Distributed to the MPWMD Board of Directors, General Manager and District Counsel on 08-16-2021

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August 16, 2021

Via Email Only

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 93940

Re: Marina Coast Water District's Comments on August 16, 2021 Board Meeting Action Item 8 -- *CONSIDER APPROVING AND AUTHORIZING THE DISTRICT TO ENTER INTO AN AMENDED AND RESTATED WATER PURCHASING AGREEMENT FOR THE PURE WATER MONTEREY PROJECT EXPANSION.*

Dear Board of Directors:

On behalf of our client, the Marina Coast Water District ("MCWD"), we provide these preliminary comments on the Draft Amended and Restated Water Purchase Agreement ("WPA") for expansion of the Pure Water Monterey ("PWM") project included with the Board Packet for the Monterey Peninsula Water Management District's ("MPWMD") August 16, 2021 Board Meeting.

As explained in MCWD's comments on the Supplemental Environmental Impact Report ("SEIR") for PWM Expansion project, **MCWD supports MPWMD's proposal with Monterey One Water ("M1W") to expand PWM supplies for purposes of providing an additional 2,250 acre-feet ("AFY") per year of potable water supplies for the Monterey District of California-American Water Company ("CalAm") and the constituents of the MPWMD as long as MCWD's senior contractual rights to recycled water from M1W remain fully protected.**

As it appears the draft WPA was only posted on the District's website on Friday (August 13, 2021), MCWD has not completed its review of the document or had time to determine whether the draft WPA conflicts with any of M1W's contractual obligations to provide recycled water to MCWD. Based on our preliminary review, MCWD is also concerned that certain provisions of the draft WPA contain internal inconsistencies and that approval of the WPA in its current form would violate the California Environmental Quality Act ("CEQA") as explained below.

MCWD's Senior Contractual Rights to Recycled Water

As the District is aware. MCWD is a participant in the PWM advanced-treated recycled water project. On July 13, 2021, MCWD general manager verbally notified M1W general manager and general counsel that MCWD will begin taking MCWD's RUWAP Phase 1 600

AFY this year and that MCWD plans to take delivery of at least a portion of its additional Phase 2 827 AFY possibly during 2022 pursuant to the M1W/MCWD Pure Water Delivery and Supply Project Agreement dated April 8, 2016 as amended by the 2017 First Amendment (2016 MCWD-M1W Agreement).

MCWD's main concern with the draft WPA is the wording of Section 19 (Additional Project Participants) on page 16, and related language concerning ownership of advanced treated recycled water as set forth in certain Section 2 definitions on page 5. These sections should be modified to confirm the WPA does not apply to (1) any right under the 2016 M1W/MCWD Agreement (as amended) for MCWD's 1,427 AFY net advanced treated water and; (2) any right of MCWD to recapture Central Marina sewer flows under the 1996 Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands with the Monterey County Water Resources Agency and others and (3) any right of MCWD under its 1989 Annexation Agreement with M1W, including as referenced in the foregoing 1996 agreement. Therefore, MCWD requests three modest revisions. First, that the following sentence be added as the final paragraph of section 19:

> "Nothing in this Section 19 or in this Agreement is intended to affect, impair or supersede in any way the separate rights of the Marina Coast Water District as they are set forth in its existing agreements regarding recycled water, source water for recycled water or recycled water conveyance facilities, including its existing agreements with the Agency."

Second, that clarifying language be added to the definition of "AWT Facilities" as follows (addition shown in underline):

> "AWT Facilities" means the advanced water treatment facilities portion of the Project that provides advanced treatment to source water that has undergone secondary treatment at the Regional Treatment Plant, including any advanced water treatment facilities constructed as part of the Expansion, and which produce Company Water or Excess Water for delivery to the Delivery Point under this Agreement.

Third, that clarifying language be added to the definition of "AWT Water" as follows (addition shown in underline):

> "AWT Water" means advanced treated recycled water produced by the AWT Facilities as Company Water or Excess Water delivered to the Delivery Point under this Agreement.

Alternatively, because the MPWMD Board agenda item states that "General Counsel Approval: N/A," MCWD requests the Board direct its counsel to meet with MCWD's counsel to address whether the draft WPA conflicts with any of M1W's contractual obligations to provide recycled water to MCWD and to craft mutually acceptable language that would resolve any such conflicts.

General Drafting Comments

MCWD notes that, perhaps due to the amendment and restatement of an existing agreement, the draft presents certain internal inconsistencies that should be resolved. For example:

- Section 3 states that the Performance Start Date occurred on September 1, 2020, while section 20(c)(2) establishes an event of default if the Performance Start Date does not occur on or before January 1, 2020, which presents at best ambiguity and at worst an agreement as to which a default will exist the moment the Agreement is signed; MCWD suggests that sections 20(c)(1) and 20(c)(2) be deleted.
- The agreement should incorporate a provision acknowledging the existence of the original agreement as well as the parties' intent as to the effect of the amended and restated agreement on the original agreement, for clarity regarding the parties' present and ongoing commitments.
- MCWD believes that the proposed commitment of public agencies to a future position as set forth in section 20(e) of the draft is an inappropriate contract term that should be removed in its entirety. In the alternative, if this provision is retained it should be modified as discussed below.

CEQA Matters

The Staff Report states that the Board's s approval of the draft WPA does not constitute a project as defined by the California Environmental Quality Act Guidelines Section 15378. This is not accurate. The CEQA Guidelines define "approval" as: "[T]he decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person . . . Legislative action in regard to a project often constitutes approval." (Guidelines, § 15352, subd. (a).) For private projects, "approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project." (Guidelines, § 15352, subd. (b).) An agency must complete the CEQA process before the agency approves the project so that the analysis informs the agency's decision; otherwise, the analysis may serve as nothing more than a post-hoc rationalization for a decision that the agency has already made. (Guidelines, § 15004, subd. (a); *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 128–130.)

Here, approval of the draft WPA – which provides financial assistance and other approvals relating to the PWM Expansion project — meets the definition of a project under CEQA. It is not clear that the scope of the facilities and activities contemplated in the draft WPA were evaluated in the PWM Expansion SEIR. The District must confirm all the contemplated facilities and activities in the draft WPA are within the scope of the PWM Expansion SEIR before approving the draft WPA.

Finally, MCWD notes that Section 20(e) **[*Support upon Event of Default*]**, on page 18 of the draft WPA, which requires MPWMD and M1W in the event of default as to water deliveries

under Sections 20(e)(5) or 20(e)(6) by MPWMD or M1W to "cooperate and support the Company's efforts to obtain all permits and approvals necessary" for Cal-Am's desalination project or a substitute project proposed by Cal-Am amounts to a precommitment to a future project in violation of CEQA. (See *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 128–130.) MCWD also suggests the agreement define what "support" means in the context of the provision – financial support or otherwise. MCWD provides the following suggested edits to Section 20(e), which would address some of the ambiguities in this Section and CEQA:

> (e) Support upon Event of Default when CalAm is the non-defaulting Party – In addition to the remedies available under section 20(d), above, if an Event of Default by the District or the Agency should occur under Section 20(c)(5) or Section 20(c)(6), the District and the Agency shall cooperate and support the Company's efforts to obtain all permits and approvals necessary for implementation of a CPUC-approved water supply project (specifically including all necessary approvals for development, construction and operation of desalination facilities) proposed by the Company to both satisfy the requirements for lifting State Water Resources Control Board Orders WR 2009-0060 and WR 2016-0016 and comply with source capacity requirements under state regulations for a public water system, and any water supply project that may be proposed by the Company to the CPUC as a substitute therefor following any required environmental review under CEQA. The Parties understand and acknowledge that approvals of a CPUC-approved water supply project or substitute project proposed by the Company may be subject to procedural or substantive obligations under California Environmental Quality Act ("CEQA") (Pub. Resources Code, §§ 21000 et seq.), the California Code of Regulations, title 14, Section 15000 et seq. ("CEQA Guidelines"), the State Planning and Zoning Law, or other laws potentially applicable to such approvals; nothing in this Agreement is intended to constrain the Agency's or the District's consideration on any such proposed project in light of information obtained or developed pursuant to these laws; and the Agency and the District retain the discretion to comment, approve, conditionally approve, or deny any such project in light of such information. The obligations provided in this section 20(e) shall survive any termination of the Agreement exercised pursuant to section 20(d), above.

* * *

MCWD hopes these comments assist the MPWMD in evaluating the draft WPA. We have attached a redline version of the draft WPA showing the proposed changes referenced above for your consideration. Because the MPWMD Board agenda item states that "General Counsel Approval: N/A," MCWD requests the Board direct its counsel to meet with MCWD's counsel to address the above issues. Please contact me or MCWD General Manager Remleh Scherzinger to arrange such a meeting and if you have any questions on our comments or need additional information.

MCWD looks forward to continuing to work with MPWMD in advancing regional goals through implementation of the Aquifer Storage and Recovery, PWM, and PWM Expansion projects. MCWD recognizes that the PWM Expansion project will provide the Monterey Peninsula with the additional water that is needed to secure the long-term sufficiency of its water supply. Thank you for your consideration.

