



moulton niguel water district

**ENGINEERING & OPERATIONS
BOARD OF DIRECTORS' MEETING
MOULTON NIGUEL WATER DISTRICT**

27500 La Paz Road, Laguna Niguel

June 13, 2016

8:30 AM

Approximate Meeting Time: 3 Hours

THIS BOARD MEETING WILL INCLUDE TELECONFERENCING AT THE FOLLOWING LOCATION: 12025 CEDAR SHORE ROAD, ELLISON BAY, WISCONSIN

1. CALL MEETING TO ORDER
2. APPROVE THE MINUTES OF THE MAY 16, 2016 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING

3. PUBLIC COMMENTS

Persons wishing to address the Board of Directors on matters not listed on the Agenda may do so at this time. "Request To Be Heard" forms are available at the entrance to the Board Room. Comments are limited to five minutes unless further time is granted by the Presiding Officer. Submit form to the Recording Secretary prior to the beginning of the meeting.

Those wishing to address the Board of Directors on any item listed on the Agenda should submit a "Request To Be Heard" form to the Recording Secretary before the Presiding Officer announces that agenda item. Your name will be called to speak at that time.

DISCUSSION ITEMS

4. Customer Portal Dashboard Vendor Selection
5. 2015 Urban Water Management Plan Public Hearing and Adoption
6. Water Shortage Contingency Plan Continued Implementation
7. On-Call Asphalt and Concrete Repair Services
8. Water Softener Rules and Regulations Revisions
9. AlertOC Memorandum of Understanding
10. Updated Reserve Policy Adoption

11. Updated Investment Policy Adoption
12. Fiscal Year 2016-17 Proposed Budget

INFORMATION ITEMS

13. Water Usage Update
14. Joint Powers Authority Quarterly Update
15. Baker Water Treatment Plant Project Update
16. Operations Center Consolidation Improvement Project Update
17. Future Agenda Items (Any items added under this section are for discussion at future meetings only)
18. Late Items (Appropriate Findings to be Made)
 - a. Need to take immediate action; and
 - b. Need for action came to District's attention after Agenda Posting. [Requires 2/3 vote (5 members) or unanimous vote if less than 2/3 are present]

ADJOURNMENT

The Board of Directors' Meeting Room is wheelchair accessible. If you require any special disability related accommodations (i.e., access to an amplified sound system, etc.), please contact the Moulton Niguel Water District Secretary's office at (949) 831-2500 at least forty-eight (48) hours prior to the scheduled meeting. This agenda can be obtained in alternate format upon written request to the Moulton Niguel Water District Secretary at least forty-eight (48) hours prior to the scheduled meeting.

Agenda exhibits and other writings that are disclosable public records distributed to all, or a majority of, the members of the Moulton Niguel Water District Board of Directors in connection with a matter subject to discussion or consideration at an open meeting of the Board of Directors are available for public inspection at the District Office, 27500 La Paz Road, Laguna Niguel, CA ("District Office"). If such writings are distributed to members of the Board less than seventy-two (72) hours prior to the meeting, they will be available in the reception area of the District Office at the same time as they are distributed except that, if such writings are distributed immediately prior to, or during the meeting, they will be available in the Board meeting room and on the District website at www.mnwd.com.



moulton niguel water district

DRAFT
MINUTES OF THE REGULAR MEETING OF THE
ENGINEERING & OPERATIONS BOARD OF DIRECTORS OF THE
MOULTON NIGUEL WATER DISTRICT

May 16, 2016

A Regular Meeting of the Engineering & Operations Board of Directors of the Moulton Niguel Water District was held at the District offices, 27500 La Paz Road, Laguna Niguel, California, at 8:30 AM on May 16, 2016. There were present and participating:

DIRECTORS

Duane Cave	Director
Scott Colton	Vice President/Chair
Richard Fiore	Director
Donald Froelich	President
Gary Kurtz	Director
Larry Lizotte	Director
Brian Probolsky	Vice President (arrived at 8:35 a.m.)

Also present and participating were:

STAFF MEMBERS, LEGAL COUNSEL, AND MEMBERS OF THE PUBLIC

Joone Lopez	General Manager
Matt Collings	Assistant General Manager
Marc Serna	Director of Engineering & Operations
Gina Hillary	Director of Human Resources
Jeff Ferre	Best, Best, & Krieger (General Counsel)
Paige Gulck	Board Secretary
Tim Bonita	Recording Secretary
Drew Atwater	MNWD
Johnathan Cruz	MNWD
Todd Dmytryshyn	MNWD
Tracy Ingebrigtsen	MNWD
Steve Merk	MNWD
Mark Mountford	MNWD
Todd Novacek	MNWD

#2.

Eva Plajzer	MNWD
Rod Woods	MNWD
Nicole Dubois	LSA Associates, Inc.
Tony Ingegneri	ATS Communications

1. CALL MEETING TO ORDER

The meeting was called to order by Scott Colton at 8:30 a.m.

2. APPROVE THE MINUTES OF THE APRIL 18, 2016 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING

MOTION DULY MADE BY DUANE CAVE AND SECONDED BY GARY KURTZ, MINUTES OF THE APRIL 18, 2016 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING WERE APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, DONALD FROELICH, GARY KURTZ, AND LARRY LIZOTTE ALL VOTING 'AYE'. DIRECTOR BRIAN PROBOLSKY WAS ABSENT.

3. PUBLIC COMMENTS

None.

PRESENTATION ITEMS

4. Emergency Response System Overview

Todd Novacek presented the Emergency Response System Overview. Key topics included California's emergency response and mutual aid structure and the District's incident command organization chart.

Brian Probolsky arrived at 8:35 a.m.

DISCUSSION ITEMS

5. Valve Replacements Construction Contract Award

Rod Woods presented the Valve Replacements Construction Contract. The contract is for a one year period and will replace 40 potable valves and install 17 new valves. Staff recommends that the Board of Directors award the construction services contract to Paulus Engineering, Inc. in the amount of \$1,062,191; authorize the General Manager to execute the contract; and authorize the General Manager or designee to approve change orders up to 15% of the contract value. Discussion ensued regarding the contract.

6. Amendment No. 1 to the Professional Services Agreement - LSA Associates, Inc.

Matt Collings presented the details of Amendment No. 1 to the Professional Services Agreement with LSA Associates, Inc. Staff recommends that the Board of Directors approve the amendment for an amount not-to-exceed \$78,840 for a total contract amount of \$153,076; authorize the General Manager to execute Amendment No. 1; and authorize the General Manager or designee to approve change orders up to 15% of the total contract value. Discussion ensued regarding the agreement.

7. Security Services

Todd Novacek presented the agreement. Staff recommends that the Board of Directors authorize the General Manager to execute a three year agreement with G4S Secure Solutions (USA), Inc., in the amount of \$73,892 per year, for a total agreement amount of \$221,676 with the option to extend for two additional one-year terms. Discussion ensued regarding the agreement.

8. Amendment No. 7 to Agreement with ATS Communications for FY 2016-17

Eva Plajzer presented Amendment No. 7 to the agreement with ATS Communications. Staff recommends that the Board of Directors approve Amendment No. 7 for a not-to-exceed amount of \$90,000 for FY 2016-17 for a total contract value of \$518,357; and authorize the General Manager to execute Amendment No. 7 to the Professional Services Agreement. Discussion ensued regarding the amendment.

INFORMATION ITEMS

9. Baker Water Treatment Plant Project Update

Marc Serna provided an update on the Baker Water Treatment Plant Project. The expected date of completion is October 1, 2016.

10. Operations Center Consolidation Improvement Project Update

Matt Collings provided an update on the Operations Center Consolidation Improvement Project. Initial building designs were shared at the monthly homeowners' association meeting on April 28, 2016.

11. Quarterly Capital Improvement Program Report

Eva Plajzer presented the Quarterly Capital Improvement Program Report.

12. Future Agenda Items (Any items added under this section are for discussion at future meetings only)

#2.

None.

13. Late Items (Appropriate Findings to be Made)

Staff has none.

CLOSED SESSION

14. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9

One Potential Case

15. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code Section 54957

Title: General Manager

Discussion of evaluation process

The Board entered closed session at 9:33 a.m. and exited at 11:01 a.m. Scott Colton stated that there was no reportable action on either item

ADJOURNMENT

The meeting was adjourned at 11:02 a.m.

Respectfully submitted,

Tim Bonita
Recording Secretary



STAFF REPORT

TO: Board of Directors **MEETING DATE:** June 13, 2016
FROM: Drew Atwater, Water Resources Manager
Doug Zytkevicz, Superintendent of Customer Service
SUBJECT: Customer Portal Dashboard Vendor Selection
DIVISION: District-wide

SUMMARY:

Issue: Board action is required to execute an agreement for the purchase and implementation of the Customer Portal and Utility Dashboard, for Phase 1 of the District’s Advanced Metering Infrastructure (AMI) Pilot Project.

Recommendation: It is recommended that the Board of Directors authorize the General Manager to execute an agreement with Smart Utility Systems, for the purchase and installation of the Customer Portal Software Application, in the amount of \$83,800; and authorize the General Manager or designee to approve change orders up to 10% of the contract value.

Fiscal Impact: The funds for this project are included in the FY 2015-16 and FY 2016-17 Capital Improvement Program Budget with a current project budget of \$968,381. The proposed budget for the project is \$943,061. There is a savings of \$25,320 from the Customer Portal portion of the AMI project. A WaterSMART Grant in the amount of \$300,000 in matching funds from the United States Bureau of Reclamation was obtained.

Background:

On March 24, 2016, the District’s purchasing department sent out a request for proposals to develop a Customer Portal and Utility Dashboard for the District’s pilot AMI project. As was discussed in previous Board Meetings, the Consultant will

#4.

Customer Portal Dashboard Vendor Selection

June 13, 2016

Page 2 of 4

produce both a customer portal and a utility portal that can be accessed via all current major web browsers and mobile devices. To facilitate the development of the portals, the consultant will provide a secure channel to transfer relevant customer and District data.

Customers will be able to login to their secure account and access up-to-date water budget and bill information, usage management tools and account alerts, advanced usage analytics, as well as bill pay and District forms (rebates, variances, etc.).

Additionally, the Utility Dashboard will serve as an analytical tool that District staff can use to monitor the water system, identify leaks, track and compare customer usage characteristics across the District, as well as generate summary statistics and activity reports. The Customer Portal and Utility Dashboard will serve as a critical component of the AMI Pilot Project in the District's efforts to enhance customer service, promote the importance of water use efficiency, and expand the District's Water Loss Control Program.

To support project funding, the District was awarded a WaterSMART Grant from the United States Bureau of Reclamation in the amount of \$300,000 in matching funds for the AMI Pilot Project which includes the development of a Customer Portal and Utility Dashboard. Grant funding requires the pilot project be completed by June 30, 2017.

The following timeline provides a summary of items previously completed, in addition to a projection of future milestones.

Project Task	Completion Date
USBR Grant Presentation	December 2014
USBR Grant Resolution	January 2015
USBR Grant Award	August 2015
AMI Project Update	January 2016
Infrastructure Contract Award Recommendation	March 2016
Customer Portal Board Update	June 2016
Infrastructure Installation Complete	October 2016
Customer Portal Implemented	November 2016

Customer Portal Dashboard Vendor Selection

June 13, 2016

Page 3 of 4

Discussion:

Staff issued a Request-for-Proposal to nine (9) firms and received six (6) proposals. The table below summarizes the proposals received:

Consultant / Firm	Proposed Installation Fee	Annual Maintenance Cost
Gigasavvy	\$556,770	N/A
Water Smart Software	\$8,000	\$61,375
Smart Utility Systems	\$24,300	\$59,500
Dropcountr	Fees not included	Fees not included
Aquahawk	\$52,000	\$103,800
Omniearth	N/A	\$110,000

The proposed fee includes the one-time implementation costs as well as the customer portal and utility dashboard annual operating costs. Many of the firms, including the selected vendor, operate under a Software as a Service (SaaS) model where they provide system upgrades and increased functionality developed as part of the annual operating costs. Proposed software for the pilot phase will have the ability to support AMI in the Customer Portal and Utility Dashboard for the District's entire service area if future expansion of the proposed system is desired. The proposed software supports both AMI meters and meters read monthly so that all current District customers will have access to the portal.

Staff performed a thorough review of the proposals received to determine the overall best value provided for the services required. Based on the supplier's specific project understanding and approach, ability to meet performance requirements, overall proposal quality, and cost, staff recommends that Smart Utility Systems be awarded the Customer Portal and Utility Dashboard Project agreement.

The proposed agreement, which has been reviewed and approved by legal, is provided in Exhibit A.

#4.

Customer Portal Dashboard Vendor Selection

June 13, 2016

Page 4 of 4

SUMMARY OF AMI PROJECT BUDGET:

	Project Budget*	Proposed / Approved Contract	Proposed / Authorized Contingency	Total Proposed / Authorized Amount
Project Items				
AMI Pilot Services Contract	\$689,500	\$796,077	\$39,804	\$835,881
Customer Portal Software	\$117,500	\$83,800	\$8,380	\$92,180
Customer Outreach Program	\$15,000	\$0	\$0	\$15,000
Totals	\$822,000	\$ 879,877	\$48,184	\$943,061

*\$30,987 has been expended to date.

 Currently Proposed Amount

Attachment: Exhibit A – Smart Utility Systems Agreement

**MASTER SERVICES AGREEMENT BETWEEN
MOULTON NIGUEL WATER DISTRICT AND
SMART UTILITY SYSTEMS, INC.
AGREEMENT NO. 2015.019, 2015.020**

THIS AGREEMENT (the "Agreement") is dated as of _____, 2016 (the "Effective Date"), by and between Smart Utility Systems, Inc., hereinafter referred to as the "CONSULTANT" and Moulton Niguel Water District hereinafter referred to as "DISTRICT". DISTRICT and CONSULTANT may sometimes be referred to in this Agreement individually as "party" and together as "parties."

RECITALS

DISTRICT issued that certain Request for Proposal for Customer Portal Development and Implementation Services for Advanced metering Infrastructure Phase 1 Project No. 2015.019 & 2015.020 ("RFP");

CONSULTANT responded to the RFP with that certain RFP Response dated April 12, 2016 ("Proposal") and DISTRICT has made a determination to move forward with the solution set forth in the Proposal for the AMI Customer Portal project described in the RFP;

CONSULTANT proposes to provide implementation services (the "Services") and software (the "Product") for the DISTRICT's AMI Customer Portal project. The scope of work to be performed by CONSULTANT under this Agreement is described in the Proposal and **Exhibit A** hereto, which is incorporated herein (the "Scope of Work").

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

AGREEMENT

SECTION I - CONSULTING SERVICES AND SOFTWARE LICENSE

Section 1.1 CONSULTANT shall provide the Products and Services to DISTRICT as further defined in **Exhibit A**. This Agreement, including all attached Exhibits form the Agreement between the parties.

Section 1.2 The sale, purchase and use of the Product software is subject to the SWiQ End User License Agreement, which is incorporated herein and attached hereto as **Exhibit B**.

Section 1.3 The parties acknowledge that DISTRICT is the recipient of a grant from the Bureau of Reclamation for this Project and agree to comply with the contract terms required by such grant, including the special provisions attached hereto ("Special Provisions") **Exhibit C**.

Section 1.4 The Products and Services will be provided in accordance with the following contract documents ("Contract Documents"):

- (a) this Agreement;
- (b) the Scope of Work;

#4.

- (c) the Special Provisions;
- (d) the SWiQ End User License;
- (e) the Proposal (Attachment 1 to this Agreement); and
- (f) the Documentation (as defined in the SWiQ End User License).

In the event of any conflict or ambiguity as between the Contract Documents, the Contract Documents will be interpreted in the foregoing order of priority, provided, however, that the Proposal and the Documentation will prevail with respect to the description of the features and functionality which is included in the Product (the “Functional Requirements”).

SECTION II – SCOPE OF SERVICES AND PERFORMANCE

Section 2.1 CONSULTANT shall perform the Services in accordance with **Exhibit A**, the terms of this Agreement, and as directed by DISTRICT. DISTRICT reserves the right to develop additional Services and related requirements as it deems appropriate to meet the needs and objectives of DISTRICT and this Agreement.

Section 2.2 CONSULTANT acknowledges and agrees that DISTRICT does not guarantee any minimum or maximum amount of Services and DISTRICT may use other Consultants for the Services in its sole discretion.

Section 2.3 CONSULTANT shall provide all labor, materials, tools, equipment, supplies, utilities and transportation required to perform the Services, subject to compliance with the Agreement requirements, and complete all Services in a thorough, professional manner in accordance with generally accepted industry practices and principles, and to the satisfaction of DISTRICT. CONSULTANT shall have the sole and absolute discretion in determining the methods, details and means of performing the Services, and DISTRICT shall not have any right to direct the methods, details and means of the Services, provided that CONSULTANT must receive prior written approval from DISTRICT before using any sub consultants for the provision of Services under this Agreement. In performing the Services under this Agreement, CONSULTANT shall observe and abide by the terms and conditions of all applicable laws, regulations, ordinances, or other rules of the United States, of the State of California, or any political subdivisions thereof, or of any other duly constituted public authority or agency including but not limited to DISTRICT.

Section 2.4 DISTRICT may request or CONSULTANT may recommend, that CONSULTANT perform work in addition to or different from that delineated in the original Scope of Services, or delete services from the Scope of Services. Upon DISTRICT's request for additional or changed Services, CONSULTANT shall provide a cost estimate and written description of the additional or changed work. Prior to any such addition, changes, or deletion to the Scope of Services, DISTRICT and CONSULTANT shall negotiate an adjustment of the compensation and completion date and shall execute a written addendum. Upon execution of each addendum, (i) the Scope of Services shall thereafter be as described in the Agreement, respectively, as modified by the addendum and any previously executed addendum; and (ii) the time for completing the Services shall be as set forth in the addendum. Following execution of any amendment, all terms and provisions of the Agreement, except as expressly modified by such amendment, shall remain in full force and effect. DISTRICT will not be required to pay for any additional or changed work rendered in advance of the execution of an amendment covering the additional or changed work.

Section 2.5 CONSULTANT agrees to coordinate the work to ensure its timely completion and shall promptly notify DISTRICT of any anticipated delays or causes or casualties beyond CONSULTANT'S control which may affect the work schedule. CONSULTANT shall not begin work on any Services pursuant to this Agreement until receipt of DISTRICT'S written direction to proceed. Upon receipt of such notice, CONSULTANT shall immediately commence the work described in Exhibit A. The Services shall be completed in an expeditious manner and in any event no later than the completion date listed on the Scope of Services. Time is of the essence in this Agreement.

Section 2.6 CONSULTANT's manager in charge of the Services is Brad Adamske.

Section 2.7 Without prior written approval of DISTRICT, CONSULTANT will not make any changes in CONSULTANT'S manager in charge, in consultants, in outside labor arrangements, or associations or joint ventures which are required to accomplish any part of the Scope of Services. CONSULTANT is responsible to DISTRICT for the acts and omissions of its subcontractors as it is for persons directly employed by CONSULTANT. Nothing contained in this Agreement creates any contractual relationship between any subcontractor and DISTRICT. CONSULTANT shall not allow any subcontractor to commence work or services under any subcontract until all insurance required of CONSULTANT has been obtained for the subcontractor.

Section 2.8 DISTRICT shall make available to CONSULTANT, at no cost, all information reasonably required by CONSULTANT and relating to the work to be performed under this Agreement.

Section 2.9 (a) For purposes of this Agreement, the term "Confidential Information" shall be deemed to be used in the most comprehensive and broadest sense and shall mean all information generated and/or provided by either party (the "Disclosing Party") to the other (the "Receiving Party"), that is confidential and/or proprietary in nature, including without limitation, Disclosing Party's customer information, including without limitation, names, meter numbers, utility usage data, addresses, telephone numbers, facsimile numbers and/or e-mail addresses.

(b) The Parties agree that the Confidential Information is and shall remain the sole and exclusive proprietary property of the Disclosing Party, and except for the stated purposes set forth in this Agreement, that the Receiving Party (with respect to Confidential Information of Disclosing Party) shall not acquire any license or other right whatsoever in the Confidential Information by virtue of this Agreement or by virtue of any disclosure of the Confidential Information pursuant hereto.

Section 2.10 (a) Except as provided below in this Section 2.10, the Receiving Party agrees to hold and maintain the Confidential Information in the strictest confidence and shall not disclose all or any portion of the Confidential Information to any other party without Disclosing Party's prior written consent. Receiving Party shall not disclose or permit the disclosure of all or any portion of the Confidential Information to any employee, agent, or other representative of such party and/or its affiliate(s) other than those with a need to know who have been advised of this Agreement and such party's obligations hereunder and who represent and warrant to such party in writing that they agree to be bound by the terms of this Agreement.

(b) Notwithstanding anything set forth above in this Section 2.10 or elsewhere in this Agreement to the contrary, Receiving Party may disclose Confidential Information if required to do so by applicable law, order or regulation; provided, however, that it shall not so disclose any

#4.

Confidential Information pursuant to this sentence without first giving the Disclosing Party at least five (5) business days' prior written notice of Receiving Party's intention to make such disclosure to allow Disclosing Party to seek a protective order or other judicial relief or otherwise have an opportunity to prevent the disclosure.

(c) For example, and not by way of limitation, the Parties agree, within the requirements of the Public Records Act and any other applicable State or federal law, to protect all Confidential Information from disclosure and preserve any and all applicable exemptions under the Public Records Act and any applicable legal privileges for such Confidential Information, to the same degree of care and legal responsibility as each Party protects their own confidential and proprietary information from disclosure.

Section 2.11 All work product, original drawings, artwork, media, electronic media, final deliverables, and other documents, developed pursuant to this Agreement shall, upon payment in full for the services described in this Agreement or as otherwise provided in SECTION IV herein, be furnished to and become the property of DISTRICT. Work Product means all programs, systems, data and materials, including but not limited to, images, graphic user interface, source code, object code, and any documentation and notes associated with the web site, in whatever form, first produced or created by or for Consultant as a result of, or related to, performance of work or services under this Agreement.

Section 2.12 CONSULTANT shall be solely responsible for maintaining the security of all DISTRICT data and the data of DISTRICT customers that is processed by or hosted by CONSULTANT in connection with the Products. CONSULTANT further acknowledges that DISTRICT's customers may provide credit card or other billing information that is protected as Nonpublic Personal Information under the requirements of the Gramm-Leach-Bliley Act and the privacy laws of the State of California. If there is a suspected, threatened or actual breach of security involving or relating to DISTRICT'S or its customer's data provided to CONSULTANT ("Customer Data") (each, a "Security Breach"), CONSULTANT shall at its own expense and using commercially reasonable efforts: (1) promptly investigate and take all steps to identify, prevent and mitigate the effects of such Security Breach; (2) promptly notify DISTRICT (but in all such circumstances within twelve (12) hours of becoming aware of such occurrence), which notice shall include a detailed description of the incident, of the Customer Data accessed or attempted to be accessed, and such other information as DISTRICT may reasonably request concerning the Security Breach related to the Customer Data; and (3) as soon as possible conduct any recovery necessary to remediate the impact of such Security Breach and comply with any federal and state laws relating to such Security Breach. Upon notice of a Security Breach, DISTRICT may to the extent DISTRICT deems reasonably necessary, with seven (7) days' advance written notice to CONSULTANT and at DISTRICT's sole expense, conduct or have a third party conduct on its behalf, an audit of CONSULTANT's network security systems, facilities, practices and procedures used in connection with, or applicable to, Client Data.

Section 2.13 CONSULTANT represents and warrants that the Product will not contain any spyware, virus, trap door, rootkit, malware, trojan horse, worm, and/or other similar malicious or disabling code or mechanisms and will not introduce any of the foregoing into the computer systems of DISTRICT when accessing DISTRICT data.

SECTION III – TERM

Section 3.1 This Agreement shall commence as of the Effective Date and continue in effect through June 30, 2017 unless otherwise terminated by either party pursuant to Section VII herein. This Agreement may be extended, at DISTRICT’s option, for an additional year to June 30, 2018, at the annual pricing listed in the Price Schedule in Exhibit D. Subject to DISTRICT’s sole discretion, an extension will be based upon a satisfactory review of Contractor’s performance, DISTRICT’s needs, and appropriation of funds and approval by the District Board of Directors. The parties will prepare a written amendment indicating the effective date and length of the extended Agreement.

SECTION IV – FEES AND PAYMENT TERMS

Section 4.1 The total purchase price for the Products and Services to be provided pursuant to this Agreement is **Eighty-Three Thousand Eight Hundred Dollars (\$83,800)** (the “Purchase Price”), and is further detailed in Exhibit D. Except for any additional maintenance charges, or additional product purchases, the Purchase Price to be paid by DISTRICT shall be CONSULTANT’s sole compensation for the Products and Services to be delivered herein.

Section 4.2 Payments will be made based on submittal of invoices by CONSULTANT. Invoices will include the date or period of Services, a complete description of the Services performed, the total amount due and, when requested by DISTRICT, any support documentation sufficient to validate the charges for each invoice item. Only one bill per month shall be submitted by CONSULTANT, showing amounts due for CONSULTANT during the monthly billing period. Incomplete invoices will be returned unpaid to CONSULTANT.

SECTION V - INSURANCE AND INDEMNIFICATION

Section 5.1 Professional Liability Insurance.

CONSULTANT and each of its sub- consultants/subcontractors shall maintain throughout the term of this Agreement a professional liability (errors and omissions) policy of insurance having coverage of not less than One Million Dollars (\$1,000,000) for each claim and in annual aggregate. The following provisions shall apply if the professional liability coverage is written on a claims-made basis:

- (a) The retroactive date of the policy must be shown and must be dated before the date of this Agreement.
- (b) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of this Agreement or the services hereunder.
- (c) If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this Agreement, CONSULTANT must provide extended reporting coverage for a minimum of five (5) years after completion of the services. DISTRICT shall have the right to exercise at the CONSULTANT’S cost any extended reporting provisions of the policy should the CONSULTANT cancel or not renew the coverage.

#4.

- (d) A copy of the claims reporting requirements must be submitted to DISTRICT prior to the commencement of any work under this Agreement.

