whenever the loaded hourly rates change.

6. Term. This Agreement shall commence as of the effective date set forth above and shall continue until terminated by thirty (30) days written notice by one party to the other.

7. Insurance and Indemnity. MCWD and the CAWD shall procure and maintain for the duration of the Agreement insurance against claims for injuries

or death to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by MCWD and the CAWD, their agents, representatives, employees or subcontractors.

(a) Coverage. Coverage shall be at least as broad as the following:

i. Workers' Compensation Insurance - as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

ii. Waiver of Subrogation. MCWD and the CAWD agree to waive all rights of subrogation against one another, including their elected or appointed officers, officials, agents, authorized volunteers and employees for losses paid under the terms of the insurance policy, which arise from work performed by or for MCWD and the CAWD.

iii. Property Insurance – coverage for vehicles and equipment scheduled in the Association of California Water Agencies Joint Powers Insurance Authority (JPIA) or California Sanitation Risk Management Authority CSRMA (see subsection v, below) against all risk of loss at Actual Cost Value.

If MCWD or the CAWD maintains broader coverage and/or higher limits than the policy minimums required hereunder, MCWD and CAWD requires and shall be entitled to the broader coverage and/or higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to MCWD and the CAWD.

iv. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to MCWD by CAWD and by CAWD to MCWD.

v. Acceptability of Insurers – Insurance. MCWD is insured for Personal Injury Liability and Property Damage by the Association of California Water Agencies Joint Powers Insurance Authority (JPIA). CAWD is insured for Personal Injury Liability and Property Damage by California Sanitation Risk Management Authority (CSRMA). The parties shall coordinate with the JPIA or CSRMA on insurance coverages and conditions per the Memorandum of Coverage for all claims, losses, damages, injuries, costs and expenses (including attorneys' fees) and all liabilities of every kind, nature and description, directly or indirectly arising from or in connection with this Agreement. Other required insurance is to

be placed with insurers having a current A.M. Best rating of no less than A:VII or as otherwise approved by each party.

vi. Verification of Coverage. Each party shall furnish the other certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates are to be received and approved by MCWD and CAWD before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive MCWD and the CAWD obligations to provide the certificates. MCWD and CAWD reserve the right to require complete, certified copies of all required insurance policies, including policy Declaration pages and Endorsement pages.

(b) Indemnity. The Borrower shall indemnify, defend and hold harmless the Lender and its officers, directors, employees and agents from all claims, losses, damages, injuries, costs and expenses (including attorneys' fees) and all liabilities of every kind, nature and description, directly or indirectly arising from or in connection with (i) the use by the Borrower or by the Borrower's employees, agents or contractors of equipment or supplies provided by the Lender, or (ii) any project or activity undertaken by the Borrower for which the Lender has provided resources or assistance pursuant to this Agreement; provided, however, that the Borrower shall not be required to indemnify, defend and hold harmless the Lender and its officers, directors, employees and agents to the extent any such claim, loss, damage, injury, cost, expense or liability is caused by the negligence or willful wrongful acts or omissions of the Lender.

8. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

9. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

10. Professional Fees. In the event of any action or suit arising in connection with the enforcement or interpretation of any of the covenants or provisions of this Agreement, the prevailing party shall be entitled to recover all

costs and expenses of the action or suit, including actual attorneys' fees, accounting fees and any other professional fees incurred in connection therewith.

11. Entire Agreement/Amendments. This Agreement (including all exhibits attached hereto) is the final expression of and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings and communications with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by a written instrument signed by the party who is the beneficiary of the obligation. No waiver by any party shall, except as may otherwise be stated in such waiver, be applicable to subsequent obligations. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

12. Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to paragraphs and subparagraphs are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.

13. Governing Law. The parties hereto expressly agree that (i) this Agreement shall be governed by, interpreted under and enforced in accordance with the laws of the United States of America and the State of California, (ii) in the event of any dispute, the parties shall be subject to the jurisdiction of the courts of the State of California, regardless of their place of residence, and (iii) in any action arising in connection with this Agreement, venue shall be in the County of Monterey, State of California, United States of America.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

15. Digital Signatures. In the event executed copies of this Agreement are provided by one party to the other(s) by facsimile, or email transmission, the original copies shall be sent by the signing party to the other party(ies) as soon as reasonably feasible, and pending the receipt thereof, the facsimile, or email copies and the signatures thereon shall for all purposes be treated as originals.

16. Further Assurances. The parties agree to take such actions and execute such documents as may be reasonably required to carry out the intent of this Agreement.

17. Assignment. Neither party may assign its rights or delegate its obligations under this Agreement, in whole or in part, without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first set forth above.

MARINA COAST WATER DISTRICT

CARMEL AREA WASTEWATER DISTRICT

By: 
Remleh Scherzinger, General Manager

By: 
Barbara Buikema, General Manager

ATTEST:

ATTEST:

By: 

By: 

RESOLUTION NO. 2023-43

A RESOLUTION AUTHORIZING THE GENERAL MANAGER TO EXECUTE A
MUTUAL ASSISTANCE AGREEMENT BETWEEN CARMEL AREA
WASTEWATER DISTRICT AND THE MARINA COAST WATER DISTRICT

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WHEREAS, Carmel Area Wastewater District (CAWD) is a Special Sanitary District that provides wastewater collections, treatment, and recycled water to approximately 14,500 customers; and,

WHEREAS, the Marina Coast Water District (MCWD) is a Special County Water District that serves water, sewer and recycled water to approximately 41,000 customers within central Marina and the Fort Ord Communities; and,

WHEREAS, both entities operate under a small umbrella of employees; and,

WHEREAS, both CAWD and the MCWD would benefit from a mutual assistance agreement should an emergency arise; and,

WHEREAS, the mutual assistance agreement will provide cost recovery and voluntary response language to prevent unnecessary hardship between either entity.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Carmel Area Wastewater District does hereby:

1. Adopt Resolution No. 2023-43 to approve the Mutual Assistance Agreement between CAWD and MCWD.
2. Authorize the General Manager to execute the Mutual Assistance Agreement and directs the General Manager to take all actions and execute all documents as may be necessary or appropriate to give effect to this resolution.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Carmel Area Wastewater District duly held on July 27, 2023 by the following vote:

AYES: BOARD MEMBERS: PRESIDENT WHITE, DIRECTORS:

D'AMBROSIO, URQUHART, RACHEL AND SIEGFRIED

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ABSTAIN: BOARD MEMBERS:



A handwritten signature in cursive script, appearing to read "Ken White", is written over a horizontal line.

Ken White, President of the Board

ATTEST:



A handwritten signature in cursive script, appearing to read "Domine Barringer", is written over a horizontal line.

Domine Barringer, Secretary to the Board