



Tamalpais Community Services District

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AGENDA

TAMALPAIS COMMUNITY SERVICES DISTRICT Board of Directors Special Work Session

Wednesday, February 29, 2012

TCSD Main Offices
305 Bell Lane, Mill Valley
8:45am

1. **ROLL CALL:** President, Steffen Bartschat, Directors: Jim Jacobs, Linda Johnson, Gretchen Stagg and Jeff Brown

2. **APPROVE AGENDA**

3. **PUBLIC EXPRESSION**

Members of the public are invited to address the Board concerning topics, which are not listed on the Agenda (If an item is agendized, interested persons may address the Board during the Board's consideration of that item). Speakers should understand that except in very limited situations, State law precludes the Board from taking action on or engaging in extended deliberations concerning items of business which are not on the Agenda. Consequently, if further consideration is required, the Board may refer the matter to its staff or direct that the subject be added to an agenda for a future meeting. The Board reserves the right to limit the time devoted to this portion of the Agenda and to limit the duration of speakers' presentations.

4. **GENERAL BUSINESS**

A. General Discussion of Status of Pump Replacement Project - Nute Engineering

B. Approval of Agreement between TCSD and MMWD Regarding Use of Customer Water Use Data for Computation of TCSD Sewer Charges - Jon Elam

5. **ADJOURNMENT**

Date: February 29, 2012

ITEM # 4B

STAFF REPORT

To: Board of Directors

From: Jon Elam, General Manager

Subject: Agreement Between MMWD and TCSD for the Release of Customer Water Consumption Data for Use By TCSD in the Preparation of Sewer Rates

For many years, MMWD has provided their water use data to TCSD for use by Staff to determine commercial sewer charges. This use data has been provided without any formal agreement and MMWD has asked all sanitary districts in their service area that will be using their data to sign and approve the attached agreement. Staff found the agreement acceptable and recommends the Board's acceptance

Recommended Action: Motion to Authorize the General Manager to Sign an Agreement with MMWD to Provide Water Consumption Data to TCSD for use in Preparation of Annual Sewer Service Charges

AGREEMENT M.A. # 5076

This agreement (“Agreement”) is made by and between the Marin Municipal Water District (“MMWD”) and the Tamalpais Community Service District.

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

Section 1. Recitals

- A. The MMWD provides non-residential and residential historical consumption data to Tamalpais Community Service District for use in calculating service charges.
- B. Tamalpais Community Service District has, for more than two decades, relied upon the MMWD data to calculate service charges.
- C. Although MMWD is not obligated to provide this data, both parties agree that the Tamalpais Community Service District will use the water consumption data only as input for calculating Tamalpais Community Service District service charges.

Section 2. Release of Customer Water Consumption Data /Use by Tamalpais Community Service District

- A. MMWD agrees to release to Tamalpais Community Service District non-residential and residential water consumption data for the last year (“Data”) for use in calculating service charges only.
- B. Tamalpais Community Service District agrees to use the Data only for calculating service charges.

Section 3. Exclusive Property/ No Warranties

- A. All materials provided to Tamalpais Community Service District by MMWD are the exclusive property of the MMWD. Re-use of these materials by Tamalpais Community Service District in any manner other than in conjunction with activities authorized by the MMWD is prohibited without the written permission of MMWD.
- B. Tamalpais Community Service District understands and agrees that it is possible that errors and omissions will occur in Data input or programming done by MMWD to provide the Data in the form desired. Tamalpais Community Service District further understands and agrees that it is probable that errors and omissions will occur in record keeping processes, especially when large numbers of records are developed and maintained, and that Data may not meet Tamalpais Community Service District's standards as to accuracy or completeness. Notwithstanding, Tamalpais Community Service District agrees to take the

Data "as is", fully expecting that there may be errors and omissions associated with the Data.

- C. Tamalpais Community Service District further understands and agrees that MMWD makes absolutely no warranty whatsoever, whether expressed or implied, as to the accuracy, thoroughness, value, quality, validity, merchantability, suitability, condition or fitness for a particular purpose of the Data or any programming used to obtain the Data, nor as to whether the Data are error-free, up-to-date, complete or based upon accurate or meaningful facts.

