

MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY

and

MARINA COAST WATER DISTRICT

OUTFALL AGREEMENT

Dated as of February 12, 2010

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THIS OUTFALL AGREEMENT, dated as of February 12, 2010 ("Agreement"), is between the MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY, a joint powers agency organized and operating under sections 6500 and following of the California Government Code, concerning the joint exercise of powers by public agencies in the State of California ("MRWPCA"), having an address at 5 Harris Court, Building "D", Monterey, CA 93940, and MARINA COAST WATER DISTRICT, a political subdivision of the State of California, organized and operating under the County Water District Law codified at sections 30000 and following of the California Water Code ("MCWD"), having an address at 11 Reservation Road, Marina, CA 93933. MRWPCA and MCWD are sometimes referred to collectively herein as the "Parties" and individually as a "Party."

RECITALS:

A. The Parties are public agencies with service areas in northern Monterey County, California. MCWD is a member agency of MRWPCA.

B. MRWPCA owns and operates the Regional Treatment Plant ("RTP") for wastewater from northern Monterey County. The RTP includes an ocean outfall ("Outfall") that has available, unused capacity and is physically capable of carrying Brine. The Outfall consists of two components: 12,742 lineal feet of buried land pipeline, and 11,286 lineal feet of underwater ocean pipeline.

C. On April 15, 2009, MCWD and MRWPCA signed a Memorandum of Understanding ("MOU") entitled "Planning for Use of MRWPCA Outfall for Brine Disposal," with a term of five years.

C.1 Paragraph 3 of that MOU states that a feasibility analysis will be completed for using the Outfall for discharge of brine.

C.2 Paragraph 4 of that MOU indicated that there would be subsequent negotiations regarding the terms and conditions for disposal of brine.

C.3 As required under the MOU and as referenced in Recital C.1 above, Brown & Caldwell prepared a report to evaluate the feasibility of using the Outfall for brine disposal. The initial draft report was completed on February 6, 2009. A Final Report was issued on July 31, 2009. This report concluded that brine discharge to the Outfall was feasible, however, additional studies would be needed to confirm the conditions associated with the brine acceptance and to support a request to the RWQCB to adjust MRWPCA's NPDES Permit to allow large volumes of brine from the Outfall.

D. On June 16, 2009, MCWD and MRWPCA signed a Memorandum of Understanding for the Regional Urban Water Augmentation Project ("RUWAP MOU"). The RUWAP MOU includes provision for MCWD and MRWPCA to meet and confer in good faith to evaluate the feasibility of using Outfall to transport and discharge brine byproduct from a water desalination facility. The RUWAP MOU has an initial term of fifty years.

E. On December 17, 2009, the California Public Utilities Commission (“CPUC”), acting as Lead Agency under the California Environmental Quality Act as part of Application 04-09-019, certified a Final Environmental Impact Report (“FEIR,” State Clearinghouse No. 200610104) analyzing the potential environmental impacts of a project designated the “Coastal Water Project” and alternatives to it. One alternative analyzed in the certified FEIR is a project designated the “Regional Project,” which includes a desalination facility that would discharge desalinization brine through the Outfall. The Parties intend to conduct their activities under this Agreement in accordance with the certified FEIR, for a project to discharge an amount and composition of saline water not exceeding that analyzed in the FEIR.

F. This Agreement provides mutually beneficial terms and conditions and adequate consideration for planning, permitting, design, financing, operation and maintenance, scheduling, quality requirements, term, priorities, and fair compensation to MRWPCA for MCWD’s connection to and use of the Outfall to discharge MCWD Brine into the ocean.

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

1. Designations and Definitions. The following designations and definitions apply in this Agreement and all Exhibits and Schedules to this Agreement:

1.1 “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 this Agreement.

1.2 “Agency Board” means MRWPCA’s governing body.

1.3 “Authorized Officer” means the General Manager or any other person of the MRWPCA or MCWD designated by the MRWPCA or MCWD as an Authorized Officer of the designating Party from time to time.

1.4 “Baseline Analysis” has the meaning set forth in paragraph 6.6.2.

1.5 “Brine Receiving Facility” means the MRWPCA facility for holding, mixing, dilution, sampling, neutralization, aeration, treatment, and metering of influent MCWD Brine and other water accepted by MRWPCA from water softeners and other sources, and/or metering of the MCWD Brine and/or other water accepted by MRWPCA flowing from the receiving facility to the Outfall prior to entering the Outfall. The Brine Receiving Facility will be designed by MRWPCA and located as shown diagrammatically and generally on Exhibit A.

