



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

**BOARD OF DIRECTORS
SPECIAL / RETREAT
MEETING
March 1, 2023**

THIS SPECIAL MEETING WILL BE HELD IN PERSON AT:

**THE TOWERS EMERYVILLE
2000 POWELL ST., SUITE 250
2ND FLOOR TENANT LOUNGE AND TRAINING CENTER
EMERYVILLE, CA 94605**

**MEMBERS OF THE PUBLIC MAY PARTICIPATE REMOTELY VIA ZOOM
AT THE FOLLOWING LINK OR BY PHONE:**

<https://bayareametro.zoom.us/j/87624896812>

(669) 900-6833 or (408) 638-0968

WEBINAR ID: 876 2489 6812

**THOSE PARTICIPATING BY PHONE WHO WOULD LIKE TO MAKE A COMMENT CAN USE
THE “RAISE HAND” FEATURE BY DIALING “*9”. IN ORDER TO RECEIVE THE FULL ZOOM
EXPERIENCE, PLEASE MAKE SURE YOUR APPLICATION IS UP TO DATE.**

**REMOTE ZOOM PARTICIPATION FOR MEMBERS OF THE PUBLIC IS PROVIDED FOR
CONVENIENCE ONLY. IN THE EVENT THAT THE ZOOM CONNECTION MALFUNCTIONS
FOR ANY REASON, THE BOARD OF DIRECTORS RESERVES THE RIGHT TO CONDUCT THE
MEETING WITHOUT REMOTE ACCESS.**

BOARD OF DIRECTORS SPECIAL / RETREAT MEETING AGENDA

WEDNESDAY, MARCH 1, 2023
9:30 AM

Chairperson, John J. Bauters

1. **Call to Order - Roll Call**
2. **Public Meeting Procedure**

The Board Chair shall call the meeting to order and the Clerk of the Boards shall take roll of the Board members.

***Public Comment on Agenda Items:** The public may comment on each item on the agenda as the item is taken up. Members of the public who wish to do so will have two minutes each to address the Board for each agenda item, unless a different time limit is established by the Chair. No speaker who has already spoken on an item will be entitled to speak to that item again.*

I. MORNING SESSION

3. Translating Global Environmental Challenges into Local Initiatives

- A. Tribal Land Acknowledgement

Corrina Gould, Tribal Chair/Confederated Villages of Lisjan Nation. CoFounder Sogorea Te Land Trust.

- B. 2022 Accomplishments

The Board of Directors will receive a report on accomplishments in 2022.

- C. 2022 United Nations Climate Change Conference, COP 27: A Perspective

The Board of Directors will receive a brief presentation with one perspective from a participant of the 2022 United Nations Climate Change Conference, COP 27.

D. Youth Perspective

The Board of Directors will receive a presentation from a community youth representative, Community Advisory Councilmember Cecilia Mejia on the role government plays in community wellness.

E. Federal Perspective

The Board of Directors will receive a presentation from Robin Collin, Senior Advisor to the U.S. EPA Administrator for Environmental Justice with a perspective on how local government can partner with communities to promote wellness.

LUNCH BREAK

II. AFTERNOON SESSION

4. Achieving Organizational Excellence – Visioning and Level Setting

A. Facilitated Panel Discussion with Representatives of the Community Advisory Council (CAC) and Assembly Bill (AB) 617 Community Steering Committees

The Board of Directors, Community Advisory Council Co-Chair Kevin Jefferson, East Oakland Community Steering Committee Co-Chair Charles Reed, West Oakland Community Steering Committee Co-Lead Brian Beveridge, Bay View Hunters Point Community Steering Committee Co-Lead Arieann Harrison, and North-Richmond-Richmond-San Pablo Co-Chair Y'Anad Burrell will participate in an open, facilitated discussion on how local government can partner with communities to promote wellness.

B. Discussion on Work Goals for the Year

The Board of Directors will receive a presentation on a new strategic planning initiative, an update on making processes more efficient and conducive to good government and community input, and responding to community needs.

III. CONSENT CALENDAR

5. Approval of the Minutes of the Board of Directors Meeting of February 15, 2023

The Board will consider approving the draft minutes of the Board of Directors meeting of February 15, 2023.

6. Notices of Violations Issued and Settlements in Excess of \$10,000 in the Month of January 2023

In accordance with Resolution No. 2012-08 the Board of Directors will receive a list of all Notices of Violations issued, and all settlements for amounts in excess of \$10,000 during the month of January 2023.

7. Set a Public Hearing for March 15, 2023 to Consider Adoption of Proposed Amendments to Regulation 9: Inorganic Gaseous Pollutants, Rule 4: Nitrogen Oxides from Fan Type Central Furnaces (Rule 9-4) and Rule 6: Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters (Rule 9-6), and Certification of an Environmental Impact Report for the Proposed Amendments to Rule 9-4 and Rule 9-6 Pursuant to the California Environmental Quality Act (CEQA)

At the March 15, 2023 meeting, the Board of Directors will consider adoption of proposed amendments to Regulation 9: Inorganic Gaseous Pollutants, Rule 4: Nitrogen Oxides from Fan Type Central Furnaces (Rule 9-4) and Rule 6: Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters (Rule 9-6), and Certification of an Environmental Impact Report for the proposed amendments to Rule 9-4 and Rule 9-6 pursuant to the California Environmental Quality Act (CEQA).

8. Consider Authorization to Execute a Contract with Direct Mail Center

The Board of Directors will consider authorizing the Executive Officer/APCO to execute a contract with Direct Mail Center for an amount not to exceed \$340,000 for public notice expenses and general mailing services supporting the permit programs.

9. Authorization to Execute a Contract Amendment with Shute Mihaly & Weinberger LLP

The Board of Directors will consider authorizing the Executive Officer/APCO to execute an amendment to the existing Legal Services Agreement with Shute Mihaly & Weinberger LLP to increase the current contract limit by \$200,000, from \$425,000 to \$625,000, for continued representation in the litigation regarding District Regulation 6, Rule 5; and will consider authorizing the transfer of \$200,000 from the Litigation Contingency General Fund Reserves to amend the Fiscal Year 2023 Legal Office's Litigation program budget.

10. Authorization to Execute a Contract Amendment with Van Dermyden Makus Law Corporation

The Board of Directors will consider authorizing the Executive Officer/APCO to execute an amendment to the existing contract with Van Dermyden Makus Law Corporation for legal services related to workplace investigations (i) to increase the current contract limit by \$150,000, from \$350,000 to \$500,000; and (ii) to extend the term of the contract through December 31, 2023.

IV. OTHER BUSINESS

11. Board Member Comments

Any member of the Board, or its staff, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)

12. Report of the Executive Officer/APCO

13. Chairperson's Report

14. Time and Place of Next Meeting

March 15, 2023, at 9:00 a.m. at 375 Beale Street, San Francisco, CA 94105. The meeting will be in person for members of the Board of Directors. Members of the public may attend in person or view via webcast.

15. Adjournment

The Board meeting shall be adjourned by the Board Chair.

CONTACT:

MANAGER, EXECUTIVE OPERATIONS
375 BEALE STREET, SAN FRANCISCO, CA 94105
vjohnson@baaqmd.gov

(415) 749-4941
FAX: (415) 928-8560
BAAQMD homepage:
www.baaqmd.gov

- Any writing relating to an open session item on this Agenda that is distributed to all, or a majority of all, members of the body to which this Agenda relates shall be made available at the Air District's offices at 375 Beale Street, Suite 600, San Francisco, CA 94105, at the time such writing is made available to all, or a majority of all, members of that body.

Accessibility and Non-Discrimination Policy

The Bay Area Air Quality Management District (Air District) does not discriminate on the basis of race, national origin, ethnic group identification, ancestry, religion, age, sex, sexual orientation, gender identity, gender expression, color, genetic information, medical condition, or mental or physical disability, or any other attribute or belief protected by law.

It is the Air District's policy to provide fair and equal access to the benefits of a program or activity administered by Air District. The Air District will not tolerate discrimination against any person(s) seeking to participate in, or receive the benefits of, any program or activity offered or conducted by the Air District. Members of the public who believe they or others were unlawfully denied full and equal access to an Air District program or activity may file a discrimination complaint under this policy. This non-discrimination policy also applies to other people or entities affiliated with Air District, including contractors or grantees that the Air District utilizes to provide benefits and services to members of the public.

Auxiliary aids and services including, for example, qualified interpreters and/or listening devices, to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs, and services will be provided by the Air District in a timely manner and in such a way as to protect the privacy and independence of the individual. Please contact the Non-Discrimination Coordinator identified below at least three days in advance of a meeting so that arrangements can be made accordingly.

If you believe discrimination has occurred with respect to an Air District program or activity, you may contact the Non-Discrimination Coordinator identified below or visit our website at www.baaqmd.gov/accessibility to learn how and where to file a complaint of discrimination.

Questions regarding this Policy should be directed to the Air District's Non-Discrimination Coordinator, Suma Peesapati, at (415) 749-4967 or by email at speesapati@baaqmd.gov.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

375 BEALE STREET, SAN FRANCISCO, CA 94105

FOR QUESTIONS PLEASE CALL (415) 749-4941

EXECUTIVE OFFICE:

MONTHLY CALENDAR OF AIR DISTRICT MEETINGS

FEBRUARY 2023

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Legislative Committee	Monday	27	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Path to Clean Air Community Emissions Reduction Plan Steering Committee	Monday	27	5:30 p.m.	Webcast only pursuant to Assembly Bill 361

MARCH 2023

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Regular Mtg. / Retreat	Wednesday	1	9:30 a.m.	The Towers Emeryville 2000 Powell St. Tenant Lounge Emeryville, CA 94608
Board of Directors Finance & Administration Committee - CANCELLED	Wednesday	1	1:00 p.m.	1 st Floor Board Room
Board of Directors Stationary Source and Climate Impacts Committee	Wednesday	8	9:00 a.m.	1st Floor, Yerba Buena and Ohlone Rooms
Board of Directors Mobile Source and Climate Impacts Committee	Wednesday	8	1:00 p.m.	1st Floor, Yerba Buena and Ohlone Rooms
Board of Directors Meeting	Wednesday	15	9:00 a.m.	1 st Floor Board Room
Board of Directors Community Equity, Health and Justice Committee	Wednesday	15	1:00 p.m.	1 st Floor Board Room
Board of Directors Legislative Committee	Wednesday	15	3:30 p.m.	1 st Floor Board Room
Community Advisory Council Meeting	Thursday	16	6:00 p.m.	1 st Floor Board Room
Path to Clean Air Community Emissions Reduction Plan Steering Committee	Monday	20	5:30 p.m.	1 st Floor Board Room

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: March 1, 2023

Re: Approval of the Minutes of the Board of Directors Meeting of February 15, 2023

RECOMMENDED ACTION

Approve the attached draft minutes of the Board of Directors meeting of February 15, 2023.

BACKGROUND

None.

DISCUSSION

Attached for your review and approval are the draft minutes of the Board of Directors meeting of February 15, 2023.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Draft Minutes of the Board of Directors Meeting of February 15, 2023

Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
(415) 749-5073

Board of Directors Regular Meeting
Wednesday, February 15, 2023

DRAFT MINUTES

Note: Audio recordings of the meeting are available on the website of the Bay Area Air Quality Management District at www.baaqmd.gov/bodagendas

This meeting was conducted under procedures authorized by Assembly Bill (AB) 361 (Rivas 2021), allowing remote meetings. Members of the Board of Directors participated by teleconference.

CALL TO ORDER

1. **Opening Comments:** Board of Directors (Board) Chairperson, John J. Bauters, called the meeting to order at 9:00 a.m.

Roll Call:

Present: Chairperson John J. Bauters; Vice Chairperson Davina Hurt; Secretary Lynda Hopkins; and Directors Margaret Abe-Koga, Brian Barnacle, Ken Carlson, Noelia Corzo, Joelle Gallagher, John Gioia, Juan Gonzalez, David Haubert, Tyrone Jue, Sergio Lopez, Otto Lee, Myrna Melgar, Nate Miley, Ray Mueller, Katie Rice, Mark Ross, Shamann Walton, and Steve Young.

Absent: Director Erin Hannigan and David Hudson.

2. **PLPEDGE OF ALLEGIANCE**
3. **PUBLIC MEETING PROCEDURE**
4. **SPECIAL ORDERS OF THE DAY**

Chair Bauters introduced recently promoted Air District employee, Linda Heller, Administrative Assistant II in the Engineering Division; and new employee, Wei Ji, Staff Specialist II in the Finance Division.

