

Agenda Item 2 - March 31, 2014 Governance Committee

Execution Copy -- As Revised November 5, 2013

AMENDED AND RESTATED AGREEMENT TO FORM THE MONTEREY PENINSULA WATER SUPPLY PROJECT GOVERNANCE COMMITTEE

This AGREEMENT TO FORM THE MONTEREY PENINSULA WATER SUPPLY PROJECT GOVERNANCE COMMITTEE ("Agreement") is made and entered into as of November 5, 2013, by and among the MONTEREY PENINSULA REGIONAL WATER AUTHORITY ("MPRWA"), the MONTEREY PENINSULA WATER MANAGEMENT DISTRICT ("MPWMD"), the COUNTY OF MONTEREY ("County"), and the CALIFORNIA-AMERICAN WATER COMPANY ("Cal-Am"). The MPRWA, the MPWMD, the County, and Cal-Am are sometimes referred to individually herein as a "Party," and collectively as the "Parties."

I. Formation of Governance Committee

Pursuant to the terms of this Agreement, the Parties hereby form the Monterey Peninsula Water Supply Project Governance Committee ("**Governance Committee**") comprised of representatives of the MPRWA, the MPWMD, the County, and Cal-Am to ensure efficient and effective public input into the development and operation of the Monterey Peninsula Water Supply Project ("**Project**"). Cal-Am's entry into this Agreement is expressly conditioned upon its legal obligations to abide by the orders and decisions of the California Public Utilities Commission ("**CPUC**"). Therefore, should the CPUC order Cal-Am not to participate in this Agreement, Cal-Am shall be relieved of all obligations set forth in this Agreement and this Agreement may be terminated by Cal-Am upon such CPUC order. Further, if the CPUC issues any order or decision that conflicts with any particular provision of this Agreement, Cal-Am shall be relieved of any and all obligations to abide by the conflicting provision of this Agreement.

II. Definitions

A. Application A.12-04-019. Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates, filed with the CPUC on or about April 23, 2012.

B. ASR Infrastructure. The facilities used to inject into and extract potable water from the Seaside Groundwater Basin, as described in Application A.12-04-019. These facilities will include the Aquifer Storage and Recovery ("ASR") wells and related appurtenances, the backflush pipeline, the recirculation pipeline and the ASR pipeline.

C. Brine Discharge Infrastructure. Facilities located outside the desalination plant site that are used to dispose of brine into the ocean. These facilities will include the brine disposal pipeline, the brine receiving station, any modification to the MRWPCA existing outfall, or a new outfall, or potentially the use of other existing outfalls with or without modifications.

D. Cal-Am Notification. The written notification from Cal-Am to the Chair of the Governance Committee that a matter is ready for consideration, consultation, or action by the Governance Committee as provided herein, and as further defined within Section V.B.

E. CEQA. The California Environmental Quality Act.

F. Contracts. One or more of the contracts between Cal-Am and a selected contractor, valued in excess of \$1 million, relating to the design and/or construction of the following facilities: (1) the Desalination Infrastructure, (2) the Source Water Infrastructure, (3) the Brine Discharge Infrastructure contracted for by Cal-Am, (4) the Product Water Pipeline, (5) the Raw Water Pipeline; (6) the ASR Infrastructure, and (7) the Terminal Reservoir Infrastructure. Contracts for one or more of the facilities identified above in this definition may be combined into a single contract. In addition, the design and construction of a single facility identified above in this definition may be combined into a single contract.

G. CPCN. The Certificate of Public Convenience and Necessity, if ordered by the CPUC, within Application A.12-04-019.

H. Desalination Infrastructure. Facilities located within the desalination plant site that are used to create potable water from either an ocean source water, brackish source water or a combination thereof, and appurtenant facilities needed to dispose of brine to the Brine Discharge Infrastructure, dispose of wastewater (i.e. process water and sanitary discharge), and any needed facilities that may be required to prevent export of native Salinas River Groundwater Basin water.

I. Desalination Project. The combination of the Desalination Infrastructure, the Brine Discharge Infrastructure, the Source Water Infrastructure, the Product Water Pipeline, the Raw Water Pipeline, and the Terminal Reservoir Infrastructure.