Section 5.2 General/Automobile Liability Insurance. CONSULTANT and each of its sub-consultants/subcontractors shall maintain throughout the term of this Agreement a general liability policy of insurance for bodily injury and/or death, personal injury and property damage claims which may arise from or in connection with the performance of the work under this Agreement by CONSULTANT and its sub-consultants/subcontractors, and each of their agents, representatives, or employees. Such public liability and property damage insurance (which shall cover claims, injury, death, loss or damage or accidents from the use or operation of any automobiles, trucks and/or other mobile or stationary equipment, whether owned, non-owned or hired) shall be comprehensive in form and shall be on a "per occurrence" basis in a minimum amount of One Million Dollars (\$1,000,000) per occurrence and an annual aggregate limit in a minimum amount at least twice the per occurrence limit specified in this Section. All insurance provided under this Section 5.2 shall name DISTRICT and its' directors, officers, employees and representatives as additional insureds under each such policy ("additional insureds") and an additional insured endorsement shall be provided in form acceptable to DISTRICT.

Section 5.3 Worker's Compensation. By its signature hereunder, CONSULTANT certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and that CONSULTANT will comply with such provisions before commencing the performance of work under this Agreement. CONSULTANT and subcontractors shall maintain throughout the term of this Agreement workers' compensation insurance with limits no less than the statutory limits, and Employer's Liability insurance with limits no less than One Million Dollars (\$1,000,000) per accident and per disease for their employees and shall file with the DISTRICT the certificate required by Labor Code Section 3700. The workers compensation/Employer's Liability insurance shall be endorsed with a waiver of subrogation in favor of DISTRICT and its' directors, officers, employees and representatives.

Section 5.4 Requirements of All Policies. All policies of insurance required under this SECTION V shall be from insurance providers who are either admitted or licensed to do business in California, or are Surplus Lines Carriers authorized to do business in California, and who have financial size and ratings of no less than A-, Class VII, and in either case are otherwise acceptable to DISTRICT. All such policies shall include a provision and executed endorsement for thirty (30) days prior written notice by certified mail, return receipt requested, to DISTRICT of any cancellation or material alteration of such insurance. CONSULTANT shall provide original certificates and endorsements for all such insurance on forms approved by DISTRICT in conformity with all requirements of this Agreement prior to commencement of any work or professional services. The policies required hereunder shall be endorsed to include contractual liability.

In the case of additional insured provisions, any insurance afforded the additional insureds by this Agreement is primary insurance as to the additional insureds. Any insurance or self-insurance maintained by the additional insureds shall be excess of the CONSULTANT'S (and its subcontractor's) insurance, and shall not contribute to such insurance.

Any deductibles or self-insured retentions must be declared in writing and approved by DISTRICT. At the option of DISTRICT, either: the insurance provider(s) shall reduce or eliminate such deductibles or self-insured retentions as respects the DISTRICT and its' directors, officers, employees and representatives; or the CONSULTANT shall provide a financial guarantee

satisfactory to DISTRICT guaranteeing payment of losses and related investigations, claim administration and defense expenses. Maintenance of insurance coverage as specified in this Agreement is a material term of this Agreement, and any failure to maintain or renew coverage, or to provide evidence thereof, as required by the terms is a material breach of this Agreement.

Section 5.5 Indemnity.

CONSULTANT agrees to indemnify, defend and hold harmless DISTRICT and its officers, directors, officials, and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of the performance of the work described herein caused by any negligence, recklessness, or willful misconduct of the CONSULTANT, its subconsultants or anyone for whose acts any of them may be liable. This section will survive the expiration or early termination of this Agreement. CONSULTANT is not responsible for errors or omissions in the data provided by District to the CONSULTANT. CONSULTANT's obligations pursuant to this Section shall survive the expiration or termination of this Agreement and/or the performance or completion of any or all Services and work provided under this Agreement. This indemnity obligation shall apply to all liability regardless of whether any insurance is applicable, and the policy limits of any insurance shall not act as a limitation upon the indemnification, and amounts related thereto, to be provided by CONSULTANT hereunder.

SECTION VI - SUBCONTRACTING

Section 6.1 No obligations under this Agreement shall be subcontracted without prior written approval by DISTRICT, which approval shall not be unreasonably withheld or delayed.

Section 6.2 In the event that subcontracting is approved by DISTRICT, CONSULTANT shall ensure that:

- 1) Each subcontractor complies in all respects with the provisions of this Agreement.
- 2) Its subcontractor maintains the same level of insurance coverage as required of CONSULTANT in Section V of this Agreement.

Section 6.3 CONSULTANT is as responsible to DISTRICT for the acts and omissions of its subcontractor as it is for persons directly employed by CONSULTANT. Nothing contained in this Agreement creates any contractual relationship between any subcontractor and DISTRICT. Supplier shall remain the primary debtor and be responsible for the due and timely performance by any subcontractor.

SECTION VII - TERMINATION OR ABANDONMENT

Section 7.1 This Agreement may be terminated in whole or in part in writing by DISTRICT provided that no such termination may be effected unless CONSULTANT is given not less than ten (10) calendar days' written notice of its intent to terminate. Additionally, DISTRICT may suspend performance by CONSULTANT of any or all services listed in the Scope of Services under this Agreement by providing written notice to CONSULTANT at least five (5) working days prior to the date on which DISTRICT wishes to suspend; provided, upon receipt of such notice, CONSULTANT shall immediately suspend any work or services hereunder, unless otherwise instructed by DISTRICT in such notice.

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Section 7.2 CONSULTANT shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from DISTRICT to resume performance. DISTRICT and CONSULTANT agree that in the event DISTRICT suspends or terminates performance by CONSULTANT for any cause other than the intentional or negligent error or omission of CONSULTANT, CONSULTANT shall be entitled to payment of compensation incurred prior to the effective date of the suspension or termination, as determined under Section IV of this Agreement.

Section 7.3 In the event of any suspension or termination herein, DISTRICT shall have the right to take possession and shall immediately own all original drawings, programming and other documents developed for that portion of the work completed and/or being suspended or abandoned.

SECTION VIII - GENERAL

Section 8.1 CONSULTANT represents that it is aware of no facts or circumstances which would impair its ability to provide fair and unbiased advice to DISTRICT in the course of performing the consulting services hereunder, or which would impact its objectivity in performing such services hereunder.

Section 8.2 This Agreement represents the entire understanding of DISTRICT and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be amended, modified or altered except in writing, signed by the parties. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared it. In the event of any inconsistency between this Agreement and any other agreement or document between the parties, either written or verbal, including any CONSULTANT proposal document, this Agreement shall control unless such other agreement provides explicitly to the contrary.

Section 8.3 Any notice required or permitted to be given hereunder if not otherwise specified herein may be given or delivered by depositing the same in the United States Post Office, registered or certified, postage prepaid, or by personal service a hand delivery, and addressed to:

To DISTRICT - Attn: Matt Collings, Assistant General Manager
 Moulton Niguel Water
 District 27500 La Paz
 Road
 Laguna Niguel, CA 92677

To CONSULTANT - Attn: Brad Adamske, Vice President of Sales
 Smart Utility
 Systems, Inc. 19900
 MacArthur Blvd
 #370 Irvine, CA
 92612

Section 8.4 California law shall govern the interpretation of this Agreement. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to

and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure 394.

Section 8.5 In the event an action is commenced by either party to enforce its rights or obligations arising from this Agreement, the prevailing party in such action, in addition to any other relief and recovery awarded by the court, shall be entitled to recover all costs and expenses, including court costs, plus a reasonable amount for attorney's fees.

Section 8.6 If any section of this Agreement or provision of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

Section 8.7 It is expressly understood and agreed that CONSULTANT is retained as an independent contractor for the sole purpose of rendering the professional and/or special services, and is not an employee or agent of DISTRICT. CONSULTANT warrants that it will not represent, at any time or in any manner, that CONSULTANT is an employee or agent of DISTRICT. CONSULTANT shall have no authority to, and shall not, incur any debt, obligation or liability on behalf of DISTRICT. CONSULTANT shall be solely responsible for the payment of all federal, state and local income tax, social security tax, Workers' Compensation insurance, state disability insurance, and any other taxes or insurance CONSULTANT, as an independent contractor, is responsible for paying under federal, state or local law. CONSULTANT is thus not eligible to receive workers' compensation, medical, indemnity or retirement benefits, including but not limited to enrollment in CalPERS.

Section 8.8 The person signing this Agreement on behalf of each party hereto represents he/she has authority to sign on behalf of, respectively, DISTRICT or CONSULTANT.

Section 8.9 This is a non-exclusive Agreement for the services contemplated herein.

Section 8.10 This Agreement and all of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns; provided, however, that no assignment of this Agreement or any interest herein shall be made by CONSULTANT without prior written consent of DISTRICT.

Section 8.11 This Agreement may be executed in counterparts, each of which shall be deemed an original.

SIGNATURE PAGE FOLLOWS

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

MOULTON NIGUEL WATER DISTRICT

By: _____
Joone Lopez
General Manager

SMART UTILITY SYSTEMS, INC.

By: _____

Title: _____

EXHIBIT A**1.1. Scope of Work**

The functional scope of the implementation will include the following modules and capabilities of the CONSULTANT's Software for 55,000 End Users and 25 Utility users:

SCM® Module	Description
Conservation	Mobile module that allows customers to view their Water Efficiency Score, see rebates and savings tips, and enroll in programs.
Connect Me	Allows customers to report water waste and other violations to Utility and to connect with them via phone or email.
Outage	Displays Alerts sent by the Utility and provides the ability for customers to report incidents directly from their mobile devices
My Account	Utility customers can view and manage service account information including billing, payment, and communication preferences.
Usage	Graphs and charts illustrating consumption, historical comparisons, and rate plan.
Compare	Allows customers the ability to compare historical usage rates to current consumption, similar properties, average users, and other characteristics as defined by Utility.
Notifications	Real time 2-way communication between customer and utility via messages such as outage updates and service requests from Utility pushed via web portal, email, and push notifications.
Billing	Customers can see account balance and due date, and make one-time payments.
Service	This module allows customers to initiate service requests such as Move In, Move Out, Turn On/Off, and Service Transfer

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Administration Portal	The MNWD administration dashboard for reports, and analytics with the capabilities to download and/or export data to PDF and MS Excel.
SWIQ® Module	Description
Leakage Analytics	Identify leaks based on meter notifications and size of leak, and notify customers.
Conservation Analytics	Calculate Water Efficiency Score based on customer segment specific benchmarks, identify high value target customers for conservation programs, and track conservation program performance based on usage reduction at customer level.
Violations and Reporting	Identify and track violations based on customer and utility fieldworker reports, and meter analysis for investigation, and issue notices to customers.

1.2. Installation Support and Integration

The SUS team will install all listed software modules in the SUS cloud along with integrations with the Client systems as listed below:

1. Utility Billing/ERP System, flat file-based transfer.
2. Meter Data: Monthly File transfer based batch process using secure FTP for monthly reads and daily batch process for AMI system reads
3. Online Payments: Integration for online payments within SCM/SCP

1.3. Not in Scope

Any other modules standard to CONSULTANT products that not specifically listed in above scope sections or relevant Contract Documents. Any enhancement or change to CONSULTANT baseline products. Any integrations for data exchange with MNWD systems not explicitly listed above.

2. Project Duration and Timeline

The estimated timeline for this engagement is 14 calendar weeks (13 week implementation + 1 week training and stabilization). Within two weeks of receiving written authorization, the CONSULTANT team will begin scheduling the work sessions associated with the tasks detailed below.

Stage	Activities		
Planning	1. Project Kick-Off a. Kick-Off Meeting b. ID customer stakeholders	2. Application Fit Gap a. Application Walkthrough b. Integration Planning	3. Deliver: a. Application Walkthrough Doc

Design	1. Integration Design a. Integration design b. Access to test data c. Database/table data mapping d. Third-party APIs	2. Configuration and administrative setup a. Data request delivered	
Configuration	1. Infrastructure Setup/Ready	2. Module Configuration a. Configure test data b. Customer portal and mobile configuration. c. Utility analytics (WiQ) Platform configuration	3. Integration with customer data and access
Testing	1. Functional/integration Testing complete for all	2. User Acceptance Test (UAT) a. UAT Scripts complete b. UAT complete	3. Training a. Application walkthrough session b. Document end user Guides
Deployment	1. Execute Go-Live plan	2. Production Verification Test	2. Production live and delivery of User Guides

3. Deliverables

The following deliverables are anticipated as a result of the implementation activities in scope of this SOW.

Item	Description
Application Walkthrough Document	The Application Walkthrough Doc will summarize the standard product specifications incorporated into the software package for this implementation.
Weekly Project Status Report	CONSULTANT will provide weekly updates to the MNWD on the overall status of the project. This report will include the details of the tasks accomplished for the current week, planned for next week, any changes to scope and risks involved, if any.
User Acceptance Test (UAT) Scripts	CONSULTANT will be responsible to provide the MNWD the detailed User Acceptance Test scripts which the MNWD personnel can utilize to validate the functionality per the requirements.
End User Guide	CONSULTANT will provide user manuals for the in-scope Software projects. These user guides will help MNWD’s customers to easily understand the workflow and functionality of each module.

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4. Acceptance and Escalation

Acceptance of Software

The Product will be configured for use by MNWD as part of the Services and all Product and Services deliverables will be subject to review and acceptance. The Product modules will further be subject to the user acceptance testing process. To the extent that MNWD gives CONSULTANT notice that any Product module contains a material defect or does not operate in accordance with the Functional Requirements, then upon confirmation of such defect or non-conformity, CONSULTANT will promptly correct same and resubmit the deliverable for review and approval by MNWD. Unless otherwise agreed upon by MNWD and CONSULTANT, MNWD will use reasonable efforts to provide CONSULTANT with notice of acceptance of deliverables within ten (10) business days of the receipt thereof for interim deliverables and thirty (30) days for user acceptance testing prior to the implementation of live production use of the Product.

Escalation

CONSULTANT will escalate issues in the following order, if they remain unresolved at the previous level:

Level	Unresolved for	E-mail Id
MNWD Project Manager (TBD)	1 Day	TBD

MNWD will escalate issues in the following order, if they remain unresolved at the previous level:

Level	Unresolved for	E-mail Id
Amit Sharma – Implementation Director	1 Days	amit.sharma@smartusys.com
Brad Adamske – Vice President of Sales	3 Days	brad.adamske@smartusys.com

5. Change Control

1. The following process will be followed if a change to this Statement of Work or project plan is required:
2. A Project Change Request (PCR) will be the vehicle for communicating change. The PCR must describe the change, the rationale for the change and the effect the change will have on the Project. Additionally, the PCR must also provide a recap of the original estimated resources and costs, revised estimated resources and costs and associated cost savings or expenditures.
3. The designated Project Manager of the requesting party will review the proposed change and determine whether to submit the request to the other party.
4. Both Project Managers will review the proposed change and agree to take steps to implement it, recommend it for further investigation, or reject it.
5. CONSULTANT and MNWD will specify any changes to the fees as per agreed rate in this Statement of Work for such investigation. A Change Order must be signed by authorized representatives from both parties in order to revise the Statement of Work.

6. Risks and Assumptions

1. MNWD will provide a response to reasonable CONSULTANT information needs within three (3) business days and any needed review of project-relevant documents for acceptance

- purposes within ten (10) business days for interim deliverables and thirty (30) days for any deliverable that is subject to user acceptance testing.
2. Key personnel at MNWD that are designated as such by MNWD will be made available to CONSULTANT as required during the Project Phases.
 3. MNWD will provide onsite workspace for three (3) CONSULTANT resources with internet connectivity if necessary. CONSULTANT resources will comply with reasonable VPN or other security protocols when accessing MNWD computer systems. CONSULTANT, resources will further comply with the reasonable safety and security rules and regulations and the direction of MNWD staff while working onsite.
 4. All documents will be jointly reviewed with MNWD staff prior to submission by CONSULTANT for formal acceptance by MNWD.
 5. CONSULTANT mobile applications will be made available for iOS and Android.
 6. MNWD data will be provided to CONSULTANT for products integration before start of Configuration Phase. The configuration phase requires necessary datasets for module configuration. These data sets will be provided in a flat file format sent and captured through SFTP protocol.
 7. The Scope of Work is binding if authorized, and any changes to the Scope of Work must be made and agreed to in writing by CONSULTANT and MNWD.
 8. MNWD agrees to ensure Integration access with MNWD billing, payment, and hardware systems where and when applicable. Failure to obtain such availability and/or access from MNWD's billing provider shall not relieve MNWD of any obligations under this Statement of Work.
 9. Standard SLA levels offered by CONSULTANT are acceptable.
 10. MNWD fully acknowledges and understands that any customization to standard features and functionality as described in this Statement of Work will be assessed by CONSULTANT and may impact any approved budget and/or schedule. MNWD will have sole discretion to determine whether to proceed with such customizations.
 11. CONSULTANT acknowledges that MNWD has relied on CONSULTANT's experience implementing the Products for other public utilities to determine the level of resources and related pricing necessary for CONSULTANT to implement the Products through go-live within the Project Schedule (assuming that MNWD complies with its obligations). The pricing set forth in the Contract Documents includes the cost of all Services necessary to carry out the foregoing.
 12. Standard CONSULTANT implementation and configuration is conducted primarily from CONSULTANT offices with any included on-site activities to be determined and documented during Milestone One. Additional CONSULTANT resources beyond those so identified will travel to Customer offices on an as-requested basis if and when practicable. Any such requested on-site implementation activities will be billed to MNWD at a minimum rate of \$150 per individual per work hour.

7. Software Licensing, Maintenance, and Technical Support

All licensing and support terms and fees shall be governed by the attached End User License Agreement which is hereby incorporated by reference as Appendix 1 below.

EXHIBIT B

END-USER LICENSE AGREEMENT

END-USER LICENSE AGREEMENT (“EULA”)

This End-User License Agreement (this “Agreement”) is entered into as of ____ (the “Effective Date”) by and between Smart Utility Systems, Inc. (“Licensor”), and Moulton Niguel Water District (“Customer”).

RECITALS

Licensor provides a software application known as SWiQ™ (the “Software”), and the parties have agreed that Licensor will provide the Software to Customer and also provide the Customer with maintenance services related to the Software. This Agreement is entered into pursuant to the terms of that certain Master Services Agreement between Licensor and Customer dated [_____, 2016] (“MSA”), and is one of the Contract Documents (as defined in the MSA) which governs the delivery and use of the Software and related services. Therefore, in consideration of the mutual covenants, terms, and conditions set forth below and in any relevant exhibits or the Contract Documents, the adequacy of which is hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

1. DEFINITIONS. The following capitalized terms shall have the following meanings whenever used in this Agreement.

- 1.1. “Documentation” means the Software’s standard user manuals and any other accompanying documents related to the Software delivered to Customer during Implementation.
- 1.2. “Implementation” means the process for gathering requirements, configuring, testing, training, and integrating the Software for Customer’s use, as set forth in a Statement of Work.
- 1.3. “Initial Term” means 5 years from the date the Software is made available for use, with such a date otherwise defined as “Go Live/Launch” in an applicable Statement of Work. The Initial Term is subject to termination in accordance with the MSA.
- 1.4. “Software” means Licensor’s SWiQ™ software, in source code and object code format.
- 1.5. “Specifications” means Licensor’s specifications for the Software, as set forth in an applicable Statement of Work.
- 1.6. “Term” means the Initial Term (as defined above) and any applicable renewal term(s).
- 1.7. “Upgrades” is defined in Section 3.1 below.

2. LICENSES & DELIVERY.

2.1. License. Licensor hereby grants Customer a nonexclusive license to use and make available the Software to Customer’s utility users and/or employees during the Term, subject to Section 2.2 below.

2.2. Restrictions on Software Rights. Software transferred pursuant to this Agreement is licensed, not sold, and Customer receives no title to or ownership of any copy or of the Software itself. Furthermore, Customer receives no rights to the Software other than those specifically granted in Section 2.1 above. Without limiting the generality of the foregoing, Customer shall not: (a) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the Software; (b) allow third parties to exploit the Software; or (c) reverse engineer, decompile, or attempt to derive any of the Software’s source code.

3. MAINTENANCE.

3.1. Provision of Maintenance: Licensor shall maintain the Software as follows during the Term:

- (a) Licensor will routinely update the Software to address any warranty issues pursuant to Section 7.1, security updates, bug fixes, or responsiveness matters quarterly or as is required pursuant to Section 3.2 below. Licensor will update the Software to add any new features or functions, incorporate any improved process changes, and/or implement any performance-enhancing modifications annually, if applicable (“Upgrades”).
- (b) Should an Upgrade be required pursuant to Section 3.2 below, Licensor will promptly notify the Customer of any downtime and provide confirmation once functionality is restored pursuant to the terms therein.
- (c) Upon delivery to Customer, each Upgrade will constitute an element of the Software and will be subject to this Agreement’s terms regarding Software, including, without limitation license, warranty, and indemnity terms.

3.2 Service Levels: Licensor shall exercise reasonable efforts to achieve the following service performance targets:

(a) Severity Classification

- (i) Severity 1 – Critical business impact with no alternative
- (ii) Severity 2 – High business impact with complicated alternative
- (iii) Severity 3 – Minimal business impact with alternatives
- (iv) Severity 4 – Cosmetic Issues or documentation issues

(b) Service performance targets are set against system availability, problem resolution times, and follow up. Performance and reporting against such targets shall be as follows:

- (i) System Availability: 99.5%
- (ii) Problem Resolution Time:

Severity 1 - within 4 Normal Business hours	95%
Severity 2 - within 8 Normal Business hours	90%
Severity 3 - within 40 Normal Business hours	80%
Severity 4 – within 80 Normal Business hours	70%

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(iii) Follow – Up:

Severity 1 - hourly update	99%
Severity 2 - daily update	99%
Severity 3 - monthly update	99%
Severity 3 – monthly update	99%

(c) SUS will measure and report on the Service performance targets on a monthly basis.

4. FEES.

4.1. All implementation fees, software licensing fees, and any other applicable fees shall be set out in the Contract Documents. All fees are fixed for the Products and scope of work described in the Contract Documents unless the parties have agreed to a change order.

5. IP & FEEDBACK.

5.1. IP Rights in the Software. Licensor retains all right, title, and interest in and to the Documentation and Software, including without limitation Upgrades, except to the extent of the limited licenses specifically set forth in Section 2.1 (*Licenses*). Customer recognizes that the Software and its components are protected by copyright and other laws. Customer shall not (and shall not allow or cause any third party to) reverse engineer, disassemble, alter, or otherwise translate the Software, Documentation, or Upgrades.

5.2. Feedback. Customer hereby grants Licensor a perpetual, irrevocable, unrestricted, worldwide license to use any Feedback (as defined below) Customer communicates to Licensor during the Term, without compensation or any obligation to report on such use. Such rights shall include, without limitation, the right to exploit Feedback in any way and the right to grant sublicenses. Notwithstanding the provisions of Article 6 (*Confidential Information*) below, Feedback will not be considered Customer's Confidential Information. ("Feedback" refers to any suggestion or idea for modifying any of Licensor's products or services, including all intellectual property rights therein.)

6. CONFIDENTIAL INFORMATION.

6.1. Confidential Information Defined. "Confidential Information" refers to the following types of material or content one party to this Agreement ("Discloser") discloses to the other ("Recipient"): (a) any information Discloser marks or designates as "Confidential" at the time of disclosure; and (b) any other nonpublic, sensitive information disclosed by Discloser including, but not limited to code, inventions, know-how, business, technical, and financial information, or other information which should reasonably be known by the Recipient to be confidential at the time it is disclosed, due to the nature of the information and the circumstances surrounding such disclosure. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Recipient's possession at the time of disclosure; (ii) is independently developed by Recipient without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Recipient's improper action or inaction; (iv) is rightfully obtained by Recipient from a third party without breach of any confidentiality obligations; or (v) is subject to disclosure pursuant to the requirements of applicable law, including without limitation, the Public Records Act.

- 6.2. Nondisclosure. Recipient shall not use Confidential Information for any purpose other than to facilitate this Agreement (the “Purpose”). Recipient: (a) shall not disclose Confidential Information to any employee or contractor of Recipient unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Recipient with terms no less restrictive than those of this Article 6; and (b) shall not disclose Confidential Information to any third party without Discloser’s prior written consent. Notwithstanding the foregoing, Recipient shall protect Confidential Information with the same degree of care it uses to protect its own confidential information, but with no less than reasonable care. Recipient shall promptly notify Discloser of any misuse or misappropriation of Confidential Information that comes to Recipient’s attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Recipient shall give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at Discloser’s expense.
- 6.3. Injunction. Recipient agrees that breach of this Article 6 would cause Discloser irreparable injury, for which monetary damages would be inadequate, and in addition to any other remedy, Discloser will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage.
- 6.4. Termination & Return. With respect to each item of Confidential Information, the obligations of Section 6.2 above (*Nondisclosure*) will terminate three (3) years from the expiration of this Agreement. Upon such termination, Recipient shall return all copies (excepting one (1) copy archived for purposes of Recipient’s back-up processes) of Confidential Information to Discloser or certify, in writing, the destruction thereof.
- 6.5. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Discloser will retain all right, title, and interest in and to all Confidential Information.

7. REPRESENTATIONS &

WARRANTIES. 7.1. From Licensor.

- (a) *Re: Function.* Licensor warrants that the Software will operate without material defects and will provide the features and functionality set forth in the Functional Requirements. Licensor reserves the right to change features and functionality of the Software from time to time in connection with new releases and Upgrades, provided, however, that during the Initial Term, the Software will provide all Functional Requirements or their equivalent. Licensor further warrants that it will comply with the service level targets in Section 3.2 above.
- (b) *Re: IP Rights in the Software.* Subject to the next sentence, Licensor represents and warrants that it owns the Software, and has the power and authority to grant the rights in this Agreement without the further consent of any third party. Licensor’s representations and warranties in the preceding sentence do not apply to the extent that the infringement arises out of any of the conditions listed in Subsections 8.1(a) through 8.1(e) below. In the event of a breach of the warranty in this Subsection 7.1(b), Licensor, at its own expense, will promptly take the following actions: (i) secure for Customer the right to continue using the Software; (ii) replace or modify the Software to make

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it non-infringing, provided such modification or replacement will not materially degrade any functionality listed in the Specifications; or (iii) refund the Licensee Fee paid for the Software. In conjunction with Customer's right to terminate for breach where applicable and the provisions of Section 8.1 below (*Indemnified Claims*), the preceding sentence states Licensor's sole obligation and liability, and Customer's sole remedy, for breach of the warranty in this Subsection 7.1(b) and for potential or actual infringement by the Software.