CONSENT CALENDAR (ITEMS 5 -13)

- 5. Approval of the Minutes of the Board of Directors Meeting of January 25, 2023
- 6. Approval of the Minutes of the Board of Directors Meeting of February 1, 2023
- 7. Board Communications Received from February 1, 2023 through February 14, 2023
- 8. Personnel Out-of-State Business Travel Report for January 2023
- 9. Consider Adopting Proposed Amendments to Section 4.9 and Section 6 of Division I of the Administrative Code Regarding (i) Creation of a New Finance & Administration Committee and (ii) Time Limits for Public Comment
- 10. Report of the Advisory Council Meeting of January 30, 2023
- 11. Report of the Richmond Area Community Emissions Reduction Plan Steering Committee Meeting of January 30, 2023
- 12. Report of the Budget and Finance Committee Meeting of February 1, 2023
- 13. Report of the Stationary Source and Climate Impacts Committee Meeting of February 8, 2023

Public Comments

No requests received.

Board Comments

None.

Board Action

Vice Chair Hurt made a motion, seconded by Director Gioia, to **approve** Consent Calendar Items 5 through 13, inclusive; and the motion **carried** by the following vote of the Board:

- AYES: Abe-Koga, Barnacle, Bauters, Carlson, Corzo, Gallagher, Gioia, Gonzalez, Haubert, Hopkins, Hurt, Jue, Lopez, Lee, Melgar, Mueller, Rice, Ross, Walton, Young.
- NOES: None.
- ABSTAIN: None.
- ABSENT: Hannigan, Hudson, Miley.

INFORMATIONAL ITEMS

- 14. **GREEN AND HEALTHY HOMES INITIATIVE’S (GHHI) INNOVATIVE FUNDING STRATEGIES FOR LOW-INCOME BUILDING RETROFITS (OUT OF ORDER, ITEM 15)**

NOTED PRESENT: Director Miley was noted present at 9:11 a.m.

Ruth Ann Norton, President and Chief Executive Officer of the Green and Healthy Homes Initiative, gave presentation on funding strategies for low-income building retrofits, including: vision and mission; accomplishments; the GHHI model; the whole-house strategy in Baltimore, Maryland; Contra Costa asthma technical assistance – data utilized to map need to address asthma episodes, disadvantaged communities, and largest polluters; program component and staffing organization; projects with

revalue.io and BlocPower; increasing public health consensus on indoor air quality and natural gas appliances; major medical associations are recognizing the link between gas stoves, indoor air quality, and asthma triggers; effects of gas stoves; racial equity metrics; decarbonization/electrification policies in other jurisdictions; Cities and States Across the Country are Adopting Housing Codes and Standards to Improve Indoor Air Quality and Reduce Asthma Triggers; relevant health policy considerations; State Plan Amendment – Asthma Preventive Services; In Lieu of Services (1115 Waiver); Policy for CA to explore: CHIP Health Service Initiatives; Policy for CA to explore: Health Related Social Needs- (1115 Waiver); Value-Based Model / Public-Private \$4.75M Investment in New York City to Serve 850 Medicaid Members with Asthma; and NY Healthy Homes Collaborative - Funding Flow Diagram.

Public Comments

Public comments were given by Marti Roach; Michael Kent, Contra Costa County Health Services; and Leah Louis-Prescott, Rocky Mountain Institute.

Board Comments

The Board and staff discussed an “all-electric building” ordinance adopted by the Contra Costa County Board of Supervisors in January 2022; whether GGHI has looked at the health impacts of propane, and battery backup times in rural (versus urban) areas; whether any California legislation is requiring gas and electric utilities to upgrade their infrastructure; strategies for electrification of farms and rural properties; concerns about the potential impact on electrical grids after appliances are converted; and whether GGHI partners with housing authorities regarding the renovations of existing homes.

Board Action

None; receive and file.

15. OVERVIEW OF STATE AND FEDERAL FUNDING FOR RETROFITTING LOW-INCOME HOMES WITH CLEANER APPLIANCES (ITEM 14)

Amy Dao, Senior Planner, gave the staff presentation *Overview of State and Federal Funding for Retrofitting Low-Income Homes with Cleaner Appliances*, including: outcome; outline; presentation for information only; background on health impacts; federal incentives – Inflation Reduction Act (IRA); IRA: High Efficiency Electric Home Rebate Program (HEEHRA) and Homeowner Managing Energy Savings Program (HOMES); State funds – California Energy Commission and California Public Utilities Commission (CPUC); and other funds.

Public Comments

Public comments were given by Jed Holtzman, San Francisco resident; and Jan Warren, Interfaith Climate Action Network of Contra Costa County.

Board Comments

The Board and staff discussed how to measure the number of households that that utilized weatherization programs by utility providers; the need to improve outreach about existing grants opportunities to low and middle-income households; concerns of unintended consequences and cost

burdens associated with converting to electric appliances; how having to pay for costs upfront and waiting to receive rebates may deter potential incentive applicants, and whether zero-interest loans can be offered to applicants before they are reimbursed; whether HOMES incentives are available to tenants (and whether the homeowner must occupy the home as well); incentives offered within the IRA for electric ranges, cooktops, and wall ovens; the need to identify potential future funding sources prior to the depletion of the IRA and similar rebate programs; CPUC proceedings regarding rate reform efforts that would provide bill protection for low-income households; the need to improve the electric retrofitting workforce development; the desire for one-stop shop and/or ombudsman programs that assist with the decarbonization grant application process, and the suggestion of collaborating with organizations that have such existing programs; concerns about funding sources for the aforementioned one-stop-shop and/or ombudsman programs; whether the Air District has researched solar ordinance adoption trends; concerns about the potential impact on electrical grids after appliances are converted; and stakeholders that make up the Implementation Working Group that will support proposed rule amendments to Rules 9-4 and 9-6 (to reduce emissions of nitrogen oxides from residential and commercial furnaces and water heaters in buildings in the Bay Area) after potential adoption.

Board Action

None; receive and file.

16. AIR MONITORING AND MODELING OF INCIDENTS: FORMATION OF AN AD HOC COMMITTEE

Dr. Ranyee Chiang, Director of Meteorology and Measurement, gave the staff presentation *Air Monitoring and Modeling of Incidents: Formation of Ad Hoc Committee*, including: presentation for information only; Stationary Source and Climate Impacts Committee: Agenda Items on Incidents; current Air District role during incidents; limitations to current Air District role during incidents; formation of an ad hoc committee; ad hoc committee; and summary of proposal – timeline.

Public Comments

No requests received.

Board Comments

The Board and staff discussed whether the proposed ad hoc committee will be subject to the Ralph M. Brown Act; the request that the ad hoc committee meetings to added to the Air District’s website with as much advanced notice as possible, for the public’s benefit; and whether the proposed ad hoc committee would focus on fence line monitoring.

Board Action

None; receive and file.

CLOSED SESSION (10:56 a.m.)

17. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION AND EMPLOYMENT**

Pursuant to Government Code Section 54957(b)

Title: Interim Air Pollution Control Officer/Executive Officer

Reportable Action: DeeAnne Gillick of Sloan Sakai, Yeung & Wong, LLP, Bay Area Air District Outside Counsel, had nothing to report.

18. **PUBLIC EMPLOYEE APPOINTMENT AND EMPLOYMENT**

Pursuant to Government Code Section 54957(b)

Title: Interim Chief Operating Officer

Reportable Action: Ms. Gillick had nothing to report.

19. **CONFERENCE WITH LABOR NEGOTIATORS**

Pursuant to Government Code Section 54957.6

Agency Designated Representatives: Board Chair John J. Bauters; DeeAnne Gillick, Sloan Sakai Yeung & Wong LLP

Unrepresented Employee: Interim Chief Operating Officer

Reportable Action: Ms. Gillick had nothing to report.

20. **CONFERENCE WITH LEGAL COUNSEL RE ANTICIPATED LITIGATION (GOVERNMENT CODE SECTIONS 54956.9(a) AND (d)(2))**

Pursuant to Government Code sections 54956.9(a) and (d)(2), the Board will meet in closed session with legal counsel to discuss a significant exposure to litigation, based on facts and circumstances not known to a potential plaintiff or plaintiffs: One case.

Reportable Action: Alexander Crockett, District Counsel, had nothing to report.

21. **CONFERENCE WITH LEGAL COUNSEL RE EXISTING LITIGATION (GOVERNMENT CODE SECTION 54956.9(a))**

Pursuant to Government Code Section 54956.9(a), the Board will meet in closed session with legal counsel to discuss the following case:

Communities for a Better Environment v. Bay Area Air Quality Management District and McWane Inc., Alameda Superior Court Case No. 22CV020451.

Reportable Action: Mr. Crockett had nothing to report.

OPEN SESSION (11:27 a.m.)

ACTION ITEMS

22. CONSIDER AMENDING THE INTERIM EXECUTIVE OFFICER / AIR POLLUTION CONTROL OFFICER’S (APCO) EMPLOYMENT AGREEMENT AND APPROVING THE INTERIM CHIEF OPERATING OFFICER’S EMPLOYMENT AGREEMENT

Chair Bauters described the following history of the current Interim Executive Officer/APCO’s appointment:

On May 18, 2022, the Board of Directors appointed Sharon Landers as Interim Executive Officer / APCO for a nine-month term ending on February 23, 2023, and Ms. Landers has executed the duties of the office in accordance with the direction of the Board since her appointment. An Executive Officer / APCO was appointed by the Board for the permanent position on December 21, 2022, and will begin employment in the position on February 21, 2023. The Board will consider appointing Ms. Landers as Interim Chief Operating Officer for a term beginning February 21, 2023, and ending on December 31, 2023. In Closed Session, the Board considered the proposed amendment to the Interim Executive Officer / APCO’s employment agreement and the attached Interim Chief Operating Officer’s employment agreement.

Public Comments

Public comments were given by Rochele Henderson, an Air District Employee who provided comments in her personal capacity.

Board Comments

None.

Board Action

Chair Bauters made a motion, seconded by Director Haubert, to **amend** the current contract for Sharon L. Landers in the position of Executive Officer/APCO to terminate on February 20, 2023, instead of February 23, 2023, and to further **approve** the contract to appoint Sharon L. Landers as the Interim Chief Operating Officer for a term beginning February 21, 2023, and ending on December 31, 2023, at an annual salary of \$337,748 per year, including all of the other regular Air District, non-represented executive staff employee benefits.

The motion **carried** by the following vote of the Board:

- AYES: Abe-Koga, Barnacle, Bauters, Carlson, Corzo, Gallagher, Gonzalez, Haubert, Hopkins, Hurt, Jue, Lopez, Lee, Melgar, Miley, Rice, Ross.
- NOES: None.
- ABSTAIN: Mueller.
- ABSENT: Gioia, Hannigan, Hudson, Walton, Young.

23. **RECOMMEND AMENDING THE MANAGEMENT AUDIT CONTRACT WITH SJOBERG EVASHENK CONSULTING, INC.**

John Chiladakis, Acting Chief Administrative Officer, gave the staff presentation *Recommend Amending the Management Audit Contract with Sjoberg Evashenk Consulting*, including: outline; requested action; key milestones to date; next audits; and requested action.

Public Comments

Public comments were given by Jan Warren, Interfaith Climate Action Network of Contra Costa County.

Board Comments

None.

Board Action

Director Carlson made a motion, seconded by Director Abe-Koga, to **authorize** the Interim Executive Officer / APCO to amend the Air District's contract with Sjoberg Evashenk Consulting, Inc. to fund ongoing management audit services through 2023 by increasing the contract's not to exceed amount by \$300,000 from \$250,000 to a total of \$550,000; and the motion **carried** by the following vote of the Board:

AYES: Abe-Koga, Barnacle, Bauters, Carlson, Corzo, Gallagher, Gonzalez, Haubert, Hopkins, Hurt, Jue, Lopez, Lee, Melgar, Miley, Mueller, Rice, Ross.
NOES: None.
ABSTAIN: None.
ABSENT: Gioia, Hannigan, Hudson, Walton, Young.

OTHER BUSINESS

24. **PUBLIC COMMENT ON NON-AGENDA MATTERS**

Public comments were given by Bob Brown, Western States Petroleum Association; and Rochele Henderson, an Air District Employee who provided comments in her personal capacity.

25. **BOARD MEMBER COMMENTS**

None.

