

M0916

MARINA COAST WATER DISTRICT

and

CALIFORNIA-AMERICAN WATER COMPANY

**POTABLE WATER WHEELING AGREEMENT**

Dated as of March 10, 2009

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THIS POTABLE WATER WHEELING AGREEMENT, dated as of April 8, 2009 ("Agreement"), is between the MARINA COAST WATER DISTRICT, a County Water District organized and operating under the County Water District Law, Sections 30000 and following of the California Water Code ("MCWD"), having an address at 11 Reservation Road, Marina, CA 93933, and CALIFORNIA-AMERICAN WATER COMPANY, a California corporation and regulated public utility ("CAW"), having an address at 511 Forest Lodge Road, Suite 100 Pacific Grove, CA 93950.

RECITALS:

A. MCWD provides water and wastewater service within a service area that includes the former Fort Ord. As an element of such service, MCWD plans to install a pipeline and appurtenances (the "water conveyance facility") to convey water along and within an existing public road, Gen. Jim Moore Boulevard, as part of the Fort Ord Reuse Plan. The installation will be made in accordance with the Mitigated Negative Declaration approved by the Fort Ord Reuse Authority on September 9, 2005, based on the Environmental Assessment/Initial Study (EA/IS) dated March 2005, for The General Jim Moore Boulevard and Eucalyptus Road Improvement Project.

B. CAW provides water service within its Monterey District, in a service area adjacent to MCWD's service area. As an element of such service, CAW plans to undertake a project for aquifer storage and recovery of water in the Seaside Groundwater Basin, based on the authority provided under various water right entitlements, including but not limited to, State Water Resources Control Board, Permit 20808A, and based further on the environmental review undertaken by the State Water Resources Control Board for Permit 20808A, the Environmental Impact Report and Environmental Assessment (EIR/EA) for the Monterey Peninsula Water Management District's Phase 1 Aquifer Storage and Recovery (ASR) Project, and the Notice of Exemption by MPWMD for the Water Right Change Petition for Phase 2 Seaside Basin Groundwater Aquifer Storage and Recovery Project, and the Amended Decision in the Seaside Basin Groundwater Adjudication, and further pursuant to Section 15261(b) of the CEQA Guidelines for any exercise by CAW of pre-1914 water rights for CAW's ASR project.

C. CAW wants to use a portion of the capacity of a portion of MCWD's water conveyance facility, as shown diagrammatically and generally on Exhibit A to this Agreement ("the Subject Facility"), to transfer water for CAW's ASR project. The Subject Facility is the potable water pipeline extending southwards from the inter-tie location within General Jim Moore Boulevard just south of Coe Avenue and all appurtenant devices and fittings on the main transmission pipe itself. The Subject Facility boundary is immediately outside the flanged connection point of any fitting that allows water to enter or exit the main transmission pipe; in other words, the valves commonly attached to the flanged connection points on the main transmission pipeline are not considered part of the Subject Facility. The ownership of the valve(s) that control the exit and entrance of water to the main transmission pipeline from any branch pipeline or turn-out will be determined by the ownership of the pipe segments extending away from the valves outside the Subject Facility. MCWD wants to cooperate with CAW to enable joint use of the Subject Facility pursuant to sections 1810 through 1813 of the Water

Code. This Agreement is intended to provide the terms and conditions for construction, financing, operation and maintenance, scheduling, quality requirements, term, priorities, and fair compensation for CAW's joint use of the Subject Facility.

D. CAW and MCWD intend and have determined that CAW's use of the water conveyance facility may be made without injuring any legal user of water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and without unreasonably affecting the overall economy or the environment of Monterey County.

NOW, THEREFORE, MCWD and CAW hereby agree, in consideration of the mutual covenants in this Agreement, the sufficiency of which are hereby acknowledged and agreed, as follows:

1. Wheeling of Potable Water

1.1 Wheeling of Potable Water. As and when agreed by the Parties as provided in (and subject to the provisions of) this Agreement, MCWD will wheel potable water on behalf of CAW through the Subject Facility to mutually-agreed points of delivery. CAW will be responsible for further distribution of the transported water received at a point of delivery, including operation and maintenance costs for delivery to CAW's end users.

1.2 Priority of Service. CAW shall have the first right to use the Subject Capacity in accordance with the terms and conditions of this Agreement to convey water for CAW's ASR project.

1.3 Scheduling and Ordering. The Parties will mutually agree from time to time, on a monthly basis or otherwise, on a water delivery schedule, including periodic water quality testing at each entry point on the Subject Facility for water being transferred by CAW through the Subject Facility. A schedule and protocol shall be memorialized in a writing signed by MCWD's General Manager and an Authorized Officer of CAW prior to CAW's use of the Subject Facility, subject to periodic revision as otherwise described in this paragraph.

1.4 Interruptions and Curtailments. The wheeling of water pursuant to this Agreement is subject to interruptions, curtailments or schedule changes related to (a) emergencies, operational constraints, or unplanned necessary maintenance and repairs of the Subject Facility; (b) degradation of the quality of water introduced into the Subject Facility or received from CAW's sources of supply; or (c) the availability of water to convey. Interruptions or curtailments will be allocated in accordance with the priority of service.