- 7.2. From Both Parties. Each party represents and warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required hereunder.
- 7.3. Warranty Disclaimers. Except for the express warranties in Sections 7.1 and 7.2 above, LICENSOR MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Licensor does not warrant that the Software will perform without error or that it will run without immaterial interruption. Licensor provides no warranty regarding, and will have no responsibility for, any claim arising out of: (a) a modification of the Software made by anyone other than Licensor, unless Licensor approves such modification in writing; or (b) use of the Software in combination with any operating system not authorized or specifically forbidden in the Specifications or Documentation or with hardware or software.

8. INDEMNIFICATION.

- 8.1. Indemnified Claims. Licensor shall defend and indemnify Customer and its officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of, related to, or alleging infringement of any patent, copyright, trade secret, or other intellectual property right by the Software. Licensor's obligations set forth in this Section 8.1 do not apply to the extent that an Indemnified Claim arises out of: (a) Customer's breach of this Agreement; (b) revisions to the Software made without Licensor's written consent; (c) Customer's failure to incorporate Upgrades that would have avoided the alleged infringement, provided Licensor offered such Upgrades without charges not otherwise required pursuant to this Agreement; (d) Licensor's modification of Software in compliance with Customer's specifications; (e) unauthorized use of the software by third parties; or (f) use of the Software with hardware or software not provided by or approved of by Licensor.
- 8.2. Litigation & Additional Terms. Licensor's obligations pursuant to Section 8.1 above will be excused to the extent that Customer's or any of Customer's Associates' failure to provide prompt notice of the Indemnified Claim or reasonably to cooperate materially prejudices the defense. Licensor will control the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided Customer will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations.

9. LIMITATION OF LIABILITY.

- 9.1. Liability Cap. Licensor's liability arising out of or related to this Agreement shall in no event exceed the aggregate fees paid by Customer pursuant to the Contract Documents.

- 9.2. Exclusion of Consequential Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 9.3. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 9 APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; EVEN IF LICENSOR IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Section 9, Licensor's liability will be limited to the maximum extent permissible by law. For the avoidance of doubt, Licensor's liability limits apply to Licensor's affiliates, licensors, agents, sponsors, directors, officers, employees, consultants, and other representatives.
- 9.4. Exceptions to Limitation of Liability. Sections 9.1 (*Liability Cap*) and 9.2 (*Exclusion of Consequential Damages*) above do not apply to: (a) claims pursuant to Article 8 above (*Indemnification*); (b) claims for indemnification under Section 5.5 of the MSA which are related to third party claims for personal injury, wrongful death or property damage as a result of the negligence or willful misconduct of Licensor's employees or contractors will providing services on behalf of Customer; or (b) claims for attorneys' fees and other litigation costs recoverable by the prevailing party in any action.

10. TERMINATION.

- 10.1. Termination for Cause. Either party may terminate this Agreement if the other party (a) fails to cure any material breach within thirty (30) days after written notice of such breach; or (b) ceases operation without a successor.
- 10.2. Effects of Termination. Upon termination of this Agreement, Customer shall cease all use of the Software and delete, destroy, or return all copies of the Documentation in its possession or control. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay fees incurred before termination; (b) Articles and Sections 2.2 (*Restrictions on Software Rights*) 5 (*IP & Feedback*), 6 (*Confidential Information*), 7.2 (*Warranty Disclaimers*), 8 (*Indemnification*), and 9 (*Limitation of Liability*); and (c) any other provision herein that must survive to fulfill its essential purpose.

11. MISCELLANEOUS.

- 11.1. Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other and neither may make commitments on the other's behalf.
- 11.2. Taxes. Fees in Section 4.1 above do not include any applicable taxes. Customer shall be solely responsible in the event any authority imposes a duty, tax, levy, or fee (excluding those based on Licensor's net income) upon the Software as supplied by Licensor under this Agreement.
- 11.3. Notices. Notices pursuant to this Agreement shall be made in writing and sent to the addresses in the preamble of this Agreement. Such notices will be deemed received at such addresses upon the earlier of (a) actual receipt or (b) delivery in person, by electronic delivery to an authorized representative, or by certified mail return receipt requested.

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- 11.4. Force Majeure. No delay, failure, or default, other than a failure to pay fees, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, earthquakes, other acts of God or of nature, strikes or labor disputes, embargoes, or other causes beyond the performing party's reasonable control.
- 11.5. Assignment & Successors. Customer may not assign this Agreement or any of its rights or obligations hereunder without Licensor's written consent. Except to the extent forbidden in this Section 11.5, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- 11.6. Severability. To the extent permitted by law, the parties waive any provision of law that would render any clause of this Agreement invalid or unenforceable. In the event that a provision herein is held to be invalid or unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by law, and the remaining provisions of this Agreement will continue in full force and effect.
- 11.7. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach hereof will constitute a waiver of any other breach of this Agreement.
- 11.8. Choice of Law & Jurisdiction: This Agreement will be governed by the laws of the State of California, without reference to any conflicts of law principles. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Orange County, California.
- 11.9. Conflicts. Should this Agreement conflict with any other agreements, this Agreement will govern.
- 11.10. Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
- 11.11. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- 11.12. Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
- 11.13. Amendment. This Agreement may only be amended in writing by authorized representatives of each party.

EXHIBIT C

SPECIAL PROVISIONS

- 1) **Applicable Laws.** CONSULTANT shall adhere to all Federal, state and local laws, regulations and codes, as applicable.
- 2) **Records.** CONSULTANT shall maintain accurate and orderly records and shall upon request assist the DISTRICT in complying with any reporting requirements in accordance with the applicable federal grant. CONSULTANT records shall clearly support any requests for payment to the District for services performed or products provided to the project.
- 3) **Audit and Inspection of Records.** CONSULTANT agrees that the DISTRICT (grantee), the Comptroller General of the United States, or any of their duly authorized representatives, shall for the purpose of audit and examination be permitted to inspect all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records, and accounts with regard to the project. Further, CONSULTANT agrees to maintain all required records for at least three (3) years after grantees make final payments and all other pending matters are closed.
- 4) **[PREVAILING WAGE NOT APPLICABLE TO THIS AGREEMENT] Wages.** Where required by law, CONSULTANT shall have the sole responsibility for paying each employee or subcontractor engaged in work on the project a wage rate not less than the prevailing wage rate, regardless of any contractual relationship alleged to exist between CONSULTANT or any employees or subcontractors. CONSULTANT shall comply with federal law concerning work hours and safety, including 40 U.S.C. 3701-3708.

CONSULTANT shall pay the higher of the two wage rates and conform to the higher labor standards specified in subsections (a) and (b) below. CONSULTANT may be subject to additional requirements with regard to labor compliance and prevailing wage reporting if state bond funds will be used on the project.

(a) **State Labor Code.** When applicable, the wage rates determined by the California Director of Industrial Relations. CONSULTANT shall be responsible for any future adjustments to prevailing wage rates, including but not limited to changes to wage orders, base hourly rates, and employer payments as determined by the Division of Industrial Relations (DIR), or any new classification or modification that may be added by the DIR or a collective bargaining agreement. A mistake, inadvertence, or neglect by CONSULTANT in failing to pay the correct rates of prevailing wage will be remedied solely by CONSULTANT and will not, under any circumstances, be considered as the basis of a claim against the DISTRICT.

(b) **Federal Labor Code.** CONSULTANT shall comply with current federal Labor Standards, including the Davis Bacon Act, 40 U.S.C. 3141, and 3146-3148, and implementing U.S. Department of Labor (DOL) regulations.

5) **Small, Minority and Women’s Business Participation.** CONSULTANT shall take reasonable steps to ensure that small and minority businesses and women’s business enterprises have an opportunity to participate in the Master Agreement.

6) **Non-Discrimination.** Neither CONSULTANT, a subcontractor, nor any sub-recipient shall willfully discriminate against any employee or applicant for employment because of race, religion, color,

#4.

national origin, ancestry, physical handicap, medical condition, gender, marital status, sexual orientation, age, political affiliation or disability. CONSULTANT agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment Practice Act and other applicable federal, State and county laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

7) Federal Lobbying Restrictions. Section 1352 of Title 31 of the United States Code prohibits federal funds from being expended to pay for any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal-aid contract, the making of any federal grant or loan, or the entering into of an cooperative agreement.

8) Energy Efficiency. CONSULTANT agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201.

9) ADA. CONSULTANT shall comply with all applicable provisions of the Americans with Disabilities Act in performing work under this Agreement.

10) Drug-Free Workplace. CONSULTANT agrees to comply with the Drug Free Workplace Act of 1990 per Government Code Section 8350 et seq.

11) Provisions Required by Law Deemed Inserted. Each and every provision of law and language required by law or any applicable regulation, including laws and regulations required for Bureau of Reclamation funded projects, shall be deemed to be inserted herein and the Agreement shall be read and enforced as though included in the Master Agreement.

EXHIBIT D - Pricing

SCM® Customer Portal/Mobile & WiQ® Operational Analytics - SaaS Cloud Licenses						
Task Summary	One Time Cost	Year 1	Year 2	Year 3	Year 4	Year 5
Annual Software Licenses for: 1. Smart Customer Portal/Mobile SCM ® (55,000 End Users) and 2. WiQ Utility Operational Analytics (25 Utility Users)	\$ -	\$ 59,500.00	\$ 59,500.00	\$ 59,500.00	\$ 59,500.00	\$ 59,500.00
Hosting Costs	\$ -	Included	Included	Included	Included	Included
Software Support and Maintenance	\$ -	Included	Included	Included	Included	Included
Unlimited Emails Notifications & Digital Customer Report	\$ -	Included	Included	Included	Included	Included
Total SaaS License Cost	\$ -	\$ 59,500.00	\$ 59,500.00	\$ 59,500.00	\$ 59,500.00	\$ 59,500.00

One-time Implementation Cost		
Task Activities	Amount	% of Allocation
Planning	\$ 3,645.00	15%
Detailed Fit GAP for Launch (finalize product features for launch)	\$ 3,645.00	15%
Integration / Configuration (including Remediation during testing phases)	\$ 9,720.00	40%
Functional/Performance Testing	\$ 4,860.00	20%
Launch	\$ 2,430.00	10%
Travel Costs (per trip, including per diem, flights, hotel, etc.)	\$ -	0%
Total Implementation Cost	\$ 24,300.00	100%

Details of resources hours are provided in "SUS-Detail Resource Planning" Tab

**Cost for SMS / Text messaging is not included in the pricing state above and will be determined based of carrier charges.*

***Additional discount of 10% will apply on annual license pricing for a five year contract.*



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** June 13, 2016

FROM: Drew Atwater, Water Resources Manager

SUBJECT: 2015 Urban Water Management Plan Public Hearing and Adoption

DIVISION: District-wide

SUMMARY:

Issue: Board action is required to formally adopt the 2015 Urban Water Management Plan.

Recommendation: It is recommended that the Board of Directors adopt the Resolution entitled, “Adopting the 2015 Urban Water Management Plan”.

Fiscal Impact: No fiscal impact.

Background:

The Urban Water Management Planning Act (Act) requires urban water suppliers providing water to more than 3,000 customers or supplying more than 3,000 acre feet of water annually to develop an Urban Water Management Plan (UWMP) at least once every five years. Pursuant to recent amendments to the Act, urban water supplier are required to update and electronically submit their 2015 Urban Water Management Plans to the California Department of Water Resources (DWR) by July 1, 2016. UWMPs provide a framework for long term water planning and provide a vehicle that informs the public about how agencies are carrying out their long-term water resource planning responsibilities to ensure adequate water supplies are available to meet existing and future demands. The Act has been modified over the years, and the Water Conservation Act of 2009, also known as SBX7-7, now requires urban retail water providers to prepare and report “urban water use targets” in accordance with the goal of reducing statewide per capita water use 20 percent by the year 2020. Beginning with the 2015 UWMPs, urban retail water suppliers must

#5.

2015 Urban Water Management Plan Public Hearing and Adoption

June 13, 2016

Page 2 of 3

comply with water conservation requirements established by SBX7-7 in order to be eligible for State water grants or loans.

Discussion:

While many agencies hire consultants to prepare their UWMP, MNWD staff internally led the effort for the 2015 UWMP, highlighting the District's water reliability projects, as well as the wide array of demand management measures it has implemented and plans to implement in the future. Staff across departments worked collaboratively to put forth the final document. Additionally, due to many of the Board's proactive decisions, the District was highlighted as a case study in the 2015 UWMP DWR Guidelines as a best practice in rate design and drought response. The District sent public notices and contacted the cities within its service area, the County of Orange, and local water agencies for input into the draft 2015 UWMP document and analysis.

Once the 2015 UWMP is adopted by the Board, the adoption resolution must be included with the 2015 UWMP submittal. DWR collects and reviews all the submitted plans, checking for compliance with the Act and SBX7-7, and then summarizes the statewide compilation of plans to the State Legislature.

Required deadlines for noticing and submitting the District's 2015 UWMP are listed in the table below which have been met or are planned to be met.

Project Task	Date Sent or Planned
60 day notice to stakeholders (cities, the County, and other water agencies) prior to public hearing	April 4, 2016
Two notices of the public hearing published in local newspapers at least 14 days prior to hearing	May 16 th and May 23 rd , 2016
Public Hearing	June 16, 2016
Adoption of UWMP Resolution	June 16, 2016
Deadline to submit UWMP to DWR	July 1, 2016
Submit UWMP to California State Library	No later than 30 days after adoption
Submit UWMP to cities and County	No later than 30 days after adoption
UWMP available for public review at District offices	No later than July 30, 2016

2015 Urban Water Management Plan Public Hearing and Adoption

June 13, 2016

Page 3 of 3

Attachments:

1. Board Resolution Adopting 2015 Urban Water Management Plan
2. Moulton Niguel Water District's 2015 Urban Water Management Plan

RESOLUTION NO. _____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MOULTON NIGUEL WATER DISTRICT
ADOPTING THE 2015 URBAN WATER MANAGEMENT PLAN**

WHEREAS, the Urban Water Management Planning Act (Water Code, Part 2.6, Section 10610 et seq.) mandates that every urban water supplier providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre feet of water annually, prepare an Urban Water Management Plan, and update its Urban Water Management Plan at least once every five years on or before December 31 in years ending in five and zero; and

WHEREAS, pursuant to recent amendments to the Urban Water Management Planning Act, urban water suppliers are required to update and electronically submit their 2015 Urban Water Management Plans to the California Department of Water Resources by July 1, 2016; and

WHEREAS, the Water Conservation Act of 2009 (Water Code, Part 2.55, Section 10608 et seq.) established, among other things, requirements for urban retail water suppliers to prepare targets for achieving increased water use efficiency by the years 2015 and 2020 in accordance with the goal of reducing per capita water use statewide; and

WHEREAS, the Moulton Niguel Water District (District) is an urban retail water supplier for purposes of the requirements of the Urban Water Management Planning Act and the Water Conservation Act of 2009; and

WHEREAS, in accordance with the Urban Water Management Planning Act and the Water Conservation Act of 2009, the District has prepared its 2015 Urban Water Management Plan (2015 UWMP) and has undertaken certain coordination, notice, public involvement, public comment, and other procedures in relation to its 2015 UWMP;

WHEREAS, as authorized by Section 10620(e) of the Urban Water Management Planning Act, the District has prepared its 2015 UWMP with its own staff, with the assistance of consulting professionals, and in cooperation with other governmental agencies, and has utilized and relied upon industry standards and the expertise of industry professionals in preparing its 2015 UWMP, and has also utilized and relied upon the California Department of Water Resources Guidebook for Urban Water Suppliers to Prepare 2015 Urban Water Management Plans (March 2016), including its related appendices; and

WHEREAS, in accordance with applicable law, including Water Code sections 10608.26 and 10642, and Government Code section 6066, a properly noticed public hearing regarding the District's 2015 UWMP was conducted by the District's Board of Directors on June 16, 2016 in order to provide members of the public and other interested entities with the opportunity to be heard in connection with the 2015 UWMP and the proposed adoption thereof; and

#5.

WHEREAS, pursuant to said public hearing on the 2015 UWMP, the District, among other things, encouraged the active involvement of diverse social, cultural, and economic members of the community within the District's service area with regard to the preparation of the 2015 UWMP, allowed community input regarding the District's implementation plan for complying with the Water Conservation Act of 2009, considered the economic impacts of the District's implementation plan for complying with the Water Conservation Act of 2009, and confirmed Method 1 under Water Code section 10608.20(b) for determining its urban water use targets; and

WHEREAS, the Board of Directors of the District has reviewed and considered the purposes and requirements and of the Urban Water Management Planning Act and the Water Conservation Act of 2009, the contents of the 2015 UWMP, and the documentation contained in the administrative record in support of the 2015 UWMP, and has determined that the factual analyses and conclusions set forth in the 2015 UWMP are supported by substantial evidence.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Moulton Niguel Water District as follows:

SECTION 1. The Board of Directors confirms Method 1 under Water Code section 10608.20(b) for determining the District's urban water use targets, and approves and adopts the District's 2015 Urban Water Management Plan, a final copy of which is attached hereto as Exhibit "A";

SECTION 2. The General Manager is hereby authorized and directed to include a copy of this Resolution in the 2015 Urban Water Management Plan and, in accordance with Water Code sections 10621(d) 10644(a), to electronically submit a copy of the 2015 Urban Water Management Plan to the California Department of Water Resources no later than July 1, 2016;

SECTION 3. The General Manager is hereby authorized and directed, in accordance with Water Code section 10644(a) to submit a copy of the 2015 Urban Water Management Plan to the California State Library within thirty (30) days after this adoption date;

SECTION 4. The General Manager is hereby authorized and directed, in accordance with Water Code section 10644(a), and in satisfaction of Water Code section 10635(b), to submit a copy of the 2015 Urban Water Management Plan, specifically including the portion of the Plan prepared in accordance with Water Code section 10635(a), to any city or county within which the District provides water supplies within thirty (30) days after this adoption date;

SECTION 5. The General Manager is hereby authorized and directed, in accordance with Water Code section 10645, to make the 2015 Urban Water Management Plan available for public review at the District's offices during normal business hours not later than thirty (30) days after filing a copy thereof with the California Department of Water Resources;

SECTION 6. The General Manager is hereby authorized and directed to recommend to the Board of Directors additional steps necessary or appropriate to effectively carry out the

implementation of the 2015 Urban Water Management Plan in accordance with the Urban Water Management Planning Act and the Water Conservation Act of 2009.

ADOPTED, SIGNED and **APPROVED** this 16th day of June, 2016

MOULTON NIGUEL WATER DISTRICT

President/Vice President
MOULTON NIGUEL WATER DISTRICT
and of the Board of Directors thereof

Secretary/Assistant Secretary
MOULTON NIGUEL WATER DISTRICT
and of the Board of Directors thereof

ATTACHMENT 2

**PROVIDED UNDER
SEPARATE COVER**



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** June 13, 2016

FROM: Joone Lopez, General Manager
Drew Atwater, Water Resources Manager

SUBJECT: Water Shortage Contingency Plan Continued Implementation

DIVISION: District-Wide

SUMMARY:

Issue: Current State regulations to meet a water conservation standard for the region, the future implementation of a long term water use efficiency standard in the State and the uncertainty in future water supply conditions provide that the District continue implementation of its Water Shortage Contingency Plan Stages 1 and 2.

Recommendation: It is recommended that the Board of Directors approve the resolution entitled, “Continuing Water Shortage Stages 1 and 2”.

Fiscal Impact: Conservation penalties will be assessed on customers in violation of the Water Shortage Contingency Plan Ordinance under Stage 2 implementation.

Background:

On April 1, 2015, Governor Jerry Brown issued an Executive Order to address prolonged drought conditions and restricted water supplies. The State Water Resources Control Board issued mandatory regulations to effect the Executive Order that aimed to reduce statewide urban water usage by 25% through February 2016. The result of the mandatory regulations required that Moulton Niguel Water District reduce District-wide water consumption by 20%. In May 2016, State Water Resources Control Board amended and readopted drought related emergency regulations for urban water

#6.

Water Shortage Contingency Plan Continued Implementation

June 13, 2016

Page 2 of 3

conservation. The amended regulation requires the water agencies to meet a conservation standard for the region, instead of meeting the 25% statewide water reduction standard. The amended regulation will require agencies to identify their potable water reduction requirements through a self-certification process that will compare 2013 and 2014 demands against a 3-year supply outlook. Wholesale agencies are required to provide the 3-year supply outlook to the SWRCB and retail agencies based on 2013, 2014, 2015 hydrology by June 15, 2016 and retail agencies are to complete the self-certification process to identify their new conservation standard to the SWRCB by June 22, 2016. The State will reevaluate the amended regulation based on the snowpack and precipitation reading come January 2017 and can revert back to the 25% statewide water conservation standard, if needed.

In February of 2015, in compliance with the Proposition 218 process, the Board of Directors adopted Ordinance No. 15-01, "Water Conservation Rules and Regulations" ("Ordinance"). The Ordinance prescribes incremental stages of water reductions based on varying water shortage conditions by utilizing the water budget rate structure and other conservation tools. A summary of the various stages and the impacts to the different customer classes has been provided in attachment 2.

On May 1, 2015, the Board of Directors adopted Resolution 15-16 which implemented Stage 2 of the Water Shortage Contingency Plan commencing July 1, 2015. Under that Resolution, Stage 2 remains in effect until October 29, 2015. Per the Water Shortage Contingency Plan, every 120 days after implementation of a Stage the Board of Directors needs to take action to either continue or implement a different stage. On September 17, 2015, the Board of Directors adopted Resolution 15-26 which continued the implementation of Stage 2 of the Water Shortage Contingency Plan through the end of February 2016. On January 21, 2016 the Board of Directors adopted Resolution 16-02, which continued implementation of Stage 2 of the Water Shortage Contingency Plan through June 30, 2016.

DISCUSSION:

California and the American Southwest are in a long term trend of dry conditions and one average year is not sufficient to relieve multiple dry years. California experienced extreme drought over the past five years, the Colorado River is in sixteen years of drought and 2016 is shaping up to be among the hottest years on record. State regulators are looking to the local water agencies to implement local actions with the steps taken by the SWRCB on May 18, 2016.

In January of 2014, the governor provided an opportunity to water agencies to take the lead through local actions to meet the statewide drought emergency. However, due to inconsistent and mediocre savings, the State issued the first ever mandatory water restrictions. The relaxation of mandates from the State is an opportunity for local

agencies to take action and control their own conservation goals and policies. Additionally, the State is looking to put in place permanent regulations in January 2017. Hence, action in the short term could put local agencies in a good position to guide long term water efficiency policy.

The most effective demand management tool the District can implement is targeting wasteful usage through its rate structure and assigning penalties in times of scarcity. Customers have responded remarkably with the lowest number of customers above their individual water budget ever. Given all the long term water supply trends and broader policy issues, Staff is recommending the continued implementation of its Water Shortage Contingency Plan at Stage 2.

Attachments:

1. Resolution entitled, "Continuing Water Shortage Stages 1 and 2"
2. Water Shortage Contingency Plan Stages
3. State Water Resources Control Board Resolution No. 2016-0029
4. State Water Resources Control Board May 18 Drought Regulation Fact Sheet
5. May 9, 2016 Executive Order
6. Ordinance 15-01; "Water Conservation Rules and Regulations"

RESOLUTION NO. 16-__

**RESOLUTION OF THE BOARD OF DIRECTORS OF
MOULTON NIGUEL WATER DISTRICT
CONTINUING WATER SHORTAGE STAGES 1 AND 2**

WHEREAS, California Constitution article X, section 2 and California Water Code section 100 provide that because of conditions prevailing in the state of California (the “State”), it is the declared policy of the State that the general welfare requires that the water resources of the State shall be put to beneficial use to the fullest extent of which they are capable, the waste or unreasonable use of water shall be prevented, and the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and the public welfare; and

WHEREAS, pursuant to California Water Code section 106, it is the declared policy of the State that the use of water for domestic use is the highest use of water and that the next highest use is for irrigation; and

WHEREAS, pursuant to California Water Code section 375, the Moulton Niguel Water District (the “District”) is authorized to adopt and enforce a water conservation program to reduce the quantity of water used by persons within its jurisdiction for the purpose of conserving the water supplies of the District; and

WHEREAS, Governor Brown proclaimed a condition of statewide drought and called upon local agencies to take aggressive, immediate action to reduce water consumption locally and regionally; and

WHEREAS, pursuant to Ordinance No. 15-01 the District is authorized to declare water shortage stages; and

WHEREAS, on May 1, 2015, the Board adopted Resolution No. 15-16, which declared Water Shortage Stages 1 and 2 as said stages are set forth in Ordinance No. 15-01. As a result, beginning June 1, 2015, the voluntary water shortage response measures in Water Shortage Stage 1 and the mandatory water shortage response measures, reductions in water use, and penalties during a Water Shortage Stage 2 went into effect within the District; and

WHEREAS, on September 17, 2015, the Board adopted Resolution No. 15-26, which declared that continuing October 30, 2015, Water Shortage Stage 2 shall remain in effect within the District through February 28, 2016. As a result, along with the voluntary measures, the mandatory water shortage response measures, reductions in water use, and penalties during a Water Shortage Stage 2 continued to be in effect.

WHEREAS, on January 21, 2016, the Board adopted Resolution No. 16-02, which declared that continuing March 1, 2016, Water Shortage Stage 1 and 2 shall remain in effect within the District through June 30, 2016. As a result, along with the voluntary measures, the mandatory

#6.

water shortage response measures, reductions in water use, and penalties during a Water Shortage Stage 2 continued to be in effect.