1.6 “Brine Waste Disposal Study” has the meaning set forth in paragraph 7.8.

1.7 “Brown & Caldwell (B&C) Feasibility Report” (as required by the MOU referenced in Recital C.1) means the report prepared to evaluate the feasibility of using the outfall for brine disposal. The initial draft report was completed on February 6, 2009. A Final Report was issued on July 31, 2009.

1.8 “California Ocean Plan” means the Water Quality Control Plan for Ocean Waters of California adopted by the SWRCB on February 14, 2006.

1.9 “Capacity Charge” has the meaning set forth in paragraph 6.3.

1.10 “CEQA” means the California Environmental Quality Act, Public Resources Code Section 21000 et seq. and the Guidelines promulgated thereunder and codified at Title 14, Chapter 3, sections 15000-15387 of the California Code of Regulations.

1.11 “Connection” means works and facilities to connect the MCWD Brine discharge facilities from the Desalination Plant to the Brine Receiving Facility, as shown diagrammatically and generally on Exhibit A.

1.12 “Desalination Plant” means the regional desalination facility with a designed capacity to produce up to the quantity and composition of desalinated Product Water described and analyzed in the FEIR.

1.13 “Environmental review and compliance” means any review and analysis required to comply with CEQA and NEPA.

1.14 “FEIR” has the meaning set forth in Recital E.

1.15 “Fiscal Year” means each 12-month period during the term hereof commencing July 1 of each year and terminating June 30 of the following year, both dates inclusive.

1.16 “Force Majeure” means 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 Outfall becomes wholly or partially unavailable for use by MCWD due to one of the foregoing causes, then such event shall be considered as a “Force Majeure” event.

1.17 “Initial Term” has meaning set forth in paragraph 3.1.

1.18 “Lead Agency” has the meaning defined in CEQA.

1.19 “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 MRWPCA, MCWD, the Desalination Plant or the Outfall, relating to the ownership, use, occupancy, maintenance or operation of the Outfall, or the improvements thereon, or the facilities or equipment thereon or therein, or the streets, sidewalks, vaults, vault spaces, curbs and gutters adjoining the Outfall, or the appurtenances to the Outfall, or the franchises and privileges connected therewith or the transactions contemplated by this Agreement, including but not limited to the operation of the Outfall in the manner described in Sections 7 and 8 of this Agreement and including, without limitation, the California Ocean Plan, and all applicable building laws, health codes, safety rules and regulations.

1.20 “MCWD” has the meaning set forth in the introductory paragraph of this Agreement.

1.21 “MCWD Board” means MCWD’s governing body.

1.22 “MCWD Brine” means the saline water remaining for discharge through the Outfall to the ocean after production of Product Water at the Desalination Plant.

1.23 “MCWD Brine Discharge Permit” means an industrial discharge permit issued to MCWD by MRWPCA pursuant to the provisions of MRWPCA’s Wastewater Discharge Ordinance and source control regulations to assure compliance with its NPDES Permit and the California Ocean Plan, and which will specify that minimum, maximum, and expected average volumes, salinity concentrations, other constituents, plus discharge standards/conditions/monitoring requirements for acceptance of MCWD Brine waste for disposal.

1.24 “Metering Facility” means the facility required to measure the volume of Brine discharged from the Desalination Plant to the Outfall, located as shown diagrammatically on Exhibit A to this Agreement.

1.25 “mgd” means million gallons per day.

1.26 “MRWPCA” has the meaning set forth in the introductory paragraph of this Agreement.

1.27 “NEPA” means the National Environmental Quality Act of 1969 codified at 42 U.S.C. § 4321 et seq., and regulations promulgated thereunder.

1.28 “NPDES” means the National Pollutant Discharge Elimination System.

1.29 “NPDES Permit” means a permit issued pursuant to the National Pollutant Discharge Elimination System Permit Program which controls water pollution by regulating point sources that discharge pollutants into waters of the United States, as authorized by the Federal Clean Water Act.

1.30 “Outfall” has the meaning set forth in Recital B.

1.31 “Outfall Asset Value” has the meaning set forth in Exhibit C.