2. Billing and Payment

2.1 Upon execution of this Agreement, as a condition precedent to MCWD's performance of MCWD's obligations under this Agreement, CAW shall pay to MCWD One Million Three Hundred Thousand Dollars (\$1,300,000.00), as a deposit against all costs incurred and to be incurred by MCWD in planning, engineering and constructing the Subject Capacity. MCWD shall create a separate holding account for the deposit and shall report to CAW monthly

on all funds placed into and withdrawn from the account, including the date, purpose and payee of each withdrawal. The minimum deposit held in this account shall be \$5,000.00. If the account balance falls below the minimum deposit balance before all of MCWD's costs are paid, CAW will pay to MCWD within 7 days from time of request an amount estimated by MCWD to be sufficient to pay the balance of MCWD costs through completion of the Subject Capacity. MCWD shall refund to CAW any balance remaining in the holding account after the payment of all of MCWD's costs through the date of completion of the Subject Capacity.

2.2 Wheeling Charges. On a monthly basis, MCWD will invoice CAW \$2,000.00 per month for each month CAW wheels water into and through the Subject Facility. MCWD may, but shall not be required to, adjust the monthly charge on July 1 of each year, based on MCWD's costs for the fiscal year ending on the June 30 before the adjustment and MCWD's budgeted costs for the fiscal year beginning on July 1. MCWD shall provide CAW with any proposed change and the justification for the change not less than 60 days before the change becomes effective. Upon CAW's request, MCWD shall provide CAW with an invoice for an entire year's wheeling charges in advance. Such invoice shall be paid in accordance with Paragraph 2.3, provided that late charges shall be assessed only for those months where payment is in arrears.

2.3 Payment by CAW. CAW will pay amounts invoiced pursuant to Section 2.1 or 2.2 within thirty (30) days of the date of the invoice. Any delinquent invoices past 30 days will be subject to interest charge at the rate of 18% per annum.

2.4 Water Accounting. CAW will provide a monthly report regarding the amounts of potable water wheeled pursuant to this Agreement.

2.5 Metering. CAW will install and maintain meters at the points of entry to the Subject Facility and at the CAW points of delivery for purposes of measuring the amount of water wheeled pursuant to this Agreement. CAW will pay the cost of meter installation in addition to the costs under Section 2.1 and shall maintain the meters in accordance with accepted water industry practices.

2.6 Removal of Connections at Termination of Agreement. CAW agrees to remove, at CAW expense, all points of connection to the Subject Facility that are under CAW control upon termination of this Agreement. At MCWD's preference, this removal may take the form of accepting ownership, with CAW's concurrence, of all valving and appurtenant devices that control the entrance or exit of water from the Subject Facility or by CAW installing, to MCWD standards, an appropriate blind flange fitting at the boundary of the Subject Facility.

### 3. Conveyance Capacity

3.1 Upon execution of this Agreement, CAW will provide to MCWD sufficient information to enable MCWD's engineers to determine and describe with particularity the Subject Facility, including all points of entry and all points of discharge for water being transferred by CAW, and to calculate the capacity required in the subject portion for CAW's ASR project. Upon receiving the deposit from CAW pursuant to section 2.1 of this Agreement, using the information supplied by CAW, MCWD and CAW will determine the unused capacity

required and available in the Subject Facility for CAW's proposed use and sections 1810 through 1813 of the Water Code.

3.2 MCWD will cause the Subject Facility to be sized and constructed such that space is available within the operational limits of the conveyance system and that MCWD is not using during the period for which CAW proposes to use the Subject Facility (the "Subject Capacity") and that such space is sufficient to carry the quantity of water proposed to be transferred by CAW.

3.3 MCWD will cause the Subject Facility to be built in accordance with the Approved Plans and will allow CAW to inspect and approve the Subject Facility before MCWD begins operating the water conveyance facility.

3.4 MCWD will control, operate and maintain the whole water conveyance facility, including the Subject Facility and the Subject Capacity, subject to the terms and conditions of this Agreement, in compliance with laws and regulations, or accepted industry Best Operating Practices, governing operation and use of the Subject Facility.

3.5 MCWD shall have no responsibility for or control of the following:

- (a) Any facilities used by CAW to convey water to or away from the Subject Facility;
- (b) Any use of water transferred by CAW through the Subject Facility.

3.6 Nothing in this Agreement shall be construed as obligating MCWD to construct any facilities or other improvements or to take any other action to expand or increase the unused capacity of either the water conveyance facility or the Subject Facility beyond that contemplated in this Agreement.

#### 4. Term

4.1 Except as otherwise provided in section 4 of this Agreement, CAW's right to use the Subject Capacity shall begin on the date MCWD determines the Subject Capacity is ready to convey water and shall continue from that date for thirty (30) years (the "Basic Term"), unless sooner terminated or extended as hereinafter provided.