WHEREAS, because of the prevailing conditions in the State, the current statewide drought, and the declared policy of the State, the District hereby finds and determines that it is necessary and appropriate for the District to continue, along with the voluntary measures, the mandatory water shortage response measures, reductions in water use, and penalties that are currently in effect during a Water Shortage Stage 2. Continuation of Water Shortage Stages 1 and 2 is necessary in order to adopt, implement, and enforce water shortage response measures to reduce the quantity of water used by consumers within the District to ensure that there is sufficient water for human consumption, sanitation, and fire protection all in conformance with Ordinance No. 15-01; and

NOW, THEREFORE, the Board of Directors of the Moulton Niguel Water District does hereby **RESOLVE, DETERMINE, AND ORDER** as follows:

Section 1. **Water Shortage Stages 1 and 2.** Pursuant to Ordinance No. 15-01, the Board hereby declares and finds that continuing July 1, 2016, Water Shortage Stages 1 and 2 shall remain in effect within the District through October 31, 2016. Such voluntary and mandatory water shortage response measures, reductions in water use, and penalties during Water Shortage Stages 1 and 2 as are set forth in Ordinance No. 15-01 are necessary for the following reasons:

- (1) District water supply conditions and storage levels;
- (2) statewide water supply conditions;
- (3) local water supply and demand conditions; and
- (4) actions by surrounding wholesale and retail water agencies.

Section 3. **Severability.** If any provision, section, subsection, sentence, clause or phrase or sections of this Resolution, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the invalidity of the remaining portions of this Resolution shall not be affected, it being the intent of the Board of Directors in adopting this Resolution that no portions, provisions, or regulations contained herein shall become inoperative, or fail by reason of the unconstitutionality of any other provision hereof, and all provisions of this Resolution are declared to be severable for that purpose.

Section 4. **Effective.** This Resolution shall be effective immediately upon adoption.

ADOPTED, SIGNED and APPROVED this 16th day of June, 2016.

MOULTON NIGUEL WATER DISTRICT

President/Vice President
MOULTON NIGUEL WATER DISTRICT
and of the Board of Directors thereof

Secretary/Assistant Secretary
MOULTON NIGUEL WATER DISTRICT
and of the Board of Directors thereof

Moulton Niguel Water District Water Shortage Contingency Plan

Account Type	Stage 1	Stage 2	Stage 3	Stage 4	Stage 5
Residential (Single and Multi-Family)	- Stay within budget - No adjustments to bills for pool fills	- Stay within budget or pay penalty - No adjustments to bills	- Reduce outdoor water usage by 40% or pay penalty - No adjustments to bills	- Reduce outdoor water usage by 70% or pay penalty - No adjustments to bills	- Reduce indoor water use to 40 gallons per person per day - No outdoor water usage - No adjustments to bills
Commercial	- Stay within budget - No adjustments to bills for pool fills	- Stay within budget or pay penalty - No adjustments to bills	- Stay within budget or pay penalty - No adjustments to bills	- Stay within budget or pay penalty - No adjustments to bills	- Stay within budget or pay penalty - No adjustments to bills
Outdoor Irrigation	- Stay within budget	- Stay within budget or pay penalty - No adjustments to bills	- Reduce outdoor water usage by 40% or pay penalty - No adjustments to bills	- Reduce water usage by 70% or pay penalty - No adjustments to bills	- No water use - No adjustments to bills
Recycled Water	- Stay within budget - No potable water for outdoor irrigation (i.e. golf courses)	- Stay within budget or pay penalty - No adjustments to bills	- Reduce water usage by 10% or pay penalty - No adjustments to bills	- Reduce water usage by 20% or pay penalty - No adjustments to bills	- Reduce water usage by 30% or pay penalty - No adjustments to bills

THERE ARE PENALTIES FOR EXCEEDING WATER BUDGETS IN STAGES 2-5

Order of Targeted Reductions:

1. Target inefficient users first
2. Outdoor water budget reduced in Stages 3 and 4
3. Indoor water budget reduced in Stage 5

Note: The District's Water Shortage Contingency Plan was adopted in the form of an ordinance and included in a public Proposition 218 notice. This ordinance is the legal structure by which penalties may be imposed if violated.

Moulton Niguel Water District **Water Conservation Best Management Practices**

Conservation through Best Management Practices (BMP's). Water is our most vital resource, the following water conservation BMPs have been established to conserve water, prevent waste or unreasonable use or unreasonable method of use of water, and preserve the District's water supplies. The BMPs shall be in effect at all times. The BMPs shall not apply to the use of recycled water. This is an excerpt from the Water Shortage Contingency Plan, Water Conservation BMP's.

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Installation of Water Conservation Devices 2. Standards for Water Conservation Devices 3. Limits on Watering Hours between the hours of 9:00 a.m. and 5:00 p.m. on any day 4. Limits on Water Duration 5. No Watering During Rain 6. Plant Low-Water Demand Plants and Trees 7. No Excessive Water Flow or Runoff 8. No Washing Down Hard or Paved Surfaces 9. Obligation to Fix Leaks, Breaks or Malfunctions 10. Re-circulating Water Required for Water Fountains and Decorative Water Features | <ol style="list-style-type: none"> 11. Limits on Washing Vehicles 12. Drinking Water Served Upon Request Only 13. Commercial Lodging Establishments Must Provide Option to Not Launder Linens Daily 14. No Installation of Single Pass Cooling Systems. 15. No Installation of Non-re-circulating Water Systems in Commercial Car Washes and Laundry Systems 16. Restaurants Required to Use Water Conserving Dish Wash Spray Valves 17. Swimming Pools and Spa Covers 18. Water Waste and Unreasonable Water Use Prohibited |
|--|--|

For a more information about MNWD's Water Shortage Contingency Plan and Best Management Practices, please visit our website at www.MNWD.com

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2016-0029**

**TO ADOPT AN EMERGENCY REGULATION FOR
STATEWIDE URBAN WATER CONSERVATION**

WHEREAS:

1. On April 25, 2014, Governor Edmund G. Brown Jr. issued an executive order ([April 2014 Proclamation](#)) to strengthen the State's ability to manage water and habitat effectively in drought conditions, and called on all Californians to redouble their efforts to conserve water. The April 2014 Proclamation finds that the continuous severe drought conditions present urgent challenges across the State, including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity, if drought conditions continue into 2015. It orders that any provision of the governing document, architectural or landscaping guidelines, or policies of a common interest development will be void and unenforceable to the extent it has the effect of prohibiting compliance with the water-saving measures contained in this directive, or any conservation measure adopted by a public agency or private water company. The April 2014 Proclamation also suspends the environmental review required by the California Environmental Quality Act to allow the emergency regulation and other actions to take place as quickly as possible;
2. The April 2014 Proclamation references the [Governor's January 17, 2014 declaration of a drought State of Emergency in California due to severe drought conditions \(Proclamation No. 1-17-2014\)](#), January 2014 Proclamation). The January 2014 Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmers' long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction. The January 2014 Proclamation also calls on all Californians to reduce their water usage by 20 percent;
3. On December 22, 2014, in light of the continued lack of rain, Governor Brown issued [Executive Order B-28-14](#), which extends the California Environmental Quality Act suspension through May 31, 2016 for Water Code section 13247 and certain activities identified in the January 2014 and April 2014 proclamations;
4. On April 1, 2015, Governor Brown issued [Executive Order B-29-15](#) that directs the State Water Board to impose restrictions on urban water suppliers to achieve a statewide 25 percent reduction in potable urban usage through February 2016; require commercial, industrial, and institutional users to implement water efficiency measures; prohibit irrigation with potable water of ornamental turf in public street medians; and prohibit irrigation with potable water outside newly constructed homes and buildings that is not delivered by drip or microspray systems; along with other directives;

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5. On May 5, 2015, the State Water Resources Control Board (State Water Board) adopted [Board Resolution No. 2015-0032](#) and an Emergency Regulation to address specific provisions of Executive Order B-29-2015 that included a mandatory 25 percent statewide reduction in potable urban water use between June 2015 and February 2016. To implement the Executive Order, the Emergency Regulation placed each urban water supplier in a conservation tier, ranging between 8 and 36 percent, based residential per capita water use for the months of July – September 2014. Resolution No. 2015-0032 also directed staff to work with stakeholders to further develop and consider a range of factors that contribute to water use, including but not limited to climate, growth, investment in local, drought resilient supplies, and others for adjustment to the current emergency regulation should it need to be extended into 2016;
6. On November 13, 2015, Governor Brown issued [Executive Order B-36-15](#) calling for an extension of urban water use restrictions until October 31, 2016, should drought conditions persist through January 2016. This Executive Order also directs the State Water Board to consider modifying the restrictions to incorporate insights gained from the existing restrictions;
7. On February 2, 2016, the State Water Board adopted [Board Resolution No. 2016-0007](#) and a revised, extended Emergency Regulation to address specific provisions of Executive Order B-36-15. The Emergency Regulation established adjustments to reduce the conservation standards of urban water suppliers in consideration of the differences in climate affecting different parts of the state, growth experienced by urban areas, and significant investments that have been made by some suppliers towards creating new, local, drought-resilient sources of potable water supply;
8. On May 9, 2016, Governor Brown issued [Executive Order B-37-16](#) calling on the State Water Board to adjust emergency water conservation regulations through the end of January 2017 in recognition of differing water supply conditions across the state;
9. Statewide precipitation in 2016 has been variable. Northern California received above-average rainfall, while much of southern California continued to experience below-average rainfall and warm temperatures. February 2016 was amongst the warmest and driest recorded for parts of southern California. Consequently, while major Northern California water reservoirs are near or above average water storage for this time of year, many Southern California reservoirs are significantly below average. In addition, the snowpack is melting fast and as of early May is at less than 50 percent of the average for this time of year;
10. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports”;
11. On July 15, 2014, the State Water Board adopted an emergency regulation to support water conservation ([Resolution No. 2014-0038](#)). That regulation became effective July 28, 2014 upon approval by the Office of Administrative Law (OAL);

12. On March 17, 2015, the State Water Board amended and readopted the emergency regulation to support water conservation ([Resolution No. 2015-0013](#)), which became effective March 27, 2015 upon approval by OAL;
13. On May 5, 2015, the State Water Board significantly amended, and readopted, the emergency regulation to support water conservation ([Resolution No. 2015-0032](#)), which became effective May 18, 2015 upon approval by OAL and expires February 13, 2016;
14. On February 2, 2016, the State Water Board amended and readopted the emergency regulation to support water conservation ([Resolution No. 2016-0007](#)), which became effective February 11, 2016 upon approval by OAL and expires November 7, 2016;
15. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes will survive while receiving a decreased amount of water;
16. Although urban water suppliers have placed restrictions on outdoor watering, the State Water Board continues to receive reports of excessive outdoor water use;
17. Water conservation is the easiest, most efficient, and most cost-effective way to quickly reduce water demand and to extend supplies into the next year. Water saved this summer is water available later in the season or next year, reducing the likelihood of even more severe water shortages should the drought continue. Extending current water supplies offers communities flexibility in managing their water portfolios and drought response options should the drought continue into the next water year;
18. Education and enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated;
19. Public information and awareness is critical to achieving conservation goals, and the Save Our Water campaign, run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response (<http://saveourwater.com>);
20. Many California communities are facing continued social and economic hardship due to the ongoing drought. The rest of us can make adjustments to our water use, including landscape choices that conserve even more water;
21. The California Constitution declares, at article X, section 2, that the water resources of the state must be put to beneficial use in a manner that is reasonable and not wasteful. Relevant to the current drought conditions, the California Supreme Court has clarified that “what may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time.” (*Tulare Dist. v. Lindsay Strathmore Dist.* (1935) 3 Cal.2d 489, 567.) In support of water conservation, the legislature has, through Water Code section 1011, deemed reductions in water use due to conservation as equivalent to reasonable beneficial use of that water. Accordingly, this regulation is in furtherance of article X, section 2 during this drought emergency. This temporary emergency

#6.

regulation is not to be used in any future administrative or judicial proceedings as evidence or finding of waste and unreasonable use of any individual water user or water supplier subject to this regulation, and are not to affect or otherwise limit any rights to water conserved under applicable law, including without limitation, water conserved consistent with Water Code section 1011;

22. Under the May 5, 2015 emergency regulation, as revised February 2, 2016, urban water suppliers, large and small, have reduced statewide potable water usage more than 23.9 percent compared to usage during the same months in 2013, through the significant efforts of the suppliers and their customers;
23. The State Water Board estimates that suppliers and their customers will save between 0.46 and 0.97 million acre-feet of water in response to the extended regulation from June 2016 through January 2017. This savings will be in addition to the 1.55 million acre-feet the State is on track to have saved from June 2015 through May 2016 compared to usage during the same months in 2013;
24. Directive one of the Governor's May 9, 2016 Executive Order Directs the State Water Board to adjust emergency water conservation regulations through the end of January 2017 in recognition of differing water supply conditions across the state;
25. On April 20, 2016 the State Water Board held a workshop to receive input on the potential modification of the current Drought Emergency Water Conservation regulation. The State Water Board solicited public comments on the proposed framework and received over 130 comments, primarily relating to the improved 2016 water year conditions, whether conservation regulations were necessary, the need to transition to a supply-based conservation regulation, and the ability of urban water suppliers to manage their own water supply options;
26. On May 9, 2016 the State Water Board issued staff-proposed regulatory language for public comment based in part on the April 20, 2016 workshop and comments received, and in part on Executive Order B-37-16. The staff proposal reflects careful consideration by the Board and staff of all comments including those directed at the levels of required reduction and the basis upon which water use reductions should be required. The draft regulatory language extends portions of the February 2016 emergency regulation and establishes a process for developing locally appropriate water conservation standards in recognition of differing water supply conditions across the state;
27. On May 13, 2016, the State Water Board initiated the formal emergency rulemaking process by issuing public notice that it would consider the adoption of the emergency regulation at the Board's regularly-scheduled May 18, 2016 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations;
28. As discussed above, the State Water Board is adopting the revised emergency regulation as directed by the Governor in Executive Order B-37-16 based on the ongoing need to prevent the waste and unreasonable use of water and to promote conservation during the ongoing drought emergency; and

29. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Moreover, the Water Code does not impose a mandatory penalty for violations of the regulation adopted by this resolution, and local agencies retain the enforcement discretion in enforcing the regulation to the extent authorized. Local agencies are encouraged to develop their own progressive enforcement practices to promote conservation.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, section 864.5 and amends and re-adopts sections 863, 864, 865, and 866 as appended to this resolution as an emergency regulation;
2. State Water Board staff will submit the regulation to OAL for final approval;
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or the Executive Director's designee may make such changes;
4. This regulation shall remain in effect for 270 days after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions, or unless the State Water Board renews the regulation due to continued drought conditions as described in Water Code section 1058.5;
5. The State Water Board directs staff to provide the Board with monthly updates on the implementation of the emergency regulation and its effect.
6. The State Water Board directs staff to condition funding upon compliance with the emergency regulation, to the extent feasible;
7. The State Water Board directs staff to work with DWR and the Save Our Water campaign to disseminate information regarding the emergency regulation; and
8. The State Water Board directs staff to update the electronic reporting portal to include data fields for reporting required by the emergency regulation.

THEREFORE BE IT FURTHER RESOLVED THAT:

10. The State Water Board shall work with DWR, the Public Utilities Commission, and other agencies to support urban water suppliers' actions to implement rates and pricing structures to incent additional conservation, as required by directive eight in the Governor's April 1, 2015 Executive Order. The Fourth District Court of Appeal's recent Decision in *Capistrano Taxpayer Association Inc. v. City of San Juan Capistrano* (G048969) does not foreclose the use of conservation-oriented rate structures;

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11. The State Water Board calls upon water suppliers to:
 - a. ensure that adequate personnel and financial resources exist to implement conservation requirements not only for 2016, but also for another year of drought should it occur. Water suppliers that face budget shortfalls due to reduced sales should take immediate steps to raise necessary revenues in a way that actively promotes continued conservation;
 - b. expedite implementation of new conservation programs by minimizing internal review periods and utilizing emergency authorities, as appropriate;
 - c. consider the relative water use and conservation practices of their customers and target those with higher water use to achieve proportionally greater reductions than those with low use;
 - d. minimize financial impacts to low-income customers;
 - e. preserve safe indoor water supplies in areas with very low R-GPCD and where necessary to protect public health and safety;
 - f. promote low-water use methods of preserving appropriate defensible space in fire-prone areas, consistent with local fire district requirements;
 - g. educate customers on the preservation of trees;
 - h. promote on-site reuse of water; and
 - i. promptly notify staff of the supplier's need for an alternate method of compliance pursuant to resolved paragraph 20 for any supplier that retains a conservation standard pursuant to section 865 of the emergency regulation.
12. The State Water Board calls upon all businesses within California's travel and tourism sectors to inform visitors of California's drought situation and actions visitors should take to conserve water;
13. The State Water Board calls upon all homeowners' associations to support and cooperate with water suppliers' and their residents' efforts to conserve water in community apartment projects, condominium projects, planned developments, and stock cooperatives statewide;
14. The State Water Board calls upon both landlords and tenants of residential and commercial properties to cooperate in taking actions that conserve potable water consistent with the emergency regulation and any applicable rules identified by the appropriate urban water supplier;
15. The State Water Board commends wholesale water agencies that have set aggressive conservation targets for their retail water suppliers;
16. The State Water Board commends water suppliers that have made investments to boost drought-resistant supplies, such as advanced treated recycled water and desalination. Those investments help to make communities more resilient in the face of drought;

- 17. The State Water Board commends the many water suppliers that have taken steps and made systemic changes that have led to them surpassing their 20x2020 conservation targets. Long-term conservation efforts are critical to maintaining economic and social well-being, especially in light of the impacts of climate change on California’s hydrology;
- 18. The State Water Board commends the many water suppliers that have met or exceeded their conservation standards under the May 2015 emergency regulation and the February 2016 amended and extended emergency regulation. Those local efforts have helped the state achieve a statewide 23.9 percent potable water savings from June 2015 through March 2016 and have shown what dedicated Californians can achieve as we make water conservation a California way of life;
- 19. During this drought emergency, heightened conservation that extends urban resilience is necessary. The State Water Board’s focus is primarily on immediate reductions in outdoor water use. Some short-term conservation efforts, such as landscape conversions and installation of efficient appliances, will also support long-term conservation objectives, and are encouraged wherever possible; and
- 20. The State Water Board recognizes that some commercial and industrial customers, while accounting for a significant portion of total use in a service area, have already taken steps to significantly reduce their water consumption and cannot further reduce their use without substantial impacts. However, the Board also recognizes that in many areas there are significant opportunities for reductions in water use by industries and commercial enterprises that have yet to take action, especially those with large areas of non-functional turf. The Board directs staff to respond promptly upon receipt of any request for alternate enforceable methods of compliance for suppliers that retain a conservation standard pursuant to section 865 of the emergency regulation. If the supplier believes the conservation standard is unachievable due to firm commercial and industrial water use and residential use reductions that would affect public health and safety, it should provide any supporting information or documentation for an alternate method of compliance or should use the new water supply reliability self-certification method provided for in section 864.5.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 18, 2016.

- AYE: Chair Felicia Marcus
Vice Chair Frances Spivy-Weber
Board Member Steven Moore
Board Member Dorene D’Adamo
- NAY: None
- ABSENT: None
- ABSTAIN: Board Member Tam M. Doduc



 Jeanine Townsend
 Clerk to the Board

ADOPTED TEXT OF EMERGENCY REGULATION

Article 22.5. Drought Emergency Water Conservation.

Sec. 863. Findings of Drought Emergency.

(a) The State Water Resources Control Board finds as follows:

(1) On January 17, 2014, the Governor issued a proclamation of a state of emergency under the California Emergency Services Act based on drought conditions;

(2) On April 25, 2014, the Governor issued a proclamation of a continued state of emergency under the California Emergency Services Act based on continued drought conditions;

(3) On April 1, 2015, the Governor issued an Executive Order that, in part, directs the State Board to impose restrictions on water suppliers to achieve a statewide 25 percent reduction in potable urban usage through February, 2016; require commercial, industrial, and institutional users to implement water efficiency measures; prohibit irrigation with potable water of ornamental turf in public street medians; and prohibit irrigation with potable water outside newly constructed homes and buildings that is not delivered by drip or microspray systems;

(4) On November 13, 2015, the Governor issued an Executive Order that directs the State Board to, if drought conditions persist through January 2016, extend until October 31, 2016 restrictions to achieve a statewide reduction in potable usage;

(5) On May 9, 2016, the Governor issued an Executive Order that directs the State Board to adjust and extend its emergency water conservation regulations through the end of January 2017 in recognition of the differing water supply conditions for many communities;

~~(5)~~ The drought conditions that formed the basis of the Governor's emergency proclamations continue to exist; and

~~(6)~~ The drought conditions will likely continue for the foreseeable future and additional action by both the State Water Resources Control Board and local water suppliers will likely be necessary to prevent waste and unreasonable use of water and to further promote conservation.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 102, 104, 105, and 275, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 864. End-User Requirements in Promotion of Water Conservation.

(a) To prevent the waste and unreasonable use of water and to promote water conservation, each of the following actions is prohibited, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency:

(1) The application of potable water to outdoor landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(2) The use of a hose that dispenses potable water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(3) The application of potable water to driveways and sidewalks;

(4) The use of potable water in a fountain or other decorative water feature, except where the water is part of a recirculating system;

(5) The application of potable water to outdoor landscapes during and within 48 hours after measurable rainfall;

(6) The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased;

(7) The irrigation with potable water of ornamental turf on public street medians; and

(8) The irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission and the Department of Housing and Community Development.

(b) To promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.

(c) ~~Immediately upon~~ Upon this subdivision taking effect, all commercial, industrial and institutional properties that use a water supply, any portion of which is from a source other than a water supplier subject to section 864.5 or 865 of this article, shall either:

(1) Limit outdoor irrigation of ornamental landscapes or turf with potable water to no more than two days per week; or

(2) Target potable water use reductions commensurate with those required of the nearest urban water supplier under section 864.5 or, if applicable, section 865. Where this option is chosen, these properties shall implement the reductions on or before July 1, 2016.

~~(2) Reduce potable water usage supplied by sources other than a water supplier by 25 percent for the months of June 2015 through October 2016 as compared to the amount used from those sources for the same months in 2013.~~

(d) The taking of any action prohibited in subdivision (a) or (e), or the failure to take any action required in subdivision (b) or (c), is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(e)(1) To prevent the waste and unreasonable use of water and to promote water conservation, any homeowners' association or community service organization or similar entity is prohibited from:

#6.

(A) Taking or threatening to take any action to enforce any provision of the governing documents or architectural or landscaping guidelines or policies of a common interest development where that provision is void or unenforceable under section 4735, subdivision (a) of the Civil Code; or

(B) Imposing or threatening to impose a fine, assessment, or other monetary penalty against any owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during a declared drought emergency, as described in section 4735, subdivision (c) of the Civil Code.

(2) As used in this subdivision:

(A) "Architectural or landscaping guidelines or policies" includes any formal or informal rules other than the governing documents of a common interest development.

(B) "Homeowners' association" means an "association" as defined in section 4080 of the Civil Code.

(C) "Common interest development" has the same meaning as in section 4100 of the Civil Code.

(D) "Community service organization or similar entity" has the same meaning as in section 4110 of the Civil Code.

(E) "Governing documents" has the same meaning as in section 4150 of the Civil Code.

(F) "Separate interest" has the same meaning as in section 4185 of the Civil Code.

(3) If a disciplinary proceeding or other proceeding to enforce a rule in violation of subdivision (e)(1) is initiated, each day the proceeding remains pending shall constitute a separate violation of this regulation.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110, 4150, 4185, and 4735, Civil Code; Sections 102, 104, 105, 275, 350, and 10617, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 864.5. Self-Certification of Supply Reliability for Three Additional Years of Drought.

(a) To prevent the waste and unreasonable use of water and to meet the requirements of the Governor's May 9, 2016 Executive Order, each urban water supplier shall:

(1) Identify and report no later than June 22, 2016, on a form provided by the Board, the conservation standard that the supplier will be required to meet under this section;

(2) Identify and report no later than June 22, 2016, on a form provided by the Board, the data and underlying analysis relied upon by the supplier to determine the conservation standard reported pursuant to this subdivision including, but not limited to identification of each source of supply the supplier intends to rely on and the quantity of water available under that source of supply given the assumptions of this section;

(3) Certify, no later than June 22, 2016, that the conservation standard reported pursuant to this subdivision is based on the information and assumptions identified in this section;

(4) Post, within two weeks of submittal to the board, the data and underlying analysis relied upon by the supplier to determine the conservation standard reported pursuant to this subdivision to a publicly-accessible webpage; and

(5) Beginning June 1, 2016, reduce its total potable water production by the percentage identified as its conservation standard in this section each month, compared to the amount used in the same month in 2013.

(b) Each urban water supplier's conservation standard pursuant to this section shall be the percentage by which the supplier's total potable water supply is insufficient to meet the total potable water demand in the third year after this section takes effect under the following assumptions:

(1) The next three years' precipitation is the same as it was in water years 2013-2015;

(2) No temporary change orders that increase the availability of water to any urban water supplier are issued in the next three years;

(3) The supplier's total potable water demand for each of the next three years will be the supplier's average annual total potable water production for the years 2013 and 2014;

(4) The supplier's total potable water supply shall include only water sources of supply available to the supplier that could be used for potable drinking water purposes;

(5) Each urban water supplier's conservation standard shall be calculated as a percentage and rounded to the nearest whole percentage point.

(c) The Board will reject conservation standards that do not meet the requirements of this section.

(d) Beginning June 1, 2016, each urban water supplier shall comply with the conservation standard it identifies and reports pursuant to this section.

(e) Compliance with the conservation standard reported pursuant to this section shall be measured monthly and assessed on a cumulative basis through January 2017.

(f) If a wholesaler and all of its urban water supplier customers agree, in a legally-binding document, those suppliers and wholesaler may submit to the board, in lieu of the individualized self-certified conservation standard applicable pursuant to section 864.5 or section 865, an aggregated conservation standard, with all supporting documentation required for individualized self-certified conservation standards by section 864.5.

