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Submitted by staff  
at 3/11/2013 meeting.  
Item 6

**MRWPCA-MPWMD  
GROUNDWATER REPLENISHMENT PROJECT**

**COST SHARING AGREEMENT**

This Cost Sharing Agreement is entered into as of April \_\_, 2013, by and between the Monterey Regional Water Pollution Control Agency, a joint powers authority ("MRWPCA") and the Monterey Peninsula Water Management District, a California special act district ("MPWMD"), collectively the "Parties", based upon the following facts, intentions and understandings of the Parties.

**I.**

**BACKGROUND**

A. MRWPCA owns and operates a wastewater collection and treatment system in northern Monterey County, including the Regional Treatment Plant ("RTP") and the associated ocean outfall ("Outfall"). From the RTP, MRWPCA produces treated wastewater that has the potential for reuse;

B. MPWMD was created by the California Legislature in 1977 for the purposes of "conserving and augmenting the supplies by integrated management of ground and surface water supplies, for control and conservation of storm and wastewater, and for the promotion of the reuse and reclamation of water." The MPWMD's specific functions are "management and regulation of the use, reuse, reclamation, conservation of water and bond financing of public works projects." It is authorized to issue bonds, assess charges for groundwater enhancement facilities, levy assessments on real property and improvements, and "fix, revise, and collect rates and charges for the services, facilities, or water furnished by it";

C. MRWPCA treats wastewater at the RTP, creating a potential source of water supply.

D. The parties believe that an additional increment of water supply should be generated for the benefit of Cal Am and its customers, many of whom are within the service areas of MPWMD and MRWPCA, by conveying advanced treated wastewater from the MRWPCA to the Seaside Basin, where it could be injected for storage and subsequent recovery ("GWR Project").

E. The Parties and California American Water Company jointly entered into a Groundwater Replenishment Project Planning Term Sheet And Memorandum of Understanding To Negotiate In Good Faith ("GWR MOU") on April 20, 2012 to, among other things, enable planning and environmental evaluation of a groundwater replenishment project by the following:

- to commit themselves to evaluate the ways in which a groundwater replenishment project could be effectively accomplished;
- to commit themselves to negotiate in good faith to reach agreement on such a project, should it be deemed viable;

- for MRWPCA to commit to act as lead agency to achieve California Environmental Quality Act ("CEQA") compliance for such a project, should it be deemed viable;
- for MPWMD to assist MRWPCA in providing the necessary financial support for the foregoing planning and CEQA compliance activities; and
- to identify non-binding preliminary terms of a GWR project agreement, which will assist in focusing the development of a GWR project responsive to the Parties' capabilities and needs.

## II. AGREEMENT

NOW, THEREFOR, in consideration of the foregoing facts recited and the mutual goals and objectives contained herein, the Parties agree as follows:

### A. Finance

1. **Financing of GWR Project Planning and Development Costs.** Each Party shall pay fifty percent (50%) of the costs of planning, feasibility studies, environmental and permitting, and preliminary design incurred beginning April 1, 2012. Such costs include but are not limited to (a) payments for professional consultant contract services, and (b) cost of materials and supplies approved in accordance with this Agreement. Except as specifically set forth in this Agreement, each Party shall bear the costs of its employees working on the GWR Project.
2. **Financing of GWR Project Design and Construction Costs.** It is anticipated that the permanent financing of final design and construction will be financed with public debt issued by MPWMD and secured by a wholesale potable water sales agreement between MPWMD and California American Water Company and other MPWMD available revenues. Both Parties will undertake and approve a "reimbursement resolution" in order to reimburse prior expenditures from the proceeds of the debt issuance. Any MRWPCA expenditures not reimbursed in this manner will be reimbursed over the life of the project as a portion of the payments received by MRWPCA for the sale of recycled water to MPWMD.
3. **Grants and Loans.** MRWPCA or MPWMD may each pursue and receive grants, state revolving fund loans, or other form of reimbursement from local, state, or federal sources. All such receipts will be delivered to MRWPCA and credit the GWR Project ledger as received. Such receipts will be deemed to offset project costs to the 50% benefit of each Party.
4. **Reimbursement.** MRWPCA shall invoice MPWMD and MPWMD shall pay, subject to the conditions described in Section 25, fifty percent (50%) of the expended amount, less fifty percent (50%) of any grant or loan receipts available.
5. **Limited Obligation.** MPWMD's financial obligations are limited obligations payable from its Water Supply Charge.