Very truly yours,

Howard "Chip" Wilkins III

Attachment

cc: David Laredo, MPWMD General Counsel
David Stoldt, MPWMD General Manager
Robert Wellington, M1W General Counsel
Remleh Scherzinger, MCWD General Manager

Marina Coast Water District's Comments on
August 16, 2021 Board Meeting Action Item 8

ATTACHMENT

EXHIBIT 8-A

DRAFT AMENDED AND RESTATED WATER PURCHASE AGREEMENT FOR PURE WATER MONTEREY PROJECT

THIS AMENDED AND RESTATED WATER PURCHASE AGREEMENT ("Agreement") is made this_____day of_____, 2021 (the "Effective Date") by and between California-American Water Company, a California corporation, hereinafter referred to as the "Company," Monterey One Water (formerly the Monterey Regional Water Pollution Control Agency), hereinafter referred to as the "Agency," and Monterey Peninsula Water Management District, hereinafter referred to as the "District." The Company, the Agency, and the District are hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. The Company has a statutory duty to serve water in certain cities on the Monterey Peninsula and in a portion of Monterey County for its service area, the boundaries of which are shown in Exhibit A attached hereto and incorporated herein.

B. The Company has been ordered by the State Water Resources Control Board in orders WR 95-10, WR 2009-0060, and WR 2016-0016 to find alternatives to the Carmel River to fulfill its duty to serve, and to reduce Carmel River diversions to authorized limits by December 31, 2021.

C. In 2012, the Company filed application 12-04-019 with the California Public Utilities Commission ("CPUC"), seeking an order issuing a Certificate of Public Convenience and Necessity ("CPCN") for the construction of the Monterey Peninsula Water Supply Project ("MPWSP") and authorizing the recovery of the costs for such construction in rates. The Company proposed the MPWSP as either a 9.6 million gallons per day ("mgd") production capacity desalination plant or a reduced capacity 6.4 mgd production capacity desalination plant combined with a water purchase agreement for 3,500 acre-feet per year of product water from the Agency's Groundwater Replenishment Project (also known as the Pure Water Monterey Project).

D. In 2013, multiple parties, including the Company, the Agency, and the District, entered into a Comprehensive Settlement Agreement, providing for the development, construction, operation and financing of the MPWSP, and recovery of costs in rates for a desalination plant sized at either 9.6 mgd or 6.4 mgd.

E. In 2016, in Decision 16-09-021, the CPUC authorized a water purchase agreement for the

3,500 acre-feet per year of product water from the Pure Water Monterey Project to be delivered to the Company.

F. On September 20, 2018, the CPUC issued Decision 18-09-017, certifying the combined Final Environmental Impact Report/Environmental Impact Statement for the MPWSP and authorizing a CPCN for the MPWSP at a desalination plant size of 6.4 mgd. The Decision declined to adopt the Comprehensive Settlement Agreement, but adopted the framework set forth therein, including a cost cap, operations and maintenance financing provisions, ratemaking provisions, and contingency provisions.

G. Between 2012 and the present, the Company incurred costs, including environmental review, permitting, and other costs, in proceeding with development of the MPWSP to provide a permanent, reliable water supply and allow reduction of unauthorized Carmel River and Seaside Basin diversions. Many of these costs were reviewed and discussed among the parties Since July 2013, the Company has provided these incurred costs as part of its quarterly newsletter filings that are served on all parties in the CPUC proceeding.

H. In September 2017, at the CPUC's request the Agency proposed expansion of the Pure Water Monterey Project to provide an additional incremental supply of 2,250 acre-feet per year of product water to be made available to the Company for delivery to its customers.

I. In Decision 18-09-017, the CPUC required the Company to file an application if it sought to enter into a water purchase agreement for additional water supply to be provided by an expansion of the Pure Water Monterey Project.

J. In Decision 18-09-017, the CPUC set forth the requirements for any water purchase agreement application to be filed with the CPUC for acquiring water from the Pure Water Monterey Expansion Project if the MPWSP desalination plant was delayed beyond December 31, 2021, stating: "To the extent Cal-Am files (or the Commission directs Cal-Am to file) an application seeking approval of a PWM expansion WPA, the application shall include sources of supply water, development costs, prices for sales of the developed water, contractual details, environmental effects, potential to obtain necessary permits, water quality, sources of funding, possible related facilities (e.g., additional pipelines or pump stations), and any other information relevant and necessary for the Commission to make an informed, just and reasonable decision including details as to supply and production including not only during average rainfall years but also during a multi-year drought and the timing of expanded production. The application will be considered only to the extent the desalination plant authorized in this decision (i.e., 6.4 million gallons per day) is delayed to the point that sufficient source water capacity is more likely than not to be unavailable after the December 31, 2021, deadline set by the State Water Resources Control Board in its amended CDO."

K. Approval by the California Coastal Commission of a coastal development permit necessary for

the MPWSP desalination plant slant wells was delayed, such that the desalination plant authorized by the CPUC will not be operational by December 31, 2021.

L. At this time, the Company desires to buy advanced treated recycled water from the Pure Water Monterey Project, and the Pure Water Monterey Expansion project, from the District for the purpose of fulfilling its duty to serve its customers within its service area and the District is willing to sell advanced treated recycled water to the Company for this purpose on the terms and conditions provided for herein.

M. The Company believes, based on expert advice, that the water available from the Pure Water Monterey Project and the Pure Water Monterey Expansion Project provides insufficient supplies to meet customer demand without the desalination component of the MPWSP and, therefore, intends to continue to seek all necessary approvals for development, construction and operation of the MPWSP desalination plant. Nevertheless, water supplied by the Pure Water Monterey Expansion Project will likely be available before the desalination plant is operational and would help meet current demand after December 31, 2021.

N. The District believes, also based on expert advice and peer review, that supplies without the desalination plant are sufficient to satisfy customer demand for a couple decades if the Pure Water Monterey Expansion Project is built, and, therefore, supports entering into an agreement with the Company for water purchases from the Pure Water Monterey Expansion Project.

O. The Agency will be responsible for the design, construction, operation, and ownership of facilities for the production, delivery, and injection of advanced treated recycled water into the Seaside Groundwater Basin, such facilities to be part of the Pure Water Monterey groundwater replenishment project.

P. The District will buy advanced treated recycled water from the Agency for purpose of securing the financing of and paying the operating costs of the project. The District will sell the advanced treated recycled water to the Company subject to the terms of this Agreement.

Q. The Company desires to buy advanced treated recycled water from the District for the purpose of fulfilling its duty to serve its customers within its service area and the District is willing to sell advanced treated recycled water to the Company for this purpose on the terms and conditions provided for herein.

R. The Agency contends, and has so advised the District and the Company, that based on advice of counsel, (1) Agency assets and revenue derived from Agency ratepayers are not available for satisfying claims and judgments for any liability arising from this water project Agreement, and (2) therefore, the single source for so satisfying is insurance coverage described as Required Insurance in this Agreement.

S. The Agency has separately entered into an agreement with the Monterey County Water Resources Agency in Section 4.05 of which, the Monterey County Water Resources Agency may request additional irrigation water from Agency sources. Pursuant to that agreement the Agency has committed to produce no more than 200 acre-feet per year, up to a total quantity of 1,000 acre-feet, for delivery to the District as a drought reserve. When such a request is made, the District may make available to the Company Drought Reserve Water in order to satisfy the Company Allotment. Additionally, in order to ensure delivery of the Company Allotment in the event of an interruption in project operations, the District has established an Operating Reserve. Together the two reserves are called the Reserve Account and will be paid for by the District until deemed delivered to the Company if needed at a future date.

NOW, THEREFORE, the Parties agree as follows:

1. Purpose of Agreement.

The purpose of this Agreement is to provide for the sale of advanced treated recycled water from the Agency to the District and from the District to the Company derived from the Pure Water Monterey groundwater replenishment project owned and operated by the Agency, and to serve the Company's customers within its service area. The Parties confirm that this Agreement constitutes a contractual right to purchase advanced treated recycled water, that no water right is conferred to the Company, and that no additional rights in the Seaside Groundwater Basin are conferred to the District or the Agency. The Parties' September 19, 2016 "Water Purchase Agreement for Pure Water Monterey Project" is amended, restated and superseded in its entirety by this Agreement.

2. Definitions

The following terms shall, for all purposes of this Agreement have the following meanings:

"Additional Project Participant" means any public district, agency, or entity, or any private water company, other than the Company, that executes a water purchase agreement in accordance with Section 19 hereof, together with its respective successors or assigns.

"Affected Party" means a Party claiming the occurrence of a Force Majeure Event and seeking relief under this Agreement as a result thereof.

"Agreement" means this Amended and Restated Water Purchase Agreement, as the same may be amended from time to time.

"Applicable Law" means any federal, state or local statute, local charter provision, regulation, ordinance, rule, mandate, order, decree, permit, code or license requirement or other governmental requirement or restriction, or any interpretation or administration of any of the foregoing by any governmental authority, which applies to the services or obligations of any of the Parties under

this Agreement.

"AWT Facilities" means the advanced water treatment facilities portion of the Project that provides advanced treatment to source water that has undergone secondary treatment at the Regional Treatment Plant, including any advanced water treatment facilities constructed as part of the Expansion, and which produce Company Water or Excess Water for delivery to the Delivery Point under this Agreement.

"AWT Water" means advanced treated recycled water produced by the AWT Facilities as Company Water or Excess Water delivered to the Delivery Point under this Agreement.

"Company Account" means the account managed by the District and the Company that tracks and records the quantity of Company Water delivered to the Delivery Point.

"Company Allotment" means 3,500 acre-feet of AWT Water until the Expansion Performance Start Date, after which it shall mean 5,750 acre-feet, or another quantity of AWT Water as agreed to, in writing, by the Parties.