(g) Each urban water wholesaler shall calculate, to the best of its ability, and no later than June 15, 2016, the volume of water that it expects it would deliver to each urban water supplier in each of the next three years under the assumptions identified in subdivision (b), and post that calculation, and the underlying analysis, to a publicly-accessible webpage.

(h) Submitting any information pursuant to this section that the person who submits the information knows or should have known is materially false is a violation of this regulation, punishable by civil liability of up to five hundred dollars (\$500) for each day in which the violation occurs. Every day that the error goes uncorrected constitutes a separate violation. Civil liability for the violation is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(i) Any urban water supplier that does not comply with this section shall comply with the applicable conservation standard identified in section 865.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 102, 104, 105, 275, 350, 1846, 10617 and 10632, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 865. Mandatory Actions by Water Suppliers.

(a) As used in this ~~section~~article:

(1) “Distributor of a public water supply” has the same meaning as under section 350 of the Water Code, except it does not refer to such distributors when they are functioning solely in a wholesale capacity, but does apply to distributors when they are functioning in a retail capacity.

(2) “R-GPCD” means residential gallons per capita per day.

(3) “Total potable water production” means all potable water that enters into a water supplier’s distribution system, excluding water placed into storage and not withdrawn for use during the reporting period, or water exported outside the supplier’s service area.

(4) “Urban water supplier” means a supplier that meets the definition set forth in Water Code section 10617, except it does not refer to suppliers when they are functioning solely in a wholesale capacity, but does apply to suppliers when they are functioning in a retail capacity.

(5) “Urban water wholesaler” means a wholesaler of water to more than one urban water supplier.

(6) “Water year” means the period from October 1 through the following September 30. Where a water year is designated by year number, the designation is by the calendar year number in which the water year ends.

(b) In furtherance of the promotion of water conservation each urban water supplier shall:

(1) Provide prompt notice to a customer whenever the supplier obtains information that indicates that a leak may exist within the end-user’s exclusive control.

(2) Prepare and submit to the State Water Resources Control Board by the 15th of each month a monitoring report on forms provided by the Board. The monitoring report shall include the amount of potable water the urban water supplier produced, including water provided by a wholesaler, in the preceding calendar month and shall compare that amount to the amount produced in the same calendar month in 2013. The monitoring report shall specify the population served by the urban water supplier, the percentage of water produced that is used for the residential sector, descriptive statistics on water conservation compliance and enforcement efforts, the number of days that outdoor irrigation is allowed, and monthly commercial, industrial and institutional sector use. The monitoring report shall also estimate the gallons of water per person per day used by the residential customers it serves.

(c)(1) To prevent the waste and unreasonable use of water and to meet the requirements of the Governor’s ~~November 13, 2015~~May 9, 2016 Executive Order, each urban water supplier that fails to identify a conservation standard as required under section 864.5, or that has a conservation standard rejected by the Board under section

864.5, shall reduce its total potable water production by the percentage identified as its conservation standard in this ~~subdivision~~section. Each urban water supplier’s conservation standard considers its service area’s relative per capita water usage.

~~(2) Each urban water supplier whose source of supply does not include groundwater or water imported from outside the hydrologic region in which the water supplier is located, and that has a minimum of four years’ reserved supply available, may submit to the Executive Director for approval a request that, in lieu of the reduction that would otherwise be required under paragraphs (3) through (10), the urban water supplier shall reduce its total potable water production by 4 percent for each month as compared to the amount used in the same month in 2013. Any such request shall be accompanied by information showing that the supplier’s sources of supply do not include groundwater or water imported from outside the hydrologic region and that the supplier has a minimum of four years’ reserved supply available.~~

~~(3) Each urban water supplier whose average July-September 2014 R-GPCD was less than 65 shall reduce its total potable water production by 8 percent for each month as compared to the amount used in the same month in 2013.~~

~~(4) Each urban water supplier whose average July-September 2014 R-GPCD was 65 or more but less than 80 shall reduce its total potable water production by 12 percent for each month as compared to the amount used in the same month in 2013.~~

~~(5) Each urban water supplier whose average July-September 2014 R-GPCD was 80 or more but less than 95 shall reduce its total potable water production by 16 percent for each month as compared to the amount used in the same month in 2013.~~

~~(6) Each urban water supplier whose average July-September 2014 R-GPCD was 95 or more but less than 110 shall reduce its total potable water production by 20 percent for each month as compared to the amount used in the same month in 2013.~~

~~(7) Each urban water supplier whose average July-September 2014 R-GPCD was 110 or more but less than 130 shall reduce its total potable water production by 24 percent for each month as compared to the amount used in the same month in 2013.~~

~~(8) Each urban water supplier whose average July-September 2014 R-GPCD was 130 or more but less than 170 shall reduce its total potable water production by 28 percent for each month as compared to the amount used in the same month in 2013.~~

~~(9) Each urban water supplier whose average July-September 2014 R-GPCD was 170 or more but less than 215 shall reduce its total potable water production by 32 percent for each month as compared to the amount used in the same month in 2013.~~

~~(10) Each urban water supplier whose average July-September 2014 R-GPCD was 215 or more shall reduce its total potable water production by 36 percent for each month as compared to the amount used in the same month in 2013.~~

(d)(1) Beginning June 1, 2015, each urban water supplier that does not submit a self-certification in compliance with section 864.5 shall comply with the conservation standard specified in subdivision (c), with any modifications to the conservation standard pursuant to subdivision (f) applying beginning March 1, 2016.

(2) Compliance with the requirements of this subdivision shall be measured monthly and assessed on a cumulative basis through ~~October 2016~~January 2017.

(e)(1) Each urban water supplier that provides potable water for commercial agricultural use meeting the definition of Government Code section 51201, subdivision (b), may subtract the amount of water provided for commercial agricultural use from its

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potable water production total, provided that any urban water supplier that subtracts any water provided for commercial agricultural use from its total potable water production shall:

(A) Impose reductions determined locally appropriate by the urban water supplier, after considering the applicable urban water supplier conservation standard specified in subdivision (c), for commercial agricultural users meeting the definition of Government Code section 51201, subdivision (b) served by the supplier;

(B) Report its total potable water production pursuant to subdivision (b)(2) of this section, the total amount of water supplied for commercial agricultural use, and shall identify the reduction imposed on its commercial agricultural users and each recipient of potable water for commercial agricultural use;

(C) Certify that the agricultural uses it serves meet the definition of Government Code section 51201, subdivision (b); and

(D) Comply with the Agricultural Water Management Plan requirement of paragraph 12 of the April 1, 2015 Executive Order for all commercial agricultural water served by the supplier that is subtracted from its total potable water production.

(2) Submitting any information pursuant to subdivision (e)(1)(B) or (C) of this section that is found to be materially false by the Board is a violation of this regulation, punishable by civil liability of up to five hundred dollars (\$500) for each day in which the violation occurs. Every day that the error goes uncorrected constitutes a separate violation. Civil liability for the violation is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(f) In consideration of the differences in climate affecting different parts of the state, growth experienced by urban areas and significant investments that have been made by some suppliers towards creating new, local, drought-resilient sources of potable water supply, an urban water supplier's conservation standard identified in subdivision (c) shall be reduced by an amount, not to exceed eight (8) percentage points total, as follows:

(1) For an urban water supplier whose service area evapotranspiration (ET_o) for the months of July through September exceeds the statewide average evapotranspiration, as determined by the Board, for the same months by five (5) percent or more, the supplier's conservation standard identified in subdivision (c) shall be reduced:

(A) By two (2) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by five (5) percent or more but less than ten (10) percent;

(B) By three (3) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by ten (10) percent or more but less than twenty (20) percent;

(C) By four (4) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by twenty (20) percent or more.

(D) Statewide average evapotranspiration is calculated as the arithmetic mean of all urban water suppliers' service area default evapotranspiration values for the months of July through September. Default service area evapotranspiration will be based on the California Irrigation Management System (CIMIS) ET_o Zones Map zone for which the supplier's service area has the greatest area of overlap. In lieu of applying its default service area evapotranspiration, a supplier may use specific data from CIMIS stations within its service area that have at least a five-year period of record, or a three year continuous period of record, to identify a more specifically-applicable evapotranspiration

for its service area. If no CIMIS station exists within the supplier's service area, a weather station of comparable accuracy, meeting the preceding period of record requirements, may be used. To qualify for the in-lieu climate adjustment, the supplier shall submit the following data to the Board by March 15, 2016 for each station: station ID; station location; and monthly average evapotranspiration, in inches per month, for July, August, and September for either the five-year period of record or the three-year continuous period of record.

(2) To account for water efficient growth experienced in the state since 2013, urban water suppliers' conservation standards shall be reduced by the product of the percentage change in potable water production since 2013 and the percentage reduction in potable water use required pursuant to subdivision (c), rounded to the nearest whole percentage point. Change in potable water production since 2013 shall be calculated as the sum of the following:

(A) The number of additional permanent residents served since January 1, 2013, multiplied by the average residential water use per person for that supplier's service area during the months of February through October, 2015, in gallons; and

(B) The number of new commercial, industrial and institutional connections since January 1, 2013, multiplied by the average commercial, industrial and institutional water use per connection for that supplier's service area during the months of February through October, 2015, in gallons.

(C) To qualify for the growth credit the supplier shall submit to the Board the following data by March 15, 2016: the number of additional permanent residents served since January 1, 2013 and the number of new commercial, industrial and institutional connections since January 1, 2013.

(3) For an urban water supplier that supplies, contracts for, or otherwise financially invests in, water from a new local, drought-resilient source of supply, the use of which does not reduce the water available to another legal user of water or the environment, the conservation standard identified in subdivision (c) shall be reduced:

(A) By one (1) percentage point if the supplier's qualifying source of supply is one (1) percent or more but less than two (2) percent of the supplier's total potable water production;

(B) By two (2) percentage points if the supplier's qualifying source of supply is two (2) percent or more but less than three (3) percent of the supplier's total potable water production;

(C) By three (3) percentage points if the supplier's qualifying source of supply is three (3) percent or more but less than four (4) percent of the supplier's total potable water production;

(D) By four (4) percentage points if the supplier's qualifying source of supply is four (4) percent or more but less than five (5) percent of the supplier's total potable water production;

(E) By five (5) percentage points if the supplier's qualifying source of supply is five (5) percent or more but less than six (6) percent of the supplier's total potable water production;

(F) By six (6) percentage points if the supplier's qualifying source of supply is six (6) percent or more but less than seven (7) percent of the supplier's total potable water production;

#6.

(G) By seven (7) percentage points if the supplier's qualifying source of supply is seven (7) percent or more but less than eight (8) percent of the supplier's total potable water production;

(H) By eight (8) percentage points if the supplier's qualifying source of supply is eight (8) percent or more of the supplier's total potable water production.

(I) To qualify for this reduction the supplier must certify, and provide documentation to the Board upon request demonstrating, the percent of its total potable water production that comes from a local, drought-resilient source of supply developed after 2013, the supplier's investment in that local, drought-resilient source of supply, and that the use of that supply does not reduce the water available to another legal user of water or the environment. To qualify for this reduction an urban water supplier shall submit the required certification to the Board by March 15, 2016.

(J) Certifications that do not meet the requirements of subdivision (f)(3)(I), including certifications for which documentation does not support that the source of supply is a local, drought-resilient source of supply, the use of which does not reduce the water available to another legal user of water or the environment, will be rejected. Submitting a certification or supporting documentation pursuant to subdivision (f)(3)(I) that is found to be materially false by the Board is a violation of this regulation, punishable by civil liability of up to five hundred dollars (\$500) for each day in which the violation occurs. Every day that the error goes uncorrected constitutes a separate violation. Civil liability for the violation is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(4) No urban water supplier's conservation standard pursuant to this section shall drop below eight (8) percent as a consequence of the reductions identified in this subdivision. ~~No reduction pursuant to this subdivision shall be applied to any urban water supplier whose conservation standard is four (4) percent based on subdivision (e)(2).~~

~~(g)(1)~~ To prevent waste and unreasonable use of water and to promote water conservation, each distributor of a public water supply that is not an urban water supplier shall ~~take one or more of the following actions:~~

(1) Provide prompt notice to a customer whenever the supplier obtains information that indicates that a leak may exist within the end-user's exclusive control; and

~~—— (A) Limit outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week; or~~

~~—— (B) Reduce by 25 percent its total potable water production relative to the amount produced in 2013.~~

(2) Each distributor of a public water supply that is not an urban water supplier shall submit a report by ~~September~~ December 15, 2016, on a form provided by the Board, that either confirms compliance with subdivision (g)(1)(A) or identifies total potable water production, by month, from December, 2015 through ~~August~~ November, 2016, and total potable water production, by month, for the same months in 2013, and any actions taken by the supplier to encourage or require its customers to conserve water.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 102, 104, 105, 275, 350, 1846, 10617 and 10632, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 866. Additional Conservation Tools.

(a)(1) To prevent the waste and unreasonable use of water and to promote conservation, when a water supplier does not meet its conservation standard required by section 864.5 or section 865 the Executive Director, or the Executive Director’s designee, may issue conservation orders requiring additional actions by the supplier to come into compliance with its conservation standard.

(2) A decision or order issued under this article by the Board or an officer or employee of the Board is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.

(b) The Executive Director, or his designee, may issue an informational order requiring water suppliers, or commercial, industrial or institutional properties that receive any portion of their supply from a source other than a water supplier subject to section 864.5 or 865, to submit additional information relating to water production, water use or water conservation. The failure to provide the information requested within 30 days or any additional time extension granted is a violation subject to civil liability of up to \$500 per day for each day the violation continues pursuant to Water Code section 1846.

(c) Orders issued under previous versions of this ~~subdivision~~section shall remain in effect and shall be enforceable as if adopted under this version. Changes in the requirements of this article do not operate to void or excuse noncompliance with orders issued before those requirements were changed.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 100, 102, 104, 105, 174, 186, 187, 275, 350, 1051, 1122, 1123, 1825, 1846, 10617 and 10632, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.



Fact Sheet

36 Month Urban Water Supply Now Basis For Local Emergency Water Conservation Efforts

On May 18, the State Water Resources Control Board adopted a statewide water conservation approach that replaces the prior percentage reduction-based water conservation standard with a localized “stress test” approach – that mandates urban water suppliers act now to ensure at least a three year supply of water to their customers under drought conditions.

The adopted emergency regulation followed improved water supply conditions around most of the state and recognition that urban water suppliers are in a better position to plan for, and accommodate, local drought impacts to their water supply, following their experiences conserving upwards of 24 percent of their water use these past 10 months.

The adopted regulation establishes standards with locally developed conservation standards based upon each agency’s specific circumstances. The regulation now requires individual urban water suppliers to self-certify the level of available water supplies they have assuming three additional dry years, and the level of conservation necessary to assure adequate supply over that time.

This self-certification would include information provided by regional water distribution agencies (wholesale suppliers) about how regional supplies would fare during three additional dry years. Both urban water suppliers and wholesale suppliers are required to report the underlying basis for their assertions, and urban water suppliers are required to continue reporting their conservation levels.

Urban water suppliers are now required to reduce potable water use in a percentage equal to their projected shortfall in the event of three more dry years. In other words, if an individual water district projects it would, under the specified assumptions, have a 10 percent shortfall after the next three years at the current rate of use, their mandatory conservation standard would be 10 percent.

The regulation keeps in place the monthly reporting requirements and specific prohibitions against certain water uses. Those prohibitions include watering down a sidewalk with a hose instead of using a broom or a brush, or overwatering a landscape to where water is running off the lawn, over a sidewalk and into the gutter. Prohibitions directed to the hospitality industry also remain in place. Prohibitions against home owners associations taking action against homeowners during a declared drought remain as well. As directed by Governor Brown’s [Executive Order B-37-16](#), the Board will separately take action to make some of these requirements and prohibitions permanent.



The adopted regulation is the result of review of many meetings, written and oral comments from a public workshop on [April 20](#) to receive input on conservation needs through the summer and fall, and lessons learned since the Water Board first adopted drought emergency water conservation regulations.

The new conservation standards will take effect in June and remain in effect until the end of January 2017.

Improved Water Supply and Conditions; and Conservation – Reason for Change

Winter 2016 saw improved hydrologic conditions in parts of California. More rain and snow fell in Northern California as compared to Central and Southern California; yet, due to California's water storage and conveyance systems, concerns over supply reliability have eased compared to last year throughout urban California. Consequently, the unprecedented mandatory state-driven conservation standards in place over the last ten months must transition to conservation standards based on supply reliability considerations at the local level. However, conservation standards are still needed in case this winter was a short reprieve in a longer drought.

The Board has been monitoring state hydrology, water supply conditions, including local supply reliability, and the conservation levels achieved by the State's 411 urban water suppliers. Hydrologic conditions in parts of California – particularly northern California – have markedly improved relative to 2014 and 2015. Many reservoirs are above historic averages for late spring, and water allocations are up in most cases for the State Water Project.

In addition, the water production reports submitted to the State Water Board have shown that the majority of urban water suppliers have successfully responded to mandatory conservation expectations over the last 20 months. Public awareness of drought conditions and the public's extraordinary response this past ten months should lead to continuing conservation.

Should severe drought conditions return, the Board stands ready to return to stronger conservation mandates to ensure urban water suppliers can meet local water needs in the long term.

The adopted drought emergency water conservation regulation allows suppliers to define an individualized conservation standard on their specific water supply and demand conditions. Each water supplier is required to evaluate its supply portfolio and self-certify the accuracy of its information while also providing the underlying information and assumptions; the State Water Board would assign each supplier a mandatory conservation standard equal to the percentage deficiency the supplier identifies in its supply under specified assumptions. Additionally, certain statewide requirements on small suppliers and businesses would be lifted.



Governor and Board Actions Achieved Historic Conservation Statewide
In his April 1, 2015 [Executive Order](#), Governor Brown mandated a 25 percent water use reduction by users of urban water supplies across California.

In May 2015, the State Water Board adopted an emergency regulation requiring a cumulative 25 percent reduction in overall potable urban water use over the following 9 months. The [May 2015 Emergency Regulation](#) used a sliding scale for setting conservation standards, so that communities that have already reduced their residential gallons per capita per day (R-GPCD) through past conservation had lower mandates than those that had not made such gains since the last major drought. Conservation tiers for urban water suppliers were set between eight percent and 36 percent, based on residential per capita water use for the months of July - September 2014.

During this time, statewide water conservation was [unprecedented](#). In the last 10 months alone, the state realized nearly a 24 percent savings in water use as compared to same period 2013, resulting in some 1.30 million acre-feet of water conserved throughout California, enough to supply 6.5 million people with water for an entire year.

On Feb. 2, 2016, based on Governor Brown's [November 2015 Executive Order](#), the State Water Board approved an updated and extended emergency regulation that continued mandatory reductions through October.

The [February 2016 Emergency Regulation](#) responded to calls for continuing the conservation structure that has spurred savings, while providing greater consideration of some localized factors that influence water needs around the state: climate differences, population growth and significant investments in new local, drought-resilient water supplies such as potable wastewater reuse and desalination. The February Emergency Regulation is longer in effect. Under the new reporting structure adopted by the Board May 18, water districts will continue to [report water use](#), but their conservation standard will be based on any shortfall in projected supply over three drought years.

On May 9, Governor Brown [issued an Executive Order](#) directing actions aimed at using water wisely, reducing water waste, and improving water use efficiency for the years and decades ahead. The Executive Order, in part, directed the State Water Board to extend the emergency regulations for urban water conservation through the end of January 2017. As called for in his Executive Order, it is anticipated the State Water Board will be working closely with the Department of Water Resources and other agencies to define and establish water efficiency standards for the state to ensure a more reliable water supply and to make state water users more resilient and prepared over the long-term.

(This fact sheet was last updated May 18, 2016)

Executive Department

State of California

**EXECUTIVE ORDER B-37-16
MAKING WATER CONSERVATION A CALIFORNIA WAY OF LIFE**

WHEREAS California has suffered through a severe multi-year drought that has threatened the water supplies of communities and residents, devastated agricultural production in many areas, and harmed fish, animals and their environmental habitats; and

WHEREAS Californians responded to the drought by conserving water at unprecedented levels, reducing water use in communities by 23.9% between June 2015 and March 2016 and saving enough water during this period to provide 6.5 million Californians with water for one year; and

WHEREAS severe drought conditions persist in many areas of the state despite recent winter precipitation, with limited drinking water supplies in some communities, diminished water for agricultural production and environmental habitat, and severely-depleted groundwater basins; and

WHEREAS drought conditions may persist in some parts of the state into 2017 and beyond, as warmer winter temperatures driven by climate change reduce water supply held in mountain snowpack and result in drier soil conditions; and

WHEREAS these ongoing drought conditions and our changing climate require California to move beyond temporary emergency drought measures and adopt permanent changes to use water more wisely and to prepare for more frequent and persistent periods of limited water supply; and

WHEREAS increasing long-term water conservation among Californians, improving water use efficiency within the state's communities and agricultural production, and strengthening local and regional drought planning are critical to California's resilience to drought and climate change; and

WHEREAS these activities are prioritized in the California Water Action Plan, which calls for concrete, measurable actions that "Make Conservation a California Way of Life" and "Manage and Prepare for Dry Periods" in order to improve use of water in our state.



NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, in particular California Government Code sections 8567 and 8571, do hereby issue this Executive Order, effective immediately.

IT IS HEREBY ORDERED THAT:

The orders and provisions contained in my January 17, 2014 Emergency Proclamation, my April 25, 2014 Emergency Proclamation, Executive Orders B-26-14, B-28-14, B-29-15, and B-36-15 remain in full force and in effect except as modified herein.

State agencies shall update temporary emergency water restrictions and transition to permanent, long-term improvements in water use by taking the following actions.

USE WATER MORE WISELY

1. The State Water Resources Control Board (Water Board) shall, as soon as practicable, adjust emergency water conservation regulations through the end of January 2017 in recognition of the differing water supply conditions across the state. To prepare for the possibility of another dry winter, the Water Board shall also develop, by January 2017, a proposal to achieve a mandatory reduction in potable urban water usage that builds off of the mandatory 25% reduction called for in Executive Order B-29-15 and lessons learned through 2016.
2. The Department of Water Resources (Department) shall work with the Water Board to develop new water use targets as part of a permanent framework for urban water agencies. These new water use targets shall build upon the existing state law requirements that the state achieve a 20% reduction in urban water usage by 2020. (Senate Bill No. 7 (7th Extraordinary Session, 2009-2010).) These water use targets shall be customized to the unique conditions of each water agency, shall generate more statewide water conservation than existing requirements, and shall be based on strengthened standards for:
 - a. Indoor residential per capita water use;
 - b. Outdoor irrigation, in a manner that incorporates landscape area, local climate, and new satellite imagery data;
 - c. Commercial, industrial, and institutional water use; and
 - d. Water lost through leaks.

The Department and Water Board shall consult with urban water suppliers, local governments, environmental groups, and other partners to develop these water use targets and shall publicly issue a proposed draft framework by January 10, 2017.



3. The Department and the Water Board shall permanently require urban water suppliers to issue a monthly report on their water usage, amount of conservation achieved, and any enforcement efforts.

ELIMINATE WATER WASTE

4. The Water Board shall permanently prohibit practices that waste potable water, such as:
 - Hosing off sidewalks, driveways and other hardscapes;
 - Washing automobiles with hoses not equipped with a shut-off nozzle;
 - Using non-recirculated water in a fountain or other decorative water feature;
 - Watering lawns in a manner that causes runoff, or within 48 hours after measurable precipitation; and
 - Irrigating ornamental turf on public street medians.
5. The Water Board and the Department shall direct actions to minimize water system leaks that waste large amounts of water. The Water Board, after funding projects to address health and safety, shall use loans from the Drinking Water State Revolving Fund to prioritize local projects that reduce leaks and other water system losses.
6. The Water Board and the Department shall direct urban and agricultural water suppliers to accelerate their data collection, improve water system management, and prioritize capital projects to reduce water waste. The California Public Utilities Commission shall order investor-owned water utilities to accelerate work to minimize leaks.
7. The California Energy Commission shall certify innovative water conservation and water loss detection and control technologies that also increase energy efficiency.

STRENGTHEN LOCAL DROUGHT RESILIENCE

8. The Department shall strengthen requirements for urban Water Shortage Contingency Plans, which urban water agencies are required to maintain. These updated requirements shall include adequate actions to respond to droughts lasting at least five years, as well as more frequent and severe periods of drought. While remaining customized according to local conditions, the updated requirements shall also create common statewide standards so that these plans can be quickly utilized during this and any future droughts.
9. The Department shall consult with urban water suppliers, local governments, environmental groups, and other partners to update requirements for Water Shortage Contingency Plans. The updated draft requirements shall be publicly released by January 10, 2017.



10. For areas not covered by a Water Shortage Contingency Plan, the Department shall work with counties to facilitate improved drought planning for small water suppliers and rural communities.

IMPROVE AGRICULTURAL WATER USE EFFICIENCY AND DROUGHT PLANNING

11. The Department shall work with the California Department of Food and Agriculture to update existing requirements for Agricultural Water Management Plans to ensure that these plans identify and quantify measures to increase water efficiency in their service area and to adequately plan for periods of limited water supply.

12. The Department shall permanently require the completion of Agricultural Water Management Plans by water suppliers with over 10,000 irrigated acres of land.


13. The Department, together with the California Department of Food and Agriculture, shall consult with agricultural water suppliers, local governments, agricultural producers, environmental groups, and other partners to update requirements for Agricultural Water Management Plans. The updated draft requirements shall be publicly released by January 10, 2017.

The Department, Water Board and California Public Utilities Commission shall develop methods to ensure compliance with the provisions of this Executive Order, including technical and financial assistance, agency oversight, and, if necessary, enforcement action by the Water Board to address non-compliant water suppliers.

This Executive Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this order.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 9th day of May 2016.