4.2 So long as no Event of Default shall have occurred and be continuing on the last day of the Basic Term, CAW may elect to extend the term of this Agreement beyond the Basic Term for one (1) additional term of thirty (30) years ("Extended Term"). CAW may exercise its election to extend this Agreement by delivering written notice to MCWD not less than ninety (90) days prior to the expiration of the Basic Term.

4.3 CAW may terminate this Agreement at any time after paying all sums to be paid by CAW under section 2.1 of this Agreement, by delivering written notice of termination to MCWD at least 60 days before the termination date. CAW shall be liable to MCWD for any costs incurred in connection with the Subject Capacity before the termination date.

5. Use. CAW may use the Subject Capacity only to convey potable water meeting all statutory and regulatory quality requirements for human domestic use and consumption. The commingling of water transferred by CAW shall not result in a diminution of the beneficial uses or quality of the water conveyed by MCWD in the water conveyance facility.

6. Compliance with Laws. MCWD and CAW will cooperate to take the actions and execute the documents necessary to comply with laws and regulations governing the construction, operation and use of the Subject Facility.

7. Liens. MCWD shall use its best efforts to prevent the filing of any liens on or against the Subject Facility. During the Basic Term and Extended Term MCWD will promptly, but no later than sixty (60) days after its Actual Knowledge of the filing thereof, at its own expense remove and discharge of record, by bond or otherwise, any Lien (other than Permitted Encumbrances) upon the Subject Facility which arises solely out of MCWD's possession, use, operation and occupancy of the Subject Facility.

8. Indemnification; Fees and Expenses

8.1 During the Basic Term and Extended Term, and subject to the other limits in this Agreement, CAW shall indemnify and defend MCWD and other applicable Indemnified Parties against all liabilities, obligations, losses, actions, suits and causes of action, or claims, of any kind or nature, (the foregoing, collectively, "Losses", and, individually, a "Loss") arising from the acts or omissions of CAW in the use of the Subject Facility, including but not limited to CAW's introduction into the Subject Facility of water that does not meet all applicable health and safety standards for potable use.

8.2 CAW shall not be required pursuant to this Agreement to indemnify: (i) MCWD or any other Indemnified Party for any property or other damage that is covered or should have been covered by the insurance to be maintained by MCWD; (ii) MCWD or any particular Indemnified Party for any Losses resulting from, arising out of or which would not have occurred but for MCWD's or such other Indemnified Party's own negligence, fraud or willful misconduct; (iii) MCWD or any particular Indemnified Party for any Losses resulting from, arising out of or which would not have occurred but for a breach by MCWD or such Indemnified Party of any representation, warranty or covenant made by MCWD or such Indemnified Party in this Agreement or any other related document; (iv) any Indemnified Party for any taxes; (v) any Indemnified Party for any losses resulting from the authorization or giving or withholding of any future amendments, supplements, waivers or consents with respect to the Agreement or the Subject Capacity by such Indemnified Party other than such as have been consented to in writing by the CAW; (vi) any Indemnified Party for any Losses resulting, from, arising out of or which would not have occurred but for acts or events solely with respect to any portion of the Subject Facility that occur after this Agreement terminates and CAW ceases to use the Subject Facility; or (vii) for Loss or Losses arising from a defect in the design or construction of the Subject Facility.

8.3 MCWD shall indemnify CAW against all liabilities that are solely a result of a defect in the design or construction of the Subject Facility.

8.4 Nothing in this Article 7 or in Article 8 hereof shall be construed to give rise to any third party beneficiary rights with respect to any Person who is not an Indemnified Party.

9. Condemnation and Casualty. If the Subject Facility, or any part thereof shall be damaged or destroyed by fire or earthquake or other casualty, MCWD shall proceed with diligence and promptness to carry out any necessary demolition and to restore, repair, replace, and/or rebuild the Subject Facility in order to restore the Subject Facility to a condition and fair market value, utility and remaining useful life not less than the condition and fair market value, utility and remaining useful life thereof immediately prior to such casualty. Unless CAW elects to terminate this Agreement, MCWD and CAW shall meet and confer regarding casualty repairs, including but not limited to, the nature of the repairs, the replacement equipment, contractor qualifications, potential disruptions to operations, and schedule; No repair work done by MCWD pursuant to this section shall violate the terms of any restriction, easement, condition or covenant or other matter affecting title to the Subject Facility, and all repair work done by MCWD pursuant to this Article 9 shall be undertaken and completed in a good and workmanlike manner and in compliance in all material respects with all Legal Requirements then in effect with respect to the Subject Facility. If the proceeds of any casualty insurance policy maintained by MCWD are less than the estimated cost of restoring, replacing or rebuilding the Subject Facility to the condition and fair market value required above in this Article 9, then CAW shall share and pay any such deficiency in the same proportion that the Subject Capacity bears to the total capacity of the Subject Facility.