26. **REPORT OF THE EXECUTIVE OFFICER/APCO**

Sharon L. Landers, Interim Executive Officer/APCO, reported the following:

- Dr. Chiang, Director was asked to provide a summary on recent air quality.
- On January 6, 2023, the US Environmental Protection Agency (EPA) proposed revisions to the Particulate Matter National Ambient Air Quality Standards, or “PM NAAQS” in response to petitions to reconsider their 2020 PM NAAQS decisions. The EPA is proposing to reduce the primary annual PM_{2.5} NAAQS from 12 µg/m³ [*Micrograms per cubic meter*] to a range between 9 and 10 µg/m³. The EPA is also proposing to retain the 24-hour PM_{2.5} NAAQS of 35 µg/m³. The EPA is soliciting comments regarding the level of the standard until the end of March. They would consider an annual standard as low as 8 µg/m³ and a 24-hour standard as low as 25 µg/m³. The EPA expects to finalize the revised NAAQS by late 2023, which is followed by their initial area designations, which takes two years to complete. The Air District is currently designated as unclassifiable/attainment for the existing annual PM_{2.5} standard and nonattainment for the existing 24-hour PM_{2.5} standard. Air District staff are currently reviewing the proposal and are drafting written public comments. Staff expect to support EPA’s science-based approach to selecting the most stringent levels for both the annual and 24-hour PM NAAQS that are requisite to protect public health. This is consistent with recommendations from Air District staff, our Advisory Council and California Air Resources Board (CARB). In the likely scenario our region is designated nonattainment, we would be required to develop and implement a strategy to attain the standard. The plan would need to be submitted to EPA for inclusion into the State Implementation Plan
- Air District staff has released proposed amendments to Rules 9-4 and 9-6 to reduce emissions of nitrogen oxides from residential and commercial furnaces and water heaters in buildings in the Bay Area. These rules govern point of sale emission standards for small, typically residential and commercial, water and space heating systems. The proposed rule amendments would set zero-NOx standards for these appliances starting with water heaters in 2027, phasing out this pollution over time as old equipment is replaced with cleaner appliances. Emissions of nitrogen oxides impact local and regional air quality and contribute to the formation of ozone and secondary particulate matter. The Air District Board of Directors will conduct a public hearing to consider adoption of the proposed amendments and certification of the Environmental Impact Report on March 15, 2023, at 9:00 AM. If the amendments are adopted by the Board, Staff plans to convene a formalized ongoing Implementation Working Group (IWG) to support the proposed rule amendments after potential adoption. The IWG is intended to consist of a variety of stakeholders with different areas of expertise in reference to the implementation of the rule amendments. This may include community-based organizations, environmental justice groups, advocacy, and subject matter expert organizations, building technology experts, affordable and market rate housing developers and managers, local and state government staff, funding and financing agencies, equipment manufacturers and distributors, tenant representation organizations and labor organizations. The comment period for the rule ended on Feb 6, 2023, and 560 comment letters or emails had been received. Staff is developing responses to all of these comments which will be compiled in a response to comments document that will be published ahead of the Board hearing on March 15, 2023.
- The Legislative Office has worked with two Assemblymembers to introduce two District-sponsored bills below. The bill introduction period ends this coming Friday, and staff will provide an update on introduced bills at the next Legislative committee meeting.

- a. AB 536 was introduced by Assemblymember Lori Wilson and would provide the BAAQMD Board with the authority to set compensation rates for members of the Technical Advisory Committee to attend TAC meetings. Since 1975, state law has not allowed for any meeting attendance compensation.
 - b. AB 953 was introduced by Assemblymember Damon Connolly and would create a statewide voluntary vessel speed reduction program modeled after the successful Bay Area, Santa Barbara County, and Ventura County programs which works with shipping companies to reduce oceangoing vessel speeds during whale migration periods, simultaneously reducing air emissions along the coast and reducing harmful whale strikes.
- As February is Black History Month, the Air District will have several events and activities throughout the month led by our Diversity, Equity & Inclusion Office. One of these is a presentation on February 15, 2023, via Zoom, given by Dr. Bruce Strouble. The presentation is entitled *The Impacts of Environmental Racism on the Development of Social Capital in African American Communities*. Dr. Strouble will also discuss how special government agencies, like the Air District, play a role in environmental justice. Board Members will be sent a link for registration.
 - The Co-Chairs of the Air District’s Community Advisory Council (CAC) will present an overview of their last meeting during the upcoming Community Equity, Health & Justice Committee meeting on February 15, 2023, at 1:00 p.m. At that meeting, staff will also be presenting the CAC Compensation Policy recommended by the CAC for approval by the Committee. If approved, it will move on to the full Board for consideration of approval.

27. **CHAIRPERSON’S REPORT**

Chair Bauters gave the following remarks:

- The annual Board retreat will take place on Wednesday, March 1, 2023, at 9:30 a.m., at the Towers Emeryville. While the Board members and Air District staff are expected to attend in person, members of the public who wish to observe and make public comments via Zoom, may do so.
- Palo Alto City Councilmember, Vicki Veenker was appointed to the Board by the Cites Association of Santa Clara County on February 9, 2023, for a two-year term.
- Director Lopez was reappointed to our Board by the Cites Association of Santa Clara County on February 9, 2023, for a new two-year term.
- Brian Barnacle, Petaluma City Councilmember, was appointed to the Board by the Sonoma County Cities Selection Committee on February 9, 2023, for a two-year term.
- Juan Gonzalez III, Mayor of San Leandro, was appointed to the Board by the Alameda County Mayors’ Conference on February 8, 2023, for a two-year term.
- The Board’s Community Equity, Health & Justice Committee will meet on February 15, 2023, at 1:00 p.m., via Zoom.
- This is the final Board meeting that will be fully remote, via Zoom. While most meetings will be held at 375 Beale Street in San Francisco, beginning March 1, 2023, Air District staff is identifying remote locations throughout the Bay Area that can be used by Board members and members of the public.

28. **TIME AND PLACE OF NEXT MEETING**

March 1, 2023, at 9:30 a.m. at the Towers Emeryville, 2000 Powell St., Suite 250, Second Floor Tenant Lounge and Training Center, Emeryville, CA 94608. The meeting will also be webcast for members of the public.

29. **ADJOURNMENT**

The meeting was adjourned at 12:03 p.m.

Marcy Hiratzka
Clerk of the Boards

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: March 1, 2023

Re: Notices of Violations Issued and Settlements in Excess of \$10,000 in the Month of
January 2023

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

In accordance with Resolution No. 2012-08, attached to this Memorandum is a listing of all Notices of Violations issued, and all settlements for amounts in excess of \$10,000 during the calendar months prior to this report.

BUDGET CONSIDERATION/FINANCIAL IMPACT

The amounts of civil penalties are collected and recorded in the Air District's General Fund.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Alexander G. Crockett

ATTACHMENTS:

- 1. Notices of Violations for the Month of January 2023

NOTICES OF VIOLATIONS ISSUED

The following Notice(s) of Violation(s) were issued in January 2023:

Alameda						
Site Name	Site #	City	NOV #	Issuance Date	Regulation	Comment
Au Energy LLC	Z1937	Fremont	A62250A	1/19/2023	8-7-302.1	Gas Dispensing Facility Violation
Au Energy LLC	Z1937	Fremont	A62280A	1/24/2023	8-7-301.1	Gas Dispensing Facility Violation
Au Energy LLC	Z1937	Fremont	A62280B	1/24/2023	8-7-302.3	Gas Dispensing Facility Violation
P.W. Stephens Environmental	FB498	Fremont	A61673A	1/11/2023	11-2-303.6	Asbestos Violation
Tesla, Inc.	A1438	Fremont	A61761A	1/11/2023	2-6-307	Title V Requirement/Condition Violation
University of California, Berkeley	A0059	Berkeley	A61745A	1/24/2023	2-6-307	Title V Requirement/Condition Violation
Vasco Road Landfill	A5095	Livermore	A60890A	1/17/2023	2-6-307	Title V Requirement/Condition Violation
Western Digital Technologies	A8391	Fremont	A61762A	1/26/2023	2-1-307	Permit Requirement/Condition Violation

Contra Costa						
Site Name	Site #	City	NOV #	Issuance Date	Regulation	Comment
Acme Press, Inc. dba Calitho	A9722	Concord	A60859A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Bedrock Oil	FB537	Pinole	A62315A	1/17/2023	8-7-302.1	Gas Dispensing Facility Violation
Chevron Products Company	A0010	Richmond	A62042A	1/6/2023	2-1-307	Permit Requirement/Condition Violation

Delta Energy Center	B2095	Pittsburg	A60861A	1/24/2023	2-6-307	Title V Requirement/Condition Violation
Los Medanos Energy Center	B1866	Pittsburg	A60860A	1/24/2023	2-6-307	Title V Requirement/Condition Violation
Martinez Refining Company LLC	A0011	Martinez	A62082A	1/5/2023	2-6-307	Title V Requirement/Condition Violation
Martinez Refining Company LLC	A0011	Martinez	A62083A	1/5/2023	2-6-307	Title V Requirement/Condition Violation
Martinez Refining Company LLC	A0011	Martinez	A62084A	1/9/2023	1-301	Public Nuisance Violation
Pinole-Hercules Wastewater Treatment Plant	A1194	Pinole	A62067A	1/18/2023	2-1-301	No Authority to Construct

Marin						
Site Name	Site #	City	NOV #	Issuance Date	Regulation	Comment
Bauman Concrete Construction	FB549	Novato	A61569A	1/26/2023	2-1-301	No Authority to Construct and No Permit to Operate
Bauman Concrete Construction	FB549	Novato	A61569B	1/26/2023	2-1-302	No Authority to Construct and No Permit to Operate
Ghilotti Bros. Inc.	B8813	San Rafael	A61570A	1/30/2023	2-1-301	No Authority to Construct and No Permit to Operate
Ghilotti Bros. Inc.	B8813	San Rafael	A61570B	1/30/2023	2-1-302	No Authority to Construct and No Permit to Operate
Sa Ngasilpa #257384	Z5331	San Rafael	A62254A	1/17/2023	8-7-503.1	Gas Dispensing Facility Violation

Napa						
Site Name	Site #	City	NOV #	Issuance Date	Regulation	Comment
Clover Flat Resource & Recovery Park	B1247	Calistoga	A61524A	1/24/2023	8-34-415.10	Landfill Violation
Clover Flat Resource & Recovery Park	B1247	Calistoga	A61524B	1/24/2023	8-34-415.11	Landfill Violation

San Mateo						
Site Name	Site #	City	NOV #	Issuance Date	Regulation	Comment
Cypress Amloc Land Co , Inc.	A1364	Colma	A60336A	1/4/2023	8-34-301.1	Landfill Violation
San Francisco Public Utilities Commission	B4241	Millbrae	A61724A	1/17/2023	8-7-301.5	Gas Dispensing Facility Violation
South San Francisco-San Bruno Water Quality Plant	A5876	South San Francisco	A60337A	1/26/2023	2-1-307	Permit Requirement/Condition Violation
South San Francisco-San Bruno Water Quality Plant	A5876	South San Francisco	A60337B	1/26/2023	2-1-302	No Permit to Operate
South San Francisco-San Bruno Water Quality Plant	A5876	South San Francisco	A60338A	1/26/2023	2-1-307	Permit Requirement/Condition Violation
South San Francisco-San Bruno Water Quality Plant	A5876	South San Francisco	A60339A	1/26/2023	2-1-301	No Authority to Construct and No Permit to Operate
South San Francisco-San Bruno Water Quality Plant	A5876	South San Francisco	A60339B	1/26/2023	2-1-302	No Authority to Construct and No Permit to Operate

Santa Clara						
Site Name	Site #	City	NOV #	Issuance Date	Regulation	Comment
Ali's Construction & Remodel	FB543	San Jose	A60140A	1/24/2023	11-2-401.3	Asbestos Violation
Alzeta Corporation	E4717	San Jose	A59758A	1/10/2023	2-1-307	Permit Requirement/Condition Violation
Alzeta Corporation	E4717	San Jose	A61624A	1/25/2023	2-1-307	Permit Requirement/Condition Violation
Babbitt Bearing Co Inc.	A4019	San Jose	A61637A	1/26/2023	2-1-307	Permit Requirement/Condition Violation
Flex	A7441	Milpitas	A61621A	1/5/2023	2-1-301	No Authority to Construct and No Permit to Operate
Flex	A7441	Milpitas	A61621B	1/5/2023	2-1-302	No Authority to Construct and No Permit to Operate
Green Planet Gas, Inc.	FB179	Sunnyvale	A62248A	1/17/2023	8-7-301.5	Gas Dispensing Facility Violation
International Disposal Corp of CA	A9013	Milpitas	A59759A	1/11/2023	8-34-301.1	Landfill Violation
International Disposal Corp of CA	A9013	Milpitas	A61622A	1/17/2023	8-34-301.1	Landfill Violation
International Disposal Corp of CA	A9013	Milpitas	A61625A	1/25/2023	8-34-301.1	Landfill Violation
International Disposal Corp of CA	A9013	Milpitas	A61626A	1/26/2023	8-34-301.1	Landfill Violation
Kirby Petroleum Inc.	Z5213	Los Gatos	A62316A	1/17/2023	2-1-307	Permit Requirement/Condition Violation
Signature Flight Support	E2691	Santa Clara	A61636A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
THAT Corporation	A4104	Milpitas	A61623A	1/17/2023	2-1-301	No Authority to Construct and No Permit to Operate