EDMUND G. BROWN JR.
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State



ORDINANCE NO. 15- 01

AN ORDINANCE OF THE MOULTON NIGUEL WATER DISTRICT PRESCRIBING WATER CONSERVATION RULES AND REGULATIONS

WHEREAS, California Constitution article X, section 2 and California Water Code section 100 provide that because of conditions prevailing in the state of California (the "State"), it is the declared policy of the State that the general welfare requires that the water resources of the State shall be put to beneficial use to the fullest extent of which they are capable, the waste or unreasonable use of water shall be prevented, and the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and the public welfare; and

WHEREAS, pursuant to California Water Code section 106, it is the declared policy of the State that the use of water for domestic use is the highest use of water and that the next highest use is for irrigation; and

WHEREAS, pursuant to California Water Code section 375, the Moulton Niguel Water District (the "District") is authorized to adopt and enforce a water conservation program to reduce the quantity of water used by persons within its jurisdiction for the purpose of conserving the water supplies of the District; and

WHEREAS, on January 17, 2014, the Governor Brown proclaimed a condition of statewide drought and called upon local agencies to take aggressive, immediate action to reduce water consumption locally and regionally by 20%; and

WHEREAS, because of the prevailing conditions in the State, the current statewide drought, and the declared policy of the State, the District hereby finds and determines that it is necessary and appropriate for the District to adopt, implement, and enforce a water conservation program to reduce the quantity of water used by consumers within the District to ensure that there is sufficient water for human consumption, sanitation, and fire protection; and

WHEREAS, pursuant to California Water Code section 350 the Board of Directors is authorized to declare a water shortage emergency to prevail within its jurisdiction when it finds and determines that the District will not be able to or cannot satisfy the ordinary demands and requirements of water consumers without depleting the water supply of the District to the extent that there would be insufficient water for human consumption, sanitation, and fire protection, and as more fully set forth in this chapter; and

#6.

WHEREAS, in the event the District determines that it is necessary to declare that a water shortage emergency exists, the District will be authorized, pursuant to the Water Shortage Contingency Plan adopted pursuant to this Ordinance, to implement certain shortage response measures and a water conservation and regulatory program to regulate water consumption activities within the District and ensure that the water delivered in the District is put to beneficial use for the greatest public benefit, with particular regard to domestic use, including human consumption, sanitation, and fire protection, and that the waste or unreasonable use of water is prevented; and

WHEREAS, the District is authorized to prescribe and define by ordinance restrictions, prohibitions, and exclusions for the use of water during a threatened or existing water shortage and adopt and enforce a water conservation and regulatory program to: (i) prohibit the waste of District water or the use of District water during such period; (ii) prohibit use of water during such periods for specific uses that the District may from time to time find nonessential; and (iii) reduce and restrict the quantity of water used by those persons within the District for the purpose of conserving the water supplies of the District; and

WHEREAS, the District hereby finds and determines that as hereby amended, the District shall: (i) implement water conservation and water shortage response measures; (i) regulate the water consumption activities of persons within the District for the purposes of conserving and protecting the District's water supplies, reducing the quantity of water consumed, and deterring and preventing the waste or unreasonable use or unreasonable method of use of valuable water resources; and (ii) establish and collect regulatory fees and impose administrative penalties as set forth herein to accomplish these purposes and/or recover the costs of the District's water conservation and regulatory program; and

WHEREAS, the District hereby finds and determines that it is desirable to codify the rules and regulations governing its actions, and the actions of persons using and consuming water within the District, particularly during declared water shortages and water shortage emergencies, to protect the general welfare and the District's water supplies, and to reduce water consumption in accordance with the declared policies and laws of the State.

NOW THEREFORE BE IT ORDAINED by the Board of Directors of the Moulton Niguel Water District as follows:

Section 1. Findings and Determinations

The District hereby finds and determines that the above recitals are true and correct and incorporated herein.

Section 2. Amendments to District Rules and Regulations.

Moulton Niguel Water District's Article IV Rules and Regulations, Section 5.N., and Exhibit G, amendments to Section 5.N., are hereby amended in their entirety and replaced with the following rules and regulations governing water conservation:

N. Water Conservation

1. Findings and Intent

(A) **Findings.** The Board of Directors finds and determines that because of the prevailing conditions in the State, and the declared policy of the State, it is necessary and appropriate for the District to adopt, implement, and enforce a water conservation program to reduce the quantity of water used by persons within the District to ensure that there is sufficient water for human consumption, sanitation, and fire protection. The District further finds and determines that during periods of drought, water shortages, and water shortage emergencies the general welfare requires that the District maximize the beneficial use of its available water resources to the extent that it is capable, and that the waste or unreasonable use, or unreasonable method of use of water shall be prevented and the conservation of water is to be extended with the view to the reasonable and beneficial use thereof in the interests of the people of the District and for the public health, safety, and welfare.

(B) **Intent.** This Section 5.N. is intended to establish:

(1) permanent water conservation BMPs and response measures;

(2) rules, regulations, and restrictions on water use (the "Rules") to be implemented during declared water shortage stages, with increasing restrictions on water use in response to decreasing water supplies and worsening water shortage conditions.

(C) **Demand Management Through Rate Structure Design.** The District's water budget-based rate structure is designed and intended to be a water demand management tool and to proportionately recover the costs of providing water service within the District. The District's efforts in managing its water supply are best achieved through its water budget-based rate structure and the calculated water budgets provided to the District's customers.

(D) **Use of Property.** This Section 5.N. is not intended to repeal, abrogate, annul, impair or in any way interfere with the free use of property by covenant, deed, or other

#6.

private agreement or with restrictive covenants running with the land to which the District provides water services.

2. Purposes and Scope

(A) **Purposes.** The purposes of this Section 5.N. are to:

- (1) protect the health, safety and welfare of the citizens and property owners of the District;
- (2) assure the maximum beneficial use of available water supplies;
- (3) attempt to provide sufficient water supplies to meet, at a minimum, the basic needs of human consumption, sanitation, and fire protection; and
- (4) authorize restrictions in water use during declared water shortages to maximize the beneficial use of water, and the imposition of penalties for violations of the Rules.

(B) **Scope.** The provisions of this Section 5.N. shall apply to all persons within the District and all property served by the District wherever situated. Nothing in this Section 5.N. is intended to affect or limit the ability of the District to respond to an emergency, including an emergency that affects the ability of the District to supply water.

3. Definitions

For the purposes of this Section 5.N., the following words, terms, and phrases shall have the following meanings:

(A) "Appellant" means the person appealing the imposition of a penalty imposed by the District for a violation of the Rules pursuant to this Section 5.N.

(B) "BMPs" mean best management practices.

(C) "Calculated water budget" means the water budget calculated by the District for each customer in accordance with the District's water rate structures.

(D) "Calculated recycled water budget" means the recycled water budget calculated by the District for each customer in accordance with the District's recycled water rate structure.

(E) "Ccf" means one hundred cubic feet.

(F) "District" means the Moulton Niguel Water District.

(G) "General Manager" means the General Manager of the District or her or his authorized designee.

(H) "Immediate emergency" shall have the meaning set forth in Section 5.N.6.(D).

(I) "19 Account customers" shall have the meaning set forth in Section 5.N.9.(A).

(J) "Person" means any natural person, firm, joint venture, joint stock company, partnership, public or private association, club, company, corporation, business trust, organization, public or private agency, government agency or institution, school district, college, university, any other user of water provided by the District, or the manager, lessee, agent, servant, officer or employee of any of them or any other entity which is recognized by law as the subject of rights or duties.

(K) "Plant factor" means the water needs of specific types of plants as established through guidelines provided by state law and the State Department of Water Resources' Model Water Efficient Landscape Ordinance established under Assembly Bill 1881.

(L) "Potable Water" means that water furnished to the customer which complies with federal and State drinking water regulations and standards, or any other applicable standards, for human consumption.

(M) "Property owner" or "owner" means the record owner of real property as shown on the most recently issued equalized assessment roll.

(N) "Recycled water" means water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource.

(O) "Rules" shall have the meaning set forth in in Section 5.N.1.(B)(2).

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(P) "RC9 Account customers" shall have the meaning set forth in Section 5.N.14(A)(1).

(Q) "State" means the state of California, including any department or regulatory agency thereof.

(R) "Water customer" or "customer" means a person who, according to the District's records, has an account with the District and receives water service or recycled water service to a parcel of property.

(S) "Water shortage emergency" means a condition existing within the District in which the ordinary water demands and requirements of persons within the District cannot be satisfied without depleting the water supply of the District to the extent that there would be insufficient water for human consumption, sanitation, and fire protection. A water shortage emergency includes both an immediate emergency, in which the District is unable to meet current water needs of persons within the District, as well as a threatened water shortage, in which the District determines that its future supply of water may not meet an anticipated future demand.

(T) "WUCOLS" shall have the meaning set forth in Section 5.N.8.(D).

4. Water Conservation Best Management Practices

(A) **Conservation through BMP's.** Recognizing that water is our most vital resource, the following water conservation BMPs have been established to conserve water, prevent the waste or unreasonable use or unreasonable method of use of water, and preserve the District's water supplies. The BMPs shall be in effect at all times. Except as otherwise provided in this Section 5.N.4., the BMPs shall not apply to the use of recycled water.

(B) **Installation of Water Conservation Devices.** No water shall be provided by the District for internal or external use to any residential, commercial, industrial, agricultural, recreational, governmental, or public building or structure of any kind which is constructed or altered and in which either internal or external irrigation or domestic water piping or water fixtures are to be installed, extended, or altered in any way, including, but not limited to, any plumbing, water piping, or water fixtures for which a construction permit is required to be obtained from the County of Orange or its successor, or for which District approval of plans and service applications are required, unless the new, extended, or altered plumbing, water piping, or other water using facilities conform to the requirements and standards of this Section 5.N.4.(C) of the Rules and Regulations.

(C) **Standards for Water Conservation Devices.** The required water conservation devices and standards of the District are those set forth on Exhibit "F" to these Rules and Regulations. Nothing herein provided shall be deemed to relieve any person from compliance with the plumbing code of the County of Orange or any other state or local plumbing or building requirements.

(D) **Limits on Watering Hours.** Watering or irrigating any lawn, landscape or other vegetated area with potable water should be avoided between the hours of 9:00 a.m. and 5:00 p.m. on any day, except by use of a hand-held bucket or similar container, a hand-held hose equipped with an automatic shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system.

(E) **Limits on Water Duration.** Watering or irrigating any lawn, landscape or other vegetated area with potable water using a landscape irrigation system or watering device that is not continuously attended should be limited to no more than eight minutes of watering per station every other day during the summer and less than six minutes during the spring, fall and winter. This subsection does not apply to landscape irrigation systems that exclusively use very low-flow irrigation systems where no emitter produces more than two gallons of water per hour.

(F) **No Watering During Rain.** Watering or irrigating any lawn, landscape or other vegetated area with potable water should be avoided when it is raining.

(G) **Plant Low-Water Demand Plants and Trees.** When installing new landscaping, plant only low-water demand trees and plants. New turf should only be installed for functional purposes. Functional turf is defined as turf used for athletic or high traffic areas.

(H) **No Excessive Water Flow or Runoff.** Watering or irrigating any lawn, landscape or other vegetated area in a manner that causes or allows excessive flow or runoff of potable or recycled water onto an adjoining sidewalk, driveway, street, alley, gutter or ditch should be avoided.

(I) **No Washing Down Hard or Paved Surfaces.** Washing down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking areas, tennis courts, patios or alleys, should be avoided except when necessary to alleviate safety or sanitary hazards, and then only by use of a hand-held bucket or similar container, a hand-held hose equipped with an automatic shut-off device or a low-volume, high-pressure cleaning machine equipped to recycle any water used.

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(J) **Obligation to Fix Leaks, Breaks or Malfunctions.** Excessive use, loss or escape of potable or recycled water through breaks, leaks or other malfunctions in the water user's plumbing or distribution system should be avoided for any period of time after such escape of water should have reasonably been discovered and corrected. It is unlawful for any person to permit for the forgoing for more than five days after receiving notice from the District of any such break, leak, or other malfunction.

(K) **Re-circulating Water Required for Water Fountains and Decorative Water Features.** Operating a water fountain or other decorative water feature that does not use re-circulated water is prohibited.

(L) **Limits on Washing Vehicles.** Using potable water to wash or clean a vehicle, including but not limited to any automobile, truck, van, bus, motorcycle, boat or trailer, whether motorized or not, should be avoided, except by use of a hand-held bucket or similar container, a hand-held hose equipped with an automatic water shut-off nozzle or a low volume power washer with an automatic water shut-off nozzle. This paragraph does not apply to commercial car washes or the washing of vehicles regulations where the health, safety, and welfare of the public is contingent upon frequent vehicle cleaning, such as garbage trucks and vehicles used to transport food and perishables.

(M) **Drinking Water Served Upon Request Only.** Eating or drinking establishments, including but not limited to a restaurant, hotel, café, cafeteria, bar, club or other public place where food or drinks are sold, served, or offered for sale, should only provide drinking water to persons when expressly requested.

(N) **Commercial Lodging Establishments Must Provide Option to Not Launder Linens Daily.** Hotels, motels and other commercial lodging establishments should provide customers the option of not having towels and linens laundered daily. Commercial lodging establishments should prominently display notice of this option in each bathroom using clear and easily understood language.

(O) **Installation of Single Pass Cooling Systems.** Single pass cooling systems shall not be installed in buildings requesting new potable water service.

(P) **Installation of Non-re-circulating Water Systems in Commercial Car Washes and Laundry Systems.** Non-recirculating water systems in commercial car washes and laundry systems shall not be installed.

(Q) **Restaurants Required to Use Water Conserving Dish Wash Spray Valves.** Food preparation establishments, such as restaurants or cafés, shall not use non-water conserving dish wash spray valves.

(R) **Swimming Pools and Spa Covers.** Property owners who have a swimming pool or a spa are encouraged to cover the facilities to minimize water loss due to evaporation.

(S) **Water Waste and Unreasonable Water Use Prohibited.** The waste or unreasonable use or unreasonable method of use of water by any person shall be prohibited at all times.

5. Water Shortages

(A) **Reductions in Water Supply.** Should the BMPs be inadequate to protect the District's potable water supply, the District Board of Directors reserves the right to implement further mandatory Rules to reduce the amount of water used within the District. The Rules are necessary to respond to any significant reductions to the District's water supply as a result of drought, natural disasters, regulatory action, and planned or unplanned potable water shortages, including but not limited to, shortages arising from the following circumstances or events that are or may impact the District's water supply:

(1) the District's wholesale water supplier has determined that a drought, water shortage, or water shortage emergency exists or has implemented or taken other actions requiring a reduction in water demand;

(2) Metropolitan Water District of Southern California ("MWD") Water Supply Allocation Plan implementation or other actions requiring a reduction in water demand;

(3) regional or statewide importation or local distribution systems or facility(ies) have failed or have been shut down (e.g., a main break, reservoir, pipeline, canal, or other distribution or conveyance system failure);

(4) alternative water supplies are limited or unavailable;

(5) the State has determined that a drought, water shortage or water shortage emergency exists;

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(6) the State has implemented restrictions on the use of water or reduced or restricted the delivery of wholesale water to the District; and

(7) any other natural disaster that impacts the availability of water to the District.

(B) **Application.** The provisions of this Section 5.N. shall apply to all persons using potable water within the District, regardless of whether any person using potable water or recycled water has a contract or account for water service.

6. Declaration of Water Shortages

(A) **District Water Supply.** The General Manager shall monitor the projected supply and demand for water by the District's customers on a frequent basis during periods of a water shortage or drought and shall recommend to the Board of Directors the extent of the conservation measures required through the implementation and/or termination of particular water shortage stages to prudently plan and supply water to its customers. The General Manager will recommend the appropriate stage of response to a water shortage based on the best information available at the time. In addition to the circumstance and events set forth in Section 5.N.5(A), conditions that may be considered include, but are not limited to:

(1) District water supply conditions and storage levels;

(2) statewide water supply conditions;

(3) local water supply and demand conditions; and

(4) actions by surrounding wholesale and retail water agencies; and

(5) any other conditions the General Manager believes will adversely affect the District's available water supply.

(B) **Declaration of Water Shortage Stages.** The declaration of any water shortage stage declared pursuant to Section 5.N.7 shall be made by the recommendation of the General Manager and the adoption of a resolution of the Board of Directors. The water shortage stage designated shall become effective immediately upon adoption of the resolution by the Board of Directors.

(C) **Notice and Publication.** Within ten (10) days of the adoption of the resolution declaring the applicable water shortage stage, the District shall make a public announcement of the applicable water shortage stage, which shall be published a minimum of three (3) times in a daily newspaper of general circulation and posted on the District's website.

(1) Such declaration and notice shall provide the extent, terms, and conditions respecting the use and consumption of water in accordance with the applicable water shortage stage as provided in this Section 5.N.

(2) The District will periodically provide the public with information about the Rules, including conditions under which each water shortage stage is to be initiated or terminated and the conservation response measures to be implemented in each stage.

(3) Upon such declaration and publication of the notice required herein, due and proper notice shall be deemed to have been given each and every person supplied water within the District of the Rules governing the applicable water shortage stage.

(D) **Declaration of Water Shortage Emergency.** Excepting in event of a breakage or failure of a dam, pump, pipe line or conduit causing an immediate emergency (an "immediate emergency"), the declaration of a water shortage emergency during any water shortage stage shall be made in accordance with California Water Code sections 350 *et seq.*

(1) The declaration of a water shortage emergency other than an immediate emergency shall be made only after a public hearing at which consumers have an opportunity to be heard to protest the declaration and to present their respective needs to the Board of Directors.

(2) Notice of the time and place of the public hearing shall be published pursuant to Section 6061 of the Government Code at least seven days prior to the date of the public hearing in a newspaper printed, published, and circulated within the area in which the water supply is distributed, or if there is no such newspaper, in any newspaper printed, published, and circulated in the Orange County.

(3) After the close of the public hearing, the Board of Directors shall be authorized to adopt a resolution declaring a water shortage emergency. The resolution shall take effect immediately upon adoption.

(4) After adopting the resolution, the declaration of the Board of Directors of the water shortage emergency shall be made by public announcement on the

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District's website and shall be published a minimum of one time in a newspaper of general circulation.

(5) The Rules on water use during the water shortage emergency shall remain in full force and effect during the period of the emergency and until the supply of water available for distribution within the District's service area has been replenished or augmented. After adopting the resolution, the declaration of the Board of Directors of the appropriate water shortage stage shall be made by public announcement on the District's website and shall be published a minimum of one time in a newspaper of general circulation.

(E) **Determination of Immediate Emergency.** Notwithstanding the forgoing, if an immediate emergency occurs and the Board of Directors cannot meet in time to act to protect the public interest pursuant to this Section 5.N., the General Manager is hereby authorized and directed to implement such provisions of this Section 5.N. upon his or her written determination that the District cannot supply adequate water to meet the ordinary demands of water consumers, and that such implementation is necessary to protect the public health and safety.

(1) The implementation of any such provisions shall take effect immediately upon making a public announcement of the immediate emergency and publication of such immediate emergency on the District's website.

(2) Such written determination shall be delivered to the Board of Directors and considered at a general or special meeting for review, revocation, or ratification. Such meeting shall be held upon the earliest date that a quorum of the Board of Directors is available.

(3) At the Board of Directors meeting, the General Manager shall update the Board of Directors on the severity and length of the immediate emergency.

(4) During an immediate emergency, the District may specify temporary restrictions on the use of potable and recycled water. Any person who willfully fails to comply with those temporary restrictions may be subject to an administrative penalty of \$500 per offense and have his or her water meter locked by the District.

(F) **Implementation of Water Shortage Stages.** As water supply conditions either deteriorate or improve, the General Manager will return to the Board of Directors to recommend, as appropriate, revising the appropriate water shortage stage of response.

(1) It shall not be necessary to implement any water shortage stage prior to another; the water shortage stages may be implemented in any reasonable order. Except for a water shortage emergency or immediate emergency, any stage implemented shall be in effect for up to 120 days, at which point the Board shall determine whether to continue a water shortage stage.

(2) The District will implement an appropriate stage based on current water conditions. Higher stages will be implemented as shortages continue and/or if customers' responses to the water shortage measures in effect do not bring about desired water savings.

(3) Restrictions, penalties and enforcement will build on each other as higher stages are implemented. All prior tier reductions and variance procedure modifications in lower stages are cumulative into the higher stages.

(G) **Actions or Restrictions by the State or Other Agencies.** In the event the State or other agencies, through executive action, emergency legislation or other actions, impose conditions, requirements, or procedures that are not included in this Section 5.N., the General Manager is authorized to implement such measures as are reasonably required to bring the District's actions in each stage into functional conformity with such conditions, requirements, or procedures.

(H) **Public Outreach.** When the Board of Directors determines that a water shortage condition exists, any or all of the following notification procedures may be implemented:

(1) Notify the general public stakeholders, elected officials and other key decision-makers regarding the water shortage condition, actions to be taken, goals customers are intended to achieve, and how these actions and goals will be implemented.

(2) The public at large will be informed of the situation and actions the District will be taking. Communications may occur through any of the following: billing inserts, special mailings, telephone contact, e-mail, social media, roadway signage, water conservation booths, and other booths in the community, community association meetings, newsletters, and education programs, etc. Literature appropriate to the drought circumstance will be provided regarding the water shortage condition, conservation methods, and water-savings devices.

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(3) Use of all forms of media may be employed. This would include public service announcements on radio and cable television, social media as well as earned media, and advertisements in local newspapers.

(4) The District's web site, www.MNWD.com, will be the central location for messaging and customer communications

7. Water Shortage Stage 1 – Potable Water Reductions

(A) **Voluntary Reductions.** During a Water Shortage Stage 1 ("Stage 1"), the District's conservation efforts will be focused on voluntary reductions in potable water use. Potable water customers may reduce demand by following the District's BMPs.

(B) **Refills of Swimming Pools.** Any customer who refills a swimming pool shall not receive a variance to his or her calculated water budget and shall be billed for water used according to the applicable tier for the corresponding use. No bill variance adjustments shall be granted.

8. Water Shortage Stage 2 – Mandatory Potable Water Use Rules

(A) **Mandatory Rules Governing Potable Water Budgets.** During a Water Shortage Stage 2 ("Stage 2"), all potable water customers shall be prohibited from using potable water in excess of their calculated water budget.

(B) **Penalties.** During a Stage 2, any potable water customer who willfully uses water in excess of his or her calculated potable water budget shall be in violation of these Rules and shall pay an administrative penalty of \$7.43 for each ccf, or portion thereof, of potable water used in excess of his or her calculated potable water budget.

(1) Such penalty shall be in addition to the water service fees the District imposes for the potable water delivered to the customer.

(C) **Refills of Swimming Pools.** During a Stage 2, any customer who refills a swimming pool shall not receive a variance to their calculated water budget and shall be billed for water used according to the applicable tier for the corresponding use. No bill variance adjustments shall be granted.

(D) **Plant Variances.** During a Stage 2, any person installing new landscaping, a new plant variance will only be granted for California friendly vegetation as

defined by the Water Use Classifications of Landscape Species (“WUCOLS”) to have low or very low watering needs for the South Coastal Region. The classifications can be found at http://ucanr.edu/sites/WUCOLS/Plant_Search/.

9. Water Shortage Stage 3 – Mandatory Potable Water Use Rules

(A) **Recalculation of Potable Water Budgets.** During a Water Shortage Stage 3 (“Stage 3”), potable water customers’ water budgets shall be recalculated as follows:

(1) all single-family residential, multi-family residential, and potable irrigation customers, except for irrigation customers in high traffic areas (“I9 Account customers”), shall have their outdoor water budgets reduced by 40%, resulting in outdoor water budgets being recalculated using a plant factor of 0.42.

(2) I9 Account customers shall have their outdoor water budgets reduced by 40%, resulting in outdoor water budgets recalculated using a plant factor of 0.6.

(B) **Mandatory Rules Governing Potable Water Budgets.** During a Stage 3, all potable water customers shall be prohibited from using water in excess of their recalculated water budgets.

(C) **Penalties.** During a Stage 3, any potable water customer who willfully uses water in excess of his or her recalculated water budget shall be in violation of these Rules and shall pay an administrative penalty of \$7.43 for each ccf, or portion thereof, of water used in excess of his or her recalculated water budget.

(1) The penalty shall be in addition to the water service fees the District imposes for the water delivered to the customer.

(2) The penalty corresponds to water usage above the modifications to tier widths.

(D) **Refills of Swimming Pools.** During a Stage 3, any customer who refills a swimming pool shall not receive a variance to their calculated water budget and shall be billed for water used according to the applicable tier for the corresponding use. No bill variance adjustments shall be granted.

(E) **Plant Variances.** During a Stage 3, any person installing new landscaping, a new plant variance will only be granted for California friendly vegetation as

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defined by the WUCOLS to have low or very low watering needs for the South Coastal Region. The classifications can be found at http://ucanr.edu/sites/WUCOLS/Plant_Search/.

10. Water Shortage Stage 4 – Mandatory Potable Water Use Rules

(A) **Recalculation of Potable Water Budgets.** During a Water Shortage Stage 4 (“Stage 4”), potable water customers’ water budgets shall be recalculated as follows:

(1) single-family residential, multi-family residential, and potable irrigation customers, except for I9 Account customers, shall have their outdoor water budgets reduced by 70%, resulting in outdoor water budgets being recalculated using a plant factor of 0.21; and

(2) I9 Account customers shall have their outdoor water budgets recalculated using a plant factor of 0.30.

(B) **Mandatory Rules Governing Potable Water Budgets.** During a Stage 4, all potable water customers shall be prohibited from using water in excess of their recalculated water budgets.

(C) **Penalties.** During a Stage 4, any potable water customer who willfully uses water in excess of his or her recalculated water budget shall be in violation of these Rules and shall pay an administrative penalty of \$7.43 for each ccf, or portion thereof, of water used in excess of his or her recalculated or assigned water budget.

(1) Such penalty shall be in addition to the water service fees the District imposes for the water delivered.

(2) The penalty corresponds to water usage above the modifications to tier widths.

(D) **Refills of Swimming Pools.** During a Stage 4, any customer who refills a swimming pool shall not receive a variance to their calculated water budget and shall be billed for water used according to the applicable tier for the corresponding use. No bill variance adjustments shall be granted.