10. Insurance.

10.1 Prior to the commencement of the Basic Term, MCWD shall procure and maintain with respect to MCWD's use and operation of the Subject Facility valid and enforceable insurance of the following character:

(a) Commercial General Liability Insurance or Comprehensive General Liability Insurance with Broad Form CGL endorsement with limits of not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate. Equivalent insurance through the ACWA JPIA will satisfy MCWD's obligation under this sub-section.

(b) Worker's Compensation Insurance as required by laws and regulations applicable to and covering employees performing under this. Agreement. Employer's Liability Insurance protecting employer against common law liability, in the absence of statutory liability, for employee bodily injury arising out of the master-servant relationship with a limit of not less than \$1,000,000 each accident, \$1,000,000 disease-policy limit, \$1,000,000 disease-each employee.

(c) All-Risk Property Insurance with a limit equal to the replacement cost of the Subject Facility during the Basic Term. Equivalent insurance through the ACWA JPIA will satisfy MCWD's obligation under this sub-section.

10.2 During the Basic Term, CAW also shall be responsible for maintaining the type of insurance described in clause 10.1(a) and 10.1(b).

10.3 In addition to the foregoing, every insurance policy maintained in accordance with this Article 10 shall: (i) name the other party as additional loss payee as its interest may appear with respect to 10.1(c); (ii) provide that the issuer waives all rights of subrogation against MCWD or CAW or any other person insured under such policy, (iii) provide that thirty (30) days advance written notice of Cancellation, material modification, termination or lapse of coverage shall be given to MCWD and CAW; and (iv) be primary relative to the respective party's liability and without right or provision of contribution as to any other insurance carried by MCWD or CAW or any other interested party.

10.4 CAW and MCWD shall deliver to the other prior to the Basic Term certificates of insurance, reasonably satisfactory to MCWD and CAW, evidencing all of the insurance required under section 10.1 of this Article 10, provided, however, that CAW shall not be obligated to deliver such certificates of insurance with respect to required insurance coverages as to which CAW has retained the risk of loss (self-insured). After the expiration of any required insurance policy, the primary insured shall deliver to the other party certificates of insurance evidencing the renewal of any such policy. CAW shall provide MCWD with written notice of any determination to self-insure with respect to any risk theretofore covered by externally procured insurance.

10.5 CAW and MCWD shall comply with all of the terms and conditions of each insurance policy maintained pursuant to the terms of this Agreement to the extent necessary to avoid invalidating such insurance policy or impairing the coverage available thereunder.

10.6 The limits of insurance contained in this Article 10 shall not be construed as limits on the indemnification obligations set forth in Article 8.

11. Quiet Enjoyment. So long as no Event of Default under this Agreement shall have occurred and be continuing, MCWD covenants that CAW shall and may at all times peaceably and quietly use the Subject Capacity during the Term without hindrance by MCWD or any Person claiming through or under MCWD.

12. Assignment.

12.1 Neither this Agreement nor the Subject Facility shall be mortgaged or pledged as security by CAW. Any such mortgage or pledge shall be null and void.

12.2 CAW may only assign its interest in this Agreement in connection with the consolidation or merger of CAW into any other Person or the sale, Agreement or other transfer or disposal of all or substantially all of CAW's assets in the Monterey Peninsula area (whether in one transaction or in a series of related transactions), if and only if (i) the assignee of CAW's interest, or the corporation or other Person which results from any such consolidation, merger, acquisition, sale, Agreement, transfer and/or disposition of assets, if not CAW, assumes all of CAW's obligations, duties and liabilities under this Agreement; and (ii) any such assignment, consolidation, merger, acquisition, sale, transfer and/or disposition of assets would

not result in a violation of any regulatory requirement applicable to MCWD, including but not limited to any and all licensing requirements applicable to the operator of the Subject Facility.

13. Events of Default and Remedies.

13.1 Any of the following occurrences or acts shall constitute an event of default under this Agreement (each an "Event of Default"):

(a) if CAW defaults in making payment on any invoice from MCWD under section 3.2, which default continues for thirty (30) days after the same first becomes due and payable; or

(b) if CAW or MCWD defaults in the performance of any covenant, agreement or obligation on the part of CAW or MCWD, as applicable, to be performed under this Agreement, and such default continues for a period of, thirty (30) days after written notice thereof is received by the defaulting party, unless such default is curable and the defaulting party shall be diligently proceeding to correct such default (but in no event for a total period of longer than ninety (90) days after the receipt of such notice as provided above); or

(c) if CAW or MCWD files a petition in bankruptcy or for reorganization or for an arrangement pursuant to the Bankruptcy Code, or is adjudicated bankrupt or become insolvent or makes an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as such debts become due, or dissolves, or suspends payment of its obligations, or takes any corporate action in furtherance of any of the foregoing; or

(d) if a petition or answer is filed proposing the adjudication of CAW or MCWD as bankrupt, or proposing its reorganization pursuant to the Bankruptcy Code, and (A) CAW or MCWD, as applicable, consents to the filing thereof, or (B) such petition or answer is not discharged or denied within sixty (60) days after the filing thereof; or