J. GWR Project. Groundwater replenishment project to be implemented by MRWPCA and/or MPWMD which involves advanced treatment of wastewater and the injection of product replenishment water into the Seaside Groundwater Basin. This project includes facilities for the treatment, conveyance, and injection of the product replenishment water.

K. MRWPCA. The Monterey Regional Water Pollution Control Agency.

L. Product Water Pipeline. Facilities used to convey potable water from the Desalination Infrastructure to the Terminal Reservoir Infrastructure and to Cal-Am's existing distribution system at the Eardley Pump Station.

M. Project. The Monterey Peninsula Water Supply Project as proposed in Application A.12-04-019, and as it may be modified by the CPCN issued in response to that Application.

N. Public Entity Members of the Governance Committee. The MPRWA, the MPWMD, and the County. Cal-Am is not a Public Entity Member of the Governance Committee.

O. Raw Water Pipeline. Facilities used to convey feedwater (i.e., raw water) from the Source Water Infrastructure to the Desalination Infrastructure.

P. Source Water Infrastructure. Wells and appurtenant facilities (or alternative contingent intake facilities) that are used to extract and convey feedwater (i.e., raw water) to the Raw Water Pipeline. These facilities will include the slant intake wells and related appurtenances (if permitted) as well as alternate contingent intakes such as a Ranney Well or open ocean intake as submitted by Cal-Am in its contingency plans.

Q. Terminal Reservoir Infrastructure. Facilities used to pump and store potable water in storage tanks east of the City of Seaside along General Jim Moore Boulevard. These facilities will include the terminal reservoir, terminal reservoir pump station, overflow facilities and related appurtenance needed to assist in the moving of water to and from the ASR Infrastructure, other ASR facilities, and Product Water Pipeline.

R. Value Engineer. The professional engineer(s) to be retained by, or to consult with, Cal-Am to perform a value engineering analysis for the Desalination Project to potentially lower the costs of, or maximize the value of, the Desalination Project to Cal-Am's ratepayers, including matters concerning the cost effectiveness, performance, reliability, quality, safety, durability, effectiveness, or other desirable characteristics of the Desalination Project.

The Parties acknowledge that the Project is still under development and several aspects of the Project may be modified as planning continues and as may be ordered by the CPUC. If necessary to address future modifications to the Project, the Parties agree to cooperate in good faith to reach agreement to amend the definitions set forth herein as necessary to fulfill the purpose of this Agreement.

below, together with an explanation of any pending or soon-to-be-pending decisions or options concerning the subject matter. The Governance Committee may issue, in writing, any recommendation concerning a subject matter included within Cal-Am's presentation. Cal-Am may determine, at its sole discretion, whether or not to follow the recommendation, provided that if Cal-Am chooses not to follow the recommendation and the subject matter is a matter covered by either Category A or Category B, Cal-Am shall, within ten (10) calendar days following issuance of the Governance Committee's recommendation, provide a written explanation of the reason(s) for Cal-Am's decision not to follow the recommendation. If the subject matter is a matter covered by Category C or is not set forth within any of the three categories set forth below, Cal-Am need not issue a written explanation of Cal-Am's reasons for its decision not to follow the recommendation.

D. Categories for Matters Subject to Governance Committee Action. Matters for consideration, consultation, decision, or recommendation by the Governance Committee shall be divided among the following three categories as follows:

Category A

1. The Governance Committee shall select a Value Engineer(s) to facilitate and report on the proposed value engineering for the Desalination Project, with consideration given to any recommended engineer submitted by any member of the Governance Committee. Cal-Am shall conduct the procurement for the Value Engineer and, consistent with the processes set forth in Categories B(1), B(2) and C(2) relating to Contracts, seek recommendations from the Governance Committee for the contract between Cal-Am and the Value Engineer. After reviewing the results of the procurement process, the Governance Committee shall decide which engineer is to be retained by Cal-Am as the Value Engineer for the Desalination Project. This matter shall be ripe for decision before Cal-Am accepts the 30% Design from the contractor retained for the design of the Desalination Infrastructure, or at any other time that Cal-Am intends to retain a Value Engineer for any other infrastructure constructed as a component of the Desalination Project.