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**B. Ownership**

6. **System Ownership.** MRWPCA shall hold title to all new GWR Project facilities to be constructed under this Agreement, including but not limited to screening facilities, pipelines, pumping facilities, advanced wastewater treatment facilities, the GWR recycled water pipeline, injection wells and related facilities, and all easements and rights-of-way to be obtained from the GWR Project's facilities.

**C. Governance of Planning, Permitting, Design, and Construction Activities**

7. **Scope of Work.** MRWPCA shall be the lead Party, however the Parties will endeavor to jointly plan, permit, design, and construct the GWR Project subject to the following scope of work.
8. **Planning, Permitting, Design, and Construction.** The Parties shall undertake feasibility studies for project source water and preliminary design, environmental work for CEQA and permitting, complete design of the GWR Project, establish the method of project delivery, prepare construction plans, and establish detailed specifications for equipment. The Parties shall also construct the facilities. To that end, the Parties shall prepare bid documents, solicit bids, negotiate and execute contracts, purchase equipment, provide for construction management, inspect construction projects, and comply with regulatory requirements for operation, testing and start-up of the GWR Project.
9. **Regular Meetings.** During the Planning and Permitting phase, supervisory personnel from both Parties shall meet one every two weeks, or more frequently as necessary. During the Design and Construction phase, supervisory personnel from both parties shall meet weekly to review design and construction issues.
10. **Services Required.** The Parties shall obtain a variety of services in the following areas:
- Feasibility Consulting
  - Project Management Engineering
  - Environmental
  - Finance
  - Legal
  - Grant and Loan Support
  - Public Relations
  - Construction Management
  - Construction
  - Other specialized services as identified and approved pursuant to this Agreement
11. **Joint Cooperative Committee.** Ultimate authority for the planning, permitting, design, and construction of the GWR Project rests with the governing boards of MRWPCA and MPWMD. In order to facilitate and expedite the development process, the Parties hereby

- (b) indemnify and hold harmless MRWPCA and MPWMD for any and all injuries or damages caused by the contractor in connection with the construction of GWR Project components; and
  - (c) name MRWPCA as beneficiary under any contractor bonds required by the contract documents.
21. **Advertisement of Bids.** Upon receiving the Joint Cooperative Committee's approval of the plans and specifications for a GWR Project component, MRWPCA shall publicly advertise for construction bids for that project if required.
22. **Construction Management/Acceptance.** The Joint Cooperative Committee shall approve construction management services for each construction project and MRWPCA shall contract for such services for each such project. On completion of construction for each GWR Project component, such component shall be accepted by the MRWPCA Board of Directors following a recommendation by the General Managers and the Joint Cooperative Committee that the component was constructed and completed in accordance with the applicable GWR Project Contract.
23. **Reports and Budgets.** During the design and construction of the GWR Project, the Joint Cooperative Committee shall prepare, or cause to be prepared, an annual report of the GWR Project's development costs on or before the first of March each year. The Joint Cooperative Committee shall recommend to the boards of directors of the Parties adjustments to the GWR Project Budgets.
24. **Recycled Water Sales Agreement.** Before final design and construction proceeds, MRWPCA shall work jointly with MPWMD to develop a Recycled Water Sales Agreement under which MRWPCA will deliver recycled water to MPWMD for storage in the Seaside Groundwater Basin. Such agreement will address quantity delivered, cost, quality, Watermaster storage and recovery agreement, metering and measurement of flows, invoicing, and other matters.

**E. MPWMD's Obligations**

25. **Payment of Invoices.** MPWMD shall have the right to review and confirm that invoices described in Section 16 of this Agreement are delivered in conformance with the terms of this Agreement. MRWPCA shall present a warrant register and back-up invoices to MPWMD at least ten (10) days prior to MRWPCA's issuance of checks. MPWMD shall wire to MRWPCA fifty percent (50%) of the value of the check to be issued on the tenth day after receipt of the warrant register and back-up invoices. If during review of the warrant register and back-up invoices MPWMD disputes any payment as not being in accordance with this Agreement, such disputes shall be resolved pursuant to Section 31 of this Agreement.
26. **Recycled Water Sales Agreement.** Before final design and construction proceeds,

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MPWMD shall work jointly with MRWPCA to develop a Recycled Water Sales Agreement under which MRWPCA will deliver recycled water to MPWMD for storage in the Seaside Groundwater Basin. Such agreement will address quantity delivered, cost, quality, Watermaster storage and recovery agreement, metering and measurement of flows, invoicing, and other matters.