THAT Corporation	A4104	Milpitas	A61623B	1/17/2023	2-1-302	No Authority to Construct and No Permit to Operate
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Solano						
Site Name	Site #	City	NOV #	Issuance Date	Regulation	Comment
Valero Refining Company - California	B2626	Benicia	A60578A	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60578B	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60579A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60579B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60580A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60580B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60827B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60824B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60825A	1/18/2023	2-1-307	Permit Requirement/Condition Violation

Valero Refining Company - California	B2626	Benicia	A60825B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60826A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60826B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60827A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60821B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60822A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60822B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60823A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60823B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60824A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60818B	1/18/2023	1-523.3	Parametric Monitor Violation

Valero Refining Company - California	B2626	Benicia	A60819A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60819B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60820A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60820B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60821A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60587A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60587B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60588A	1/26/2023	8-2-301	Miscellaneous Operations Violation
Valero Refining Company - California	B2626	Benicia	A60588B	1/26/2023	10	Code of Federal Regulation Violation
Valero Refining Company - California	B2626	Benicia	A60589A	1/26/2023	8-5-306.2	Storage Tank Violation
Valero Refining Company - California	B2626	Benicia	A60818A	1/18/2023	2-1-307	Permit Requirement/Condition Violation

Valero Refining Company - California	B2626	Benicia	A60584A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60584B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60585A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60585B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60586A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60586B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60581A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60581B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60582A	1/18/2023	2-1-307	Permit Requirement/Condition Violation
Valero Refining Company - California	B2626	Benicia	A60582B	1/18/2023	1-523.3	Parametric Monitor Violation
Valero Refining Company - California	B2626	Benicia	A60583A	1/18/2023	2-1-307	Permit Requirement/Condition Violation

Valero Refining Company - California	B2626	Benicia	A60583B	1/18/2023	1-523.3	Parametric Monitor Violation
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Sonoma						
Site Name	Site #	City	NOV #	Issuance Date	Regulation	Comment
Santa Rosa Water - Laguna Treatment Plant	A1403	Santa Rosa	A59225A	1/31/2023	2-6-307	Title V Requirement/Condition Violation

Company Address Outside of Bay Area						
Site Name	Site #	City	NOV #	Issuance Date	Regulation	Comment
BP Products North America	Z9632	Artesia	A62247A	1/10/2023	2-1-307	Permit Requirement/Condition Violation
California Highway Patrol	Z9807	Sacramento	A62249A	1/18/2023	8-7-302.1	Gas Dispensing Facility Violation
RADC Enterprises Inc.	Z8552	Upland	A62317A	1/26/2023	8-7-301.5	Gas Dispensing Facility Violation

SETTLEMENTS FOR \$10,000 OR MORE REACHED

There were 0 settlement(s) for \$10,000 or more completed in January 2023.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: March 1, 2023

Re: Set a Public Hearing for March 15, 2023 to Consider Adoption of Proposed Amendments to Regulation 9: Inorganic Gaseous Pollutants, Rule 4: Nitrogen Oxides from Fan Type Central Furnaces (Rule 9-4) and Rule 6: Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters (Rule 9-6), and Certification of an Environmental Impact Report for the Proposed Amendments to Rule 9-4 and Rule 9-6 Pursuant to the California Environmental Quality Act (CEQA)

RECOMMENDED ACTION

Set a Public Hearing for March 15, 2023, to consider adoption of proposed amendments to Regulation 9: Inorganic Gaseous Pollutants, Rule 4: Nitrogen Oxides from Fan Type Central Furnaces (Rule 9-4) and Rule 6: Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters (Rule 9-6), and Certification of an Environmental Impact Report for the proposed amendments to Rule 9-4 and Rule 9-6 pursuant to the California Environmental Quality Act (CEQA).

BACKGROUND

Air District staff developed and published proposed amendments to Regulation 9, Rule 4: Nitrogen Oxides from Fan Type Residential Central Furnaces (Rule 9-4) and Regulation 9, Rule 6: Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters (Rule 9-6). Rule 9-4 applies to the natural gas-fired space-heating furnaces commonly found in single-family homes, and Rule 9-6 applies to natural gas-fired water heaters commonly found in residential and commercial applications. Space and water-heating appliances generate a large portion of nitrogen oxide (NOx) emissions from sources in the Bay Area. NOx is formed during natural gas combustion when ambient nitrogen and oxygen combine at high temperatures, and NOx emissions are a precursor to ozone and secondary particulate matter (PM) formation. The proposed amendments would substantially reduce NOx emissions from these appliances.

DISCUSSION

The proposed amendments to Rule 9-4 and Rule 9-6 include a zero NOx standard for both space and water heating appliances that would apply when new appliances are sold and installed beginning in 2027. The proposed amendments also include the introduction of an ultra-low NOx

standard to Rule 9-4 for furnaces starting in 2024, as well as additional updates to definitions, testing and certification requirements, and other clarifications. The proposed amendments include a commitment from Air District staff to re-evaluate the availability and accessibility of zero NOx solutions in closer proximity to the compliance date through an interim reporting process. The interim reports are intended to update the Air District Board of Directors on relevant market changes and ensure equitable outcomes in the implementation of the proposed standards.

Pursuant to the California Environmental Quality Act (CEQA), the Air District published a Notice of Preparation and Initial Study (NOP/IS) in anticipation of a Draft Environmental Impact Report (DEIR) for proposed amendments to Rule 9-4 and Rule 9-6 on May 19, 2022, and a CEQA scoping meeting was conducted on June 9, 2022. The DEIR for the proposed amendments to Rules 9-4 and 9-6 was published on December 20, 2022 for public review and comment (State Clearinghouse Number 2022050430). The DEIR concluded that impacts associated with Utilities and Service Systems would be potentially significant and unavoidable under the assumption that the replacement of existing natural gas-fired space and water heating appliances over time could result in increased energy demand beyond the existing grid capacity if these existing appliances are replaced with electric appliances. The DEIR also concluded that impacts associated with noise would be potentially significant and unavoidable due to the potential operational noise impacts associated with certain zero NOx equipment.

Air District staff released the proposed amendments to Rule 9-4 and Rule 9-6, Staff Report, Socioeconomic Impact Analysis, Notice of Public Hearing, Notice of Availability of a CEQA Draft Environmental Impact Report, and other supporting documents in December 2022 for public review and comment. The materials are available on the Air District's website at: <https://www.baaqmd.gov/building-appliances>

BUDGET CONSIDERATION/FINANCIAL IMPACT

Staff anticipates that the proposed amendments to Rules 9-4 and 9-6 will require additional staff time and resources in a number of areas.

The enforcement of the zero NOx standard is anticipated to result in increased staffing needs for the Compliance and Enforcement Division. In order to process certifications for compliant equipment and ensure point of sale compliance with the proposed ultra-low NOx requirements, staff anticipates the need to allocate 0.5 full-time equivalent (FTE) starting in 2024. To ensure compliance with the proposed zero NOx requirements, staff anticipates an ongoing need for one additional FTE in the Compliance and Enforcement Division starting in 2027.

Additionally, implementation of the proposed rule amendments will require ongoing support from Rules and Strategic Policy Division and Planning and Climate Protection Division staff to facilitate and participate in the Implementation Working Group and prepare the Interim Reports. Staff anticipates that the combined workload between these two divisions will amount annually to one FTE starting in 2023.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: David Joe
Reviewed by: Elizabeth Yura

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: March 1, 2023

Re: Consider Authorization to Execute a Contract with Direct Mail Center

RECOMMENDED ACTION

Recommend the Board of Directors authorize the Executive Officer/APCO to execute a contract with Direct Mail Center and authorize a Purchase Order in excess of \$100,000 for public notice expenses and other general mailing services.

Vendor	Amount	Service and Contract Description
Direct Mail Center	\$340,000	<ul style="list-style-type: none"> • Mailout of public notices as required by Air District regulations • Mailout of permit advisories and notices for permit and fee rule development • Mailout of notifications of significant projects as required by Air District regulations • Mailout of advisories, surveys, or informational packets

BACKGROUND

As part of the Air District’s permit program, Federal, State, and local laws require preparation and distribution of notices for certain projects. In addition, periodic mailouts are needed to communicate and administer permit programs. Public notices for applicable permit applications and permit rule development notifications are the most common mailouts.

Public Notices for Permit Applications

Before issuing a permit for a new or modified stationary source of hazardous air emissions that is located within 1,000 feet from a K-12 school, the Air District mails public comment period notices to all residents within 1,000 feet of that emissions source. The Air District also works with the impacted school(s) to distribute notices to the parents of the student body.

Before issuing a permit for a new or modified stationary source that required a health risk assessment in an overburdened community, the Air District mails public comment period notices to all residents within 1,000 feet of that emissions source.

Notices are distributed in additional languages, as needed. The public has a 30-day period to submit public comment regarding the permit. Residents can submit public comments to the Air District via postal mail, email or phone. Costs from permit application public notices are recovered through permit application fees, which account for over 90% of the contract.

Permit Rule Development Notifications

The Air District’s rule development process notifies interested parties and entities that would potentially be impacted by proposed rules or rule amendments. When electronic means are unavailable, direct mail is used to distribute information to stakeholders’ homes and businesses and to inform them about how to get involved in the process. Rules that are frequently updated by the Engineering Division include Regulation 2 rules (Permits) and Regulation 3 (Fees).

Other

Other work that requires mailing services includes but not limited to projects for new projects with significant emissions or a significant increase in emissions and special mailouts. Examples of special mailouts include advisories, surveys, or informational packets.

DISCUSSION

The Request for Proposals (RFP) was completed on February 3, 2023. One of two firms had appropriate staff, expertise, cost, and availability to perform the required scope of work. The Direct Mail Center’s proposal was evaluated under the Air District’s RFP evaluation procedures and received the highest average score on a 100-point scale.

Supplier	Expertise 30 pts	Skill 25 pts	Approach 10 pts	Cost 30 pts	References 5 pts	Total
Direct Mail Center	29	24.7	9.3	23.3	5	91.3
Sendlink	25.3	22.3	6.3	27.7	4.7	86.3

BUDGET CONSIDERATION/FINANCIAL IMPACT

Funding for the contract was encumbered from Fiscal Year Ending 2023 budget for Program 501. For permit application public notices, these costs are reimbursed to the Air District by the applicant through permit application fees.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Fred Tanaka
Reviewed by: Pamela J. Leong and Veronica Eady

ATTACHMENTS:

1. Draft Contract No. 2023.028 Direct Mail Center

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

PROFESSIONAL SERVICES CONTRACT

CONTRACT NO. 2023.028

1. PARTIES – The parties to this Contract (“Contract”) are the Bay Area Air Quality Management District (“DISTRICT”) whose address is 375 Beale Street, Suite 600, San Francisco, CA 94105, and **Direct Mail Center** (“CONTRACTOR”) whose address is 1099 Mariposa St., San Francisco, CA 94107.

2. RECITALS
 - A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701. DISTRICT desires to contract with CONTRACTOR for services described in the Scope of Work, attached hereto as Attachment A and made a part hereof by this reference. DISTRICT is entering into this Contract based on CONTRACTOR’s stated qualifications to perform the services.
 - B. All parties to this Contract have had the opportunity to have this contract reviewed by their attorney.