Section 4. Waiver/Indemnification

- A. Tamalpais Community Service District further understands and agrees that it will forever waive any and all rights, claims, causes of action or other recourse that it might otherwise have against MMWD, its officers, directors, agents and employees for any injuries or damages of any type, whether direct, indirect, incidental, consequential or otherwise, resulting from any error or omission in the Data or in any programming used to obtain the Data, or in any manner arising out of or related to this Agreement or the Data provided hereunder.
- B. Tamalpais Community Service District agrees to hold harmless, indemnify and defend MMWD, its officers, directors, agents, employees and attorneys from any and all liability, claims, losses, damages, injuries or expenses of any kind (including by not limited to attorneys' fees) (1) caused or alleged to be caused, directly or indirectly, by the inadequacy/adequacy of Data obtained from the MMWD, by any deficiency of MMWD or Tamalpais Community Service District systems, by any delay or failure to provide any service, or by any other interruption, disruption or loss of Tamalpais Community Service District operations (2) arising as a result of MMWD's release of the Data to Tamalpais Community Service District.

Section 5. Representation:

This Agreement is executed voluntarily by each of the parties hereto, all of whom have had the opportunity to obtain legal advice by independent counsel of their choice as to the content and effect of this Agreement.

Section 6. Dispute Resolution

- A. Any dispute or claim in law or equity between MMWD and Tamalpais Community Service District arising out of this Agreement, if not resolved by informal negotiation between the parties, shall be mediated by referring it to the nearest office of Judicial Arbitration and Mediation Services, Inc. (JAMS) for mediation. Each party shall provide the others with a list of four mediators. The parties shall confer on the list and select a mutually agreeable mediator. Mediation shall consist of an informal, non-binding conference or conferences between the parties and the judge-mediator jointly, then in separate caucuses wherein the judge will seek to guide the parties to a resolution of the case. If the parties cannot agree to

a mutually acceptable member from the JAMS panel of retired judges, a list and resumes of available mediators with substantial experience in mediating claims of the type at issue between the parties, numbering one more than there are parties, will be sent to the parties, each of whom will strike one name leaving the remaining name as the mediator. If more than one name remains, JAMS arbitration's administrator will choose a mediator from the remaining names. The mediation process shall continue until the case is resolved or until such time as the mediator makes a finding that there is no possibility of resolution.

- B. At the sole election of the District, any dispute or claim in law or equity between MMWD and Tamalpais Community Service District arising out of this Agreement which is not settled through mediation shall be decided by neutral binding arbitration and not by court action, except as provided by California law for judicial review of arbitration proceedings. The arbitration shall be conducted in accordance with the rules of Judicial Arbitration Mediation Services, Inc. (JAMS). The parties to an arbitration may agree in writing to use different rules and/or arbitrators.

Section 7. Authorization:

Each signatory to this Agreement warrants that he or she has full authority to execute this Agreement on behalf of and thus bind the individual or entity represented.

Section 8. Entire Agreement:

This Agreement contains the entire agreement and understanding between the parties hereto with respect to the matters referred to herein.

Section 9. Binding on Successors:

This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, executors, administrators and estates of each of the parties.

Section 10. Paragraph Headings:

Paragraph headings are used for reference purposes only and are not intended to describe, interpret, define or limit the scope or extent of this Agreement or any of its provisions.

Section 11. Governing Law:

This Agreement shall be governed by and construed in accordance with the laws of the state of California.

Section 12. Counterparts:

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together, shall constitute one instrument.

Section 13. Facsimile Signatures:

The parties agree that this Agreement, documents ancillary to this Agreement and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature shall be treated in all respects as having the same effect as an original signature.

Section 14. No Presumption Re Drafter:

The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties and their attorneys, and this Agreement reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore no presumption for or against validity or as to any interpretation hereto, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

Section 15. Effective Date:

This effective date of this Agreement shall be the later to occur of:

- (a) The execution of this Agreement by Tamalpais Community Service District; or
- (b) The execution of this Agreement by MMWD.

**MMWD:
MARIN MUNICIPAL WATER DISTRICT**

**TCSD:
TAMALPAIS COMMUNITY SERVICE
DISTRICT**

By: _____
Paul Helliker
General Manager

By: _____
General Manager

Date: _____

Date: _____