27. **Wholesale Water Purchase Agreement.** Before final design and construction proceeds, MPWMD shall work jointly with California American Water Company to develop a Wholesale Water Purchase Agreement under which MPWMD will deliver potable water to California American from storage in the Seaside Groundwater Basin. Such agreement will address quantity delivered, cost, minimum annual purchase amounts, water quality, metering and measurement of flows, invoicing, and other matters.
28. **Permanent Financing Plan.** Before final design and construction proceeds, a plan for the permanent financing of final design and construction costs with public debt issued by MPWMD and secured by a wholesale potable water purchase agreement between MPWMD and California American Water Company, and additional secured by other MPWMD available revenues. Financing plan will demonstrate recovery of all MRWPCA operating and maintenance expenses, recovery of previously expended MRWPCA funds, recovery of MPWMD debt costs, any MPWMD administrative expenses, and funds to set aside for renewal and replacement.

**F. Term and Termination.**

29. **Term.** This Agreement shall remain in force and effect for five years. Before final design and construction proceeds, and in no case later than within thirty (30) days after the fourth anniversary of the date of adoption of this Agreement, the Parties shall meet to decide whether to extend this Agreement. Any extension of this Agreement shall be done on mutually-acceptable terms and conditions. In the event the Parties do not extend the Agreement, MRWPCA shall, under the direction of the Joint Cooperative Committee, sell off or liquidate the GWR Project and all facilities and appurtenances thereto. The proceeds of selling off or liquidating the GWR Project shall be used first to repay MRWPCA for all reasonable third party costs incurred in connection with the selling and/or moving the facilities. The remainder, if any, shall be divided equally between the Parties.

**G. Events of Default; Dispute Resolution.**

30. **Event of Default.** The failure of a Party to comply with any provision of this Agreement that has a material and adverse effect on the other Party, except to the extent caused by a breach of this Agreement by the other Party, shall constitute an Event of Default under this Agreement; provided, however, that the defaulting Party shall first have a period of thirty (30) days following receipt of notice from the other Party of such failure to comply to cure such failure, or if such cure cannot be effected within such thirty (30) day period, such period shall extend for a total of one hundred eighty (180) days, so long as the defaulting

Party is diligently trying to cure such failure throughout such period.

31. **Dispute Resolution.** Staffs of both Parties shall meet and use their best efforts to settle any dispute, claim, question or disagreement (a "Dispute") arising from or relating to this Agreement. To that end, staffs of both Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If the Parties do not reach such a solution within a period of thirty (30) days after the first meeting of the staff regarding a Dispute, then the Parties shall convene a meeting of the Joint Cooperative Committee within sixty (60) days after the first meeting of the staff regarding a Dispute and attempt to settle the Dispute before the Joint Cooperative Committee at the meeting. If the Parties do not settle the Dispute within five (5) calendar days after the Joint Cooperative Committee meeting, either Party may pursue any and all legal and equitable remedies that may be available.

#### **H. Miscellaneous.**

32. **Joint Cooperative Committee Review of Operations.** The Parties shall convene the Joint Cooperative Committee annually to review and assess the GWR Project's technical and financial operations. The Joint Cooperative Committee shall make any recommendations regarding GWR Project operations to the respective governing boards of the Parties that it deems appropriate.
33. **Force Majeure.** Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations (other than payment obligations) under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, actions of legislative, judicial, executive or regulatory government bodies or other cause, without fault and beyond the reasonable control of such Party. If any such events shall occur, the time for performance by either Party of any of its obligations hereunder shall be extended by the Parties for the period of time that such events prevented such performance. Upon the occurrence of an event of Force Majeure, the affected Party shall: (i) promptly notify the other Party of such Force Majeure event, (ii) provide reasonable details relating to such Force Majeure event and (iii) implement mitigation measures to the extent commercially reasonable.
34. **Indemnities.**
- (a) **MPWMD Indemnity.** MPWMD shall fully indemnify MRWPCA and its respective directors, Joint Cooperative Committee members, employees and agents against, and hold completely free and harmless from, any cost, expense, claim, demand, judgment, loss, injury and/or liability of any kind or nature, including personal or bodily injury, death or property damage ("Losses"), that may arise from (i) any grossly negligent act or omission of MPWMD related to construction of the GWR Project or (ii) any claim made by a MPWMD employee specifically retained to provide services with respect to the facilities.
- (b) **MRWPCA Indemnity.** MRWPCA shall fully indemnify MPWMD and its respective

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directors, Joint Cooperative Committee members, employees and agents against, and hold completely free and harmless from, any Losses, that may arise from (i) any grossly negligent act or omission of MRWPCA related to the GWR Project construction, management, operation, maintenance or repair, except for costs, expenses, claims, demands, judgments, losses, injuries and/or liability arising from any grossly negligent act or omission of MPWMD related to construction of the GWR Project or (ii) any claim made by a MRWPCA employee specifically retained to provide services with respect to the GWR Project.