(e) if a receiver, trustee or liquidator (or other similar official) is appointed for, or takes possession or charge of, CAW or MCWD, or of all or substantially all of the business or assets of CAW or MCWD or its estate or interest in the Subject Facility, and such official shall not be discharged within sixty (60) days thereafter, or if CAW or MCWD consents to or acquiesce in such appointment; or

(f) if, as of the time when the same shall have been made, any representation or warranty of CAW or MCWD set forth herein, or in any consent, notice, certificate, demand, request or other instrument delivered by or on behalf of CAW or MCWD, as applicable, in connection with or pursuant to this Agreement shall prove to have been incorrect or untrue in any material respect as of the time when made, and the condition or circumstance giving rise to such incorrect or untrue representation or warranty shall continue for a period of thirty (30) days after CAW or MCWD has Actual Knowledge thereof, unless such condition or circumstance is curable and CAW or MCWD shall be diligently proceeding to correct such condition or circumstance (but in no event for a total period of longer than one hundred eighty (180) days after CAW or MCWD has Actual Knowledge thereof); or

13.2 This Agreement and the term are subject to the limitation that, whenever an Event of Default shall have occurred and be continuing, the non-defaulting party may, at its option, elect to exercise any one or more of the rights and remedies set forth in the following paragraphs.

(a) Terminate this Agreement upon giving an additional 30 days written notice and in the case of default by CAW, MCWD may close the Subject Facility to water from CAW upon termination. Such notice shall specify the date of such termination, and the Term with respect to the Subject Facility shall expire by limitation at midnight on, the date specified in such notice as fully and completely as if said date were the date herein originally fixed for the expiration of the Term hereby granted, and CAW shall cease using the Subject Facility and the Subject Capacity.

(b) Sue to collect damages caused by the breach by the other party, including, if applicable, following a default by CAW, make a claim for accrued unpaid costs invoiced to CAW.

13.3 The non-defaulting party may exercise any other 'right or remedy which may be available to it under applicable law or at equity, including, without limitation, bringing a suit for specific performance, and the non-defaulting party may proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Agreement.

13.4 If an action shall be brought for the enforcement of any provision of this Agreement in which it is found that an Event of Default has occurred, the non-defaulting prevailing party shall be entitled to seek reimbursement of its attorneys' fees and expenses.

13.5 No right or remedy herein is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other legal or equitable right or remedy given hereunder, or at any time existing hereunder or at law. The failure of MCWD or CAW to insist upon the strict performance of any provision or to exercise any option, right, power or remedy contained in this Agreement shall not be construed as a waiver or a relinquishment thereof for the future.

#### 14. Dispute Resolution.

14.1 Scope of Section. This Section governs the resolution of all disputes that arise under this Agreement.

14.2 Good Faith Negotiations. A Party that believes a dispute exists under this Agreement will first refer the dispute to the Representatives for resolution. The Representatives of each Party will personally meet and attempt in good faith to resolve the dispute. If the Representatives cannot resolve the dispute within fifteen (15) days, the matter will be referred to senior management of the Parties for resolution. If these persons are unable to resolve the dispute within fifteen (15) days thereafter, a Party that still believes a dispute requires resolution may avail itself of the provisions of paragraph 14.3.

14.3 Non-Binding Mediation. If said dispute cannot be settled through normal contract negotiations, the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of JAMS before having recourse in a court of law. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required travel and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise. Any resultant agreements from mediation shall be documented in writing. All mediation proceedings, results, and documentation shall be inadmissible for any purpose in any legal proceeding (pursuant to California Evidence Codes sections 1115 thru 1128), unless such admission is otherwise agreed upon in writing by both parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery. The mediator must have substantial experience with the water utility industry. Mediation shall be completed within 30 days after request for the mediation by either Party.

14.4 Remedies. The preceding paragraphs of this Section are intended to set forth the primary procedure to resolve all disputes under this Agreement. It is expected that all disputes that would traditionally be resolvable by a court of law would be resolvable under this procedure. However, the Parties recognize that certain business relationships could give rise to the need for one or more of the Parties to seek equitable remedies from a court that were traditionally available from an equity court, such as emergency, provisional or summary relief, and injunctive relief. Immediately following the issuance of any such equitable relief, the Parties will stay any further judicial proceeding pending mediation of all underlying claims between the Parties.

15. Representatives; Notices.

15.1 Authorized Representatives. Each Party will designate at least one individual officer or employee who will be its representative and will be authorized to act on behalf of the Party for all purposes in performing the provisions of this Agreement ("Representative"). Each Party will also designate an alternate Representative who will serve in the place of (and with the same authority as) the Representative if the latter is unavailable. A Party may also designate more than one Representative. The designation may be changed from time to time. The designation must be made in a writing delivered to the other Party.

15.2 No Release. Each Party is responsible for the acts or omissions of its Representative(s). The designation of a Representative by a Party does not release the Party from responsibility for performance of its obligations under this Agreement.