(E) **Plant Variances.** During a Stage 4, any person installing new landscaping, a new plant variance will only be granted for California friendly vegetation as

defined by the WUCOLS to have low or very low watering needs for the South Coastal Region. The classifications can be found at http://ucanr.edu/sites/WUCOLS/Plant_Search/.

11. Water Shortage Stage 5 – Mandatory Potable Water Use Rules

(A) **Recalculation of Potable Water Budgets.** During a Water Shortage Stage 5 (“Stage 5”), potable customers’ water budgets shall be recalculated as follows:

(1) all single-family residential and multi-family residential customers shall have their indoor water budgets reduced from 60 gallons per capita per day to 40 gallons per capita per day;

(2) all Commercial potable water customers shall be prohibited from using potable water in excess of their calculated water budgets;

(B) **Mandatory Rules Governing Potable Water Budgets.** During a Stage 5, all single-family residential and multi-family residential customers shall be prohibited from using water in excess of their recalculated indoor water budgets. Outdoor budgets will be reduced to zero.

(C) **Mandatory Rules Governing Potable Water Use.** During a Stage 5, all potable water irrigation customers shall be prohibited from using potable water. All outdoor irrigation with potable water shall be prohibited within the District’s service area.

(D) **Penalties.** The following penalties shall be imposed for any violation of the Rules set forth in this Section 5.N.11:

(1) Any single-family residential and multi-family residential customer who willfully uses potable water in excess of his or her recalculated indoor water budget shall be in violation of these Rules and shall pay an administrative penalty of \$7.63 for each ccf, or portion thereof, of water used in excess of his or her recalculated indoor water budget.

(2) Any commercial customer who uses potable water in excess of his or her calculated water budget shall be subject to an administrative penalty of \$7.43 for each ccf, or portion thereof, of water used in excess of his or her calculated water budget.

(3) Any potable irrigation customer who uses potable water shall be subject to an administrative penalty of \$9.04 for each ccf, or portion thereof of potable water used and shall have its water meter locked off.

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(4) All penalties imposed pursuant to this Section 5.N.11. shall be in addition to the water service fees the District imposes for the water delivered to the forgoing customers.

(5) The penalties correspond to water usage above the modifications to tier widths.

(D) **Refills of Swimming Pools.** No customer shall refill a swimming pool during a Stage 5.

(E) **Plant Variances.** During a Stage 5, no customer shall install new landscaping.

12. Water Shortage Stage 1 – Voluntary and Mandatory Recycled Water Use Rules

(A) **Voluntary Reductions.** During a Stage 1, the District's conservation efforts will be focused on voluntary reductions in recycled water use. Recycled water customers may reduce demand by following the District's BMPs.

(B) **Mandatory Rules Governing Potable Water Use.** During a Stage 1, recycled water customers shall be prohibited from using potable water for outdoor irrigation.

13. Water Shortage Stage 2 – Mandatory Recycled Water Use Rules

(A) **Mandatory Rules Governing Recycled Water Budgets.** During a Stage 2, all recycled water customers shall be prohibited from using recycled water in excess of their calculated recycled water budget.

(B) **Penalties.** During a Stage 2, any recycled water customer who willfully uses recycled water in excess of his or her calculated recycled water budget shall be subject to an administrative penalty of \$7.04 for each ccf, or portion thereof, of recycled water used in excess of his or her assigned recycled water budget. Such penalties shall be in addition to the recycled water service fees the District imposes for the recycled water delivered to the customer.

14. Water Shortage Stage 3 – Mandatory Recycled Water Use Rules

(A) **Recalculation of Recycled Water Budgets.** During a Stage 3, all recycled water customers' recycled water budgets shall be recalculated as follows:

(1) All recycled water customers, except recycled water customers in high traffic areas ("RC9 Account customers"), shall have their outdoor recycled water budget reduced by 10%, resulting in outdoor recycled water budgets recalculated using a plant factor of 0.72.

(2) All RC9 Account customers shall have their outdoor recycled water budget reduced by 10%, resulting in outdoor recycled water budgets recalculated using a plant factor of 0.90.

(B) **Mandatory Rules Governing Recycled Water Budgets.** During a Stage 3, all Recycled Water customers shall be prohibited from using recycled water in excess of their recalculated recycled water budget.

(C) **Penalties.** During a Stage 3, any recycled water customer who uses recycled water in excess of his or her recalculated recycled water budget shall be subject to an administrative penalty of \$7.04 for each ccf, or portion thereof, of recycled water used in excess of his or her recalculated recycled water budget.

(1) Such penalties shall be in addition to the recycled water service fees the District imposes for the recycled water delivered to the customer.

(2) The penalty corresponds to recycled water used above the modifications to tier widths. By way of example, recycled water used in excess 90% of Tier 1 for recycled water customers (except RC9 Account customers) shall be charged an additional penalty of \$7.04 for each ccf or portion thereof.

15. Water Shortage Stage 4 – Mandatory Recycled Water Use Rules

(A) **Recalculation of Recycled Water Budgets.** During a Stage 4, all recycled water customers' recycled water budgets shall be recalculated as follows:

(1) All Recycled Water customers, except for RC9 Account customers, shall have their recycled water budgets reduced by 20%, resulting in outdoor recycled water budgets recalculated using a plant factor of 0.64.

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(2) RC9 Account customers shall have their outdoor recycled water budgets reduced by 20%, resulting in outdoor recycled water budgets recalculated using a plant factor of 0.80.

(B) **Mandatory Rules Governing Recycled Water Budgets.** During a Stage 4, all recycled water customers shall be prohibited from using recycled water in excess of their recalculated recycled water budget.

(C) **Penalties.** During a Stage 4, any recycled water customer who uses recycled water in excess of his or her recalculated recycled water budget shall be subject to an administrative penalty of \$7.04 for each ccf, or portion thereof, of recycled water used in excess of his or her recalculated recycled water budget.

(1) Such penalties shall be in addition to the recycled water service fees the District imposes for the recycled water delivered.

(2) The penalty corresponds to recycled water use above the modifications to tier widths. By way of example, recycled water use above 80% of Tier 1 for recycled water customers (except for RC9 Account customers) is charged a penalty of \$7.04.

16. Water Shortage Stage 5 – Mandatory Recycled Water Use Rules

(A) **Recalculation of Recycled Water Budgets.** During a Stage 5, all recycled water customers' recycled water budgets shall be recalculated as follows:

(1) All recycled water customers, except for RC9 Account customers, shall have their outdoor recycled water budget reduced by 30%, resulting in outdoor recycled water budgets recalculated using a plant factor of 0.56.

(2) All RC9 Account customers shall have their outdoor recycled water budget reduced by 30%, resulting in outdoor recycled water budgets recalculated using a plant factor of 0.70.

(B) **Mandatory Rules Governing Recycled Water Budgets.** During a Stage 5, all recycled water customers shall be prohibited from using recycled water in excess of their recalculated recycled water budget.

(C) **Penalties.** During a Stage 5, any recycled water customer who uses recycled water in excess of his or her recalculated recycled water budget shall be subject to

an administrative penalty of \$7.04 for each ccf, or portion thereof, of recycled water used in excess of his or her recalculated recycled water budget.

(1) Such penalties shall be in addition to the recycled water service fees the District imposes for the recycled water delivered.

(2) The penalty corresponds to recycled water use above the modifications to tier widths. By way of example, recycled water use above 70% of Tier 1 for recycled water customers (except for RC9 Account customers) shall be charged a penalty of \$7.04.

17. Violations and Remedies

(A) **Misdemeanor Violations.** It shall be unlawful for any person to willfully violate the provisions of this Section 5.N.. A violation of any of these provisions is a misdemeanor in accordance with California Water Code section 377.

(B) **Other Remedies.** In addition to any other remedies provided in this Section 5.N or available under applicable law, the District may alternatively seek injunctive relief in the Superior Court or take enforcement action, including discontinuing or appropriately limiting water service to any customer, for violations of this Section 5.N. All remedies provided herein shall be cumulative and not exclusive.

18. Notice and Collection of Penalties

(A) **Notice and Due Process.** As set forth in Section 5.N.6(C), upon the declaration of a water shortage stage and publication of the notice required herein, due and proper notice shall be deemed to have been given each and every person supplied water within the District of the Rules governing the applicable water shortage stage.

(B) **Collection of Penalties.** Any penalty imposed pursuant to the Rules of any applicable water shortage stage set forth in this Section 5.N. may be collected on a customer's water bill. Any penalty shall be applicable to water used in violation of the Rules during the first complete billing cycle after the declaration of the applicable water shortage stage.

(C) **Notice of Violation.** The receipt of a water bill with any applicable penalties shall serve as notice of violation of the District's Rules.

19. Appeal Procedures

Any person (an "Appellant") who wishes to appeal the imposition of an administrative penalty imposed by the District pursuant to this Section 5.N. shall comply with the following procedures:

(A) **Appeal Request Form.** An Appeal Request form shall be submitted to the Conservation Department.

(1) Appeal Request forms may be obtained at the District's Main Office or downloaded from the District's website at www.MNWD.com.

(2) An Appeal Request form shall be received by the District no later than thirty calendar days from the date that the Appellant's water bill for the four-week period in which the penalty or penalties were imposed is due.

(B) **Additional Documentation.** Additional documentation may be requested at the discretion of the District. Such documentation may include, but is not limited to, school records, driver's licenses, business licenses, lease agreements.

(C) **Site Survey.** After an Appeal Request form has been received, a site survey may be required by District staff to verify the irrigated square footage of the property where the water was delivered. The site survey will be at no charge to the person and will require the person who submitted the Appeal Request form to be present.

(D) **District Response.** A response to an Appeal Request shall be provided by the District within thirty calendar days from receipt of the Appeal Request form.

(E) **Review of Denial of Appeal Request.** If an Appeal Request is denied, the Appeal Request form may be resubmitted by the Appellant for review by the District's Assistant General Manager. The Decision by the District's Assistant General Manager shall be final.

Section 3. Conflicting Provisions

If provisions of Section 5.N. are in conflict with each other, other provisions of the Article IV, any other resolution or ordinance of the District, or any State law or regulation, the more restrictive provisions shall apply.

Section 4. Severability

If any provision, section, subsection, sentence, clause or phrase or sections of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the invalidity of the remaining portions of this Ordinance shall not be affected, it being the intent of the Board of Directors in adopting this Ordinance that no portions, provisions, or regulations contained herein shall become inoperative, or fail by reason of the unconstitutionality of any other provision hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 5. Effective

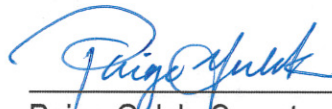
This Ordinance shall be effective immediately upon adoption.

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APPROVED, ADOPTED and SIGNED this 19th day of February, 2015.



Donald Froelich, President
MOULTON NIGUEL WATER DISTRICT
and the Board of Directors thereof



Paige Gulck, Secretary
MOULTON NIGUEL WATER DISTRICT
and the Board of Directors thereof

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, PAIGE GULCK, Secretary of the Board of Directors of the MOULTON NIGUEL WATER DISTRICT, do hereby certify that the foregoing ordinance was duly adopted by the Board of Directors of said District at a regular meeting of said Board held on the 19th day of February, 2015 that it was so adopted by the following vote:

AYES: CAVE, COLTON, FIORE, FROELICH, KURTZ, LIZOTTE, PROBOLSKY

NOES:

ABSTAIN:

ABSENT:



Paige Gulck, Secretary
MOULTON NIGUEL WATER DISTRICT
and of the Board of Directors thereof



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** June 13, 2016

FROM: Marc Serna, Director of Engineering and Operations
Adrian Tasso, Superintendent of Operations

SUBJECT: On-Call Asphalt and Concrete Repair Services

DIVISION: District-wide

SUMMARY:

Issue: Board action is required to execute an agreement for Asphalt and Concrete Repair Services.

Recommendation: It is recommended that the Board of Directors authorize the General Manager to execute the On-Call Asphalt and Concrete Repair Agreement with A & Y Company, Inc., for a per-year not-to-exceed amount of \$750,000, to perform the subject services during Fiscal Year (FY) 2016-17 and FY 2017-18, for a total not-to-exceed agreement amount of \$1,500,000, with the option to renew for an additional one-year term.

Fiscal Impact: Sufficient funds are included in the proposed FY 2016-17 Budget and will be included in the proposed budgets for each applicable fiscal year.

BACKGROUND:

Following excavation of service lines, hydrants, or other line repairs by the District's Street Crew or other contractors working on behalf of the District, city streets and concrete curbs and sidewalks must be repaired or replaced per city standard specifications and requirements. Contracting these surface repairs to an outside vendor is a cost-effective approach to completing the required work. Expenditures for asphalt and construction repairs are budgeted based on past services and projected work required for each Fiscal Year.

#7.

Asphalt and Concrete Repair Services

June 13, 2016

Page 2 of 2

DISCUSSION:

District staff issued a Request for Proposals (RFP) to thirteen contractors and four proposals were received. Staff reached out to local agencies, cities and industry associations for contractor referrals and compiled a list of contractors potentially capable of performing the services. Staff contacted each contractor to establish capabilities and experience with small patch paving and concrete work in order to identify the list of thirteen qualified contractors. The complete list of contractors considered for the RFP is attached hereto as Attachment 1, Contractor Sourcing Detail.

The RFP respondents are listed in the table below. Proposals were evaluated with an established set of criteria that included cost, references, and experience with other municipalities on projects similar in scope. Multiple unit cost proposal rates were included as part of the proposal process for the varying types of asphalt and concrete repair services to be provided. The most common and critical unit cost proposal is for repair of asphalt patches up to 50 square-feet in area. This unit price provided by the contractor is most representative of the overall best value provided by the contractors. One respondent contractor, Sanders Paving, Inc., was deemed non-responsive for not properly completing the pricing sheet.

Summary of Proposals for Asphalt and Concrete Repair Services	
Contractor	Price / sf *
A&Y Company, Inc.	\$35.00
Hardy & Harper, Inc.	\$40.00
All-American Asphalt	\$79.00
Sanders Paving, Inc.	Non-responsive

*Cost proposal for asphalt patch repairs up to 50 sf

A&Y Company, Inc. provided the overall best value unit pricing and has proven success working for the District as its current Asphalt and Concrete Repair contractor. Staff is recommending the Board authorize the General Manager to enter into an agreement with A&Y Company, Inc., in the amount of \$750,000 per year for FY 2016-17 and FY 2017-18, for a the total agreement amount of \$1,500,000, with the option to renew for an additional one-year term.

Attachments:

1. Contractor Sourcing Detail
2. On-Call Service Agreement – Asphalt and Concrete Repair with A&Y Company, Inc.

Attachment 1**Contractor Sourcing Detail**

The list of potential bidders was compiled from several sources; known contractors, participants in bids for other public agencies in Orange County, and the California Asphalt Paving Association.

Initially, twenty-one contractors were contacted by staff to gage an interest in participating in the RFP. Of these, thirteen contractors expressed interest and received the RFP. Seven contractors attended the mandatory pre-proposal meeting, of which four submitted proposals.

Sourced Contractor List

A&Y Company, Inc.
 All-American Asphalt
 Asphalt Systems
 Beach Paving
 Caliber Paving Company
 Century Paving
 Champion Paving
 El Camino Asphalt Paving Corp.
 Excel Paving
 Hardy & Harper
 Hillcrest
 JB Bostick Company
 Mark Company
 Oliver Mahon Asphalt, Inc.
 Ortiz & Sons
 Preferred Paving
 Quickel Paving
 RJ Noble
 Sanders Paving
 Shamrock Paving
 United Paving

Participating Contractors

Sanders Paving
 Hardy and Harper
 Beach Paving
 A&Y Company, Inc.
 All American Paving
 Century Paving Company
 El Camino Asphalt Paving Corp.

ON-CALL SERVICE AGREEMENT

**MOULTON NIGUEL WATER DISTRICT
ASPHALT AND CONCRETE REPAIR SERVICES
(Fiscal Year 2016-17 – Fiscal Year 2017-18)
Agreement No. OM16-17.001**

This ON-CALL SERVICES AGREEMENT (the “Agreement”) is approved and entered into as of _____, 2016 (the “Effective Date”), by and between the MOULTON NIGUEL WATER DISTRICT, hereinafter called “District”, and A & Y COMPANY, INC., a corporation under the laws of California, hereinafter called “Contractor”. District and Contractor are sometimes referred to in this Agreement individually as a “party” or jointly as the “parties.”

RECITALS

- A. District requires individual asphalt and concrete repair projects to be performed in certain areas throughout the District on an on-call basis, as needed, during the fiscal year 2016-17 through fiscal year 2017-18. This Agreement, as well as each Work Order issued pursuant to Section 1, establish the terms and procedures that will apply to this Work.
- B. Contractor has submitted a cost proposal and schedule of work items to District asphalt and concrete repair projects, and Contractor is willing to provide the services in accordance with that proposal.
- C. The objective of this Agreement is for District to authorize Contractor to provide services/work on an on-call basis related to asphalt and concrete repair projects.

NOW, THEREFORE, District and Contractor for the consideration stated herein agree as follows:

1. **SCOPE OF SERVICES; PRICE; PERFORMANCE STANDARDS.**

a. Contractor shall perform the asphalt and concrete repair services (the “Work”) in accordance with the general scope of work, repair standards and the District’s General Provisions set forth in attached **Exhibit 1** (“construction standards”) and the other terms of this Agreement from time to time as directed by District pursuant to a work order for specific repair work during the contract term (“Work Order”).

b. As the need for services/work arises, as determined by District, District’s representative may issue Contractor a written Work Order indicating: (a) Contractor’s availability to perform the services/work; (b) the not-to-exceed price to perform the services/work requested in accordance with the fee schedule (“Fee Schedule”) shown in **Exhibit 2** hereto and incorporated herein by this reference; and (c) the estimated time for performance of the services/work. A Notice to Proceed (“NTP”) will be issued by District to Contractor, following the acceptance of the Work Order as set forth in **Exhibit 3** by Contractor’s authorized representative in writing.

c. For emergency services/work, as determined by District, circumstances may not allow time to perform the Work Order process described above. In such cases, a District representative will contact Contractor and request that Contractor perform emergency services/work on a time and materials basis in accordance with the Fee Schedule in **Exhibit 2** and the terms and conditions of this Agreement, followed by the later issuance of the corresponding Work Order for performance.

#7.

d. Contractor's Fee Schedule includes all labor, supervision, materials, equipment, supplies, tools, incidentals, taxes, profit, overhead, bonding and insurance necessary to mobilize, complete the services/work, demobilize and provide cleanup and restoration of construction and work sites.

e. Contractor acknowledges and agrees that District does not guarantee any minimum or maximum amount of Work, and District may use other contractors for the Work, in its sole discretion. This Agreement, including all attached Exhibits, as well as the terms and conditions of any municipal permits or licenses issued or applicable in connection with the Work, if any, form the Agreement between the parties. Contractor shall provide all labor, materials, tools, equipment, supplies, utilities and transportation services required to perform the Work, subject to compliance with the Agreement requirements, and complete all Work in a thorough, professional and workmanlike manner, and in accordance with the District's General Provisions (attached on **Exhibit 1**), generally accepted industry standards, and to the satisfaction of District.

f. The Work shall be done in accordance with the construction standards, the Work Order issued for each individual repair project during the term of this Agreement, and the permitting or other requirements of any governmental entity within whose jurisdiction the Work is performed, which are by this reference incorporated into this Agreement. It shall be the Contractor's responsibility to ascertain and keep informed of all such existing and future requirements of other governmental entities concerning the Work performed under this Agreement, including acquisition of necessary permits and licenses by municipalities related to repair work in public right of way and payment of the fees or costs thereof.

2. PUBLIC SAFETY.

a. Contractor shall be solely and completely responsible for conditions of the Work sites, including safety of all persons and property during performance of the Work. Contractor's operations for the Work shall be conducted so as to provide maximum safety to Contractor's employees, to the general public and District's representatives, and in compliance with all safety laws, rules and regulations of the State of California ("State"), federal, and local agencies. It is Contractor's responsibility to have a current safety program on file with District prior to commencement of any Work under this Agreement.

b. Contractor shall so conduct its operations as to offer the least possible obstruction and inconvenience to the public, and shall have under construction no greater length or amount of work that it can prosecute properly with due regard to the rights of the public. Convenient access to driveways, houses and buildings along the line of the Work shall be maintained and temporary crossings shall be provided and maintained in good condition. Not more than one crossing or intersecting street or road shall be closed at any one time. Contractor shall provide and maintain such fences, barriers, directional signs, lights and flagmen as are necessary to give adequate warning to the public at all times of any dangerous conditions to be encountered as a result of the Work and to give directions to the public. Contractor shall comply with all terms of any permits issued by public agencies for the Work.

3. COMPLIANCE WITH LAW, LICENSE; STATUS.

a. Contractor shall at all times observe and comply with, and cause its agents, employees and representatives to observe and comply with, all State, federal, and local existing and future laws, rules, regulations and orders in the performance of the Work or this Agreement, including any permits issued for the Work. Contractor shall hold, maintain and keep current a valid California Contractors' State License Board (CSLB) type "A" General Engineering Contractor's License or type "C-12", Earthwork and Paving License, and meet all current licensing and registration requirements as may be required by the CSLB, the California

Department of Industrial Relations (DIR) and the cities of Laguna Niguel, Aliso Viejo, Mission Viejo, Laguna Hills and Dana Point. A current copy of any required licenses will be kept on file by District.

b. Contractor must be registered with the Department of Industrial Relations pursuant to the requirements of Sections 1725.5 and 1771.1 of the California Labor Code. Contractor must provide its DIR Registration number to the District.

c. It is expressly understood that Contractor is an independent contractor and not an employee or agent of District. No permitted or required approval of District's representatives of costs, schedules, documents, or services of Contractor, or investigations thereof, will be construed as making District responsible for the manner in which Contractor performs the Work. Such approvals and investigations are intended only to give District the right to satisfy itself with the quality of work performed by Contractor. Contractor warrants that it will not represent, at any time or in any manner, that Contractor is an employee or agent of District. Contractor shall have no authority to, and shall not, incur any debt, obligation or liability on behalf of District. Contractor shall be solely responsible for the payment of all federal, state and local income tax, social security tax, Workers' Compensation insurance, state disability insurance, and any other taxes or insurance Contractor, as an independent contractor, is responsible for paying under federal, state or local law. Contractor is thus not eligible to receive workers' compensation, medical, indemnity or retirement benefits, including but not limited to enrollment in CalPERS.

4. TIME FOR COMPLETION.

Each Work Order shall be completed in an expeditious manner from the date the Work Order and NTP is issued to Contractor, and in any event no later than the completion date listed on the Work Order. Time is of the essence in the performance and completion of the Work. Any delay in performance by Contractor of Work as scheduled shall constitute a material breach of this Agreement. Performance of any Work must be coordinated with District and local municipality to ensure minimal disruption both to the public use of right of way and to the operation of District's facilities.

5. DISTRICT OBSERVATION.

Contractor's performance of Work is subject to observation by District's representatives and inspection by local municipalities. The observation, if any, by the District's representative of the Work shall not relieve Contractor of any of obligations under the Agreement as prescribed, or Contractor's obligations to perform the Work in accordance with all terms and provisions required by municipal permits and municipal inspection standards. District shall require written evidence of municipal inspection and approval prior to District's acceptance and payment for Work under each Work Order.

6. AGREEMENT PRICE; PAYMENT; TERM.

a. MNWD agrees to compensate Contractor for Work under any Work Order at the corresponding "unit prices" in the schedule of work items attached as **Exhibit 3**, which establishes unit prices for components of the repair work listed under "description" in the schedule. There shall be no increase to the unit prices if an adjustment to the number of Contractor's staff or service hours is needed to meet the Contract requirements for any Work Order; provided, (i) if any repair work is outside the scope of work listed under "description" in the schedule of work items, or (ii) if the Contractor produces written confirmation, satisfactory to District, that the price of asphalt has increased by greater than 15% from the effective date of the Contract, then District and Contractor shall utilize the unit prices listed in the schedule of work items as the basis for any adjustment of compensation for such repair work. The total compensation paid to Contractor

#7.

during the term of this Agreement shall not exceed **One Million Five Hundred Thousand (\$1,500,000)** (the "Agreement Maximum Amount"). Notwithstanding the foregoing, the total compensation paid for Work pursuant to separate Work Orders shall not exceed **Seven Hundred Fifty Thousand Dollars (\$750,000)** for each year of the Agreement term. The Contractor is responsible for and shall pay all sales, consumer, use, and other taxes.

b. Payments under a Work Order will be made based on submittal of invoices by Contractor, including sufficient detail on work items under the Contract pricing. Contractor's invoice will account for the location of the Work performed in addition to sufficient cost details as required by District. Subject to District's "final acceptance" of repair work under a Work Order, District will make payment to the Contractor within thirty (30) calendar days of receipt and approval of a Work Order invoice by District, provided District may withhold amounts as necessary to satisfy properly filed claims for labor or material; estimated actual costs for correcting defective work; and amounts claimed by District as forfeiture due to delay or offsets. "Final acceptance" shall be defined as the formal action by District accepting the repair work under a Work Order as being complete, as evidenced by District's executed acceptance on the Work Order form. No certificate given or payment made under the Contract shall be conclusive evidence of performance of the Contract and no payment shall be an acceptance of any defective work or improper materials.

c. Invoices will include the date or period of Work, the number of hours worked by various labor categories, the hourly billing rate per individual, a complete description of the Work performed, the total amount due and, when requested by MNWD, any support documentation sufficient to validate the charges for each invoice item. Only one bill per month shall be submitted by Contractor, showing amounts due for Contractor and each subcontractor utilized during the monthly billing period. Incomplete invoices will be returned unpaid to Contractor. Each Work Order shall be billed on a separate invoice.

d. District may withhold from each payment an amount equal to five percent (5%) of such payment amount ("Retention") as security for adequate performance for work exceeding five thousand dollars (\$5,000) in cost. Notwithstanding the foregoing, after the Work is at least fifty percent (50%) complete, if the District's Director of Engineering and Operations determines that the Work is satisfactorily progressing, District, in its sole discretion, may pay some or all of the remaining payments in full to the Contractor.

e. Acceptance and payment by District for the Work will not in any way relieve Contractor of its responsibility to perform the Work and the Agreement in strict accordance with State, Federal, and local law. Neither District's acceptance of, nor payment for, any Work will be construed to operate as a waiver of any rights under the Agreement, or of any cause of action arising out of the performance of the Agreement.

f. Summary of Public Contract Code Section 20104.50. If a local public agency fails to pay an undisputed and properly submitted payment request within thirty (30) days, the agency must pay interest at the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. Each agency must review payment requests as soon as practicable to determine if they are proper and suitable for payment. If a payment request is not proper, the agency must return it to the contractor within seven (7) days, specifying in writing the reasons why it is not proper. If the agency returns an improper payment request to the contractor more than seven (7) days after receipt, the number of days available to the agency to make payments without incurring interest will be reduced by the number of days by which the agency exceeds the seven (7)-day return requirement.

g. The term of the Agreement is from the Effective Date to and including June 30, 2018 ("expiration"), unless otherwise terminated earlier by either party pursuant to Section 14. This Agreement may be extended, at District's option, for an additional year to June 30, 2019, at

the prices listed in the Fee Schedule in **Exhibit 2**. Subject to the District's sole discretion, an extension will be based upon a satisfactory review of Contractor's performance, District's needs, and appropriation of funds and approval by the District Board of Directors. The parties will prepare a written amendment indicating the effective date and length of the extended Agreement.

