

ATTACHMENT B

**First Public Review Draft December 6, 2017
WATER SALE AGREEMENT FOR PORTION OF
MARINA COAST WATER DISTRICT'S PHASE 1
PURE WATER MONTEREY PROJECT WATER**

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FOR PORTION OF MARINA COAST WATER DISTRICT'S PHASE 1
PURE WATER MONTEREY PROJECT WATER**

THIS AGREEMENT is entered into on _____, 2018 (“Effective Date”), among California-American Water Company, a California corporation (“Company”), Monterey One Water (“Agency” or “M1W”), formerly Monterey Regional Water Pollution Control Agency, Monterey Peninsula Water Management District (“District”), and Marina Coast Water District (“MCWD”). The Company, Agency, District, and MCWD are hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The Company, the Agency, and the District entered into the 2016 Pure Water Monterey (“PWM” or the “Project”) Agreement to provide up to 3,700 AFY of Advanced Water Treatment (“AWT”) Water from the Project.

B. The Agency and MCWD entered into the MCWD-M1W Agreement wherein MCWD is entitled to 600 AFY of AWT Water under Phase 1 of the Project and an additional 827 AFY of AWT Water under Phase 2 of the Project. That 1,427 AFY of AWT Water is in addition to the 3,700 AFY of AWT Water under the 2016 PWM Agreement.

C. MCWD is willing to assist the District and the Company by providing 500 AFY of MCWD’s 600 AFY of PWM Phase 1 AWT Water during the term of this Agreement.

D. The Parties find that it is in their mutual best interests to enter into this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. **Purpose of Agreement.** This Agreement is intended to provide 500 AFY of MCWD AWT Water to the District for sale to the Company to assist in meeting the Company’s water demands within the Company’s service area and to help mitigate the reductions in Company’s Carmel River diversions due to the State Water Resources Control Board’s Cease and Desist Order.

2. **Definitions.**

“2016 PWM Agreement” means the Water Purchase Agreement for Pure Water Monterey Project dated September 19, 2016 (“Agreement”), among California-American Water Company, a California corporation, Monterey One Water, formerly Monterey Regional Water Pollution Control Agency, and Monterey Peninsula Water Management District.

“AF” means acre feet.

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

“AFY” means acre feet per year.

“Agreement” means this Water Sale Agreement, as the same may be amended from time to time.

“Applicable Law” means any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order, or other requirement of any municipal, county, state, federal, or other government agency or authority having jurisdiction over the Parties or the services or obligations of any Party in effect either on the Effective Date of this Agreement or at any time during the term of 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.

“AWT Water” means advanced treated recycled water produced by the AWT Facilities.

“CEQA” means the California Environmental Quality Act, California Public Resources Code section 21000, et seq.

“CPUC” means the California Public Utilities Commission.

“Delivery Point” means any of the metered points of delivery identified in attached Exhibit A, which is incorporated herein by reference, before the AWT Water is injected into the Seaside Basin via the Injection Facilities. [Note: Exhibit A is Exhibit C to the 2016 PWM Agreement.]

“Event of Default” means each of the items specified in the General Provisions which may lead to termination of this Agreement upon election by a non-defaulting Party.

“FEIR” means Final Environmental Impact Report, as “environmental impact report” is defined in California Public Resources Code section 21061.

“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 MCWD’s share of all pre-construction, development, and capital costs of the Project, including debt service and reserves for the payment of debt service and replacement and renewal reserves, incurred by M1W and MCWD less any State Revolving Fund grants and FORA capital contributions received by MCWD, all as identified and calculated pursuant to the MCWD-M1W Agreement, particularly Sections 4 and 5, relating to the cost of MCWD AWT Water made available under this Agreement, which will normally be 500/600 of

those costs. In addition, such capital, replacement and renewal costs to wheel recovered MCWD AWT Water through the MCWD Pipeline during the term 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. Examples of a Force Majeure Event, include but are not limited to, failure or refusal of any other person or entity to comply with then-existing contracts, operational emergency, an act of God, fire, flood, explosion, earthquake, strike, sabotage, or civil or military authority including court orders, injunctions, and orders of a governmental entity.

“Injection Facilities” means the same injection wells and appurtenant facilities portion of the Project used to inject AWT Water into the Seaside Basin under the 2016 PWM Agreement.

“MCWD” means the Marina Coast Water District.

“MCWD AWT Water” means 500 acre-feet of MCWD’s 600 AFY of Phase 1 AWT Water.

“MCWD AWT Water Rate” means the sum of the Fixed Project Costs and Project Operation and Maintenance Expenses budgeted for production and delivery of MCWD AWT Water in each Fiscal Year in accordance with the MCWD-M1W Agreement.