3. PERFORMANCE REQUIREMENTS
 - A. CONTRACTOR is authorized to do business in the State of California. CONTRACTOR attests that it is in good tax standing with federal and state tax authorities.
 - B. CONTRACTOR agrees to obtain any and all required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.
 - C. CONTRACTOR shall comply with all laws and regulations that apply to its performance under this Contract, including any requirements to disclose potential conflicts of interest under DISTRICT’s Conflict of Interest Code.
 - D. CONTRACTOR shall not engage in any performance of work during the term of this contract that is in direct or indirect conflict with duties and responsibilities set forth in the Scope of Work.
 - E. CONTRACTOR shall exercise the degree of skill and care customarily required by accepted professional practices and procedures.
 - F. CONTRACTOR shall ensure that any subcontractors, employees and agents performing under this Contract comply with the performance standards set forth in paragraphs A-E above.

4. TERM – The term of this Contract is from date of Contract execution to June 30, 2024, unless further extended by amendment of this Contract in writing, or terminated earlier. CONTRACTOR shall not submit any invoice for services performed under this Contract until the Contract is fully executed.

5. TERMINATION

- A. The DISTRICT may terminate this Contract at any time, at will, and without specifying any reason, by notifying CONTRACTOR in writing. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of the notice of termination, and shall be delivered in accordance with the provisions of section 10 below. Immediately upon receipt of the notice of termination, CONTRACTOR shall cease all work under this Contract, except such work as is specified in the notice of termination. CONTRACTOR shall deliver a final invoice for all remaining work performed but not billed, including any work specified in the termination notice, on or before ten (10) business days following the termination date.
 - B. Either party may terminate this Contract for breach by the other party.
 - i) Failure to perform any agreement or obligation contained in this Contract or failure to perform the services in a satisfactory manner shall constitute a breach of the Contract.
 - ii) The non-breaching party may terminate the Contract by delivery of a written notice of breach. The notice of breach shall specify the date of termination, which shall be no earlier than ten (10) business days from delivery of the notice of breach. In the alternative, at its sole discretion, the non-breaching party may require the breaching party to cure the breach. The notice of breach shall specify the nature of the breach and the date by which such breach must be cured.
 - iii) If CONTRACTOR fails to perform any obligation under this Contract, DISTRICT at its sole discretion, may perform, or cause the performance, of the obligation itself. In that event, DISTRICT shall deduct the costs to perform such obligation and any other costs to cure the breach from the payment otherwise due to CONTRACTOR for work performed under this Contract. DISTRICT's performance hereunder shall not be deemed a waiver or release of any obligation of, or default by, CONTRACTOR under this Contract.
 - iv) The notice of breach shall be provided in accordance with the notice requirements set forth in section 10.
 - v) The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.
6. INSURANCE
- A. CONTRACTOR shall maintain the following insurance:
 - i) Workers' compensation and employers' liability insurance as required by California law or other applicable statutory requirements.
 - ii) Occurrence-based commercial general liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each occurrence. Such insurance shall include DISTRICT and its officers, agents, and employees as additional insureds and shall be primary with respect to any insurance maintained by DISTRICT.
 - iii) Business automobile liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles. If CONTRACTOR is a sole proprietor, CONTRACTOR may meet this insurance requirement with personal automobile liability insurance carrying a business use endorsement or by demonstrating to the satisfaction of DISTRICT that business use is covered under the CONTRACTOR's personal automobile liability insurance. A CONTRACTOR using only rental vehicles in performing work under this Contract may meet this insurance requirement by purchasing automobile liability insurance in the required coverage amount from the rental

agency.

- B. All insurance shall be placed with insurers acceptable to DISTRICT.
- C. Prior to commencement of work under this Contract, CONTRACTOR shall furnish properly-executed certificates of insurance for all required insurance. Upon request by DISTRICT, CONTRACTOR shall provide a complete copy of any required insurance policy. CONTRACTOR shall notify DISTRICT in writing thirty (30) days prior to cancellation or modification of any required insurance policy. Any such modifications are subject to pre-approval by DISTRICT.
- D. If CONTRACTOR fails to maintain the required insurance coverage set forth above, DISTRICT reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or to terminate this Contract for breach.

7. INDEMNIFICATION

- A. CONTRACTOR shall indemnify and hold DISTRICT, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CONTRACTOR, its officers, agents, or employees.
- B. DISTRICT shall indemnify and hold CONTRACTOR, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fee, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of DISTRICT, its officers, agents, or employees.

8. PAYMENT

- A. DISTRICT shall pay CONTRACTOR for services in accordance with the terms set forth in the Cost Schedule, which is attached hereto as Attachment B and incorporated herein by this reference.
- B. CONTRACTOR shall submit invoice(s) to DISTRICT for services performed. Each invoice shall specify the total cost of the services for which the invoice is submitted, shall reference tasks shown in the Scope of Work, the hours associated with same, or percentage completion thereof, and the amount of charge claimed, and, as appropriate, shall list any charges for equipment, material, supplies, travel, and subcontractors' services.
- C. DISTRICT's payment of invoices shall be subject to the following limitations and requirements:
 - i) Each invoice, including supporting documentation, shall be prepared in duplicate on CONTRACTOR's letterhead; shall list DISTRICT's contract number, the period covered by the invoice, and the CONTRACTOR's Social Security Number or Federal Employer Identification Number; and shall be submitted to: Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco, CA 94105, Attn: Contracts Manager.
 - ii) DISTRICT shall not pay interest, fees, handling charges, or the cost of money on the Contract.
 - iii) DISTRICT shall pay CONTRACTOR within thirty (30) calendar days after approval by

DISTRICT of an itemized invoice.

- D. The total amount for which DISTRICT may be held liable for the performance of services specified in this Contract shall not exceed \$340,000.
9. DISPUTE RESOLUTION – A party that disputes a notice of breach must first seek mediation to resolve the dispute in accordance with the provisions set forth below.
- A. Upon receipt of a notice of breach of contract, the party may submit a demand for mediation to resolve whether or not a breach occurred. The party must state the basis of the dispute and deliver the demand within ten (10) business days of the date of receipt of the notice of breach.
 - B. The mediation shall take place at DISTRICT’s office at 375 Beale Street, Suite 600, San Francisco, or at such other place as may be mutually agreed upon by the parties and the mediator.
 - C. The parties shall make good faith efforts to hold the mediation within thirty (30) days after receipt of the demand for mediation.
 - D. Each party shall bear its own mediation costs.
 - E. In the event the parties are unable to resolve the dispute, either party may file an action in a court of competent jurisdiction to enforce the Contract.
 - F. Maximum recovery under this section shall be limited to \$340,000. The mediation costs shall not reduce the maximum amount recoverable under this section.
10. NOTICES – All notices that are required under this Contract shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after the date of mailing.

DISTRICT: Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Attn: Fred Tanaka

CONTRACTOR: Direct Mail Center
1099 Mariposa St.
San Francisco, CA 94107
Attn: Ray Leung

11. ADDITIONAL PROVISIONS – All attachment(s) to this Contract are expressly incorporated herein by this reference and made a part hereof as though fully set forth.

12. EMPLOYEES OF CONTRACTOR

- A. CONTRACTOR shall be responsible for the cost of regular pay to its employees, as well as cost of vacation leave, vacation replacements, sick leave, severance pay, and pay for legal holidays.
- B. CONTRACTOR, its officers, employees, agents, or representatives shall not be considered employees or agents of DISTRICT, nor shall CONTRACTOR, its officers, employees, agents, or representatives be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by DISTRICT to its employees.

13. CONFIDENTIALITY – In order to carry out the purposes of this Contract, CONTRACTOR may require access to certain of DISTRICT’s confidential information (including trade secrets, inventions, confidential know-how, confidential business information, and other information that DISTRICT considers confidential) (collectively, “Confidential Information”). It is expressly understood and agreed that DISTRICT may designate in a conspicuous manner Confidential Information that CONTRACTOR obtains from DISTRICT, and CONTRACTOR agrees to:

- A. Observe complete confidentiality with respect to such information, including without limitation, agreeing not to disclose or otherwise permit access to such information by any other person or entity in any manner whatsoever, except that such disclosure or access shall be permitted to employees of CONTRACTOR requiring access in fulfillment of the services provided under this Contract.
- B. Ensure that CONTRACTOR’s officers, employees, agents, representatives, and independent contractors are informed of the confidential nature of such information and to assure by agreement or otherwise that they are prohibited from copying or revealing, for any purpose whatsoever, the contents of such information or any part thereof, or from taking any action otherwise prohibited under this section.
- C. Not use such information or any part thereof in the performance of services to others or for the benefit of others in any form whatsoever whether gratuitously or for valuable consideration, except as permitted under this Contract.
- D. Notify DISTRICT promptly and in writing of the circumstances surrounding any possession, use, or knowledge of such information or any part thereof by any person or entity other than those authorized by this section. Take at CONTRACTOR’s expense, but at DISTRICT’s option and in any event under DISTRICT’s control, any legal action necessary to prevent unauthorized use of such information by any third party or entity which has gained access to such information at least in part due to the fault of CONTRACTOR.
- E. Take any and all other actions necessary or desirable to assure such continued confidentiality and protection of such information during the term of this Contract and following expiration or termination of the Contract.
- F. Prevent access to such materials by a person or entity not authorized under this Contract.
- G. Establish specific procedures in order to fulfill the obligations of this section.

14. INTELLECTUAL PROPERTY RIGHTS – Title and full ownership rights to all intellectual property developed under this Contract shall at all times remain with DISTRICT, unless otherwise agreed to in writing.

15. PUBLICATION

- A. DISTRICT shall approve in writing any report or other document prepared by CONTRACTOR in connection with performance under this Contract prior to dissemination or publication

of such report or document to a third party. DISTRICT may waive in writing its requirement for prior approval.

- B. Until approved by DISTRICT, any report or other document prepared by CONTRACTOR shall include on each page a conspicuous header, footer, or watermark stating "DRAFT – Not Reviewed or Approved by BAAQMD," unless DISTRICT has waived its requirement for prior approval pursuant to paragraph A of this section.
- C. Information, data, documents, or reports developed by CONTRACTOR for DISTRICT, pursuant to this Contract, shall be part of DISTRICT's public record, unless otherwise indicated. CONTRACTOR may use or publish, at its own expense, such information, provided DISTRICT approves use of such information in advance. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.

"This report was prepared as a result of work sponsored, paid for, in whole or in part, by the Bay Area Air Quality Management District (District). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of the District. The District, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report."

- D. CONTRACTOR shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and shall require compliance with the above.
16. NON-DISCRIMINATION – In the performance of this Contract, CONTRACTOR shall not discriminate in its recruitment, hiring, promotion, demotion, and termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, medical condition, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts. CONTRACTOR shall also require each subcontractor performing work in connection with this Contract to comply with this section and shall include in each contract with such subcontractor provisions to accomplish the requirements of this section.
 17. PROPERTY AND SECURITY – Without limiting CONTRACTOR'S obligations with regard to security, CONTRACTOR shall comply with all the rules and regulations established by DISTRICT for access to and activity in and around DISTRICT's premises.
 18. ASSIGNMENT – No party shall assign, sell, license, or otherwise transfer any rights or obligations under this Contract to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception.
 19. WAIVER – No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

Further, the failure of a party to enforce performance by the other party of any term, covenant, or condition of this Contract, and the failure of a party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.

20. ATTORNEYS' FEES – In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys' fees and costs.
21. FORCE MAJEURE – Neither DISTRICT nor CONTRACTOR shall be liable for or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are beyond the reasonable control of DISTRICT or CONTRACTOR, for a period of time equal to the period of such force majeure event, provided that the party failing to perform notifies the other party within fifteen calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party's own action or inaction, then such cause shall not excuse that party from performance under this Contract.
22. SEVERABILITY – If a court of competent jurisdiction holds any provision of this Contract to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them will not be affected.
23. HEADINGS – Headings on the sections and paragraphs of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.
24. COUNTERPARTS/FACSIMILES/SCANS – This Contract may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same contract. The parties may rely upon a facsimile copy or scanned copy of any party's signature as an original for all purposes.
25. GOVERNING LAW – Any dispute that arises under or relates to this Contract shall be governed by California law, excluding any laws that direct the application of another jurisdiction's laws. Venue for resolution of any dispute that arises under or relates to this Contract, including mediation, shall be San Francisco, California.
26. ENTIRE CONTRACT AND MODIFICATION – This Contract represents the final, complete, and exclusive statement of the agreement between the parties related to CONTRACTOR providing services to DISTRICT and supersedes all prior and contemporaneous understandings and agreements of the parties. No party has been induced to enter into this Contract by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein.

This Contract may only be amended by mutual agreement of the parties in writing and signed by both parties.

27. SURVIVAL OF TERMS – The provisions of sections 7 (Indemnification), 13 (Confidentiality), 14 (Intellectual Property Rights), and 15 (Publication) shall survive the expiration or termination of this Contract.