1.32 “Outfall Capacity” means, subject to paragraph 8.3, the total capacity of the Outfall in mgd as calculated by a mutually agreeable engineering consulting firm and as approved by each of MCWD and MRWPCA.

1.33 “Outfall Reserve Account” has the meaning set forth in paragraph 6.3.4.

1.34 “Party” means either MRWPCA or MCWD individually.

1.35 “Parties” means MRWPCA and MCWD collectively.

1.36 “Product Water” means water processed at the Desalination Plant to meet Legal Requirements for human consumption and use.

1.37 “Regional Project” means the alternative project so designated, described and analyzed in the FEIR.

1.38 “Renewal Term” has the meaning set forth in Section 3.

1.39 “Responsible Agency” has the meaning defined in CEQA.

1.40 “RTP” has the meaning set forth in Recital B.

1.41 “RUWAP” means the Regional Urban Water Augmentation Project for which MCWD has certified an environmental impact report and two addenda.

1.42 “RUWAP MOU” has the meaning set forth in Recital D.

1.43 “RWQCB” means the Central Coast Regional Water Quality Control Board.

1.44 “SWRCB” means the California State Water Resources Control Board.

1.45 “Term” has the meaning set forth in Section 3 or such shorter period as may result from earlier termination of the Agreement as provided herein.

1.46 “Wastewater Discharge Ordinance” means Ordinance No. 2008-01 adopted by MRWPCA on July 28, 2008 as amended from time to time.

2. Authority. This Agreement is entered into under the authority of sections 6500 and following of the California Government Code (concerning the joint exercise of powers) and sections 30000 and following of the California Water Code (the County Water District Law).

3. Term of Agreement.

3.1 This Agreement shall be effective upon the date of the last duly authorized signature for the parties executing this Agreement and shall remain in effect for a period of thirty-four (34) years (the "Initial Term"), unless sooner terminated or extended as hereinafter provided.

3.2 Renewal Term(s). Following the Initial Term, so long as no Event of Default by MCWD shall have occurred and be continuing on the last day of the Initial Term, the Agreement shall be subject to up to six (6) automatic renewal terms of ten (10) additional years (each, a "Renewal Term," together with the Initial Term, the "Term"), unless MCWD provides written notice to MRWPCA (each, a "Non-renewal Notice"), at least five (5) years prior to the start of such Renewal Term, of such MCWD's intention not to renew the Agreement and to cease using the Outfall for MCWD Brine discharge.

4. Environmental Compliance and Permits.

4.1 Connection. MCWD, as a Responsible Agency under the FEIR, will perform any necessary environmental review and compliance, and will obtain permits for constructing facilities for the Connection, including any required NPDES Permit for brine disposal or other permit required by the Central Coast RWQCB or the California or Federal Environmental Protection Agencies.

4.2 Brine Receiving Facility.

4.2.1 MRWPCA, as a Responsible Agency under the FEIR, will perform any necessary environmental review and compliance, and will obtain permits for the Brine Receiving Facility. The Brine Receiving Facility will be designed by MRWPCA in consultation with MCWD and located generally as shown on Exhibit A of this Agreement.

4.2.2 MRWPCA may analyze the technical and financial feasibility and environmental impacts of including in the Brine Receiving Facility facilities for disposing of and measuring the quantity of brine from water softeners accepted and discharged by MRWPCA and MRWPCA will be the Lead Agency for analyzing such impacts and complying with all CEQA requirements for such facilities. Such analysis shall not delay the construction and use of facilities to discharge MCWD Brine through the Outfall.

4.3 Brine Discharge Permit. MCWD shall obtain a Brine Discharge Permit from MRWPCA before discharging MCWD Brine through the Outfall.

5. Design; Construction; Maintenance.

5.1 MCWD will plan, design, construct and maintain the Connection in consultation with MRWPCA.

5.2 MRWPCA, will plan, design, construct and maintain the Brine Receiving Facility in consultation with MCWD.

5.3 Either Party may at the Party's cost conduct value engineering on the plans and designs of the other party.

6. Costs.

6.1 Connection Costs. MCWD will pay all costs to plan, design, construct, operate and maintain the Connection, including the debt service on loan monies used.