“MCWD-M1W Agreement” means the Pure Water Delivery and Supply Project Agreement dated April 8, 2016, between MCWD and Monterey Regional Water Pollution Control Agency (now Monterey One Water), as amended.

“MCWD Pipeline” means the potable water conveyance pipeline and appurtenances located along and within General Jim Moore Boulevard as shown on attached Exhibit B, which is incorporated herein by reference. The pipeline is owned, operated, and maintained by MCWD.

“MCWD Reserved AWT Water” means 100 AFY of MCWD’s 600 AFY of Phase 1 AWT Water reserved by MCWD for use by MCWD to meet its own customer demands during the months of May, June, July, August, and September.

“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. The Product Water Facilities are owned, operated, and maintained by MCWD in accordance with Section 2.06(b) of the MCWD-M1W Agreement.

“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.

“Project Operation and Maintenance Expenses” means MCWD’s share of all operation and maintenance expenses incurred by M1W and MCWD as calculated pursuant to the MCWD-M1W Agreement, particularly Sections 4 and 5, relating to the cost of MCWD AWT Water made available under this Agreement, which will normally be 500/600 of those costs. In addition, such operation and maintenance costs to wheel recovered MCWD AWT Water through the MCWD Pipeline during the term of this Agreement.

“PWM” means Pure Water Monterey.

“RUWAP” means MCWD’s Regional Urban Water Augmentation Program.

“Seaside Basin” or “Seaside Subbasin” shall mean that certain groundwater subbasin as shown and designated as Subbasin 3-004.08 in California Department of Water Resources Bulletin 118 Interim Update 2016.

3. Environmental Review Compliance; CPUC Approval.

3-1. Nothing in this Agreement (a) commits any Party to any particular decision regarding the water sale; (b) confers any vested rights on any Party; or (c) restricts any Party’s discretion with respect to any activity or project developed in accordance with this Agreement, including MCWD’s consideration of any alternatives and mitigation measures. In addition, the Parties intend that CEQA, and all other applicable environmental compliance laws, will be fully complied with prior to this Agreement being binding on the Parties. (See *Save Tara v. City of Los Angeles* (2008) 45 Cal. 4th 116.)

3-2. MCWD shall be the lead agency for environmental review compliance.

3-3. CPUC Approval. The Parties agree to work together and cooperate in good faith and to use reasonable best efforts to promptly obtain CPUC approval of this Agreement. 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.

3-4. District agrees to reimburse MCWD for all reasonable costs MCWD incurs pursuant to Sections 3-2 and 3-3 above.

4. Commencement of Service under this Agreement. Subject to the successful commercial operation of the Project, delivery of MCWD AWT Water under this Agreement is anticipated to commence by January 1, 2020. However, delivery shall commence no later than January 1, 2022. Failure of the Agency and MCWD to meet the January 1, 2022 deadline shall constitute an Event of Default upon which the District or the Company may terminate this Agreement in accordance with Section 17. The District shall not be responsible for any payments for MCWD AWT Water under this Agreement prior to commence of delivery of MCWD AWT Water.

5. **Term of Agreement.** This Agreement shall be effective as of the commencement of delivery of MCWD's AWT Water and shall remain in effect until the date that is ten (10) years after the commence of delivery of MCWD's AWT Water ("Agreement Expiration Date"), unless earlier terminated as provided in the Agreement.

6. **Extension of Term of Agreement.** By not later than December 31 of the eighth year of the Agreement Term, MCWD shall determine its own needs for the AWT Water sold under this Agreement and shall notify the other Parties by May 1st of the ninth year how much of the AWT Water would be available for sale under this Agreement and the proposed extended term. If MCWD does not so notify the other Parties, then this Agreement shall terminate in accordance with Section 5. If MCWD does so notify the other Parties, the other Parties shall decide by July 1st of the ninth year if they will agree to the proposed extended term of the Agreement for the amount of water proposed. If the extended term and other appropriate issues under this Agreement are not agreed upon by September 1st of the ninth year, then this Agreement shall terminate in accordance with Section 5.

7. **Delivery Point, Ownership of MCWD's AWT Water, and Ownership of MCWD's Facilities.** All MCWD AWT Water shall be delivered to the Delivery Point. MCWD owns its AWT Water from the point it leaves the AWT Facilities until the AWT Water is delivered to the Delivery Point. At the Delivery Point, ownership of the MCWD AWT Water shall pass to the District. The other Parties recognize and agree that they do not acquire any interest in or to any portion of any MCWD facilities or to use of any MCWD facilities. The Parties confirm that this Agreement constitutes a contractual right to purchase MCWD ATW Water and that no water right is conferred to any of the other Parties.