15.3 Notice. All notifications, notices, demands, requests and other communications herein provided for or made pursuant hereto shall be in writing and shall sent by (i) registered or certified mail, return receipt requested, and the giving of such communication shall be deemed complete on the third (3rd) Business Day after the same is deposited in a United States Post Office with postage charges prepaid, (ii) reputable overnight delivery service, and the giving of such communication shall be deemed complete on the immediately succeeding Business Day after the same is deposited with such delivery service or (iii) legible fax with

original to follow in due course (failure to send such original shall not affect the validity of such fax notice) and the giving of such communication shall be complete when such fax is received.

(a) if to MCWD, addressed to such party at its address set forth in the first paragraph of this Agreement, or at such other address in the continental United States as MCWD may furnish to CAW in writing, or

(b) if to CAW, addressed to such party at its address set forth in the first paragraph of this Agreement, or at such other address in the continental United States as CAW may furnish to MCWD in writing, with a copy to the Western States Divisional General Counsel at such address in the continental United States as CAW will furnish to MCWD in writing.

16. Cessation of Use. Upon the expiration or earlier termination of the Term, CAW shall cease using the Subject Facility and MCWD may act to prevent CAW's water from entering the Subject Facility.

17. Limitation on Recourse. All obligations of CAW under this Agreement shall be on a non-recourse basis to its shareholders, officers, and directors and their respective parent companies, subsidiaries and affiliates (other than CAW). The sole recourse of MCWD or any other Person for any obligation of CAW under this Agreement shall be to CAW and its assets, provided that the limitation on recourse set forth in this Article 18 shall not limit any rights of MCWD or any other Person under applicable law relating to fraudulent transfers or voidable preferences.

18. Force Majeure.

18.1 If by reason of "force majeure," as defined in this Article 19, a party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, and if such party gives notice and reasonably full particulars of such force majeure in writing to the other party promptly after the occurrence of the cause relied on, the affected party, and only so far as and to the extent that it is affected by such force majeure, shall be excused from performance hereunder without liability; provided, however, such cause shall be remedied with all reasonable dispatch.

18.2 For purposes of this Agreement, "force majeure" shall mean an event that creates an inability to perform that could not be prevented or overcome by the due diligence of the affected party, including but not limited to, any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, sabotage, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, hurricanes, tornadoes, floods, washouts, civil disturbances, explosions, power outages the failure or inability to obtain any necessary governmental authorization which has been sought or requested, as the case may be, in good faith by all reasonable legal means, and any other cause, whether of the kinds herein enumerated or otherwise, not reasonably within the control of the affected party. In the event the production from the extraction wells, falls below the level needed to operate the Project at a capacity sufficient to supply water for new and expanded water

hookups in Sand City due to depletion of the aquifer or some other natural cause, then such event shall be considered as a "force majeure" event.

19. Miscellaneous.

19.1 Integration. This Agreement embodies the entire agreement between MCWD and CAW relating to the subject matter hereof and supersedes all prior agreements and understandings, written or oral, relating to such subject matter.

19.2 Successor and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the parties hereto and their respective successors and assigns permitted hereunder.

19.3 Amendments or Waivers. No term or provision hereof or Appendix, Exhibit or Schedule hereto may be amended, changed, waived, discharged, terminated or replaced orally except by a written instrument, in accordance with applicable terms and provisions hereof, executed by each of the parties hereto.

19.4 Waivers. No failure, delay, forbearance or indulgence on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, or as an acquiescence in any breach, nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

19.5 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

19.6 Neutral Construction. This Agreement is the product of negotiation between the Parties. No Party is deemed the drafter of this Agreement.

19.7 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third person to any Party. This Agreement does not create any duty, liability or standard of care to any person who is not a Party.

19.8 Relationship of Parties. Each Party is an independent entity. This Agreement will not constitute either Party as the agent of the other Party, except as otherwise provided in this Agreement or as otherwise agreed by the Parties. This Agreement will not constitute the Parties as partners or joint venturers (or as co-owners of a business entity) for common law purposes, federal, state or local income tax purposes, or otherwise. The Parties will not conduct business under a common name, execute an agreement identifying any or all of them as partners, shareholders or members of a business entity, or otherwise hold out their co-

ownership of the Plant as a partnership or other form of business entity (nor will the Parties hold themselves out as partners, shareholders, or members of a business entity).

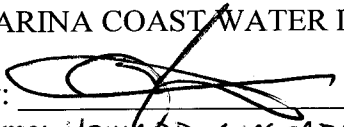
19.9 Controlling Law; Conflicts of Law. This Agreement shall be construed, governed and applied in accordance with the laws of the State of California, without regard to the conflicts of law principles thereof.

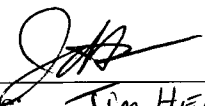
19.10 Venue. In connection with this Agreement, CAW and MCWD hereby agree that any action, proceeding, or dispute regarding this Agreement shall be filed in the Superior Court of the State of California, in and for the County of Monterey. Nothing in this section shall be construed as a waiver of CAWs' rights under California Code of Civil Procedure section 394.