"Company Facilities" means the necessary facilities funded and constructed by the Company for purposes of supporting water deliveries from the Project and other Company water supplies, including (a) injection/extraction wells and related appurtenances, (b) pipelines and transmission mains, and (c) real property, all as additionally described in Exhibit B.

"Company Water" means the AWT Water delivered to the Delivery Point to be used and owned by the Company and will be counted toward the Company Allotment.

"Company Water Payments" means payments made by the Company to the District pursuant to Section 16 hereof for the furnishing of Company Water.

"Company Water Rate" means the dollar amount per acre-foot of Company Water that the Company pays the District for delivery of Company Water, as calculated pursuant to Section 16.

"CPUC" means the California Public Utilities Commission.

"Delivery Point" means any of the metered points of delivery identified in Exhibit C.

"Delivery Start Date" means the date that the District commences delivery of AWT Water to the Delivery Point.

"Drought Reserve" means one of the two sub-accounts that comprise the Reserve Account.

"Drought Reserve Minimum" means 1,000 acre-feet of Drought Reserve Water in the Drought Reserve.

"Drought Reserve Water" means Excess Water in the Drought Reserve Account at any given

time.

"Event of Default" means each of the items specified in Section 20 which may lead to termination of this Agreement upon election by a non-defaulting Party.

"Excess Water" means a quantity of AWT Water in excess of the Company Allotment delivered by the District to the Delivery Point in any given Fiscal Year.

"Expansion" means the Pure Water Monterey groundwater replenishment project expansion, including (a) expansion to AWT Facilities, (b) additional Product Water Facilities, and (c) additional Injection Facilities, all as additionally described in Exhibit B.

"Expansion Performance Start Date" means the date set forth in a written notice provided by the District to the Company upon which the District's performance obligations with respect to the Water Availability Guarantee, the Water Delivery Guarantee, and the Water Treatment Guarantee shall commence with respect to the Expansion, such date not to be more than twelve months following the Expansion Delivery Start Date.

"Expansion Delivery Start Date" means the date that the District commences delivery of AWT Water from the Expansion to the Delivery Point.

"Fiscal Year" means a twelve-month period from July 1 through June 30. Any computation made on the basis of a Fiscal Year shall be adjusted on a pro rata basis to take into account any Fiscal Year of less than 365 or 366 days, whichever is applicable.

"Fixed Project Costs" means all pre-construction, development, and capital costs of the Project, including debt service and reserves for the payment of debt service, incurred by the Agency or District in accordance with Section 6 hereof; provided, however, Fixed Project Costs shall not include any damages or other amounts paid by the Agency or the District to the Company as indemnification payments pursuant to Section 22 of this Agreement.

"Force Majeure Event" means any act, event, condition or circumstance that (1) is beyond the reasonable control of the Affected Party, (2) by itself or in combination with other acts, events, conditions or circumstances adversely affects, interferes with or delays the Affected Party's ability to perform its obligations under this Agreement, and (3) is not the fault of, or the direct result of the willful or negligent act, intentional misconduct, or breach of this Agreement by, the Affected Party.

"Injection Facilities" means the injection wells and appurtenant facilities portion of the Project used to inject AWT Water into the Seaside Basin.

"Minimum Allotment" means 2,800 acre-feet of AWT Water until the Expansion Performance Start Date, after which it shall mean 4,600 acre-feet.

"Operating Reserve" means one of the two sub-accounts that comprise the Reserve Account.

"Operating Reserve Minimum" means (a) 1,000 acre-feet of Operating Reserve Water in the Operating Reserve prior to the date that is three (3) years following the Performance Start Date, (b) 1,750 acre-feet of Operating Reserve Water in the Operating Reserve after the date that is three (3) years following the Performance Start Date but prior to the Expansion Performance Start Date, and (c) 2,875 acre-feet of Operating Reserve Water in the Operating Reserve after the date that is three (3) years following the Expansion Performance Start Date.

"Operating Reserve Water" means Excess Water in the Operating Reserve at any given time.

"Performance Start Date" means the date set forth in a written notice provided by the District to the Company upon which the District's performance obligations with respect to the Water Availability Guarantee, the Water Delivery Guarantee, and the Water Treatment Guarantee shall commence, such date not to be more than six months following the Delivery Start Date.

"Product Water Facilities" means the product water conveyance facilities portion of the Project used to transport the AWT Water from the AWT Facilities to the Injection Facilities.

"Project" means the Pure Water Monterey groundwater replenishment project, including (a) Source Water Facilities, (b) AWT Facilities, (c) Product Water Facilities, and (d) Injection Facilities, all as additionally described in Exhibit B. The Project also includes the Expansion beginning on the Expansion Delivery Start Date.

"Project Operation and Maintenance Expenses" means all expenses and costs of management, operation, maintenance, repair, replacement, renovation, or improvement of the Project incurred by the Agency and the District, including overhead costs, and properly chargeable to the Project in accordance with generally accepted accounting principles, including, without limitation (a) salaries, wages, and benefits of employees, contracts for professional services, power, chemicals, supplies, insurance, and taxes; (b) an allowance for depreciation, amortization, and obsolescence; (c) all administrative expenses; and (d) a reserve for contingencies, in each case incurred by the Agency or District with respect to the Project; provided, however, Project Operation and Maintenance Expenses shall not include any damages or other amounts paid by the Agency or the District to the Company as indemnification payments pursuant to Section 22 of this Agreement.

"Regional Treatment Plant" means the Agency's Regional Wastewater Treatment Plant.

"Required Insurance" means, with respect to the Agency and the District, the insurance each Party is required to obtain and maintain during the term of this Agreement as set forth in Exhibit D.

"Reserve Account" means the account managed by the District that tracks and records (a) quantities of Excess Water delivered to the Delivery Point, and (b) quantities of Reserve Water debited from the Reserve Account to satisfy the Company Allotment.

"Seaside Basin" means the Seaside Groundwater Basin.

"Service Area" means the Company's service area as of the Effective Date of this Agreement, as shown in Exhibit A, and as amended from time-to-time by the CPUC.

"Storage and Recovery Agreement" means the storage and recovery agreement among the Company, the District and the Watermaster that allows for injection of AWT Water into the Seaside Basin for purposes of continued storage or withdrawal.

"Source Water Facilities" means the source water diversion and conveyance facilities portion of the Project used to divert and convey new source waters to the Regional Treatment Plant.

"Watermaster" means the Seaside Groundwater Basin Watermaster.

"Water Availability Guarantee" means the water availability guarantee set forth in Section 13.

"Water Delivery Guarantee" means the water delivery guarantee set forth in Section 12.

"Water Treatment Guarantee" means the water treatment guarantee set forth in Section 14.

OPERATIVE PROVISIONS

3. Commencement of Service.

The Performance Start Date occurred on September 1, 2020. The Expansion Delivery Start Date shall be no later than October 1, 2024, or other date as agreed to in writing by the Parties. Failure of the Agency and the District to meet this deadline shall constitute an Event of Default upon which the Company may terminate this Agreement in accordance with Section 20. The Company shall not incur any costs or be responsible for any payments under this Agreement prior to the Performance Start Date. The Company shall not incur any costs or be responsible for any payments under this Agreement relating to the Expansion prior to the Expansion Delivery Start Date.

4. Term of Agreement.

This Agreement shall be effective as of the Effective Date and shall remain in effect until the date that is thirty (30) years after the Expansion Performance Start Date (the "Expiration Date"), unless earlier terminated as provided in this Agreement.

5. Option for Continued Service.

The Company may extend the Expiration Date of this Agreement for one or more periods not to exceed ten (10) years, in total. The Company shall notify the Agency and the District, in writing at least 365 days prior to the then-applicable Expiration Date, of its intent to extend the Expiration Date and such notice shall indicate the new Expiration Date. At the election of any Party, the Parties will meet and confer to consider the Parties' interest in any additional extension or renewal of an arrangement similar to this Agreement. Such meet-and-confer sessions should take place approximately five (5) years prior to the then-applicable Expiration Date; provided, however, if

pursuant to an extension under this Section 5 the new Expiration Date is less than five (5) years following the Company's notification of the extension, the Parties will meet and confer within a reasonable time prior to the new Expiration Date.

6. Agency and District to Develop Project and Expansion.

Subject to all terms and conditions of the Agency's water rights, permits and licenses, and all agreements relating thereto, the Agency and District will cause and complete the design, construction, operation, and financing of the Project and the Expansion, the production and delivery of AWT Water, the obtaining of all necessary authority and rights, consents, and approvals, and the performance of all things necessary and convenient therefor. The Agency will own and operate the Project and the Expansion.

As consideration for funding environmental, permitting, design, and other pre-construction costs, as well as for pledging revenues for repayment of future costs under this Agreement in the event Company Water Payments are insufficient, the District shall (i) own AWT Water for sale and delivery to the Company, (ii) have the right to sell AWT Water to the Company or any Additional Project Participant (if approved by the Company pursuant to Section 19), (iii) have the right to bill the Company for Company Water Payments or to bill any Additional Project Participant for AWT Water, and (iv) have the right to apply all Company Water Payments to payment of Fixed Project Costs and Project Operation and Maintenance Expenses.

7. Obligation to Pay Design and Construction Costs.

The Agency shall be solely responsible for the design, construction, implementation and performance of the Project, and shall bear all costs associated with such design, construction, implementation and performance. Title to the structures, improvements, fixtures, machinery, equipment, materials, and pipeline capacity rights constituting the Project and the Expansion shall remain with the Agency as described in Exhibit B. The Agency shall bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment, and materials.