8. **Measurement.** All MCWD 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 MCWD, 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 independent outside contractor and provide a copy of results of such calibrations to MCWD, District, and Company. The Agency shall have the primary obligation to measure the quantity of MCWD AWT Water delivered to the Delivery Point. The Agency shall give MCWD, District, and Company prior notice of any testing of any Delivery Point meters at least three (3) business days in advance of such testing so that the other Parties may have representatives present during the testing. The MCWD, District, and Company, or any one of them may request, at any time, investigation and confirmation by the Agency and District 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.

9. **Delivery Schedule.**

9-1. Delivery Schedules. The amounts, times and rates of delivery of water to District during any Fiscal Year shall be in accordance with the water delivery schedule for that Fiscal Year to be determined as follows:

a. The Parties agree that any Delivery Schedule is dependent upon the Agency's production of AWT Water for MCWD so the total amount that is delivered and the delivery rate during any Fiscal Year will vary.

b. On or before January 1 preceding each new Fiscal Year, the District shall submit to MCWD a preliminary water delivery schedule indicating the amounts and rates of delivery of the water desired by the District at the Delivery Point during each month of the next succeeding two Fiscal Years.

c. Upon receipt of a preliminary schedule, MCWD will review it and after consultation with the Agency and District shall make such modifications as the MCWD deems necessary. On or before May 1 preceding each new Fiscal Year MCWD shall determine and furnish to the District the water delivery schedule for the coming new Fiscal Year for the Delivery Point, which will show the amounts and flow rates of water to be delivered to each Delivery Point during each month of that Fiscal Year.

c. A water delivery schedule may be amended at any time by the Parties by mutual agreement.

d. The other Parties agree to MCWD's Reserved AWT Water and the timing of that use by MCWD. The other Parties further recognize and agree that delivery of the 500 AFY of MCWD AWT Water may be reduced during the months of May, June, July, August, and September because of MCWD Reserved AWT Water.

e. Section 3.07, Daily Operation, of the MCWD-M1W Agreement states, "The AWT [Facilities] will be in operation and will supply [AWT] water to MCWD on a daily basis except for temporary periods of shut-down authorized by this Agreement or made necessary by circumstances beyond the control of PCA [M1W] or MCWD."

9-2. During the term of this Agreement and subject to the Agency's timely production of AWT Water for MCWD, MCWD shall use its reasonable best efforts to deliver the water to the District in accordance with the agreed upon delivery schedules.

9-3. MCWD AWT Water shall be presumed delivered at the Delivery Point if the meter at the Delivery Point shows the delivery of AWT Water.

10. **Water Treatment**. The Parties agree that the Agency, and not MCWD, is responsible for meeting the water quality requirements for MCWD AWT Water set forth in Applicable Law. All AWT Water treated by the Agency and delivered 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 fails to meet the Water Treatment Guarantee, the Agency shall give the other Parties immediate notice thereof and shall promptly meet with the other Parties to discuss the circumstances of such failure and the Agency's proposed action plan for remediation so that the Water Treatment Guarantee will be met.

11. Obligation to Pay when MCWD AWT Water is made Available at Delivery

Point. MCWD agrees to deliver and make the MCWD AWT Water available at the Delivery Point in accordance with the approved delivery schedule but subject to the Agency's timely production of the MCWD Water. The District agrees to pay for all such water made available at the Delivery Point even though the District does not actually take delivery of the MCWD AWT Water.

12. Payment for MCWD AWT Water.

12-1. The Parties agree that the price for the MCWD AWT Water is a negotiated price and voluntarily agreed to by the Parties.

12-2. For the MCWD AWT Water made available to the District under this Agreement, the District shall pay to MCWD on a monthly basis the sum determined as the MCWD AWT Water Rate then in effect for the previous calendar month multiplied by the quantity of MCWD AWT Water made available during the previous calendar month in accordance with the approved delivery schedule whether or not the District actually takes delivery of that water.

12-3. Payment Mechanism.

a. MCWD shall send the District and the Company a detailed monthly statement of charges due for all MCWD AWT Water made available at the Delivery Point during the preceding month as measured by the Agency meters, which shall be read on a monthly basis. The District shall pay to MCWD all undisputed portions of statements, within forty-five (45) days after receipt.

b. 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

c. 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

d. The Company shall pay to the District all undisputed portions of statements, within forty-five (45) days after receipt. 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.

e. 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.