19.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute but one and the same instrument.

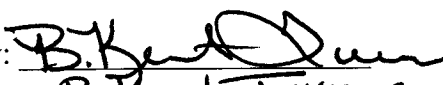
IN WITNESS WHEREOF, MCWD and CAW hereto have each caused this Agreement to be duly executed and delivered in their name and on their behalf, respectively, as of the day and year first written above.

MARINA COAST WATER DISTRICT

By:   
Name: HOWARD GUSTAFSON  
Title: BOARD PRESIDENT

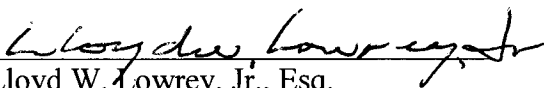
By:   
Name: JIM HEITZMAN  
Title: GENERAL MANAGER

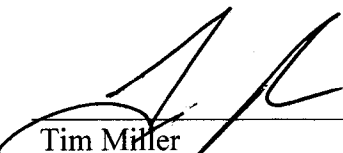
CALIFORNIA AMERICAN WATER COMPANY,

By:   
Name: B. Kent Turner  
Title: PRESIDENT  
4/8/09

APPROVED AS TO FORM:

Noland, Hamerly, Etienne & Hoss,  
A Professional Corporation,  
Legal Counsel to MCWD

By:   
Lloyd W. Lowrey, Jr., Esq.

  
Tim Miller  
Corporate Counsel  
California American Water

## ATTACHMENT 1

### Definitions

“Actual Knowledge” means actual knowledge of (i) an Authorized Officer or (ii) any other officer or official whose responsibilities include administration of the transactions contemplated by time Agreement.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person or, in the case of a specified Person which is a partnership, any general partner of such partnership. For purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether by contract, through the ownership of voting securities or the power to appoint and remove directors or trustees, or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Approved Plans” means the plans for the Subject Facility, in the form existing as of the date hereof, a copy of which have been received and approved by CAW.

“Authorized Officer” means with respect to CAW, President, the chief financial officer, any vice president, the treasurer or any assistant treasurer of the CAW, or any other person of the CAW designated by the CAW as an Authorized Officer of the CAW from time to time, including but not limited to any person granted authority by the American Water Delegation of Authority, and with respect to MCWD, any official or any officer whose responsibilities include Administration of this transaction.

“Bankruptcy Code” means Title 11 of the United States Code, as amended, or any successor statutory provisions.

“Basic Term” has the meaning set forth in Article 4 of the Agreement.

“Basic Term Commencement Date” means the Completion Date or, if such day is not the first day of a calendar month, the first day of the calendar month next succeeding the Completion Date.

“Business Day” means a day when banks are open for business in California.

“CAW” means California-American Water Company.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute.

“Complete” or “Completion” means that (a) the materials and equipment for the Subject Facility have been installed and checked for alignment, lubrication, rotation and hydrostatic and

pneumatic pressure integrity, (b) the electrical systems have been installed and tested, (c) the electrical continuity and ground fault tests and mechanical tests and calibration have been completed, (d) the instrumentation has been loop checked, (e) the Subject Facility has been flushed and cleaned out as necessary, (f) the Subject Facility is ready to commence start-up and testing, (g) the Subject Facility has been constructed substantially in accordance with the Approved Plans, including, without limitation, the specifications applicable thereto, and (h) the Subject Facility is capable of operating safely. The following shall not prevent certification of Substantial Completion, but shall be remedied, cured or resolved within sixty (60) days after the Basic-Term Commencement Date:

- (i) any redundant part or piece of equipment which is missing or inoperable which does not affect the safe operation of the Project Improvements;
- (ii) any disputed contract issue which has been submitted for arbitration;
- (iii) any non-conforming item which has been agreed to be corrected and the material placed on order which does not affect the safe operation of the Project Improvements or
- (iv) any punchlist items which will not prevent use of the Subject Facility.

“Completion Date” means the date, if any, on or before the Outside Completion Date, on which the following have occurred: (i) Substantial Completion has been achieved, and (ii) MCWD has satisfactorily completed all start-up commissioning for the Subject Facility.

“Fair Market Rental Value” means an amount equal to the fair market rental value that would be obtained in an arm’s length transaction between an informed and willing MCWD and an informed and willing CAW, in either case under no compulsion to rent, and neither of which is related to the MCWD, calculated as the value of the Agreementd Premises for its use at its present location determined on the basis of the value of the Land Parcel subject to existing governmental zoning and use restrictions and with regard to the value of the Project Improvements.

“FASB” means the Financial Accounting Standards Board, or any successors thereto that perform substantially similar functions’.

“Final Determination” means, with respect to a private letter ruling or a technical advice memorandum of the Internal Revenue Service, written notice thereof in a proceeding in which the CAW had an opportunity to participate and otherwise means written notice of a determination from which no further right of appeal exists or from which no appeal is timely filed with any court of competent jurisdiction in the United States in a proceeding to which the CAW was a party or in which the CAW had the opportunity to participate.