At the request of the Agency, the Company may assist the Agency in obtaining financing for Fixed Project Costs for the Project. Any such assistance will be evidenced in a writing agreed to by the Company and the Agency.

8. Obligation to Pay Operation and Maintenance Costs.

The Agency shall be solely responsible for the operation, maintenance, repair and replacement of the Project, and shall bear all costs associated with such operation, maintenance, repair and replacement.

9. Point of Delivery and Ownership of AWT Water.

All AWT Water shall be delivered to the Delivery Point. Water utilized to backflush an

injection well that percolates into the ground is considered delivered AWT Water.

The Agency shall own the AWT Water until the point it leaves the AWT Facilities. The District shall own the AWT Water from the point it leaves the AWT Facilities to the Delivery Point. After the Delivery Point, if the water is Company Water, it will be owned by the Company. If, however, the water is Excess Water after the Delivery Point, then ownership of such water shall remain with the District. The District shall own any water in the Reserve Account, until such time as Operating Reserve Water or Drought Reserve Water is used to satisfy the Water Availability Guarantee at which point it shall become Company Water and be owned by the Company.

The Company recognizes and agrees that it acquires no interest in or to any portion of the District's system or any Agency facilities.

Delivery by the District and withdrawal by the Company shall be governed by the Storage and Recovery Agreement.

10. Points of Withdrawal.

All AWT Water furnished pursuant to this Agreement shall be taken from storage by the Company at the points of withdrawal controlled by the Company and permitted by the California Department of Public Health. The Company shall be solely responsible for operating and maintaining all of its facilities for withdrawal of water.

11. Measurement.

All AWT Water furnished pursuant to this Agreement shall be measured by the Agency at the Delivery Point. Such measurement shall be with equipment chosen by the Agency, installed by the Agency on Agency facilities, and approved by the District and Company in writing. All measuring equipment shall be installed, maintained, repaired and replaced by the Agency. The Agency will provide annual meter calibration by an outside contractor and provide a copy of results of such calibrations to District and Company. The Agency shall have the primary obligation to measure the quantity of AWT Water delivered to the Delivery Point. The Company may request,at any time, investigation and confirmation by the District or Agency of the measurement being made as well as the charges associated with those measurements. Errors in measurement and charges discovered by the investigation will be corrected in a timely manner by the Agency and the District. The Company may, at its own expense, at any time, inspect the measuring equipment and the record of such measurements for the purpose of determining the accuracy of the equipment and measurements.

12. Water Delivery Guarantee.

(a) Beginning on the Performance Start Date and in every Fiscal Year throughout the term of this Agreement, the Agency shall use its best efforts to deliver AWT Water to the District in quantities at least equal to the Company Allotment.

(b) Beginning on the Performance Start Date and in every Fiscal Year throughout the term of this Agreement, the District shall use its best efforts to deliver Company Water to the Delivery Point in quantities at least equal to the Company Allotment.

(c) Beginning on the Performance Start Date and in every Fiscal Year throughout the term of this Agreement, the Agency shall deliver AWT Water to the District in quantities at least equal to the Minimum Allotment (the "Water Delivery Guarantee").

(d) Beginning on the Performance Start Date and in every Fiscal Year throughout the term of this Agreement, the District shall deliver Company Water to the Delivery Point in quantities at least equal to the Minimum Allotment (also, the "Water Delivery Guarantee").

(e) All AWT Water delivered by the District to the Delivery Point between the Delivery Start Date and the Performance Start Date shall be deemed Operating Reserve Water and allocated to the Operating Reserve. The Performance Start Date shall not occur until the Operating Reserve Minimum has been allocated to the Operating Reserve. Beginning on the Performance Start Date and in every Fiscal Year throughout the term of this Agreement, all AWT Water delivered to the Delivery Point each Fiscal Year shall be Company Water until an amount equal to the Company Allotment has been delivered.

13. Water Availability Guarantee.

(a) Beginning on the Performance Start Date and throughout the term of this Agreement, the Agency must deliver enough AWT Water to the District so that the Company may draw AWT Water (including Company Water, Operating Reserve Water, and Drought Reserve Water released by the District to the Company) from the Seaside Basin every Fiscal Year in an amount at least equal to the Company Allotment (the "Water Availability Guarantee").

(b) Beginning on the Performance Start Date and throughout the term of this Agreement, the District must deliver enough AWT Water to the Delivery Point so that the Company may draw AWT Water (including Company Water, Operating Reserve Water, and Drought Reserve Water released by the District to the Company) from the Seaside Basin every Fiscal Year in an amount at least equal to the Company Allotment (also, the "Water Availability Guarantee").

(c) If in any Fiscal Year the District delivers Excess Water, any such amount shall be credited to the Reserve Account. The Reserve Account will have two sub-accounts: the Operating Reserve and the Drought Reserve. The District will allocate all Excess Water into either the Operating Reserve or the Drought Reserve as it shall determine in its sole discretion.

(d) If the amount of Operating Reserve Water in the Operating Reserve at any time is less than the Operating Reserve Minimum, then all Excess Water in a Fiscal Year must be allocated

to the Operating Reserve until the Operating Reserve Minimum is achieved, except for up to 200 acre-feet of Excess Water that may, at the District's election, be allocated to the Drought Reserve but only if the balance in the Drought Reserve is less than the Drought Reserve Minimum. In no instance shall the District reduce Company Water deliveries to make available additional irrigation water to the Monterey County Water Resources Agency from Agency sources in an amount exceeding the balance available in the Drought Reserve.

(e) If in any Fiscal Year the District delivers Company Water to the Delivery Point in quantities less than the Company Allotment, the Company shall have the right, but not the obligation, to draw Operating Reserve Water from the Operating Reserve to make up for any such shortfall in Company Water. In addition, if a shortfall still exists after Operating Reserve Water is drawn by the Company, the District may, in its sole discretion, use Drought Reserve Water available in the Drought Reserve to satisfy the Water Availability Guarantee. Upon the occurrence of the Expiration Date, or the earlier termination of this Agreement as contemplated herein, the Company shall have the right to draw Drought Reserve Water from the Drought Reserve.

(f) At least every three (3) months during the term of this Agreement, beginning on the Performance Start Date, the District will report to the Company the balances and activity in the Operating Reserve and Drought Reserve. In addition, the District shall, with ten (10) days following the Company's request, provide to the Company the balances and activity in the Operating Reserve and Drought Reserve.

14. Water Treatment Guarantee.

All AWT Water delivered by the Agency to the District and by the District to the Delivery Point must meet the water quality requirements set forth in Applicable Law (the "Water Treatment Guarantee"). If at any time the Agency or the District fails to meet the Water Treatment Guarantee, the Agency or the District shall give the Company immediate notice thereof and shall promptly meet with the Company to discuss the circumstances of such failure and the District's and the Agency's proposed action plan for remediation so that the Water Treatment Guarantee will be met. AWT Water delivered by the Agency to the District or by the District to the Delivery Point that does not meet the Water Treatment Guarantee shall not be considered Company Water or Excess Water.

15. Budgeting.

Not later than May 1 each year, the Fixed Project Costs and Project Operation and Maintenance Expenses shall be estimated by the Agency and the District for the following Fiscal Year. Such estimates shall be made available for review by the Parties at least fifteen (15) days prior to adoption by the Agency's or District's respective boards.

16. Rate of Payment for Company Water.

For Company Water furnished to the Company under this Agreement, the Company shall pay Company Water Payments to the District on a monthly basis determined as the Company Water Rate multiplied by the quantity of Company Water delivered the previous month. The Company shall not pay for deliveries to the Operating Reserve and the Drought Reserve until such reserves are designated by the Company or the District, as applicable, as Company Water.

The Company Water Rate in each Fiscal Year of the Agreement shall be the sum of the Fixed Project Costs and Project Operation and Maintenance Expenses budgeted for production and delivery of AWT Water in such Fiscal Year, divided by the amount of AWT Water expected to be produced during such Fiscal Year. The Parties agree that the fundamental rate-setting principles of this Agreement shall be (a) the Company does not pay for water it does not receive, (b) the cost of water shall only reflect the true cost of service consistent with California public agency laws and regulations, and (c) the Company shall pay only its proportionate share of the costs of the Agency and the District producing AWT Water.

In the first year following the Performance Start Date, the Company Water Rate shall not exceed $1,720 per acre foot (the "Soft Cap"). Prior to the Performance Start Date, if the first-year Company Water Rate as calculated is expected to exceed the Soft Cap, the Company shall apply to the CPUC through a Tier 2 advice letter for approval of such rate before the Company shall be required under this Agreement to pay an amount greater than the Soft Cap as the Company Water Rate. Unless and until the CPUC approves a Company Water Rate in an amount greater than the Soft Cap, the Company shall only be required to pay an amount equal to the Soft Cap as the Company Water Rate. In no circumstance shall the District's or the Agency's obligations under this Agreement to deliver Company Water to the Company be affected by the pendency of the Company's application to the CPUC for approval of a rate greater than the Soft Cap or a decision by the CPUC to deny any such application.

As Project Operation and Maintenance Expenses are projected or budgeted for an upcoming Fiscal Year, the Parties agree there will be a "true-up" or reconciliation at the end of every Fiscal Year following the Performance Start Date to ensure the principles set forth in this section are met. Such "true-up" shall mean: if actual Project Operation and Maintenance Expenses are more or less than budgeted Project Operation and Maintenance Expenses used to calculate the Company Water Rate paid during the Fiscal Year, a corresponding adjustment (up or down) will be provided against the subsequent Fiscal Year budget and computed Company Water Rate for that Fiscal Year.