6.2 Brine Receiving Facility Costs. MCWD will pay all costs to plan, design, permit, study, finance, and construct, operate, maintain, repair and replace the portion of the Brine Receiving Facility attributable to and used for MCWD Brine. MRWPCA will pay all costs for any portion of the Brine Receiving Facility not attributable to and not used for MCWD Brine. Costs subject to this paragraph 6.2 include, without limitation, costs of testing to confirm the capacity of the Outfall, costs of the Baseline Analysis, and costs of the Brine Waste Disposal Study.

6.3 Capacity Charge.

6.3.1 Upon completion of both the Connection and the Brine Receiving Facility, prior to any discharge of Brine, MCWD will pay to MRWPCA a one-time Capacity Charge to use the Outfall for discharge of MCWD Brine during the Term of this Agreement. The Capacity Charge will be calculated as shown in EXHIBIT C.

6.3.2 The Capacity Charge for MCWD will be calculated by multiplying the Outfall Asset Value by the number obtained by dividing (i) the quantity of MCWD brine delivered to the Outfall, which would be estimated at 12.7 mgd if and as produced by a 10 mgd desalination facility, for the purpose of calculating the examples set forth in Exhibit C to this Agreement, by (ii) the Outfall Capacity, estimated to be 65 mgd for the purpose of calculating the examples set forth in Exhibit C to this Agreement.

6.3.3 The Outfall Asset Value shall be based on the Engineering New Record Construction Costs Index (ENR CCI) escalated original acquisition costs, as of the date of connection to the Outfall, less accumulated depreciation and grant funds. Calculation of the outfall asset value is summarized and shown in EXHIBIT C Background data for the detailed costs breakdown are contained in the Municipal Financial Services Report dated January 15, 2010, on file at MRWPCA.

6.3.4 The Capacity Charge paid by MCWD will be deposited and maintained in an MRWPCA reserve account (the "Outfall Reserve Account") and shall be used

by MRWPCA only to pay for repair and replacement of the Outfall, in accordance with the provisions of paragraph 6.6.

6.4 Outfall Operation and Maintenance Costs. MCWD will pay fair and reasonable operation and maintenance costs, including routine repair (as defined by standard MRWPCA accounting procedures) attributable to MCWD's use of the Brine Receiving Facility and the Outfall for discharging MCWD Brine and directly related to MCWD Brine. Unless otherwise specified or determined, such costs will be calculated on an average annual flow proportional basis with respect to the costs associated with the discharge of all substances and fluids other than MCWD Brine.

6.5 Outfall Monitoring Costs. MCWD will pay fair and reasonable costs attributable to monitoring and sampling MCWD Brine. Unless otherwise specified or determined, these costs will be directly related to MCWD Brine and will be the marginal cost above the MRWPCA's actual costs for monitoring and sampling all substances and fluids other than MCWD Brine discharged through the Outfall.

6.6 Outfall Capital Repair and Replacement Costs.

6.6.1 Shared Costs. Subject to paragraph 6.6.2, MCWD will pay to MRWPCA a fair and reasonable share allocable to MCWD Brine, based on the proportion of MCWD Brine delivered to the Outfall to Outfall Capacity, of capital repair and replacements expenses for the Outfall, sharing proportionately with MRWPCA the benefits of any grant or aid funds received to pay or mitigate such costs and, after first utilizing such grant or aid funds, then next using the funds in the Outfall Reserve Account.

6.6.2 MCWD Brine-Related Outfall Repair and Replacement Costs. If the Outfall requires repair or replacement significantly earlier than indicated by the Baseline Analysis, or if a repair is significantly more costly than indicated by the Baseline analysis, primarily due to the discharge of MCWD Brine, MCWD will pay the reasonable marginal increase in cost associated with such repair or replacement, reduced by the amount of any grant or aid funds received to pay or mitigate such costs. A determination of such costs shall be evaluated and based in part on the completion of a baseline engineering analysis (the "Baseline Analysis") that will be completed by an independent engineering firm mutually acceptable to both of the Parties. In coordination with the provisions of paragraph 7.8, MRWPCA shall arrange for the Baseline Analysis which will involve a detailed review (including photographs, videotaping and other acceptable methods) in order to determine the condition, functionality, value and remaining useful life of the Outfall. Thereafter, MRWPCA may also conduct additional analysis to document any ongoing impact of MCWD Brine on the Outfall.