2. Subsequent to the issuance of the CPCN and subsequent to the selection of any design-build contractor(s) for the Desalination Infrastructure, the Governance Committee may issue decisions concerning architectural renderings for the Desalination Project. The Governance Committee shall be presented with architectural renderings for decisions regarding the same when such architectural renderings are complete and upon any subsequent modifications thereto. The Governance Committee may also, in its discretion, appoint a representative to consult with Cal-Am regarding other external features or aesthetics of the Desalination Project. Upon a determination of the Governance Committee or its representative, the Governance Committee's representative and Cal-Am shall present to the Governance Committee options pertaining to the Desalination Project's external feature or aesthetics, upon which the Governance Committee may decide which option to pursue. Notwithstanding any provision of this paragraph, the Governance Committee may not issue a binding decision concerning the Desalination Infrastructure's architectural renderings, or the Desalination Project's external features or aesthetics, if the decision would in the opinion of the design-build contractor, increase the capital or operational cost of the Desalination Infrastructure.

3. Subsequent to the issuance of the CPCN, the Governance Committee may issue decisions concerning procurement of alternative (non-Pacific Gas & Electric) energy supplies for the Desalination Infrastructure, including but not limited to waste-to-energy, so long as such decisions result in lowering the Desalination Infrastructure's estimated unit price for power. This matter shall be ripe for decision at any time a formal written proposal concerning alternative power is presented by one or more of the Parties for consideration.

Category B

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**CALIFORNIA
AMERICAN WATER**

**DESIGN-BUILD AGREEMENT
FOR THE
MONTEREY PENINSULA WATER SUPPLY PROJECT
DESALINATION INFRASTRUCTURE**

between

CALIFORNIA-AMERICAN WATER COMPANY

and

CDM CONSTRUCTORS INC.

Dated as of

December 18, 2013

requirements set forth in Appendix 6 (Design-Build Work Review Procedures). The Owner shall have the right to review and comment on all Design Documents as provided in Appendix 6 (Design-Build Work Review Procedures) in order to confirm the compliance and consistency of the Design Documents with the Design and Construction Requirements and the other Contract Standards. In no event shall the Design-Builder proceed with the physical construction of any particular segment of the Design-Build Work without first complying with the requirements of the design submittal protocol and Appendix 6 (Design-Build Work Review Procedures). The Design-Builder shall give due consideration and provide written responses, in the time and manner provided in Appendix 6 (Design-Build Work Review Procedures), to any comments delivered by the Owner as to the Design-Builder's design submittals. Neither compliance by the Design-Builder with the Design and Construction Requirements, nor review and comment by the Owner of the Design-Builder's Design Documents, nor any failure or delay by the Owner in commenting on any design submittals shall in any way relieve the Design-Builder of full responsibility for the design, construction, and performance of the Design-Build Improvements in accordance with the Contract Standards.

(D) Owner Interest in the Design and Construction Requirements. The Design-Builder acknowledges the Owner's material interest in each provision of the Design and Construction Requirements and, notwithstanding the Acceptance Standards and Requirements of the Design-Builder and the associated non-performance remedies of the Owner, agrees that no change to the Design and Construction Requirements shall be made except with the consent of the Owner, which may be withheld or conditioned in its discretion. Any such changes shall be evidenced by a Contract Administration Memorandum, Design-Build Agreement Amendment, or Change Order, as applicable. The Owner reserves the right to review and comment upon the final design of the Design-Build Improvements insofar as it relates to all matters of architectural treatment and exterior visual aesthetics, so as to assure that the appearance of the Design-Build Improvements is in compliance with Appendices 2 (Design and Construction Requirements) and 4 (General Design-Build Work Requirements) with respect to such matters.

(E) Documents at the Project Site. The Design-Builder shall maintain at the Project Site all design and construction documents, including a complete set of record drawings, in accordance with Appendix 4 (General Design-Build Work Requirements). These documents shall be available to the Owner for reference, copying and use, and a complete set thereof shall be delivered to the Owner upon completion of the Design-Build Work.

(F) Value Engineering. Upon completion of the design to the thirty percent (30%) level, the design will be vetted through a value engineering process as described in Appendix 4 (General Design-Build Work Requirements). The entire value engineering process shall take no longer than 60 days.

SECTION 3.10. CHANGES TO THE DESIGN AND CONSTRUCTION REQUIREMENTS.