The Parties agree that, given the status of the Agency and the District as governmental agencies and the requirements under law that they incur only reasonable and prudent costs and expenses for purposes related to their governmental duties and the fact that such costs and expenses are subject to public review and scrutiny, all Fixed Project Costs and Project Operation and Maintenance Expenses incurred by the Agency and/or the District in compliance with the terms of this

Agreement shall reflect only the actual cost of service consistent with California public agency laws and regulations and shall be subject to CPUC review consistent with that used for existing water purchase agreements by CPUC-regulated Class A investor-owned water utilities.

The District covenants and agrees to pay to the Agency the revenues received from the Company from the Company Water Payments provided, however, it will reduce the payment amount by any portion of the Fixed Project Costs and Project Operation and Maintenance Expenses directly paid or incurred by the District.

17. Time and Method of Payments.

The District shall send the Company a detailed monthly statement of charges due for all Company Water delivered to the Delivery Point during the preceding month as measured by the Agency meters, which shall be read on a monthly basis, and all Operating Reserve Water and Drought Reserve Water used to satisfy the Water Availability Guarantee, The Company shall not be billed for Excess Water that goes into the Reserve Account.

The Company shall pay to the District all undisputed portions of statements, within forty-five (45) days after receipt. Statements shall be mailed to the Company at the following address:

California American Water Company
Director of Operations
511 Forest Lodge Rd # 100
Pacific Grove, CA 93950

The Agency shall send the District a monthly statement of charges due for all AWT Water actually delivered to the District during the preceding month as measured by the meters, which shall be read on a monthly basis. The District shall pay all statements within forty-five (45) days after receipt. Statements shall be mailed to the District at the following address:

Monterey Peninsula Water Management District
Administrative Services Division Manager
5 Harris Court, Building G
Monterey, CA 93940

If payment of any amount due hereunder is not made when due, excluding disputed amounts, simple interest will be payable on such undisputed amount at the legal rate of interest charged on California judgments, as provided in California Code of Civil Procedure Section 685.010, and shall be calculated on the basis of a 365-day year from the date such payment is due under this Agreement until paid.

The Company is obligated to pay to the District the undisputed amounts becoming due under this Agreement, notwithstanding any individual default by its water users or others in the payment to the Company of assessments or other charges levied by the Company.

GENERAL PROVISIONS

18. CPUC Rate Recovery Process.

All costs that the Company pays to the District pursuant to this Agreement shall be considered purchased water costs that are a pass-through to customers to be recovered via the Modified Cost Balancing Account ("MCBA") mechanism.

At least six (6) months prior to the Performance Start Date, at least one time between May 1 and June 1 of every year thereafter, and at any time throughout the term of this Agreement the District deems necessary, the District shall provide the Company with written notice of the Company Water Rate, supported by detailed information relating to the Fixed Project Costs and the estimated Operation and Maintenance Expenses to be incurred in the upcoming Fiscal Year that were used to determine the Company Water Rate. Within sixty (60) days following receipt of the written notice containing the Company Water Rate, the Company shall file a Tier 1 advice letter for rate recovery with the CPUC to update its rates and tariffs, and in doing so establish a surcharge rate to reflect the Company Water Rate.

All changes to the Company Water Rate resulting from annual increases or decreases to the Fixed Project Costs or Project Operation and Maintenance Expenses, as reflected in the Company Water Rate, shall be requested for rate recovery through a Tier 1 advice letter in accordance with Section 3.2 of Water Industry Rules in General Order 96-B, as amended from time to time, for processing expense offset rate changes. The rate change will be applied to the surcharge to ensure that the Company's customer rates remain aligned with the Company Water Rate under the Agreement.

The Company shall have no obligation to make Company Water Payments unless and until the CPUC approves payment and recovery of those payments in rates through the process set forth in General Order 96-B, including a Tier 1 advice letter, which is effective upon filing pending CPUC approval, or another process resulting in CPUC approval of such costs, which shall be diligently pursued by the Company. Failure of the Company to pay amounts in excess of the amount approved by the CPUC shall not constitute a breach, and the District and Agency shall not be relieved of any obligations hereunder as a result thereof.

Access to the books and records of the Agency and the District will be made available to the Company for purposes of reviewing the accuracy and reasonableness of all costs relating to the Project and determination of the Company Water Rate.

Notwithstanding the Company's commitments under this Agreement, the Company intends to implement the MPWSP as authorized by the CPUC. Neither the District nor the Agency shall oppose the Company's efforts to obtain CPUC approval to recover in rates the Company's costs incurred relating to the MPWSP on or prior to August 31, 2019. Neither the District nor the

Agency is currently taking a position relating to the Company's efforts to obtain CPUC approval to recover in rates the Company's costs incurred relating to the MPWSP after August 31, 2019.

19. Additional Project Participants.

After giving sixty (60) days' prior written notice to the Company, the District and Agency may enter into water purchase agreements for AWT Water with Additional Project Participants subsequent to the Effective Date of this Agreement to the extent the District determines sufficient capacity exists (after accounting for the need to maintain the Operating Reserve Minimum and the Drought Reserve Minimum), to the extent there is no additional cost to the Company as a result of any such agreement, and to the extent any such agreement does not adversely affect the Agency's or the District's ability to meet their performance obligations under this Agreement.

In order to not diminish the source waters available to produce AWT Water under this Agreement, the Company shall have the right, prior to the District or the Agency entering into any water purchase agreement for AWT Water and in the Company's sole discretion, to approve or not approve in writing any Additional Project Participants deriving water from the water sources identified for the Project, specifically source waters identified in Sections 1.04 and 2.02 of the Amended and Restated Water Recycling Agreement between the Agency and Monterey County Water Resources Agency, dated November 3, 2015.

The Company shall not have the right to approve Additional Project Participants deriving water from prior existing rights to wastewater flows to the Regional Treatment Plant pursuant to Section 4.01 of the Agency's agreement with Monterey County Water Resources Agency or from future additional sources, as yet unidentified, such as wastewater systems annexed to the Agency's service area.

Any Additional Project Participant will pay for all additional capital costs necessitated by existence of the new water purchase agreement, its proportionate share of both the unamortized capital costs of the Project, and its proportionate share of future operation and maintenance expenses of the Project. The District and Agency will provide supporting documentation to the Company to ensure the Company Water Payments do not include any costs properly allocable to an Additional Project Participant.

Nothing in this Section 19 or in this Agreement is intended to affect, impair or supersede in any way the separate rights of the Marina Coast Water District as they are set forth in its existing agreements regarding recycled water, source water for recycled water or recycled water conveyance facilities, including its existing agreements with the Agency.

20. Breach, Event of Default and Termination.

(a) Remedies for Breach – The Parties agree that, except as otherwise provided in this section

with respect to termination rights, if any Party breaches this Agreement, any other Party may exercise any legal rights it may have under this Agreement and under Applicable Law to recover damages or to secure specific performance. No Party shall have the right to terminate this Agreement for cause except upon the occurrence of an Event of Default. If a Party exercises its rights to recover damages upon a breach of this Agreement or upon a termination due to an Event of Default, such Party shall use all reasonable efforts to mitigate damages. If a Force Majeure Event occurs, the Affected Party shall be entitled to relief from determination of a breach pursuant to Section 23 of this Agreement.

(b) If the District fails to exercise, and diligently pursue, any legal rights it may have against the Agency pursuant to subsection (a) of this section 20 within forty-five (45) days after the Company's written request that the District do so, the District shall be deemed to have assigned to the Company all such legal rights. The Agency shall not object to any such assignment, but shall not waive any defense it may otherwise assert to any claim brought by the Company.

(c) Event of Default – The following shall each constitute an "Event of Default" under this Agreement:

~~(1) The Delivery Start Date does not occur on or before July 1, 2019;~~

~~(2) The Performance Start Date does not occur on or before January 1, 2020;~~

~~(3)~~(1) The Expansion Delivery Start Date does not occur on or before October 1, 2024;

~~(4)~~(2) The Expansion Performance Start Date does not occur on or before October 1, 2025;

~~(5)~~(3) The failure of the Agency or the District to deliver Company Water to the Delivery Point in quantities at least equal to the Company Allotment in each of three consecutive Fiscal Years;

~~(6)~~(4) The failure of the Agency or the District to meet the Water Delivery Guarantee in each of two consecutive Fiscal Years;

~~(7)~~(5) The failure of the Agency or the District to deliver Company Water to the Delivery Point in quantities at least equal to 2,960 acre-feet in any Fiscal Year;

~~(8)~~(6) The failure of the Agency or the District to meet the Water Availability Guarantee in any Fiscal Year;

~~(9)~~(7) The failure of any Party to perform any material term, covenant, or condition of this Agreement, and the failure continues for more than thirty (30) days

following the defaulting Party's receipt of written notice of such default from a non-defaulting Party; provided, however, that if and to the extent such default cannot reasonably be cured with such thirty (30) day period, and if the defaulting Party has diligently attempted to cure the same within such thirty (30) period and thereafter continues to diligently attempt to cure the same, then the cure period provided for herein shall be extended from thirty (30) days to one-hundred twenty (120) days;

~~(10)~~(8) The failure of the Agency or the District to meet the Water Treatment Guarantee on a repeated basis; and

~~(11)~~(9) The Company no longer has a statutory duty to serve water in the Service Area.