6.7 Determination of Reasonable Costs. Either Party may request in writing a review and recommendation regarding a cost or cost sharing determination as provided in this Section 6 by an independent, impartial, experienced person or entity approved by the Parties, or if the Parties cannot agree upon a single such person or entity, each Party shall name such a person or entity and they shall review the matter and agree upon and make a recommendation/determination, provided, further, if their respective

independent, impartial, experienced persons or entities cannot so agree then such persons or entities shall name a third person or entity to make the final, binding recommendation and determination. Pending a determination based upon such a recommendation, the Outfall costs in question shall remain as determined by the paragraphs above in this Section 6. If the Parties agree on and approve an independent, impartial, experienced person or entity pursuant to this paragraph 6.7, each of MCWD and MRWPCA shall share equally in paying all such costs and expense of such person or entity. To the extent the Parties cannot agree upon a single such person or entity pursuant to this paragraph 6.7, each of MCWD and MRWPCA shall be solely responsible for the costs and expenses of their respective person or entity; provided, however, that if each of their respective persons or entities cannot agree on a recommendation/determination and name a third person or entity to make the final, binding recommendation and determination, each of MCWD and MRWPCA shall share equally in paying all such costs and expenses of such third person or entity.

6.8 Annual Outfall Budget. Each fiscal year, MRWPCA will propose an annual budget for costs related to the receipt of MCWD Brine. The draft budget will be prepared for MCWD input at least 45 days prior to MRWPCA Board consideration and adoption.

6.9 Payment of Costs by MCWD. Unless MCWD requests a cost determination pursuant to paragraph 6.7 within 15 days after receiving an invoice from MRWPCA, MCWD shall pay MRWPCA for costs incurred under this Agreement by MRWPCA in consultation with MCWD within 45 days of receiving an itemized invoice from MRWPCA for such costs. If MCWD requests a cost determination pursuant to paragraph 6.7, MCWD shall pay MRWPCA for such cost within 15 days after MCWD receives a written determination under paragraph 6.7.

7. Outfall Use for MCWD Brine Discharge.

7.1 Brine Transmission and Discharge. MCWD is authorized by this Agreement to transmit MCWD Brine into the Outfall through the Connection for discharge to the ocean.

7.2 MCWD Priority. During the term of this Agreement, MCWD shall have the right prior to any other person, including any agency or entity, to use a portion of the capacity of the Outfall for MCWD Brine discharge as specified in this Agreement; provided, that MRWPCA shall have priority in the use of Outfall capacity for the discharge and disposal of treated sewage, including trucked wastes such as grease, septage and water remaining from water treatment processes, originating within the MRWPCA's jurisdictional area.

7.3 Interruptions and Curtailments. MCWD's right to use the Outfall pursuant to this Agreement shall not be interrupted, curtailed or reduced except in emergencies affecting health and safety, emergencies beyond the control of the Parties, operational constraints, orders of courts and agencies having jurisdiction, and maintenance and repairs of the Outfall. Any interruption shall be implemented with notice and due

process commensurate with the circumstances, in accordance with MRWPCA's adopted policies and ordinances. Any planned Outfall maintenance will be coordinated, agreed to and scheduled by the Parties.

7.4 Construction of Additional Capacity. MRWPCA shall be the Lead Agency and MCWD shall be a Responsible Agency for any proposed, planned change to Outfall capacity. To the extent construction of additional Outfall capacity is required, MRWPCA will cause the Outfall to be sized and constructed such that space is available within the operational limits of the conveyance system and that MRWPCA is not using during the period for which MCWD proposes to use the Outfall and that such space is sufficient to carry the quantity of Brine proposed to be discharged.

7.5 Discharge Schedule. Except when the Outfall capacity is reduced, MCWD shall be entitled to use the Outfall at any time to discharge, in accordance with the FEIR and such other environmental review and compliance documents as may be certified from time to time, up to the amount of MCWD Brine analyzed in the FEIR and in accordance with conditions as described in the MCWD Brine Discharge Permit issued by MRWPCA.

7.6 Compliance with MCWD Brine Discharge and NPDES Permits. MRWPCA shall be responsible for complying with the requirements of MRWPCA's NPDES permit for the Outfall in using the Outfall to discharge MCWD Brine pursuant to this Agreement. MCWD shall be responsible for complying with the requirements of MCWD's Brine Discharge Permit and any other permits issued to MCWD for MCWD Brine discharge through the Outfall.