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

DIRECT MAIL CENTER

By: _____
Sharon L. Landers
Interim Executive Officer/APCO

By: _____
Ray Leung
Account Manager

Date: _____

Date: _____

Approved as to form:
District Counsel

By: _____
Alexander G. Crockett
District Counsel

ATTACHMENT A

SCOPE OF WORK

CONTRACTOR will assist DISTRICT with the reproduction and distribution of notices prepared pursuant to applicable Overburdened Community projects from Regulation 2, Rule 1, California Health and Safety Code Section 42301.6, which provides for the distribution of a public notice for proposed projects to construct or modify a source that emits hazardous air emissions within 1,000 feet of a school site and other general notifications.

The CONTRACTOR will provide the DISTRICT with the following services:

- Merge/purge remove duplicate addresses;
- Reformat/Standardize Data file structure;
- Set up and check for incomplete addresses;
- Select/delete specific addresses within 1000 ft radius of the proposed project;
- Export report of addresses via email to the Air District in PDF format;
- Radius map/courier route select within 1000 ft. of center point of the proposed project;
- Set up for automation discounted postage;
- Presort address using postal software, append address barcodes;
- Print out CASS report and certificates including tray tags;
- Typeset, print samples for approval, make changes to artwork;
- Set up Inkjet machine for addressing on mail pieces Inkjet address directly onto envelopes or mail piece;
- Print 2-sided document in black and white on 20lbs 8.5x11 paper;
- Purchase residential address list /one-time-use only;
- Manually presort addressed mail pieces;
- Set up folding machine for folding tri fold letters for #10 envelopes;
- Set up insert machine to insert letters into #10 envelopes include sealing envelopes;
- Insert letters into #10 envelopes include sealing envelopes;
- Apply meter postage onto envelopes;
- Draw postage from a postage account established and funded by District;
- Affix mailing labels by hand;
- Place mail in tray per USPS instruction for presorted mail;
- Deliver mail to Main U.S. Post Office in San Francisco;
- Standard pick up in San Francisco; and
- Standard delivery in San Francisco.

ATTACHMENT B

COST SCHEDULE

List of services available	1- 999 units per mailing, \$	1000-4999 units per mailing, \$
Duplication elimination	150/hour	150/hour
File reformat	150/hour	150/hour
Additional File	13	13
File transfer via email	34	35
Programming record selection	150/hour	150/hour
Mapping	150/hour	150/hour
Export file	32	32
Prepare artwork	150/hour	150/hour
Inkjet addressing setup	75	75
Machine Folding setup	50	50
Stamp machine setup	65	65
Mailsmarter setup	43	43
Insert Machine setup	75	75
Resident List	195	200
List change	51	51
File Format	44	44
FedEx packaging	25	25
Deliver to Post Office	60	60
Pickup within SF	60	60
Delivery within SF	60	60
CASS certificate	15	15
NOCA setup	84	84
Run NCOA	82	82
Tray strap/letter size	1.3000	1.3000
Affix label by hand	0.2000	0.2000
Staple	0.1500	0.1500
Run Mailsmarter	0.0160	0.0160
Inkjet address	0.0450	0.0400
Digital Printing 20#, 1/1 black - 8.5x11	0.1800	0.1500
Digital Printing 20#, 1/0 black - 8.5x11	0.1300	0.1000
Presort	0.0700	0.0500
Machine Folding	0.0260	0.0230
Insert by machine 1 piece	0.0340	0.0310
Insert by machine 2 pieces	0.0400	0.0380
Insert by machine 3 pieces	0.0500	0.0450
Seal and Meter	0.0720	0.0720
Insert by hand 1 piece	0.1500	0.1500
Seal by hand	0.1750	0.1750
Affix stamp by machine	0.0570	0.0400
Affix stamp by hand	0.2500	0.2500

Total Cost of Contract not to exceed \$340,000.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: March 1, 2023

Re: Authorization to Execute a Contract Amendment with Shute Mihaly & Weinberger
LLP

RECOMMENDED ACTION

Authorize the Executive Officer/APCO to execute an amendment to the existing Legal Services Agreement with Shute Mihaly & Weinberger LLP to increase the current contract limit by \$200,000, from \$425,000 to \$625,000, for continued representation in the litigation regarding District Regulation 6, Rule 5; and authorize the transfer of \$200,000 of budgeted legal contingency funds to Program 205 – Litigation.

BACKGROUND

In July of 2021, the Board of Directors adopted amendments to Air District Regulation 6, Rule 5 – Particulate Emissions From Petroleum Refinery Fluidized Catalytic Cracking Units (Regulation 6-5). These amendments were a very high-profile and important regulatory effort by the Air District. The amendments will achieve significant public health benefits by reducing the amount of fine particulate matter emitted from Bay Area petroleum refineries. The amendments also fulfilled a commitment the Board of Directors made in its 2018 AB 617 Expedited BARCT Implementation Schedule to update this regulation.

In September of 2021, two affected petroleum refineries filed Petitions for Writ of Mandate in Contra Costa County Superior Court challenging the Board's adoption of the Regulation 6-5 amendments. The two cases are *Martinez Refining Co. LLC v. BAAQMD* (Case No. N-21-1568) and *Chevron U.S.A., Inc. v. BAAQMD* (Case No. N21-1739). The cases allege that the Air District violated requirements of the California Environmental Quality Act (CEQA) and the California Health & Safety Code in adopting these amendments to Regulation 6-5. The *Chevron U.S.A., Inc.* case also alleges violations of the California Public Records Act. The Air District strongly denies that it violated any legal requirements in connection with these amendments.

The parties have just completed a time-consuming and contentious process of assembling the administrative record on which these cases will be tried, which comprises over 100,000 pages of documents. The parties will now begin the process of briefing the merits. After briefing is complete, the court will hold a hearing, which is currently scheduled for September 20, 2023,

and will then proceed to render a decision.

DISCUSSION

This proposed amendment to the Legal Services Agreement is necessary because Shute Mihaly has exceeded its original estimate for the work necessary to defend these cases and is approaching the current fee limit specified in the Agreement. The cases have proven significantly more expensive to defend than initially anticipated for two main reasons. First, compiling and reviewing for privilege the documents that the Air District has now certified as the administrative record took much more time and effort than was initially expected. This was due to a number of factors, including the sheer volume of the documents and the lengthy process of obtaining them, as well as (significantly) the aggressiveness of Chevron and MRC in pursuing those documents.

Second, and somewhat relatedly, Chevron and MRC filed extensive motions to augment the record, the defense of which was not part of the original estimate. These motions sought access to confidential, privileged information, and it was important to vigorously oppose them to protect the integrity of the Air District's rulemaking processes.

At this point, Shute Mihaly estimates that an additional \$200,000 will be needed to take these cases through the briefing on the merits in the trial court. Although this amount represents Shute Mihaly's best estimate, it is only an estimate, and it is possible that actual defense costs could be different, as litigation costs cannot be predicted with certainty. Shute Mihaly will provide the Air District with advance notice if it expects the total litigation costs to exceed \$625,000. In the event that it looks like costs could exceed this amount, staff will come back to the Board to seek a supplemental authorization before exceeding the authorized limit of \$625,000.

Please let me know if you have any questions or would like to discuss this request.

BUDGET CONSIDERATION/FINANCIAL IMPACT

The FYE 2023 budget included \$3 million for litigation contingency. This budget allocation is sufficient to cover the anticipated costs of this litigation. If authorized, staff will transfer \$200,000 from this litigation contingency to Program 205 – Litigation.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Alexander Crockett

ATTACHMENTS:

1. Executed Legal Services Contract No. 2022.198 Shute Mihaly & Weinberger LLP
2. Contract 2022.198 - Shute Mihaly Legal Services Agreement - Amendment 1

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

ROBERT “PERL” PERLMUTTER
Attorney
Perlmutter@smwlaw.com

June 29, 2022

Via Electronic Mail Only

Alexander Crockett
District Counsel
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Email: ACrockett@baaqmd.gov

Re: Supplemental Legal Retainer Agreement Regarding Regulation 6-5
Litigation

Dear Sandy:

As we discussed, and pursuant to the March 7, 2022, “Framework Agreement” between Shute, Mihaly & Weinberger LLP (“Firm”) and the Bay Area Air Quality Management District (“District”), this supplemental legal retainer agreement provides for the Firm’s continued representation of the District in the two lawsuits that have been filed challenging the District’s July 21, 2021 adoption of amendments to Regulation 6-5.

1. Legal Services to Be Provided

The Firm shall defend the District in *Chevron U.S.A., Inc. v. Bay Area Air Quality Management District* (Contra Costa Superior Court Case No. N21-1739) and *Martinez Refining Company LLC. v. Bay Area Air Quality Management District* (Contra Costa Superior Court Case No. N21-1568) (“Litigation”), subject to and at the direction of the District’s General Counsel.

2. Legal Fees and Costs

Fees and costs shall be billed as set forth in the Framework Agreement.

Alexander Crockett
June 29, 2022
Page 2

3. Budget Estimate and Anticipated Timeline

At present, we estimate that the cost to represent the District in the Litigation through conclusion of the trial court proceedings will not exceed \$425,000. This estimate is based on our experience in defending public agencies in comparable litigation and assumes that this case will not involve unusual or unforeseen circumstances. However, and even absent such circumstances, litigation costs sometimes exceed expectations and accordingly this estimate is not a cap. That said, we will not exceed this estimate without prior written approval from the District.

At present, we anticipate that the trial court will issue a decision in this matter no later than the spring of 2023.

4. Additional Terms Governed by Framework Agreement

The additional terms governing the Firm's representation of the District shall be as set forth in the Framework Agreement, except that Alexander Crockett shall be the District's authorized representative to direct the Firm and to be the primary person to communicate with the Firm regarding the Litigation.

If this supplemental agreement ("Agreement") is satisfactory, please execute a copy and return it to me. This Agreement will be effective when it is signed by you.

We look forward to continue working with you to defend the District in this matter.

Alexander Crockett
June 29, 2022
Page 3

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Robert "Perl" Perlmutter

ACCEPTED AND AGREED:

Bay Area Air Quality Management District

Approved as to Form:

DocuSigned by:

D03B3B4BDCD74FD...
Veronica Eady
District Interim Executive Officer/APCO

DocuSigned by:

B5AE1A26FCA4453...
Alexander Crockett
District Counsel

Date: 8/2/2022

Date: 8/2/2022

1528021.3

February 17, 2023

Via Electronic Mail Only

Alexander Crockett
General Counsel
Bay Area Air Quality Management
District
375 Beale St Ste 600
San Francisco, CA 94105-2097
E-Mail: ACrockett@baaqmd.gov

Re: Budget Augmentation for Defending Regulation 6.5 Litigation

Dear Sandy:

As we discussed, I am writing to request an amendment to the June 29, 2022, Retainer Agreement (“Agreement”) governing this Firm’s defense of the Bay Area Air Quality Management District (“District”) in the two lawsuits challenging the District’s July 21, 2021 adoption of amendments to Regulation 6-5, in order to increase the estimated budget for this representation.

Paragraph 3 of the Agreement contained our initial estimate that the costs of defending the District through conclusion of the trial court proceedings would not exceed \$425,000. The Agreement also noted that the actual costs of defending the litigation could exceed this amount and provided that the Firm would require the District’s written approval to exceed that amount. We now estimate that it will cost an additional \$200,000 to defend the District in the litigation through the conclusion of the trial court proceedings. Accordingly, we request that the District agree to amend paragraph 3 of the Agreement to authorize that \$200,000 increase.

All other terms of the Agreement—including its incorporation of terms in the Firm’s March 7, 2022, Framework Agreement with the District—will remain the same. If this amendment is satisfactory to the District, please execute a copy and return it to me.

Alexander Crockett
February 17, 2023
Page 2

We look forward to continue working with you to defend the District in this matter.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Robert "Perl" Perlmutter

ACCEPTED AND AGREED:

Bay Area Air Quality Management District

Sharon Landers
District Interim Executive Officer/APCO

Alexander Crockett
District Counsel

Date: _____

Date: _____

1619333.1

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: March 1, 2023

Re: Authorization to Execute a Contract Amendment with Van Dermyden Makus Law Corporation

RECOMMENDED ACTION

Recommend the Board of Directors authorize the Executive Officer/APCO to amend the contract with Van Dermyden Makus Law Corporation increasing the maximum dollar amount of the contract by \$150,000 -- from \$350,000 to \$500,000 -- for legal services related to workplace investigations, and extending the term of the agreement through December 31, 2023.