(d) Termination for Event of Default – If an Event of Default occurs, any non-defaulting Party may terminate this Agreement immediately upon written notice to the other Parties. A non- defaulting Party may enforce any and all rights and remedies it may have against a defaulting Party under Applicable Law.

~~(e) Support upon Event of Default – In addition to the remedies available under section 20(d), above, if an Event of Default should occur under Section 20(c)(5) or Section 20(c)(6), the District and the Agency shall cooperate and support the Company's efforts to obtain all permits and approvals necessary for implementation of a CPUC-approved water supply project (specifically including all necessary approvals for development, construction and operation of desalination facilities) proposed by the Company to both satisfy the requirements for lifting State Water Resources Control Board Orders WR 2009-0060 and WR 2016-0016 and comply with source capacity requirements under state regulations for a public water system, and any water supply project that may be proposed by the Company to the CPUC as a substitute therefor. The obligations provided in this section 20(e) shall survive any termination of the Agreement exercised pursuant to section 20(d), above.~~

[Alternatively, if subsection (e) is not removed in its entirety, MCWD proposes the following redline changes to this provision:

(e) Support upon Event of Default when CalAm is the non-defaulting Party – In addition to the remedies available under section 20(d), above, if an Event of Default by the District or the Agency should occur under Section 20(c)(5) or Section 20(c)(6), the District and the Agency shall cooperate and support the Company's efforts to obtain all permits and approvals necessary for implementation of a CPUC-approved water supply project (specifically including all necessary approvals for development, construction and operation of desalination facilities) proposed by the Company to both satisfy the requirements for lifting State Water Resources Control Board Orders WR 2009-0060 and WR 2016-0016 and comply with source capacity requirements under state regulations for a public water system, and any water supply project that may be proposed by the Company to the CPUC as a substitute therefor following any required environmental review under CEQA. The Parties understand and acknowledge that approvals of a CPUC-approved water supply project or substitute project proposed by the Company may be subject to procedural or substantive obligations under

California Environmental Quality Act ("CEQA") (Pub. Resources Code, §§ 21000 et seq.), the California Code of Regulations, title 14, Section 15000 et seq. ("CEQA Guidelines"), the State Planning and Zoning Law, or other laws potentially applicable to such approvals; nothing in this Agreement is intended to constrain the Agency's or the District's consideration on any such proposed project in light of information obtained or developed pursuant to these laws; and the Agency and the District retain their full discretion to comment on, approve, conditionally approve, or deny any such project in light of such information. The obligations provided in this section 20(e) shall survive any termination of the Agreement exercised pursuant to section 20(d), above.

21. Dispute Resolution.

Representatives from each Party shall meet and use reasonable efforts to settle any dispute, claim, question or disagreement (a "Dispute") arising from or relating to this Agreement. To that end, the Parties' representatives 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 the Parties. If the Parties do not reach such a solution within a period of thirty (30) days after the first notice of the Dispute is received by the non-disputing Parties, then the Parties shall pursue non-binding mediation to be completed within one-hundred twenty (120) days after the notice of the Dispute is received by the non-disputing Parties. If the Parties do not settle the Dispute within the one-hundred twenty (120) day period, any Party may pursue any and all available legal and equitable remedies.

22. Indemnification.

Each Party (an "Indemnifying Party") shall fully indemnify the other Parties and their respective officers, directors, employees, consultants, contractors, representatives and agents (the "Indemnified Persons") against, and hold completely free and harmless from, all liability and damages including any cost, expense, fine, penalty, claim, demand, judgment, loss, injury and/or other liability of any kind or nature, including personal or bodily injury, death or property damage, that are incurred by or assessed against the Indemnified Persons and directly or indirectly caused by, resulting from, or attributable to the fault, failure, breach, error, omission, negligent or wrongful act of the Indemnifying Party, or its officers, directors, employees, consultants, contractors, representatives and agents, in the performance or purported performance of the Indemnifying Party's obligations under this Agreement, but only to the extent of and in proportion to the degree of fault, failure, breach, error, omission, negligent or wrongful act of the Indemnifying Party, or its officers, directors, employees, consultants, contractors, representatives and agents.

23. Force Majeure Event Relief.

(a) If a Force Majeure Event occurs, the Affected Party shall be entitled to (1) relief from its performance obligations under this Agreement to the extent the occurrence of the Force Majeure Event prevents or adversely affects Affected Party's performance of such obligations, and (2) an extension of schedule to perform its obligations under this

Agreement to the extent the occurrence of the Force Majeure Event prevents or adversely affects Affected Party's ability to perform such obligations in the time specified in this Agreement. The occurrence of a Force Majeure Event shall not, however, excuse or delay the other Parties' obligation to pay monies previously accrued and owing to Affected Party under this Agreement, or for Affected Party to perform any obligation under this Agreement not affected by the occurrence of the Force Majeure Event.

(b) Upon the occurrence of a Force Majeure Event, Affected Party shall notify the other Parties in accordance with the notice provisions set forth herein promptly after Affected Party first knew of the occurrence thereof, followed within fifteen (15) days by a written description of the Force Majeure Event, the cause thereof (to the extent known), the date the Force Majeure Event began, its expected duration and an estimate of the specific relief requested or to be requested by the Affected Party. Affected Party shall use commercially reasonable efforts to reduce costs resulting from the occurrence of the Force Majeure Event, fulfill its performance obligations under the Agreement and otherwise mitigate the adverse effects of the Force Majeure Event. While the Force Majeure Event continues, the Affected Party shall give the other Parties a monthly update of the information previously submitted. The Affected Party shall also provide prompt written notice to the other Parties of the cessation of the Force Majeure Event.

24. Amendments.

No change, alteration, revision or modification of the terms and conditions of this Agreement shall be made, and no verbal understanding of the Parties, their officers, agents or employees shall be valid, except through a written amendment to this Agreement duly authorized and executed by the Parties.

25. Remedies Not Exclusive.

The use by any Party of any remedy for the enforcement of this Agreement is not exclusive and shall not deprive the Party using such remedy of, or limit the application of, any other remedy provided by law.

26. Mitigation of Damages.

In all situations arising out of this Agreement, the Parties shall attempt to avoid and minimize the damages resulting from the conduct of another Party.

27. Failure of CPUC Approval.

If this Agreement is not approved by the CPUC in a manner acceptable to the Parties, any Party may, within sixty (60) days after the effective date of the decision or order of the CPUC relating to the approval of this Agreement, give written notice to the other Parties that the Agreement will terminate ten (10) days after receipt of such notice. Those acts and obligations that are to be

performed on or after the Execution Date shall be discharged and no Party shall thereafter be obligated to continue to perform this Agreement or any provision hereof. Whether this Agreement is approved by the CPUC in a manner acceptable to the Parties or not, those acts and obligations performed prior to the date of termination shall be final and no party shall have any claim to be restored to its pre-Execution Date status with regard to any of those acts or obligations.

28. Insurance.

The Agency and District will each obtain the applicable Required Insurance, as set forth in Exhibit D. If insurance proceeds fail to satisfy the obligations of the Agency or the District under this Agreement, the District and the Agency will utilize their own resources, including Prop 218 revenue raising capacity, to the extent allowable by law, to satisfy their obligations.

29. No Waiver.

Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by another Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any default or breach shall affect or alter this Agreement, and each and every covenant, term, and condition hereof shall continue in full force and effect to any existing or subsequent default or breach.

30. Successors in Interest, Transferees, and Assignees.

(a) This Agreement and all the rights and obligations created by this Agreement shall be in full force and effect whether or not any of the Parties to this Agreement have been succeeded by another entity, or had their interests transferred or assigned to another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest, transferee, or assignee. If the Company, the Agency or the District is succeeded by another entity, it shall assign this Agreement to its successor. If the District ceases to exist, the Agency and the Company shall continue their obligations hereunder in a manner that will substantively comply with the intent of this Agreement. Except as provided in subsection (b) of this Section 30, no succession, assignment or transfer of this Agreement, or any part hereof or interest herein, by a Party shall be valid without the prior written consent of the other Parties, such consent not to be unreasonably withheld.

(b) In the event of the creation of a local governmental agency duly established for the sole purpose of succeeding to, assuming, and performing all obligations and rights of Agency or District created by this Agreement, Agency or District may assign this Agreement and all those obligations and rights to such local governmental agency without consent, written or otherwise, of any other Party.

31. Covenants and Conditions.

All provisions of this Agreement expressed either as covenants or conditions on the part of the District, Agency, or the Company shall be deemed to be both covenants and conditions.

32. Governing Law.

This Agreement and the rights and obligations of the Parties shall be governed, controlled and interpreted in accordance with the laws of the State of California.

33. Headings.

All headings are for convenience only and shall not affect the interpretation of this Agreement.

34. Construction of Agreement Language.

The provisions of this Agreement shall be construed as a whole according to its common meaning and purpose of providing a public benefit and not strictly for or against any Party. The Agreement shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the Parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

35. Drafting Ambiguities.

This Agreement is the product of negotiation and preparation between the Parties. The Parties and their counsel have had the opportunity to review and revise this Agreement. The Parties waive the provisions of Section 1654 of the Civil Code of California and any other rule of construction to the effect that ambiguities are to be resolved against the drafting Party, and the Parties warrant and agree that the language of this Agreement shall neither be construed against nor in favor of any Party unless otherwise specifically indicated.

36. Partial Invalidity; Severability.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

37. 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, transferees and assignees of either of them shall be authorized to enforce the provisions of this Agreement.