13. **Wheeling of AWT Water.**

13-1. MCWD shall wheel its AWT Water from the point it takes delivery from the AWT Facility through the Product Water Facility to the Delivery Point pursuant to its rights under the MCWD-MIW Agreement.

13-2. The MCWD Pipeline is essential to conveying the MCWD's recovered AWT water to the Company-owned Monterey Pipeline. MCWD agrees that such recovered water may be conveyed through the MCWD Pipeline as an MCWD use of that pipeline and the Parties agree that this use shall be deemed to be a priority MCWD use of the MCWD Pipeline.

14. **Injection of MCWD AWT Water, Costs, and Permitting.** The Parties agree that the MCWD AWT Water will be injected into the Seaside Basin using the Injection Facilities. MCWD shall not be responsible for any injection costs and for the cost of the Injection Facilities. Unless otherwise agreed by the Parties, District agrees to be responsible for the cost of any additional permits and approvals under Applicable Law needed to inject the MCWD AWT Water.

GENERAL PROVISIONS

15. **CPUC Rate Recovery Process.**

15-1. All payments made to MCWD by the District pursuant to this Agreement for which the Company will reimburse the District shall be considered purchased water costs that are a pass-through to customers to be recovered via the Modified Cost Balancing Account ("MCBA") mechanism.

15-2. For all changes to the MCWD AWT Water Rate resulting from annual increases pursuant to Section 12-5, the Company may request 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.

15-3. The Company shall have no obligation to reimburse the District for any increase in the MCWD AWT Water Rate 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 under this Agreement because the District is responsible for making all payments in full to MCWD for MCWD AWT Water.

15-4. Access to the books and records of MCWD will be made available to the other Parties during MCWD's regular business hours with at least five (5) business days prior notice in accordance with Section 41 of this Agreement for the limited purpose of reviewing the accuracy and reasonableness of the Fixed Project Costs, Project Operation and Maintenance Expenses, and water wheeling expenses payable under this Agreement. All such audits shall be conducted at the auditing Party's expense.

16. **MCWD is not an Additional Project Participant under Section 19 of the 2016 PWM Agreement.** The Parties agree that MCWD shall not be considered an Additional Project Participant under Section 19 of the 2016 PWM Agreement because MCWD has pre-existing rights to 1,427 AFY net of AWT Water.

17. **Breach, Event of Default and Termination.**

17-1. 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 20 of this Agreement.

17-2. 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.

17-3. Event of Default – The following shall each constitute an "Event of Default" under this Agreement:

a. Delivery of MCWD AWT Water under this Agreement does not commence by January 1, 2022.

b. The failure of MCWD to deliver MCWD AWT Water in each of two consecutive Fiscal Years unless such failure is due to Force Majeure or failure of the Agency to timely produce the AWT water.

c. 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.

d. The failure of the Agency or the District to meet the Water Treatment Guarantee under Section 10 of this Agreement on a repeated basis.

17-4. 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.

18. **Dispute Resolution; Attorney Fees.** 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. In any legal action among two or more of the Parties that is related in any way to this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorney fees and costs.

19. **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.

20. **Force Majeure Event Relief.**

20-1. 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.

20-2. 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.

21. **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.

22. **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.

23. **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.

24. **Insurance**. For this Agreement, MCWD agrees to provide the same insurance coverages as required under the MCWD-M1W Agreement.

25. **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.

26. **Successors in Interest, Transferees, and Assignees.** 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 any Party is succeeded by another entity, it shall assign this Agreement to its successor. If any Party ceases to exist, the other Parties shall continue their obligations hereunder in a manner that will substantively comply with the intent of this Agreement.

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

28. **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.

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

30. **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.

31. **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.

32. **Partial Invalidity; Severability.** If any one or more of the terms, provisions, covenants or conditions of this Agreement are to any extent declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, the Parties agree to amend the terms of this Agreement in a reasonable manner to achieve the intention of the Parties without invalidity. If the terms cannot be amended thusly, the invalidity of one or several terms will not affect the validity of this Agreement as a whole unless the invalid terms are of such essential importance to this Agreement that it can be reasonably assumed that the Parties would not have entered into this Agreement without the invalid terms. In such case, the Party affected may terminate this Agreement by written notice to the other Parties without prejudice to the affected Party's rights in law or equity.

33. **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.

34. **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.

35. **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.

36. **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.

37. **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.

38. **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.

39. **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.

40. **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.