BACKGROUND

From time to time, the Air District has the need to engage an outside law firm for the purpose of conducting workplace investigations. Outside law firms are utilized for this type of work instead of in-house counsel because of the specialization required in personnel matters.

DISCUSSION

Van Dermyden Makus has previously worked with the Air District and is familiar with the Air District's organizational structure, operations, and policies. Van Dermyden Makus specializes in workplace investigations, has experience working with public sector employers, and has successfully performed work in a timely and efficient manner for the Air District. Because of the additional cost required to familiarize a new vendor with the Air District's organizational structure, operations and policies, and because Van Dermyden has performed successfully in the past, this Amendment is requested as a no-bid contract amendment. Amending this contract will allow the Air District to engage proven investigators from Van Dermyden Makus on any current matters, and as the need arises in the future.

BUDGET CONSIDERATION/FINANCIAL IMPACT

These funds are included in the Fiscal Year Ending 2023 Program 104 budget.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Alexander G. Crockett

ATTACHMENTS:

1. Executed Contract No. 2021.149 Van Dermyden Makus Law Corporation
2. Executed Amendment No. 1 Contract No. 2021.149 Executed Van Dermyden Makus Law Corporation
3. Executed Amendment No. 2 Contract No. 2021.149 Executed Van Dermyden Makus Law Corporation
4. Executed Amendment No. 3 Contract No. 2021.149 Executed Van Dermyden Makus Law Corporation
5. Draft Amendment No. 4 Contract No. 2021.149 Executed Van Dermyden Makus Law Corporation

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

PROFESSIONAL SERVICES CONTRACT

CONTRACT NO. 2021.149

1. **PARTIES** – The parties to this Contract (“Contract”) are the Bay Area Air Quality Management District (“DISTRICT”) whose address is 375 Beale Street, Suite 600, San Francisco, CA 94105, and **Van Dermyden Makus Law Corporation** (“CONTRACTOR”) whose address is 2520 Venture Oaks Way, Suite 450, Sacramento, CA 95833.

2. **RECITALS**
 - A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701. DISTRICT desires to contract with CONTRACTOR for services described in the Scope of Work, attached hereto as Attachment A and made a part hereof by this reference. DISTRICT is entering into this Contract based on CONTRACTOR’s stated qualifications to perform the services.
 - B. All parties to this Contract have had the opportunity to have this contract reviewed by their attorney.

3. **PERFORMANCE REQUIREMENTS**
 - A. CONTRACTOR is authorized to do business in the State of California. CONTRACTOR attests that it is in good tax standing with federal and state tax authorities.
 - B. CONTRACTOR agrees to obtain any and all required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.
 - C. CONTRACTOR shall comply with all laws and regulations that apply to its performance under this Contract, including any requirements to disclose potential conflicts of interest under DISTRICT’s Conflict of Interest Code.
 - D. CONTRACTOR shall not engage in any performance of work during the term of this contract that is in direct or indirect conflict with duties and responsibilities set forth in the Scope of Work.
 - E. CONTRACTOR shall exercise the degree of skill and care customarily required by accepted professional practices and procedures.
 - F. CONTRACTOR shall ensure that any subcontractors, employees and agents performing under this Contract comply with the performance standards set forth in paragraph D above.

4. **TERM** – The term of this Contract is from August 1, 2021 to August 1, 2022, unless further extended by amendment of this Contract in writing, or terminated earlier. CONTRACTOR shall not submit any invoice for services performed under this Contract until the Contract is fully executed.

5. **TERMINATION**
 - A. The DISTRICT may terminate this Contract at any time, at will, and without specifying any reason, by notifying CONTRACTOR in writing. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of the notice of termination, and shall be delivered in accordance with the provisions

of section 10 below. Immediately upon receipt of the notice of termination, CONTRACTOR shall cease all work under this Contract, except such work as is specified in the notice of termination. CONTRACTOR shall deliver a final invoice for all remaining work performed but not billed, including any work specified in the termination notice, on or before ten (10) business days following the termination date.

- B. Either party may terminate this Contract for breach by the other party.
- i) Failure to perform any agreement or obligation contained in this Contract or failure to perform the services in a satisfactory manner shall constitute a breach of the Contract.
 - ii) The non-breaching party may terminate the Contract by delivery of a written notice of breach. The notice of breach shall specify the date of termination, which shall be no earlier than ten (10) business days from delivery of the notice of breach. In the alternative, at its sole discretion, the non-breaching party may require the breaching party to cure the breach. The notice of breach shall specify the nature of the breach and the date by which such breach must be cured.
 - iii) If CONTRACTOR fails to perform any obligation under this Contract, DISTRICT at its sole discretion, may perform, or cause the performance, of the obligation itself. In that event, DISTRICT shall deduct the costs to perform such obligation and any other costs to cure the breach from the payment otherwise due to CONTRACTOR for work performed under this Contract. DISTRICT's performance hereunder shall not be deemed a waiver or release of any obligation of, or default by, CONTRACTOR under this Contract.
 - iv) The notice of breach shall be provided in accordance with the notice requirements set forth in section 10.
 - v) The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.

6. INSURANCE

- A. CONTRACTOR shall maintain the following insurance:
- i) Workers' compensation and employers' liability insurance as required by California law or other applicable statutory requirements.
 - ii) Occurrence-based commercial general liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each occurrence. Such insurance shall include DISTRICT and its officers, agents, and employees as additional insureds and shall be primary with respect to any insurance maintained by DISTRICT.
 - iii) Business automobile liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles. If CONTRACTOR is a sole proprietor, CONTRACTOR may meet this insurance requirement with personal automobile liability insurance carrying a business use endorsement or by demonstrating to the satisfaction of DISTRICT that business use is covered under the CONTRACTOR's personal automobile liability insurance. A CONTRACTOR using only rental vehicles in performing work under this Contract may meet this insurance requirement by purchasing automobile liability insurance in the required coverage amount from the rental agency.
 - iv) Professional liability insurance with limits not less than one million dollars (\$1,000,000) each claim.
- B. All insurance shall be placed with insurers acceptable to DISTRICT.

- C. Prior to commencement of work under this Contract, CONTRACTOR shall furnish properly-executed certificates of insurance for all required insurance. Upon request by DISTRICT, CONTRACTOR shall provide a complete copy of any required insurance policy. CONTRACTOR shall notify DISTRICT in writing thirty (30) days prior to cancellation or modification of any required insurance policy. Any such modifications are subject to pre-approval by DISTRICT.
- D. If CONTRACTOR fails to maintain the required insurance coverage set forth above, DISTRICT reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or to terminate this Contract for breach.

7. INDEMNIFICATION

- A. CONTRACTOR shall indemnify and hold DISTRICT, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CONTRACTOR, its officers, agents, or employees.
- B. DISTRICT shall indemnify and hold CONTRACTOR, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fee, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of DISTRICT, its officers, agents, or employees.

8. PAYMENT

- A. DISTRICT shall pay CONTRACTOR for services in accordance with the terms set forth in the Cost Schedule, which is attached hereto as Attachment B and incorporated herein by this reference.
- B. CONTRACTOR shall submit invoice(s) to DISTRICT for services performed. Each invoice shall specify the total cost of the services for which the invoice is submitted, shall reference tasks shown in the Scope of Work, the hours associated with same, or percentage completion thereof, and the amount of charge claimed, and, as appropriate, shall list any charges for equipment, material, supplies, travel, and subcontractors' services.
- C. DISTRICT's payment of invoices shall be subject to the following limitations and requirements:
 - i) Each invoice, including supporting documentation, shall be prepared in duplicate on CONTRACTOR's letterhead; shall list DISTRICT's contract number, the period covered by the invoice, and the CONTRACTOR's Social Security Number or Federal Employer Identification Number; and shall be submitted to: Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco, CA 94105, Attn: John Chiladakis.
 - ii) DISTRICT shall not pay interest, fees, handling charges, or the cost of money on the Contract.
 - iii) DISTRICT shall pay CONTRACTOR within thirty (30) calendar days after approval by DISTRICT of an itemized invoice.
- D. The total amount for which DISTRICT may be held liable for the performance of services specified in this Contract shall not exceed \$95,000.

- 9. DISPUTE RESOLUTION – A party that disputes a notice of breach must first seek mediation to resolve the dispute in accordance with the provisions set forth below.

- A. Upon receipt of a notice of breach of contract, the party may submit a demand for mediation to resolve whether or not a breach occurred. The party must state the basis of the dispute and deliver the demand within ten (10) business days of the date of receipt of the notice of breach.
- B. The mediation shall take place at DISTRICT’s office at 375 Beale Street, Suite 600, San Francisco, or at such other place as may be mutually agreed upon by the parties and the mediator.
- C. The parties shall make good faith efforts to hold the mediation within thirty (30) days after receipt of the demand for mediation.
- D. Each party shall bear its own mediation costs.
- E. In the event the parties are unable to resolve the dispute, either party may file an action in a court of competent jurisdiction to enforce the Contract.
- F. Maximum recovery under this section shall be limited to \$95,000. The mediation costs shall not reduce the maximum amount recoverable under this section.

10. NOTICES – All notices that are required under this Contract shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after the date of mailing.

DISTRICT: Bay Area Air Quality Management District
 375 Beale Street, Suite 600
 San Francisco, CA 94105
 Attn: John Chiladakis, Acting Chief Administrative Officer

CONTRACTOR: Van Dermyden Makus Law Corporation
 2520 Venture Oaks Way, Suite 450
 Sacramento, CA 95833
 Attn: Nikki Hall, Partner

11. ADDITIONAL PROVISIONS – All attachment(s) to this Contract are expressly incorporated herein by this reference and made a part hereof as though fully set forth.

12. EMPLOYEES OF CONTRACTOR

- A. CONTRACTOR shall be responsible for the cost of regular pay to its employees, as well as cost of vacation, vacation replacements, sick leave, severance pay, and pay for legal holidays.
- B. CONTRACTOR, its officers, employees, agents, or representatives shall not be considered employees or agents of DISTRICT, nor shall CONTRACTOR, its officers, employees, agents, or representatives be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by DISTRICT to its employees.
- C. DISTRICT reserves the right to review the credentials to perform the work of any of CONTRACTOR’s employees assigned herein and to disapprove CONTRACTOR’s assignments.

CONTRACTOR warrants that it will not employ any subcontractor(s) without prior written approval from DISTRICT.

13. [RESERVED]

14. INTELLECTUAL PROPERTY RIGHTS – Title and full ownership rights to all intellectual property developed under this Contract shall at all times remain with DISTRICT, unless otherwise agreed to in writing.

15. [RESERVED]

16. NON-DISCRIMINATION – In the performance of this Contract, CONTRACTOR shall not discriminate in its recruitment, hiring, promotion, demotion, and termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, medical condition, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts. CONTRACTOR shall also require each subcontractor performing work in connection with this Contract to comply with this section and shall include in each contract with such subcontractor provisions to accomplish the requirements of this section.

17. PROPERTY AND SECURITY – Without limiting CONTRACTOR’S obligations with regard to security, CONTRACTOR shall comply with all the rules and regulations established by DISTRICT for access to and activity in and around DISTRICT’s premises.

18. ASSIGNMENT – No party shall assign, sell, license, or otherwise transfer any rights or obligations under this Contract to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception.

19. WAIVER – No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant, or condition of this Contract, and the failure of a party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.

20. ATTORNEYS’ FEES – In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys’ fees and costs.

21. FORCE MAJEURE – Neither DISTRICT nor CONTRACTOR shall be liable for or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are

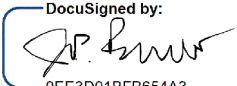
beyond the reasonable control of DISTRICT or CONTRACTOR, for a period of time equal to the period of such force majeure event, provided that the party failing to perform notifies the other party within fifteen calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party's own action or inaction, then such cause shall not excuse that party from performance under this Contract.