38. Relationship of the Parties.

The relationship of the Parties to this Agreement shall be that of independent contractors. Each Party shall be solely responsible for any workers compensation, withholding taxes, unemployment

insurance, and any other employer obligations associated with the described work or obligations assigned to them under this Agreement.

39. Signing Authority.

The representative of each Party signing this Agreement hereby declares that authority has been obtained to sign on behalf of the Party such person is representing.

40. 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.

41. Opinions and Determinations.

Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review or determination of any Party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable.

42. Interpretation of Conflicting Provisions.

If there is any conflict, discrepancy or inconsistency between the provisions of this Agreement and the provisions of any exhibit or attachment to this Agreement, the provisions of this Agreement shall prevail and control.

43. Integration.

This Agreement, including the exhibits, represent the entire Agreement between the Parties with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the Parties as of the Effective Date.

44. Counterparts.

All signatures need not appear on the same counterpart of this Agreement and all counterparts of this Agreement shall constitute one and the same instrument.

45. Notices.

All notices to a Party 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); or (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. Notices to the Parties shall be sent to the following addresses or to other such addresses as may be furnished in writing by one Party to the other Parties:

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

Monterey One Water
5 Harris Court, Building D
Monterey, CA 93940
Attention: General Manager

California American Water
Attn: President
655 W. Broadway, Suite 1410
San Diego, CA 92101

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

MONTEREY ONE WATER,

By: _____

Printed Name: _____

Board Chair, Agency Board of Directors

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT,

By: _____

Printed Name: _____

Chair, District Board of Directors

CALIFORNIA-AMERICAN WATER COMPANY,

By: _____

Printed Name: _____

President

EXHIBIT A

Service Area

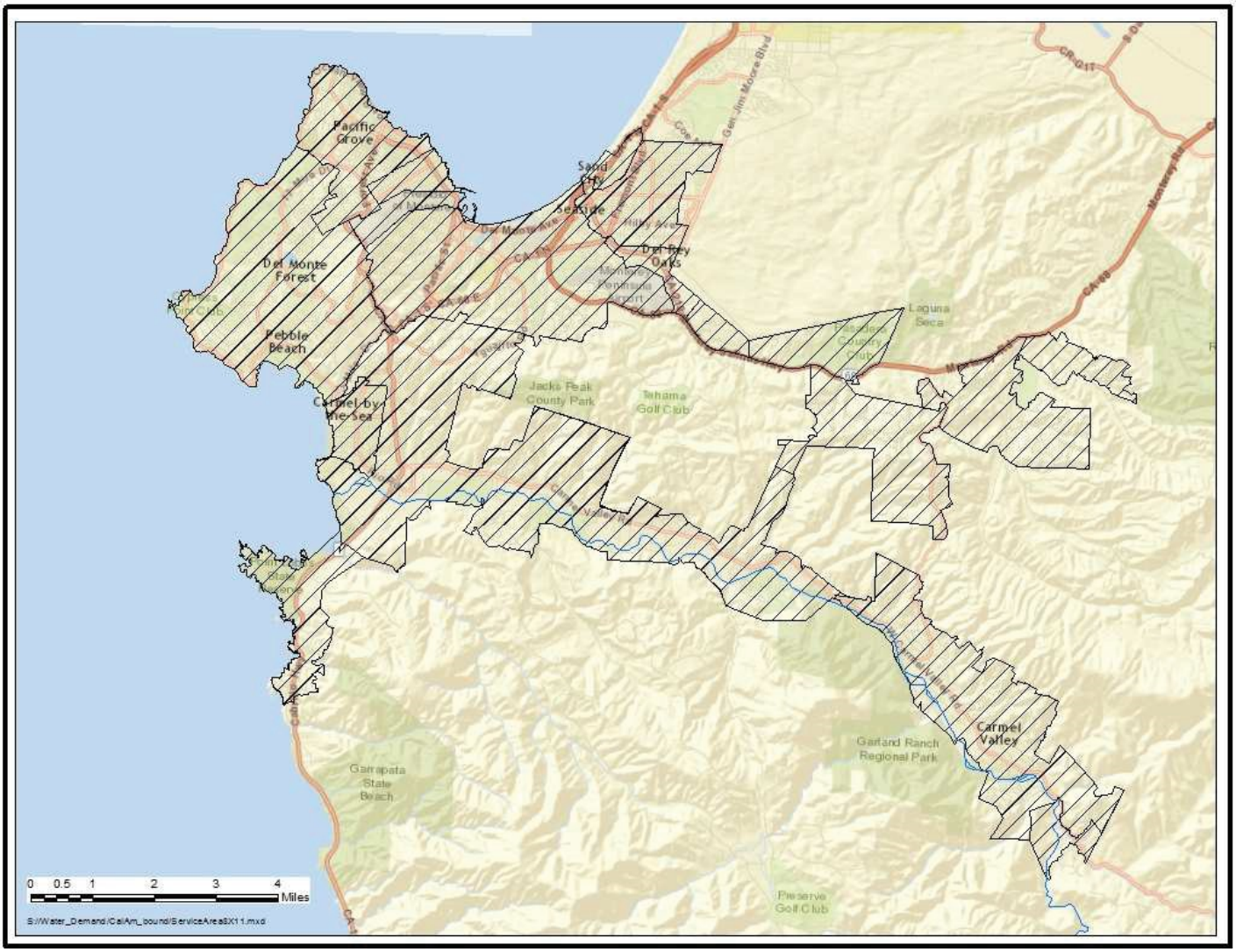


EXHIBIT B

Description of Project

Source Water Facilities – facilities to enable diversion of new source waters to the existing municipal wastewater collection system and conveyance of those waters as municipal wastewater to the Regional Treatment Plant to increase availability of wastewater for recycling. Modifications would also be made to the existing Salinas Industrial Wastewater Treatment Facility to allow the use of the existing treatment ponds for storage of excess winter source water flows and later delivery to the Regional Treatment Plant for recycling.

AWT Facilities – use of existing primary and secondary treatment facilities at the Regional Treatment Plant, as well as new pre-treatment, advanced water treatment (AWT), product water stabilization, product water pump station, and concentrate disposal facilities.

Product Water Facilities – new pipelines, pipeline capacity rights, booster pump station(s), appurtenant facilities along one of two optional pipeline alignments to move the product water from the Regional Treatment Plant to the Seaside Groundwater Basin injection well facilities.

Injection Facilities – new deep and vadose zone wells to inject Proposed Project product water into the Seaside Groundwater Basin, along with associated back-flush facilities, pipelines, electricity/ power distribution facilities, and electrical/motor control buildings.

Description of Expansion

"Expansion" means the Pure Water Monterey groundwater replenishment project expansion, including (a) expansion to AWT Facilities, (b) additional Product Water Facilities, and (c) additional Injection Facilities. The proposed expansion to AWT Facilities will include additions of equipment, pipelines, and appurtenances to the approved and existing buildings and concrete/asphalt areas at the Advanced Water Purification Facility (also referred to herein as AWT Facilities).