41. **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:

Marina Coast Water District
Attn: General Manager
11 Reservation Road
Marina, CA 93933-2099

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 PAGES FOLLOWS

EXHIBIT A

EXHIBIT C

Delivery Point

AWT Water will be injected into the Seaside Groundwater Basin using new injection wells. The proposed new Injection Well Facilities will be located east of General Jim Moore Boulevard, south of Eucalyptus Road in the City of Seaside, including up to eight injection wells (four deep injection wells, four vadose zone wells, in pairs identified as #5, #6, #7, and #8 in the figure below), six monitoring wells, and back-flush facilities.

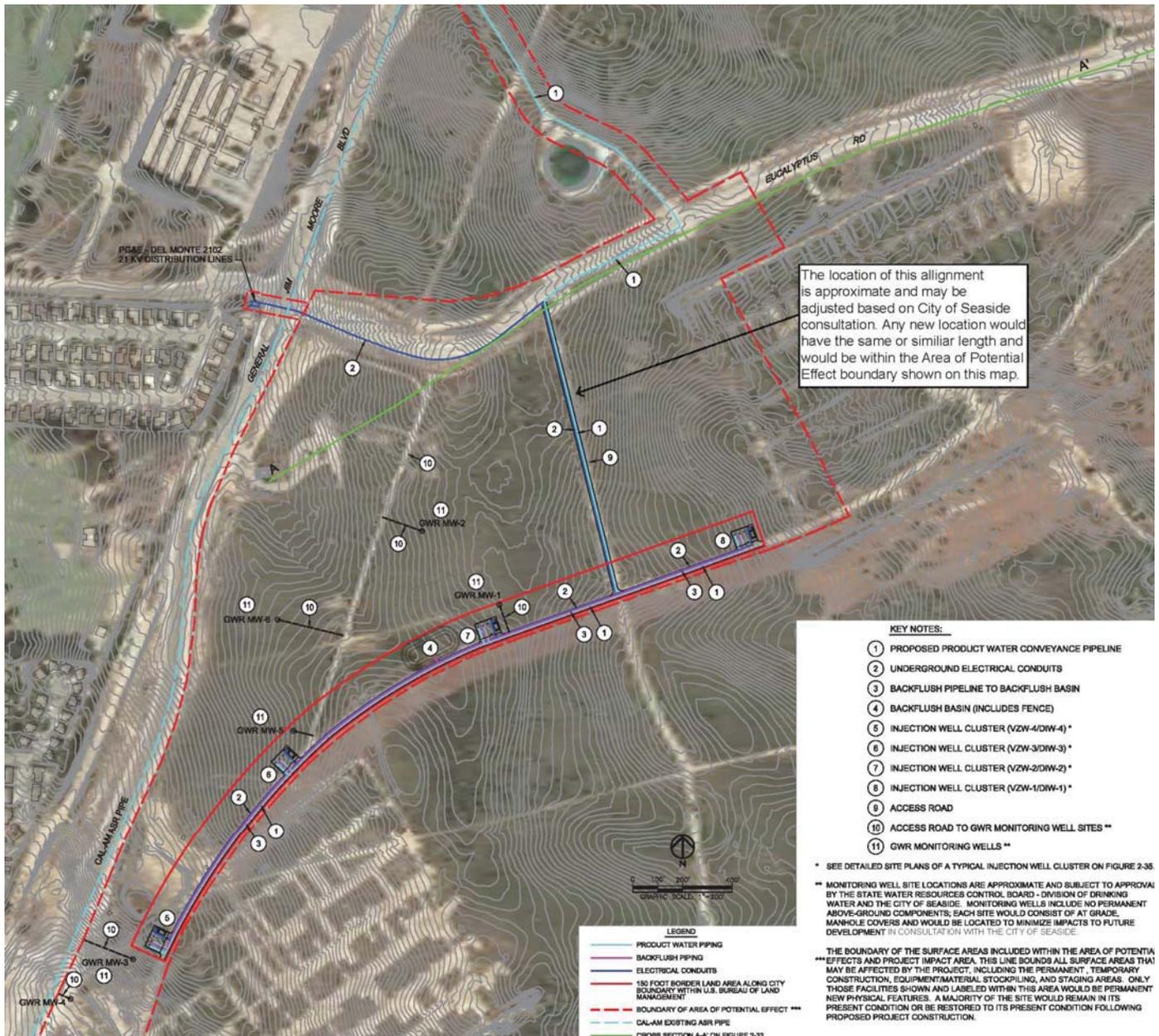


EXHIBIT B

Legend

- ASR Pipeline - MCWD Pipeline
- Brine Pipeline
- Slant Wells
- Feedwater Pipeline
- Monterey Pipeline
- Desalinated Water Pipeline
- Salinas Valley Return Pipeline
- Seaside Pipeline
- Pump-to-Waste Pipeline



From Appendix C to A.12-04-019