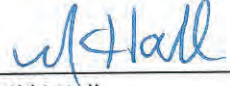
22. SEVERABILITY – If a court of competent jurisdiction holds any provision of this Contract to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them will not be affected.
23. HEADINGS – Headings on the sections and paragraphs of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.
24. COUNTERPARTS/FACSIMILES/SCANS – This Contract may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same contract. The parties may rely upon a facsimile copy or scanned copy of any party's signature as an original for all purposes.
25. GOVERNING LAW – Any dispute that arises under or relates to this Contract shall be governed by California law, excluding any laws that direct the application of another jurisdiction's laws. Venue for resolution of any dispute that arises under or relates to this Contract, including mediation, shall be San Francisco, California.
26. ENTIRE CONTRACT AND MODIFICATION – This Contract represents the final, complete, and exclusive statement of the agreement between the parties related to CONTRACTOR providing services to DISTRICT and supersedes all prior and contemporaneous understandings and agreements of the parties. No party has been induced to enter into this Contract by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein. This Contract may only be amended by mutual agreement of the parties in writing and signed by both parties.
27. SURVIVAL OF TERMS – The provisions of sections 7 (Indemnification) and 14 (Intellectual Property Rights) shall survive the expiration or termination of this Contract.

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

VAN DERMYDEN MAKUS LAW CORPORATION


By: 
DocuSigned by:
0EE3D01BFB654A3...
Jack P. Broadbent
Executive Officer/APCO

By: 
Nikki Hall
Partner

Date: 8/10/2021

Date: 

Approved as to form:
District Counsel

By: 
DocuSigned by:
150A910F987E4D3...
Adan Schwartz
Acting, District Counsel

ATTACHMENT A

SCOPE OF WORK

CONTRACTOR shall perform legal services for the DISTRICT in the form of independent, impartial workplace investigations. CONTRACTOR will perform these duties as an attorney at law for the purpose of facilitating the rendering of legal advice to the DISTRICT by its counsel. CONTRACTOR's communications, work product, and the final report will be protected from disclosure pursuant to the attorney-client privilege unless waived by the DISTRICT.

ATTACHMENT B**COST SCHEDULE**

Fees and Costs. DISTRICT agrees to pay CONTRACTOR at the following rates for the work described in Attachment A, Scope of Work. CONTRACTOR will submit invoices for all services in accordance with Section 8, "Payment", of this Contract.

Staff	Discounted Hourly Rates for Public Entities
Senior Partner	\$460
Partner	\$385
Senior Associate	\$310
Associate	\$275
Law Clerk	\$185
Paralegal	\$140

Time charged will include, for example, time spent preparing for and interviewing witnesses, reviewing documents, writing the report of the findings, and performing any necessary research. The time charged will also include time spent on telephone calls and email correspondence relating to the investigation. Time spent traveling to and from interviews will also be billed.

CONTRACTOR may incur various costs and expenses in performing services under this Contract. DISTRICT agrees to pay for all costs and expenses, in addition to the hourly fee. These costs include mileage reimbursement at the federal standard mileage rate in effect for the year, bridge tolls, parking fees, messenger and other special delivery fees, and similar charges.

Fees and costs for the investigation will not exceed \$95,000. This limitation only applies to the fees and cost of the investigation itself, not time and expenses related to any post-investigative work.

Compensation for Post-Investigative Work. This engagement shall be considered concluded after CONTRACTOR has provided a final investigation report in this matter. After the conclusion of the engagement, should a need arise for CONTRACTOR to respond to any subpoena or discovery, to provide testimony at deposition, trial, arbitration, or at an administrative hearing, or to otherwise perform services with respect to any matter relating to or arising out of the investigation, DISTRICT shall compensate CONTRACTOR at its then applicable rates for time expended, including all required preparation time.

Total cost of Contract not to exceed: \$95,000.

**AMENDMENT NO. 1 TO
BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

CONTRACT NO. 2021.149

This amendment to the above-entitled contract ("Contract Amendment") is dated, for reference purposes only, November 18, 2021.

RECITALS:

1. The Bay Area Air Quality Management District ("DISTRICT") and **Van Dermeyden Makus Law Corporation** ("CONTRACTOR") (hereinafter referred to as the "PARTIES") entered into the above-entitled contract for independent and impartial workplace investigations (the "Contract"), which Contract was executed on behalf of CONTRACTOR on August 5, 2021 and on behalf of DISTRICT on August 10, 2021.
2. The PARTIES seek to amend the total maximum cost of the Contract because the DISTRICT seeks to have CONTRACTOR continue to provide the services prescribed in the Contract, and CONTRACTOR desires to continue to provide those services, up to the new total maximum cost.
3. In accordance with Section 26 of the Contract, DISTRICT and CONTRACTOR desire to amend the above-entitled Contract as follows:

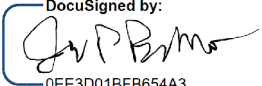
TERMS AND CONDITIONS OF CONTRACT AMENDMENT:

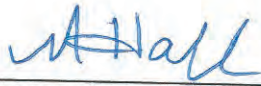
1. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph D of Section 8, "Payment," of the Contract to replace "\$95,000" with "\$250,000."
2. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph F of Section 9, "Dispute Resolution," of the Contract to replace "\$95,000" with "\$250,000."
3. By this Contract Amendment, DISTRICT and CONTRACTOR amend Attachment B, Cost Schedule of the Contract by replacing "\$95,000" where it appears with "\$250,000."
4. DISTRICT and CONTRACTOR agree that all other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the PARTIES have caused this Contract Amendment to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

VAN DERMYDEN MAKUS LAW
CORPORATION

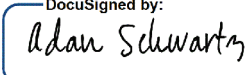
By:  _____
DocuSigned by:
0EE3D01BFB654A3...
Jack P. Broadbent
Executive Officer/APCO

By:  _____
Nikki Hall
Partner

Date: 11/24/2021

Date: 11/19/21

Approved as to form:
District Counsel

By:  _____
DocuSigned by:
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Adan Schwartz
Acting District Counsel

AMENDMENT NO. 2 TO
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
CONTRACT NO. 2021.149

This amendment to the above-entitled contract ("Contract Amendment") is dated, for reference purposes only, June 1, 2022.

RECITALS:

1. The Bay Area Air Quality Management District ("DISTRICT") and **Van Dermyden Makus Law Corporation** ("CONTRACTOR") (hereinafter referred to as the "PARTIES") entered into the above-entitled contract for independent and impartial workplace investigations (the "Contract"), which Contract was executed on behalf of CONTRACTOR on August 5, 2021 and on behalf of DISTRICT on August 10, 2021.
2. The PARTIES entered into Amendment No. 1 to the Contract, dated November 18, 2021, for reference purposes only, to amend the total maximum cost of the Contract.
3. The PARTIES seek to amend the term of the Contract because the DISTRICT seeks to have CONTRACTOR continue to provide the services prescribed in the Contract, and CONTRACTOR desires to continue to provide those services, up to the new term end date.
4. In accordance with Section 26 of the Contract, DISTRICT and CONTRACTOR desire to amend the above-entitled Contract as follows:

TERMS AND CONDITIONS OF CONTRACT AMENDMENT:

1. By this Contract Amendment, DISTRICT and CONTRACTOR amend Section 4, "Term." The term of the Contract shall be extended so that the termination date of the Contract is now August 1, 2023.
2. DISTRICT and CONTRACTOR agree that all other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the PARTIES have caused this Contract Amendment to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

VAN DERMYDEN MAKUS LAW
CORPORATION

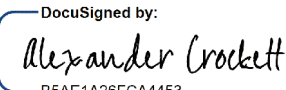
By:  _____
Sharon Landers
Interim Executive Officer/APCO

By:  _____
Nikki Hall
Partner

Date: 7/14/2022

Date: June 2, 2022

Approved as to form:
District Counsel

By:  _____
Alexander G. Crockett
District Counsel

AMENDMENT NO. 3 TO
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
CONTRACT NO. 2021.149

This amendment to the above-entitled contract ("Contract Amendment") is dated, for reference purposes only, September 21, 2022.

RECITALS:

1. The Bay Area Air Quality Management District ("DISTRICT") and **Van Dermeyden Makus Law Corporation** ("CONTRACTOR") (hereinafter referred to as the "PARTIES") entered into the above-entitled contract for independent and impartial workplace investigations (the "Contract"), which Contract was executed on behalf of CONTRACTOR on August 5, 2021 and on behalf of DISTRICT on August 10, 2021.
2. The PARTIES entered into Amendment No. 1 to the Contract, dated November 18, 2021 (for reference purposes only), to increase the total maximum cost of the Contract from \$95,000 to \$250,000.
3. The PARTIES entered into Amendment No. 2 to the Contract, dated June 1, 2022 (for reference purposes only), to extend the Term of the Contract.
4. The PARTIES now seek to amend the total maximum cost of the Contract because the DISTRICT seeks to have CONTRACTOR continue to provide the services prescribed in the Contract, and CONTRACTOR desires to continue to provide those services, up to the new total maximum cost.
5. In accordance with Section 26 of the Contract, DISTRICT and CONTRACTOR desire to amend the above-entitled Contract as follows:

TERMS AND CONDITIONS OF CONTRACT AMENDMENT:

1. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph D of Section 8, "Payment," of the Contract to replace "\$250,000," which is the effective limit pursuant to Amendment No. 1, with "\$350,000."
2. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph F of Section 9, "Dispute Resolution," of the Contract to replace "\$250,000," which is the effective limit pursuant to Amendment No. 1, with "\$350,000."

- 3. By this Contract Amendment, DISTRICT and CONTRACTOR amend Attachment B, Cost Schedule of the Contract by replacing "\$250,000," which is the effective limit pursuant to Amendment No. 1, with "\$350,000."
- 2. DISTRICT and CONTRACTOR agree that all other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the PARTIES have caused this Contract Amendment to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

VAN DERMYDEN MAKUS LAW
CORPORATION

By: DocuSigned by:
Sharon Landers
5D7BA5BC138D4C0... _____
Sharon Landers
Interim Executive Officer/APCO

By: DocuSigned by:
Miki Hall
F21B59FF217943E... _____
Partner

Date: 10/6/2022

Date: 10/5/2022

Approved as to form:
District Counsel

By: DocuSigned by:
Alexander Crockett
B5AE1A26FCA4453... _____
Crockett
District Counsel

AMENDMENT NO. 4 TO
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
CONTRACT NO. 2021.149

This amendment to the above-entitled contract ("Contract Amendment") is dated, for reference purposes only, March 1, 2023.

RECITALS:

1. The Bay Area Air Quality Management District ("DISTRICT") and **Van Dermyden Makus Law Corporation** ("CONTRACTOR") (hereinafter referred to as the "PARTIES") entered into the above-entitled contract for independent and impartial workplace investigations (the "Contract"), which Contract was executed on behalf of CONTRACTOR on August 5, 2021 and on behalf of DISTRICT on August 10, 2021.
2. The PARTIES entered into Amendment No. 1 to the Contract, dated November 18, 2021 (for reference purposes only), to increase the total maximum cost of the Contract from \$95,000 to \$250,000.
3. The PARTIES entered into Amendment No. 2 to the Contract, dated June 1, 2022 (for reference purposes only), to extend the Term of the Contract.
4. The PARTIES entered into Amendment No. 3 to the Contract, dated September 21, 2022 (for reference purposes only), to increase the total maximum cost of the Contract from \$250,000 to \$350,000.
5. The PARTIES now seek to (i) amend the total maximum cost of the Contract, and (ii) amend the Term of the Contract, because the DISTRICT seeks to have CONTRACTOR continue to provide the services prescribed in the Contract, and CONTRACTOR desires to continue to provide those services, up to the new total maximum cost.
6. In accordance with Section 26 of the Contract, DISTRICT and CONTRACTOR desire to amend the above-entitled Contract as follows:

TERMS AND CONDITIONS OF CONTRACT AMENDMENT:

1. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph D of Section 8, "Payment," of the Contract to replace "\$350,000," which is the effective limit pursuant to Amendment No. 1, with "\$500,000."

2. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph F of Section 9, "Dispute Resolution," of the Contract to replace "\$350,000," which is the effective limit pursuant to Amendment No. 1, with "\$500,000."
3. By this Contract Amendment, DISTRICT and CONTRACTOR amend Attachment B, Cost Schedule of the Contract by replacing "\$350,000," which is the effective limit pursuant to Amendment No. 1, with "\$500,000."
4. By this Contract Amendment, DISTRICT and CONTRACTOR amend Section 4, "Term." The term of the Contract shall be extended so that the termination date of the Contract is now December 31, 2023.
5. DISTRICT and CONTRACTOR agree that all other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the PARTIES have caused this Contract Amendment to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

VAN DERMYDEN MAKUS LAW
CORPORATION

By: _____
Philip Fine
Executive Officer/APCO

By: _____
Nikki Hall
Partner

Date: _____

Date: _____

Approved as to form:
District Counsel

By: _____
Alexander G. Crockett
District Counsel