- (c) Joint Indemnity. Except as provided in Sections 34(a) and 34(b), each Party shall indemnify the other Party and its respective directors, Joint Cooperative Committee members, employees and agents against, and hold completely free and harmless from, any Losses (including liabilities under the GWR Project Contracts) arising from the design and construction of facilities pursuant to this Agreement; provided however that such indemnity shall be made only to the extent necessary to allocate such Loss between the Parties in a proportion equal to the Parties' cost-sharing obligations under this Agreement with respect to the design and construction of the facilities out of which such Loss arose.
35. Notices. All notices to MPWMD required or permitted under this Agreement shall be in writing and shall be deemed delivered (i) when delivered in person, (ii) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (iii) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery; (iv) upon receipt of a confirmed transmission, if sent by telex, telecopy or facsimile transmission; or (v) via electronic mail provided the sender's system is capable of creating a written record of such notice and its receipt in each case to the parties at the following addresses or to other such addresses as may be furnished in writing by one party to the other:

Monterey Peninsula Water Management District  
5 Harris Court, Building G  
Monterey, CA 93940  
Attention: General Manager

All notices to MRWPCA required or permitted under this Agreement shall be in writing and shall be deemed delivered (i) when delivered in person, (ii) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (iii) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery; (iv) upon receipt of a confirmed transmission, if sent by telex, telecopy or facsimile transmission; or (v) via electronic mail provided the sender's system is capable of creating a written record of such notice and its receipt in each case to the parties at the following addresses or to other such addresses as may be furnished in writing by one party to the other:

Monterey Regional Water Pollution Control Agency  
5 Harris Court, Building D

Monterey, CA 93940  
Attention: General Manager

36. **Successors And Assigns.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, representatives, successors and permitted assigns.
37. **Further Acts and Assurances.** The Parties agree to execute, acknowledge and deliver any and all additional papers, documents and other assurances, and shall perform any and all acts and things reasonably necessary, in connection with the performance of the obligations hereunder and to carry out the intent of the Parties.
38. **Captions.** The captions in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of this Agreement nor in any way affects this Agreement. Words of any gender in this Agreement shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense so requires.
39. **Severability.** Should it be found that any part of this Agreement is illegal or unenforceable, such part or parts of this Agreement shall be of no force nor effect and this Agreement shall be treated as if such part or parts had not been inserted.
40. **Entire Agreement.** All previous negotiations had between the Parties hereto and/or their agents or representatives with respect to this Agreement are merged herein and this Agreement alone fully and completely expresses the Parties' rights and obligations.
41. **Modifications In Writing.** This Agreement shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors in interest.
42. **Interpretation.** Each of the Parties hereby waives any provisions of law to the effect that an ambiguity in a contract or agreement should be interpreted against the Party that drafted the contract, agreement or instrument.
43. **Governing Law.** This Contract shall be governed by and construed according to the laws of California.
44. **No Third-Party Beneficiaries.** Nothing in this Agreement is intended to create any third-party beneficiaries to the Agreement, and no person or entity other than the Parties, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Agreement.
45. **Assignment.** Neither Party may assign its interest in this Agreement without the prior written consent of the other Party.
46. **Representation and Warranties.** No representations or warranties are made or have been relied upon by either Party other than those expressly set forth herein, if any.



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**WHEREFORE**, this Cost Sharing Agreement was executed by the parties on the date first above written.

MRWPCA

MONTEREY REGIONAL WATER POLLUTION  
CONTROL AGENCY,

By: \_\_\_\_\_  
Ron Stefani, Board Chair  
MRWPCA Board of Directors

MPWMD

MONTEREY PENINSULA WATER MANAGEMENT  
DISTRICT,

By: \_\_\_\_\_  
David Pendergrass, Chair  
MPWMD Board of Directors