“GAAP” means generally accepted accounting principles as in effect in the United States

of America at the time of application.

“Governmental Action” means all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Authority, or required by any Legal Requirements, and shall include, without limitation, all citings, environmental and operating permits and licenses that are required for the use, occupancy, zoning and operation of the Project Improvements.

“Governmental Authority” means any foreign or domestic federal, state, county, municipal or other governmental or regulatory authority, agency, board, body, commission, instrumentality, court or quasi-governmental authority or any political subdivision thereof.

“Hazardous Substances” means (i) those substances included within the definitions of or identified as “hazardous substances”, “hazardous materials”, or “toxic substances” in or pursuant to, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.) (“CERCLA”), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, 100 Stat. 1613) (“SARA”), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) (“RCRA”), the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) (“OSHA”), and the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq. and in the regulations promulgated pursuant to said laws, all as amended; (ii) those substances listed in the United States Department of Transportation Table (40 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); (iii) any material, waste or substance which is or contains (A) asbestos, (B) polychlorinated biphenyls, (C) designated as “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251 (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317); (D) flammable explosives; (E) petroleum products and substances; (F) radioactive materials; and (iv) such other substances, materials and wastes which are or become regulated as hazardous, toxic or “special wastes” under applicable local, state or federal law, or the United States government, or which are classified as hazardous, toxic or as “special wastes” under federal, state or local laws or regulations.

“Indemnified Parties” means MCWD or CAW, as applicable, and all shareholders, officers, directors, employees, attorneys and agents of any of the foregoing, and any Person holding any beneficial interest in any of the foregoing.

“Legal Requirements” means all applicable laws, rules, orders, ordinances, regulations and requirements and conditional permissions now existing or (except to the extent any exemption or so called “grandfathering” provision is available) hereafter enacted or promulgated, of every government and municipality and of any agency thereof having jurisdiction over CAW, MCWD or the Subject Facility, relating to the ownership, use, occupancy, maintenance or operation of the Subject Facility, or the improvements thereon, or the facilities or equipment thereon or therein, or the streets, sidewalks, vaults, vault spaces, curbs and gutters adjoining the Subject Facility, or the appurtenances to the Subject Facility, or the franchises and privileges

connected therewith or the transactions contemplated by the Agreement, including but not limited to the operation of the Subject Facility in the manner described in Article 4 and including, without limitation, all applicable building laws, health codes, safety rules, handicapped access, zoning and subdivision laws and regulations and Environmental Laws.

“Lien” means any mortgage, pledge, security interest, production payment, encumbrance, lien or charge of any kind whatsoever. For the purposes of the Agreement, any Person shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a MCWD or vendor under any capital Agreement or other title retention agreement relating to such asset.

“MCWD” means Marina Coast Water District.

“Outside Completion Date” has the meaning set forth in Article 2 of the Agreement.

“Permitted Encumbrances” means, with respect to the Subject Facility: (a) rights reserved to or vested in any municipality or public authority to condemn, appropriate, recapture or designate a purchaser of the Subject Facility; (b) any Liens thereon for taxes, assessments and other governmental charges and any Liens of mechanics, materialmen and laborers for work or services performed or material furnished in connection with the Subject Facility, which are not due and payable, or the amount or validity of which are being contested as permitted by Article 6 of the Agreement; and (c) Liens granted by MCWD in connection with any bonds issued to fund the Project, as long as such lender receiving such lien has granted CAW satisfactory rights of nondisturbance.

“Person” means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, a governmental body or a political subdivision, a municipal corporation, a public corporation or any other group or organization of individuals.

“Prudent Industry Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the municipal water treatment and supply industry operating in the immediate area surrounding the Subject Facility during the Term of this Agreement. Prudent Industry Practices are not to be interpreted, construed or limited to the optimum industry practices, methods or acts, but rather as a range of acceptable practices, methods or acts consistent with the duties and obligations of Contractor under this Agreement.

“Regulations” means the applicable proposed, temporary or final Income Tax Regulations promulgated under the Code, as such regulations may be amended and/or supplemented from time to time.

“Renewal Term” has the meaning set forth in paragraph (b) of Article 2 of the Agreement.

“Subsidiary” means any corporation or other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or

other persons performing similar functions are at the time directly or indirectly owned by CAW.

“Subject Capacity” means the unused capacity in the Subject Facility to be used by CAW pursuant to the Agreement.

“Subject Facility” means the water conveyance facility, consisting of a water pipeline and appurtenances, to be located along and within Gen. Jim Moore Blvd on the former Ft. Ord, to be used jointly by CAW and MCWD.

“Term” means (a) the Basic Term and Extended Term which may be effected pursuant to Article 2 of the Agreement or (b) such shorter period as may result from earlier termination of the Agreement as provided therein.

“Term Termination Date” means the last day of the Basic Term or a Renewal Term, as applicable.

“Termination Date” has the meaning set forth in Article 2 of the Agreement.

# **EXHIBIT A** **DIAGRAM OF SUBJECT FACILITY**