(A) Changes Made at Design-Builder Request. The Design-Builder shall give the Owner written notice of, and reasonable opportunity to review and comment upon, any changes to the Design and Construction Requirements proposed to be made at the Design-Builder's request. The notice shall contain sufficient information for the Owner to determine

Appendix 4

General Design-Build Work Requirements

4.1. SCOPE OF DESIGN-BUILDER SERVICES

In addition to the work identified in the Design-Build Agreement, the following services shall be provided by the Design-Builder:

A.SCOPE OF SERVICES DURING DESIGN

1. Preparation and maintenance of a progress schedule throughout the design phase. The schedule can be in either Gantt chart or CPM form and must include all work items as defined in the Request for Proposal. The schedule shall compare actual to scheduled activities and be updated monthly once an award of the Design-Build Agreement is made. As a minimum, the schedule must include specific dates for the following milestones:
 - a. Submission of information prior to review meetings. At least one week shall be allotted in the schedule for review of information by the Owner prior to any meeting.
 - b. Each specific review meeting.
 - c. Completion of permit applications for each specific permit.
 - d. Design phase completion.
 - e. Receipt of each specific permit. The Design-Builder shall ensure that the schedule reflects typical or legal review periods required by each respective regulatory agency to ensure receipt of permits by the required date.
2. Attendance at periodic meetings including all design phase and construction progress meetings with the Owner at their offices located in Pacific Grove, California, or at the Project Site. Information shall be provided to Owner at least seven (7) working days prior to any meeting. It is expected that, at a minimum, monthly design meetings will be required during the design phase including an initial Project meeting. The initial Project meeting will be coupled with a partnering meeting mentioned below. Other design phase meetings include progressive review of design documents (15%, 30%, 60%, and 90% complete) and preparation of permit applications.
3. Within thirty (30) days after the Contract Date, a one day partnering conference will be held in accordance with Appendix 6.
4. Performance of a constructability and value engineering review by the Design-Builder with participation of Owner. The value engineering review shall review each element of construction work with consideration given to feasible methods of construction, constraints to construction (materials, labor, specialty construction, weather, plant

operations, other, etc.), design details, time required to complete each element of work, and possible alternatives which would reduce costs. Pursuant to the Governance Committee Agreement, the value engineering process will be undertaken at the 30% design level.

5. All land survey work, including basic control as necessary to adequately complete the design and filter permit applications, and provide construction layouts. At a minimum, property lines, topographic information and location of existing above ground and underground features/structures are to be included.
6. All geotechnical investigations including soil borings, rock cores, and auger probing as necessary to provide a geotechnical report to adequately complete the design and to estimate and plan construction earthwork.
7. All environmental activities as necessary to adequately complete the design and to prepare permit applications.
8. Total interaction and coordination with all Utility companies to design and specify proper service for the proposed improvement and to coordinate the relocation of existing Utilities as required. The Design-Builder shall also determine if any additional capital or usage fees will be imposed by any specific Utility.
9. Determining which local, State, and federal permits are required for this Project, preparing necessary permit applications, and providing technical input as required in securing these permits. The Design-Builder shall also provide the Owner with information regarding the approximate length of review time for each permit, and any special requirements that could delay this process (e.g., public hearings). Except for extraordinary revisions required by regulatory agencies, the Design-Builder is expected to revise reports, plans, and specifications as necessary to secure permits as part of the basic lump sum proposal. The permit applications will be formally submitted and paid for by the Owner.
10. Preparation and maintenance of a "Basis of Design Report". The Basis of Design Report is a summary of design data presented in outline format along with other pertinent Project information. The primary intent of the memorandum is to allow the Owner to review and comment on the design early in the design schedule. The Basis of Design Report shall be updated throughout the design, and resubmitted as necessary at each subsequent review meeting as well as being submitted with permit applications, where applicable. The Basis of Design Report is often used as the Engineer's Report in permit applications. A summary of the information to be included in the memorandum is outlined in the Attachments.
11. Preparation of a narrative description of the operation of the proposed facilities to be used by plant operations personnel to familiarize themselves with the operation, capabilities, and limitations of the proposed improvements. The narrative shall be an extension of the process sections from the Basis of Design Report, but in text format. It shall explain the intent and function of each unit process in addition to the system as a whole, and it shall