7. PREVAILING WAGE.

Under the provisions of the California Labor Code, the Director of the California Department of Industrial Relations has determined the prevailing rate of wages for the locality in the Work is to be performed and DISTRICT has adopted said prevailing rate of wages. A copy of these prevailing wage rates are on file with the Department of Industrial Relations and can be found online with the State of California at <http://www.dir.ca.gov/dlsr/pwd>. A copy of such prevailing wage rates shall be posted on the jobsite by Contractor.

It shall be mandatory for the bidder to whom the Work is awarded, and upon any subcontractor under the successful bidder, to pay not less than the specified rates to all workers employed by them in the execution of the Work.

Contractors submitting bids on this project must be registered with the Department of Industrial Relations pursuant to the requirements of Sections 1725.5 and 1771.1 of the California Labor Code, which states that contracts shall not be entered into after April 1, 2015, with any contractor without proof of current registration to perform work consistent and in compliance with the requirements of Sections 1725.5 and 1771.1. Contractors shall be responsible for ensuring that each subcontractor is registered and qualified. Contracts entering into with any Contractor or subcontractor, in violation of Section 1771.1(a), shall be subject to cancellation by the DISTRICT at the sole discretion of the DISTRICT consistent with Section 1771.1(e).

Contractors submitting bids on this project acknowledge that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor's DIR Registration No. is 1000009314.

The Contractor and all subcontractors selected to perform work on the project shall post job site notices, pursuant to the requirements set forth in the Labor Code and related applicable regulations, including but not limited to, those provisions addressing the posting of notice relating to prevailing wage compliance.

The Contractor and all subcontractors selected to perform work on the project shall be responsible for furnishing those records specified in Section 1776 of the Labor Code directly to the Labor Commissioner, pursuant to the procedures set forth in Section 1771.4 of the Labor Code.

8. CONTRACT DOCUMENTS. The Contract includes all of the Contract documents as follows: the construction standards; this Agreement; all exhibits to the foregoing documents; and, the executed Work Orders.

9. SUBCONTRACTORS.

(a) Contractor's hiring or retaining of any subcontractors to perform Work is subject to prior approval by the District. The District hereby approves Contractor's retention of each subcontractor listed on the Subcontractor List attached hereto as **Exhibit 4**, Subcontractor Listing (each a "Subcontractor"), which contains all potential Subcontractors known to the Contractor at the time this Agreement is entered who may perform Work under a subcontract with Contractor pursuant to this Agreement.

(b) Contractor shall be as fully responsible to District for the acts and omissions of its

#7.

Subcontractor and of the persons either directly or indirectly employed by its Subcontractor as it is for the acts and omissions of persons directly employed by Contractor. Nothing contained in the Agreement shall create any contractual relationship between any Subcontractor and the District. The Contractor shall bind every Subcontractor to be bound by the terms of the Agreement as applicable to its Work.

(c) Contractor is prohibited from performing any of the Work with a Subcontractor who is ineligible to perform such Work pursuant to Section 1777.1 or 1777.7 of the Labor Code. Contractor agrees that in accordance with Public Contract Code Section 6109, a subcontract with an ineligible Subcontractor is void as a matter of law, amounts paid to the Subcontractor shall be returned to District, and Contractor is responsible for paying wages of the Subcontractor's employees if the Subcontractor is allowed to perform any part of the Work.

(d) Contractor shall give prompt written notice to District as to the identity and qualifications of any Subcontractor, supplier, or other person or organization to whom Contractor intends to award work, and of Contractor's intent to remove or replace a Subcontractor, supplier, or other person.

(e) All Work performed for Contractor by a Subcontractor, supplier or other person or organization will be in accordance with an appropriate sub-agreement between Contractor and the Subcontractor, supplier, or other person or organization which specifically binds the Subcontractor, supplier, or other person or organization to the applicable terms and conditions of the Agreement for the benefit of District.

(f) If requested in writing by District, Contractor shall deliver to District a copy of each sub-agreement with a Subcontractor, supplier, or other person or organization performing a part of the Work within seven days of District's request.

10. BONDS.

a. Before commencing performance of the Work contracted for hereunder, Contractor shall furnish Payment and Performance bonds (the "Bonds") as required by Section 9550 of the Civil Code, and as approved by District, from a single surety licensed and admitted in the State with an agent for service of process in California and acceptable to the District in the District's sole discretion.

b. Bonds shall be purchased by Contractor in increments of \$100,000.00 each (both Payment and Performance bonds), for surety coverage of the initial \$100,000.00 of Work performed. Once Work performed by Contractor reaches 80% of the bonded amounts, Contractor shall purchase subsequent Bonds to cover the next \$100,000.00 of Work, consecutively, through the Agreement term, and up to the Agreement Maximum Amount. At no time shall any Work be performed by Contractor without the required bonding in place. It shall be Contractor's responsibility to ensure that all Work performed be in compliance with the bonding requirements set forth herein.

c. Contractor shall deliver all Bonds required hereunder to the District prior to the commencement of Work, or if the Work is commenced prior thereto in response to a Work Order, the Contractor shall, submit evidence satisfactory to the District that such Bonds will be issued.

d. District agrees to reimburse 100% of the total amount of the Bond premiums paid by the Contractor under this Agreement in consideration of Contractor maintaining availability for on-call Work during the term of this Agreement. District will reimburse such premium amounts within forty-five (45) days of District's receipt of invoice and following Contractor's posting of Bonds.

e. Contractor shall use District's forms, which are attached hereto as **Exhibit 5** and **Exhibit 6**, for the Bonds.

f. Nothing in the insurance requirements set forth in this Agreement or under the bonding terms is to be construed as limiting the liability of Contractor or Contractor's insurers or sureties. Contractor agrees that the provisions of this Section shall not be construed as limiting in any way the extent to which Contractor may be held responsible for the payment of damages or other costs to District, or any persons or property, resulting from Contractor's activities or the activities of any person or persons for which Contractor is otherwise responsible, including Contractor's subcontractors, if any.

11. **INSURANCE**

a. In addition to the requirements set forth herein, during the entire term of the Agreement, Contractor will pay for and maintain, in full force and effect, all insurance required by District as listed in this Section 11. Contractor shall not commence Work under the Agreement until it has obtained all insurance required by the Agreement. Two (2) sets of originally executed certificates of insurance and all required endorsements evidencing the required coverage detailed in this Section 11 shall be provided by Contractor with the Contractor's executed copy of this Agreement, and prior to commencement of any Work.

b. The general liability and business automobile insurance will be comprehensive in form, and extend through the term of this Agreement and on a 'per occurrence' basis. All policies will have a clause providing that thirty (30) calendar days written notice will be given to District prior to any cancellation of such policies. All insurance will be issued and underwritten by insurance companies having at least an "A-" policyholder's rating and a financial rating not less than Class VII in accordance with the most current Best's Rating Guide - Property/Casualty, or better, or as otherwise approved by District. Contractor may satisfy the limit requirements set forth below in a single policy or multiple policies, provided, however, that any such additional policies written as excess insurance will not provide any less coverage than that provided by Contractor's first or primary policy. *All policies shall name Moulton Niguel Water District, City of Aliso Viejo, City of Dana Point, City of Laguna Hills, City of Laguna Niguel, City of Mission Viejo, and each of their directors, elected officials, officers, employees and agents, and any other public entities issuing permits for entry in public right of way to perform the Work, and owners of record of all property on which entry will be made to perform the Work as additional insureds thereunder ("Additional Insureds").* All of the policies of insurance provided hereunder shall be primary insurance and not contribute with any other insurance maintained by the Additional Insureds, and the insurer shall waive all rights of subrogation and contribution it may have against the Additional Insureds; these requirements shall be set forth in endorsements to policies. In the event any of said policies of insurance are canceled, Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 11 to District.

c. In the event District consents, and Contractor subcontracts any portion of the Work under the Agreement, the Agreement between Contractor and such subcontractor shall require the subcontractor to maintain the same policies, limits and terms of insurance that Contractor is required to maintain pursuant to this Section, in accordance with all of the requirements of this Section.

d. Contractor shall take out and maintain at all times during the Agreement the following policies of insurance, which shall comply with the other terms of Section 11 as well as the following:

- (i) Workers Compensation Insurance and Employers Liability Insurance.

#7.

Worker's compensation insurance as required by State laws, and employer's liability insurance with limits not less than \$1,000,000 each accident and \$1,000,000 for disease per employes, **which will include the subrogation and additional insured terms and endorsements described under subsection (c) above.** This insurance shall be in strict accordance with the requirements of the most current and applicable state Workers' Compensation insurance laws. In accordance with Labor Code Sections 1860 and 1861, concurrent with execution and delivery of the Agreement, Provider shall execute and deliver to District the certification form attached to this Agreement as **Exhibit 7** whereby Provider acknowledges its responsibility to secure workers' compensation insurance in conformance with the requirements of Labor Code Section 3700, et seq.

- (ii) **Commercial General Liability Insurance.** Commercial general liability in a combined limit of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate with such aggregate to apply separately to the Work. Commercial General Liability insurance coverage shall be equivalent to Insurance Services Office Form CG 00 01. Included in such insurance shall be contractual coverage sufficiently broad to insure the matters set forth in Section 12 of this Agreement, **as well as the subrogation, primary insurance/non-contribution and Additional Insureds terms and endorsements described under subsection (c) above.** This insurance shall name the Additional Insureds using ISO endorsement CG 20 10 11 85, or both CG 20 10 and CG 23 37 forms if later revisions are used.
- (iii) **Business Automobile Insurance.** Business automobile insurance with liability limits of not less than \$1,000,000 each accident. The policy shall include coverage for owned, non-owned, and hired vehicles, **and include the subrogation, primary insurance/non-contribution and Additional Insureds terms and endorsements described under subsection (c) above.**

e. Nothing in the insurance requirements set forth in this Agreement is to be construed as limiting the liability of Contractor or Contractor's insurers or sureties. Contractor agrees that the provisions of this Section 11 shall not be construed as limiting in any way the extent to which Contractor may be held responsible for the payment of damages or other costs to District, or any persons or property, resulting from Contractor's activities or the activities of any person or persons for which Contractor is otherwise responsible, including Contractor's subcontractors, if any.

12. INDEMNIFICATION.

a. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend District, City of Aliso Viejo, City of Dana Point, City of Laguna Hills, City of Laguna Niguel, City of Mission Viejo, and their directors, elected officials, officers, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, in connection with, or resulting from, or alleged to have arisen out of or resulted from the performance of the Work hereunder, provided that any such claim, damage, losses and expenses are: (a) attributable to bodily or personal injury, sickness, disease and death, or for damage to, or loss or destruction of property including the loss of use resulting therefrom; and (b) caused or alleged to have been caused by any negligent or willful act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder (except for the sole negligence or willful misconduct of such indemnified

party); or (c) due to failure, neglect or refusal of the Contractor to faithfully perform the Work and any of the Contractor's obligations under the Agreement. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person indemnified in this Section 12.

b. In any and all claims against the indemnified parties by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor, or any subcontractor, or other person under workers' compensation acts, disability benefit acts, or other employee acts.

c. This indemnity obligation shall survive the termination or expiration of the Agreement and the completion of the Work hereunder.

13. WARRANTY.

a. Contractor shall and hereby does warranty all Work, including materials and installation, for a period of twelve (12) months from the District's **final acceptance (see Section 6 (b) for definition)** of the Work under this agreement ("Warranty Period"), and shall repair and replace any and all Work, together with any other work which may be displaced in so doing, that may prove defective in workmanship and/or materials, or that does not meet the requirements set forth in any applicable specifications, within the Warranty Period, without expense whatsoever to District and with ordinary wear and tear and unusual abuse or neglect excepted. In the event of Contractor's failure to comply with the above-mentioned conditions within seven (7) days after being notified in writing, District is hereby authorized to proceed to have the defects repaired or replaced and made good at the expense of Contractor who hereby agrees to pay the cost of and charges therefore immediately on demand. If, in the opinion of District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of operations of District, District will attempt to give the notice required by this Section 13. If Contractor cannot be contacted or does not comply with District's request for correction within a reasonable time as determined by District, District may, notwithstanding the provisions of this Section 13, proceed to make such correction or provide such attention, and the costs of such corrections or attention shall be charged against Contractor. Such action by District will not relieve Contractor of the guarantees provided in this Section 13 or elsewhere in the Agreement.

b. This section does not in any way limit the warranty on any items for which a longer warranty is specified or on any items for which Contractor or a manufacturer or supplier gives a warranty for a longer period. The Contractor agrees to furnish District with all appropriate warranty certificates upon completion of the Work. No warranty whether provided for in this Section 13 or elsewhere shall in any way limit the liability of Contractor or its sureties or insurers under the indemnity or insurance provisions of the Agreement. This warranty obligation shall survive the termination or expiration of the Agreement as to all completed Work.

14. TERMINATION.

Either party may terminate this Agreement by providing written notice to the other party ten (10) business days in advance of the date of termination; provided, District may terminate the Agreement without any advance notice in the event Contractor is in material breach of any of the terms of this Agreement, as determined by District in its discretion. In the event Contractor terminates this Agreement, Contractor is responsible for the completion of any Work still outstanding in accordance with the terms of the Agreement. Contractor's indemnity and warranty obligations shall survive the expiration or termination of this Agreement, as well as any

#7.

outstanding obligations of Contractor at the time of termination. On any termination, Contractor will be entitled to the reasonable value of the Work performed for which it has not received prior compensation under this Agreement, subject to any offset from such payment representing District's damages from any material breach of the terms of the Agreement by Contractor or as otherwise provided for under Section 6. In no event, will Contractor be entitled to receive compensation in excess of the compensation specified under Section 6 of this Agreement. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to District.

15. RECORDS.

Contractor shall preserve and retain any and all records of or related to the Work, including all records of or related to this Agreement and the Work and obligations contained herein, for a period of no less than four (4) years commencing upon final payment to Contractor under the Agreement or, if an examination, review or audit is commenced but not completed within such period, until such examination, review or audit has been completed. Additionally, pursuant to Government Code Section 8546.7, the State has the right to examine, review, audit and/or copy such records during the three (3) year period following final work order and payment to Contractor pursuant to the Agreement. Contractor, upon request, shall make the records of the work available for the purposes described in this Section at all reasonable times during the period Contractor is required to preserve and maintain such records.

16. SUCCESSORS; ASSIGNMENT.

This Agreement is binding on the successors of the parties. This Agreement may not be assigned by Contractor except upon written consent of District.

17. ATTORNEYS' FEES.

In the event of any declaratory or other legal or equitable action instituted between District and Contractor in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party all of its attorneys' fees, and costs and expenses.

18. CLAIMS RESOLUTION.

The provisions set forth in attached Exhibit 1, District General Provisions, Section 9-6, shall apply to those claims governed by Public Contract Code Section 20104 *et seq.* arising out of the Agreement.

19. DISTRICT NOTICE OF THIRD-PARTY CLAIM.

In accordance with Public Contract Code Section 9201, District shall timely notify Contractor if District receives any third-party claim relating to the Work or the Contract. District shall be entitled to recover from Contractor District's reasonable costs incurred in providing such notification.

20. NOTICE.

Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person or to an officer or duly authorized representative of the other party or deposited in the United States mail, duly certified or registered (return receipt requested), postage prepaid, and addressed to the party for whom intended, as follows:

If to Contractor: A & Y Company, Inc.
1613 Industrial Ave.
Norco, California 92860
Attn: Allen Giese, President

If to District: Notices:
Moulton Niguel Water District
27500 La Paz Road
Laguna Niguel, CA 92677
Attn: Director of Engineering and Operations

If to District: Billing:
Moulton Niguel Water District
P.O. Box 30203
Laguna Niguel, CA 92607-0203
Attn: Purchasing
(949) 831-2500

Any notice to Contractor’s surety (or any other person) shall be addressed to the addresses provided in the Agreement or such substitute addresses in accordance with the terms provided herein. Any party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as aforesaid, the same shall be fully delivered and received 24 hours after mailing as provided above.

21. INTEGRATION; ATTACHMENTS.

This Agreement supersedes any and all agreements between the parties hereto which are prior in time to this Agreement. Neither District nor Contractor shall be bound by any understanding, agreement, promise, representation or stipulation expressed or implied not specified herein. The Exhibits attached hereto are incorporated herein as part of this Agreement, and all executed work orders are deemed to form part of the Agreement terms upon execution.

22. PARTIAL INVALIDITY.

If any section of this Agreement or provision of the Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or enforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of the Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Agreement as a whole.

23. AMENDMENTS.

No addition to or modification of any provision contained in the Agreement shall be effective unless fully set forth in a writing signed by both District and Contractor.

24. GOVERNING LAW; VENUE.

The Agreement shall be construed in accordance with and governed by the laws of the State. In the event of any legal action to enforce or interpret the Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure 394.

#7.

25. DUE AUTHORITY OF SIGNATORIES; COUNTERPARTS.

Each person signing this Agreement represents and warrants that he or she has been duly authorized by appropriate action of the party he or she represents to execute, and thereby bind such party to, this Agreement. This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be an original and both of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

“DISTRICT”: MOULTON NIGUEL WATER DISTRICT

By: _____
Title: General Manager

“CONTRACTOR”: A & Y COMPANY, INC.

By: _____
Title: Authorized Officer/Representative*

* Complete and attach one of the following: Corporate Certificate executed by Corporate Secretary; or, Notarization of Authorized Officer/Representative signature

[Signature page for On-Call Asphalt and Concrete Repair Services Agreement]

#7.

CORPORATE CERTIFICATE*

I, _____, certify that I am the Secretary of the corporation named as Contractor in the foregoing Agreement; that _____, who signed said Agreement on behalf of Contractor, was then President of said corporation; and that said Agreement was duly signed for and on behalf of said corporation by authority of its Governing Body and is within the scope of its corporate powers.

— _____
[_____],
Secretary

(CORPORATE SEAL)

*To be completed if Contractor is a corporation. If Contractor is a joint venture or partnership that includes a corporation(s), a certificate must be obtained from District's office, completed and attached to this page.

EXHIBIT 1**Scope of Work, Construction Standards, General Provisions****I. Asphalt Repairs**

The majority of asphalt work will likely consist of small (5' x 5') patches. Other types of asphalt repairs will be medium (10' x 10') or large (20' x 20') patches, 36" manholes, 2' wide water valves, street valve, manhole leveling and asphalt repair, seal coat and other work related to asphalt repairs, all in accordance with respective city requirements.

II. Concrete Repairs

Concrete work will typically consist of curb & gutter replacement, sidewalk panel replacement (4' x 6' and 4' x 12'), driveway approaches and rebar work, all in accordance with respective city requirements.

III. Average Workload

The typical average amount of weekly work assigned to the Contractor is six to ten (6 -10) project sites which, ideally, have a two-day turnaround for completion.

IV. No Subcontracting

The Contractor will be responsible for self-performing the following services in-house (no subcontracting):

- Asphalt Paving
- Concrete (curb and gutter, sidewalk panels, driveway approaches, rebar work)
- Seal coat

V. Allowed Subcontracting

The Contractor will be responsible for the following work, but may use subcontractors:

- Striping
- Thermal
- Traffic Loops
- Saw Cutting
- Specialty or Patterned Concrete Work
- Road Slurry
- Other, as approved by the District

VI. REPAIR FACTORS

The work can potentially be assigned anywhere in a 37 square mile area, covering five cities. Success for this project is challenging on both a logistical and quality basis. The work must be finished within a reasonable time frame from start to completion to maintain compliance with District standards of customer service and safety. Each of the five cities has its own regulations and specifications, which must be adhered to in all stages of the work, including traffic control, types of base and asphalt, depth of repair, etc.

#7.

All work has to be completed to the satisfaction of the District and the responsible city inspector of the cities mentioned above.

Contractor will be expected to perform the following scope of work within a two week period following notification of necessary repair:

1. Within two weeks of notification of necessary repairs, schedule with the District and the affected city.
2. Perform repair work to the satisfaction of the District staff and city regulations
3. Use proper traffic control devices and safety equipment per the District and city regulations.
4. Remove debris (asphalt, concrete, dirt, etc.) as necessary from work site.
5. The District will bring the excavation site to the bottom of the asphalt cement layer and compact the area to the required compaction as per the various cities. The Contractor will be responsible for removal of existing temporary patch and placement and compaction of the final asphalt cement.
6. Repair and replace asphalt in different size patches. This includes base paving using $\frac{3}{4}$ " rock asphalt followed by a 2" grind and cap using the city specified final asphalt mix, up to and including rubberized mix. Each site may differ.
7. Repair/replace concrete gutters, curbs and sidewalk panels per the District and city specifications.
8. Seal coat reservoir sites and other District facilities.
9. One (1) year warranty for material and installation.
10. Additional items may be added as necessary to each task order as site conditions require.

All construction as part of this contract shall be completed per the District standard specifications (District General Provisions, attached), the latest editions of the APWA Standard Specifications for Public Works Construction ("Greenbook") and the requirements and regulations as determined by the City having authority over the project site.

EXHIBIT 1 (CONT'D)
DISTRICT GENERAL PROVISIONS

#7.

EXHIBIT 2

**Fee Schedule
ASPHALT AND CONCRETE REPAIRS**

EXHIBIT D
FEE SCHEDULE FORM

Work Order Description		Cost Basis	Unit Value		Unit Cost
1	Asphalt Paving	0-50 Sf.	1	sf	\$ 35.00 /sf.
2	Asphalt Paving	51-100 Sf.	1	sf	\$ 24.00 /sf.
3	Asphalt Paving	101-250 Sf.	1	sf	\$ 15.00 /sf.
4	Asphalt Paving	251-400 Sf.	1	sf	\$ 11.00 /sf.
5	Asphalt Paving	401 +	1	sf	\$ 8.00 /sf.
6	Concrete Repairs	0-47 Sf.	1	sf	\$ 30.00 /sf.
7	Concrete Repairs	48 Sf. +	1	sf	\$ 22.00 /sf.
8	Meter Box Set to Grade	Per Meter Box	1	ea	-0- /ea.
9	Seal Coat	1,000 Sf. - Type 1	1,000	sf	\$ 3.00 /sf.
10	Seal Coat	10,000 Sf. - Type 1	10,000	sf	\$.70 /sf.
11	Striping	White	1	lf	\$ 4.00 /lf.
12	Striping	Thermal	1	lf	\$ 15.00 /lf.
13	Payment Bond				\$ 100.00 /ea.
14	Performance Bond				\$ 100.00 /ea.
15	Traffic Control - Residential	Per Hour	1	hr	\$ 75.00 /hr.
16	Traffic Control - Main Thoroughfares	Per Hour	1	hr	\$ 150.00 /hr.
17	Install 24-inch Manhole	Per Manhole	1	ea	\$ 350.00 /ea.
18	Install 36-inch Manhole	Per Manhole	1	ea	\$ 400.00 /ea.

#7.

EXHIBIT 3

Work Order Form

[To be executed by DISTRICT and CONTRACTOR prior to commencement of job; again by DISTRICT for formal acceptance of completed work]

This Work Order is executed pursuant to the "AGREEMENT FOR ON-CALL ASPHALT AND CONCRETE REPAIR SERVICES BETWEEN MOULTON NIGUEL WATER DISTRICT AND _____ (Contract No. _____)" dated _____, 20__ ("Agreement"). The Agreement terms are fully incorporated in this Work Order. Terms used in this Work Order have the same meanings given in the Agreement.

Work Order No.: _____

Work Order Scope of Work: _____

Work Cost: \$ _____ [where not-to-exceed quote given]

Work Location: (address/intersection, City)

City Permit No.: _____

Bond Number/Date Issued: _____

Time for Completion: _____

Notice to Proceed Given: [Date] _____

EXECUTED, ACKNOWLEDGE AND AGREED:

District's Representative /Title

Contractor's Authorized Representative- (print name here)

II. DISTRICT'S ACCEPTANCE:

Pursuant to Section 6(b) of the Agreement, District accepts all work completed under this Work Order on the date below, subject to all terms of the Agreement.

_____ Date: _____

EXHIBIT 4

SUBCONTRACTOR LISTING

N/A

#7.

EXHIBIT 5
PAYMENT BOND

EXHIBIT 6
PERFORMANCE BOND

EXHIBIT 7

**MOULTON NIGUEL WATER DISTRICT
ASPHALT AND CONCRETE REPAIR SERVICES
(Fiscal Year 2016-17)**

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED, AND FORM SIGNED BELOW)

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the repair work to be performed under this Agreement.

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the repair work to be performed under this Agreement. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____

I certify that, in the performance of the repair work on this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Date: _____

Contractor: _____
Authorized Officer/ Representative

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.