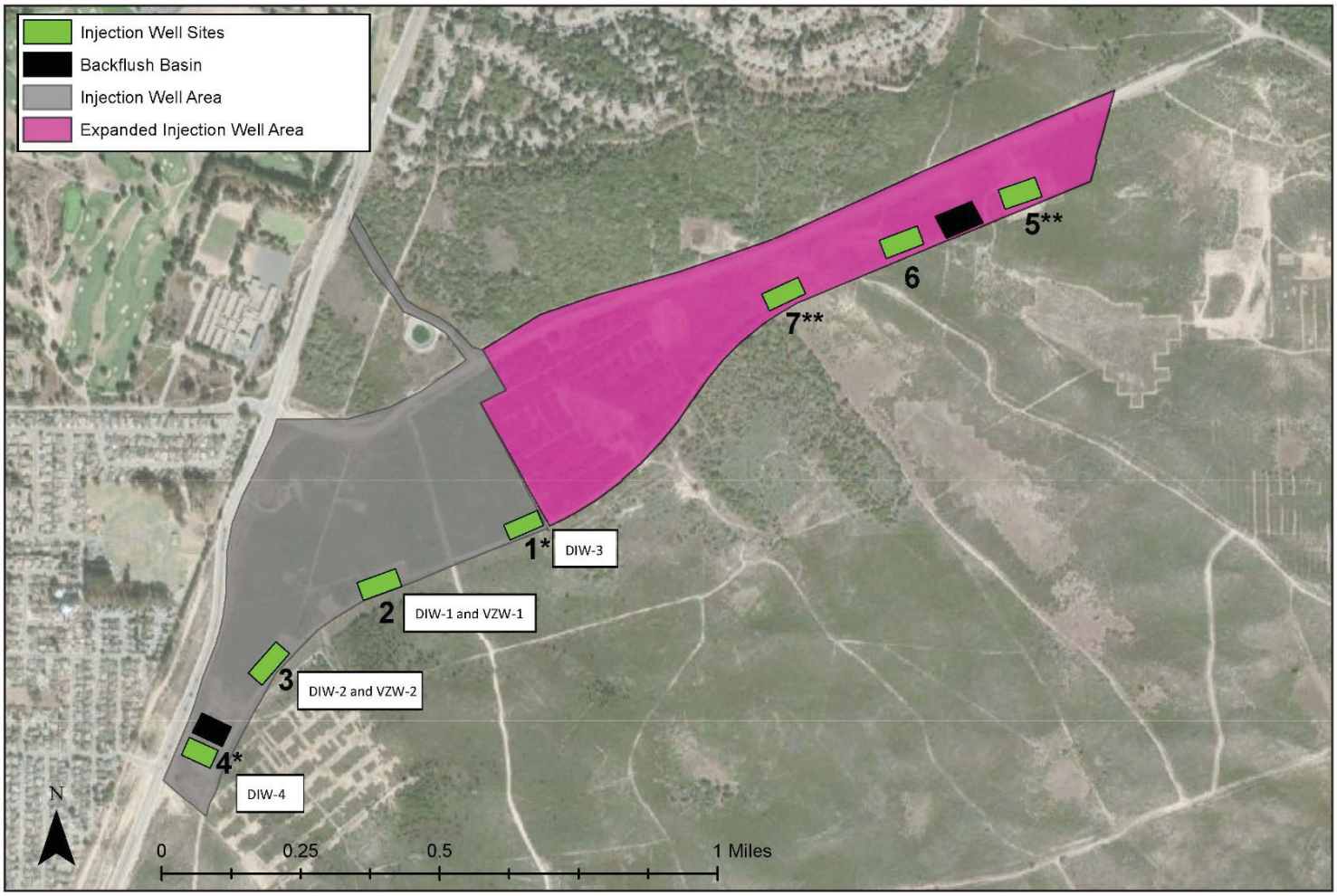
Description of Company Facilities

"Company Facilities" means the necessary facilities funded and constructed by the Company for purposes of supporting water deliveries from the Project and other Company water supplies, including (a) injection/extraction wells and related appurtenances, (b) pipelines and transmission mains, and (c) real property, including up to two extraction wells near Fitch Park on Presidio of Monterey property and two extraction wells just north of the Seaside Middle School, in the City of Seaside, conveyance pipelines serving the extraction wells and interconnecting with the Company distribution system in General Jim Moore Boulevard, and potential treatment facilities.

EXHIBIT C

Delivery Point

AWT Water will be injected into the Seaside Groundwater Basin using existing and new injection wells. The proposed Injection Well Facilities will be located east of General Jim Moore Boulevard, south of Eucalyptus Road in the City of Seaside, including injection wells (deep injection wells, vadose zone wells, as identified in the figure below), plus monitoring wells, and back-flush facilities.



Well sites 1-4 have been approved and constructed. Well site 6 is the primary site for expansion, but sites 5 and 7 may be made available for redundancy or future replacement.

EXHIBIT D

Required Insurance

As provided in Section 28 of this Agreement, Agency and District shall, to the extent it continues to be available and applicable to the insured risk, obtain and keep in force during the term of this Agreement the following minimum insurance limits and coverage (or greater where required by Applicable Law). Such coverage will be in place not later than the inception of the covered activity, or such time as the Agency's and the District's insurable interest exists.

The cost of Project insurance obtained pursuant to this Exhibit is a Project Operation and Maintenance Expense as defined in Section 2 of this Agreement.

Upon request, Agency and District will provide Company with a certificate of insurance or memorandum of coverage as to any Project insurance and/or complete copies of policies.

Company shall be provided at least 30 days' written notification of cancellation, material reduction in coverage or reduction in limits.

Project insurance may be issued by a public agency Joint Powers Authority Program or insurance companies authorized to do business in California with a current A. M. Best rating of A or better.

All commercial general liability insurance, including completed operations-products liability, automobile liability, and pollution liability insurance obtained pursuant to this Agreement shall designate Company, its parent and affiliates, their respective directors, officers, employees and agents, as additional covered parties. All such insurance should be primary and non-contributory, and is required to respond and pay prior to any other insurance or self-insurance available to Company. In addition to the liability limits available, such insurance will pay on behalf or will indemnify Company for defense costs. Any other coverage available to Company applies on a contingent and excess basis. All such insurance shall include appropriate clauses pursuant to which the insurance companies shall waive their rights of subrogation against Company, its parent and affiliates, their respective directors, officers, employees and agents.

Agency shall require that the contractors and subcontractors of all tiers as appropriate provide insurance during the pre-construction and construction (as covered activities begin) of the AWT Facilities as described in "Pure Water Monterey – Insurance Requirements for Construction and Design Professional Contracts," attached to this Exhibit D as Attachment 1. Approval of any deviation or exception from these insurance requirements resides solely with the Agency.

Coverages:

i. The Agency will provide coverage as follows:

(a) General liability insurance, including coverage for auto, errors and omissions and employment practices, and for the Water Delivery Guarantee, Water Availability Guarantee, and Water Treatment Guarantee at Sections 12, 13, and 14, respectively, of this Agreement. Total general and excess liability coverage limits shall be no less than $15,000,000 per occurrence.

(b) "All Risk" Property Insurance (including coverage for Builders' Risk, with additional coverage for loss or damage by water, earthquake, flood, collapse, and subsidence) with a total insured value equal to replacement cost of the AWT Facilities during the term of this Agreement

(c) Cyber Liability Insurance with $2,000,000 coverage limits for first and third party limits.

(d) (1) Public Entity Pollution Liability (claims made and reported) with coverage limits in the amounts of $25,000,000 policy aggregate and $2,000,000 per pollution condition with a $75,000 per pollution condition retention; (2) Pollution & Remediation Legal Liability with coverage limits in the amounts of $1,000,000 each pollution condition and $5,000,000 aggregate liability limits including a self-insured retention not to exceed $25,000 each pollution condition; and (3) Tank Advantage Pollution Liability with coverage limits in the amounts of $1,000,000 each claim and $2,000,000 aggregate.

(e) Workers' Compensation/Employers' Liability. Workers' Compensation and Employer's Liability insurance and excess insurance policy(s) shall be written on a policy form providing workers' compensation statutory benefits as required by California law. Employers' liability limits shall be no less than one million dollars ($1,000,000) per accident or disease.

ii. The District will provide coverage as follows:

(a) General Liability Coverage: $10,000,000 per Occurrence
Personal injury and Property Damage Coverage

(b) Automobile Liability Coverage: $10,000,000 per Occurrence
Personal Injury and Property Damage Coverage

(c) Workers' Compensation Coverage
A. Statutory Workers Compensation Coverage;
B. Employers' Liability Coverage: $5,000,000 each Occurrence

(d) Public Officials' and Employees Errors and Omissions: $10,000,000 per Occurrence

(e) Property Coverage: $1,000,000,000 (pooled limit)
Includes Fire, Theft and Flood Coverage with property replacement values

(f) Public Entity Pollution Liability with coverage limits in the amounts of $10,000,000 per occurrence with a not-to-exceed $75,000 per-pollution-condition retention; and (2) Pollution & Remediation Legal Liability with coverage limits in the amounts of $10,000,000 per occurrence including a self-insured retention not to exceed $25,000 each pollution condition.

Attachment 1

Pure Water Monterey
Proposed Insurance Requirements for Construction and Design Professional Contracts

Contractors and design professionals (as that term is used in California Civil Code §2782.8) shall procure and maintain for the duration of the contract, and for twelve (12) years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the contractor or design professional, his/her agents, representatives, employees, or subcontractors.[1]

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $5,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than $5,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than $1,000,000 per accident for bodily injury or disease.

4. **Builder's Risk (Course of Construction)** insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

5. **Surety Bonds** as described below.

[1] The coverages herein are understood to be representative only and the Agency and District retain the right to modify the insurance and indemnity requirements based upon the scope of services for any engagement.

6. **Professional Liability** (for all design professionals and contractors for design/build projects), with limits no less than $2,000,000 per occurrence or claim, and $4,000,000 policy aggregate.

7. **Contractors' Pollution Legal Liability and Errors and Omissions** (if project involves environmental hazards) with limits no less than $2,000,000 per occurrence or claim, and $4,000,000 policy aggregate.

If the contractor or design professional maintains higher limits than the minimums shown above, the Entity[2] requires and shall be entitled to coverage for the higher limits maintained by the contractor or design professional. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Entity. At the option of the Entity, either: the contractor shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects the Entity, its officers, officials, employees, and volunteers; or the contractor or design professional shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

The insurance policies are to contain, or be endorsed to contain, the following provisions[3]:

1. The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 10 93, CG 00 01 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 forms if later revisions used).

2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

[2] The term "Entity" as used herein means the Agency or the District.

[3] The term "Contractor" as used herein also means Design Professional in context of an agreement for services by a design professional as that term is used in CA CC 2782.8.

3. Each insurance policy required by this clause shall provide at least thirty (30) days' written notification of cancellation, material reduction in coverage or reduction in available limits.

Builder's Risk (Course of Construction) Insurance

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the Entity as a loss payee as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the Entity, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the Entity's site.

Claims Made Policies

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided for at least twelve (12) years after completion of contract work.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.

4. A copy of the claims reporting requirements must be submitted to the Entity for review.

5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to do business in California with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the Entity.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Entity for all work performed by the Contractor, its employees, agents and subcontractors.

Verification of Coverage

Contractor shall furnish the Entity with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

Surety Bonds

Contractor shall provide the following Surety Bonds:

1. Bid bond
2. Performance bond
3. Payment bond
4. Maintenance bond

The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Hold Harmless - Contractor

To the fullest extent permitted by law, Contractor shall hold harmless, immediately defend, and indemnify Entity and its officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except to the extent caused by the active negligence, sole negligence, or willful misconduct of the Entity.

Hold Harmless – Design Professional

To the fullest extent permitted by law, Design Professional shall hold harmless, immediately defend, and indemnify Entity and its officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses including attorney fees that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional, or its employees, agents or subcontractors, except to the extent caused by the active negligence, sole negligence, or willful misconduct of the Entity.

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