Activity ID	Activity Name	Duration	Start	Finish
PR390	Prepare/Submit Application - Erosion Control Permit (Monterey County)	30d	05-Feb-15	06-Mar-15
PR440	Prepare/Submit Application - Building Permit to Construct Desalination Facilities (Monterey County)	50d	05-Feb-15	26-Mar-15
PR450	Prepare/Submit Application - Protected Tree Removal Permit (Monterey County)	50d	05-Feb-15	26-Mar-15
PR470	Review / Issue - Erosion Control Permit (Monterey County)	90d	07-Mar-15	04-Jun-15
PR480	Review / Issue - Use Permit (Monterey County)	90d	17-Mar-15	14-Jun-15
PR410	Review / Issue - Combined Development Permit (Monterey County)	90d	17-Mar-15	14-Jun-15
PR460	Review / Issue - Grading Permit (Monterey County)	90d	17-Mar-15	15-May-15
PR480	Review / Issue - Building Permit to Construct Desalination Facilities (Monterey County)	90d	27-Mar-15	25-May-15
PR490	Review / Issue - Protected Tree Removal Permit (Monterey County)	90d	27-Mar-15	25-May-15
PR340	Prepare/Submit Application - Authority to Construct (MBUAPCD)	1d	24-Sep-15	24-Sep-15
PR370	Review / Issue - Authority to Construct (MBUAPCD)	60d	25-Sep-15	23-Nov-15
PR320	Inspect/Issue - Permit to Operate (MBUAPCD)	1d	13-Jan-17	13-Jan-17
Design				
Pre-Design Activities				
DS110	Partnering/Project Kickoff Meeting	3d	14-Jan-14	16-Jan-14
DS160	Conduct Site Survey	10d	17-Jan-14	31-Jan-14
DS180	Conduct Geotechnical Investigation and Issue Report	20d	03-Feb-14	03-Mar-14
DS100	Develop - Basis of Design Report	90d	20-Dec-13	12-Feb-14
DS120	QA-QC/Submit - Basis of Design Report	6d	13-Feb-14	21-Feb-14
DS160	CAW Review/Comment - Basis of Design Report	5d	25-Feb-14	03-Mar-14
DS170	Conduct Design Progress Meeting - Basis of Design Report	1d	03-Mar-14	03-Mar-14
DS190	Respond to CAW Comments - Basis of Design Report	5d	04-Mar-14	10-Mar-14
30% Design Submittal				
DS140	Develop - 30% Design Submittal	40d	24-Feb-14	16-Apr-14
DS150	Develop/Submit Value Engineering Concepts	20d	07-Apr-14	02-May-14
DS210	QA-QC/Submit - 30% Design Submittal	5d	21-Apr-14	26-Apr-14
DS220	CAW Review/Comment - 30% Design Submittal	10d	28-Apr-14	08-May-14
DS200	Conduct Value Engineering Review Meeting	1d	05-May-14	05-May-14
DS230	Conduct Design Progress Meeting - 30% Design Submittal	1d	05-May-14	05-May-14
DS240	Respond to CAW Comments - 30% Design Submittal	5d	12-May-14	16-May-14
60% Design Submittal				
DS250	Develop - 60% Design Submittal	55d	19-May-14	08-Aug-14
DS260	QA-QC/Submit - 60% Design Submittal	10d	11-Aug-14	22-Aug-14
DS270	CAW Review/Comment - 60% Design Submittal	10d	25-Aug-14	05-Sep-14
DS280	Conduct Design Progress Meeting - 60% Design Submittal	1d	02-Sep-14	02-Sep-14
DS290	Respond to CAW Comments - 60% Design Submittal	6d	12-Feb-15	20-Feb-15
90% Design Submittal				
DS300	Incorporate Final EIR into 90% Design Submittal	15d	23-Feb-15	13-Mar-15
DS310	Develop - 90% Design Submittal	145d	23-Feb-15	16-Sep-15
DS320	QA-QC/Submit - 90% Design Submittal	5d	17-Sep-15	23-Sep-15
DS330	CAW Review/Comment - 90% Design Submittal	10d	24-Sep-15	07-Oct-15
DS340	Conduct Design Progress Meeting - 90% Design Submittal	1d	01-Oct-15	01-Oct-15



MPWSP DESALINATION INFRASTRUCTURE PROJECT

Proposed Schedule

Forecasted Work
 Critical Forecast Work
 Milestone