7.7 Measurement of MCWD Brine. The MCWD Brine discharged through the Outfall shall be measured by a properly-calibrated meter installed at the Connection. At any time or times, MCWD may, upon request, inspect, in the presence of a MRWPCA representative, the meter located at the Connection, and the measurements and records taken from the Connection. MRWPCA, at MCWD's sole cost, shall test and calibrate the instrumentation at the meter at least annually and furnish such written results to MCWD. When requested by MCWD, and at MCWD's sole cost, MRWPCA shall have a qualified third-party test and calibrate the meter at the Connection. MCWD shall have the right to be represented at and during any instrumentation and/or meter tests and/or calibration, whenever testing and/or calibration of the instrumentation and/or the meter is requested by MCWD, and in the event that any such test shall disclose an error exceeding that specified by the meter manufacturer, an adjustment shall be made in charges against MCWD covering the known or estimated period of duration of such error, but in no event exceeding the prior six (6) months.

7.8 MCWD Brine Waste Disposal Study. Prior to obtaining a MCWD Brine Discharge Permit, MCWD will submit detailed information to MRWPCA in accordance with RWQCB study requirements regarding MCWD's proposed MCWD Brine discharge, including any potential impact on the MRWPCA Outfall. This information, the MCWD Brine Waste Disposal Study, and the 10% design for the Brine Receiving Facility will be used as part of the MRWPCA application to obtain approval from the Regional Water

Quality Control Board ("RWQCB") to discharge large quantities of Brine. The MCWD Brine Waste Disposal Study requirements are set forth in Exhibit B to this Agreement.

8. Outfall Operation and Modification.

8.1 MRWPCA will control, operate and maintain the Outfall subject to the terms and conditions of this Agreement, in compliance with the Legal Requirements for the Outfall.

8.2 Any modification to the Outfall required for Brine discharge or made at the request of MCWD for MCWD Brine discharge will be at the expense of MCWD and MCWD will pay to MRWPCA an amount equal to the cost of the modification.

8.3 By April 1, 2010, MRWPCA will conduct a study to determine the current and maximum capacity of the Outfall.

9. Compliance with Legal Requirements. MCWD and MRWPCA will cooperate to take the actions and execute the documents necessary to comply with all Legal Requirements governing the operation and use of the Outfall.

10. Indemnification. Subject to any limitations elsewhere in this Agreement, each Party shall indemnify, defend, and hold harmless, the other Party from and against any and all damages, liabilities, losses, and costs or expenses suffered or incurred by such other Party, arising out of, or resulting from, any breach of the indemnifying Party's representations, warranties or agreements set forth in this Agreement or any performance or failure of performance by the indemnifying Party of its obligations under this Agreement, however, in no event shall either Party be liable to the other Party, whether in contract, warranty, tort (including negligence and strict liability) or otherwise, for any special, indirect, incidental or consequential losses or damages of any kind or nature whatsoever.

11. Procedure for Indemnification.

11.1 If any legal proceedings are instituted, or any claim or demand is asserted, by any third party which may give rise to any damage, liability, loss, or cost or expense with respect to which either Party has indemnified the other party in this Agreement, then the indemnified party shall give the indemnifying Party written notice of the institution of such proceedings, or the assertion of such claim or demand, promptly after the indemnified Party first becomes aware thereof. However, any failure by the indemnified party to give such notice on such prompt basis shall not affect any of its rights to indemnification hereunder unless such failure materially and adversely affects the ability of the indemnifying Party to defend such proceeding.

11.2 The indemnifying Party shall have the right, at its option and at its own expense, to utilize counsel of its choice in connection with such proceeding, claim or demand, subject to the approval of the indemnified Party, which approval shall not be unreasonably withheld or delayed. The indemnifying Party shall also have the right to defend against, negotiate with respect to, settle or otherwise deal with such proceeding, claim

or demand. However, no settlement of such proceeding, claim or demand shall be made without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld or delayed, unless, pursuant to the terms and conditions of such settlement, the indemnified Party is released from any liability or other exposure with respect to such proceeding, claim or demand. The indemnified Party may participate in any such proceeding with counsel of its choice at its own expense.

11.3 In the event, or to the extent, the indemnifying Party elects not to, or fails to, defend such proceeding, claim or demand and the indemnified Party defends against, settles or otherwise deals with any such proceeding, claim or demand, any settlement thereof may be made without the consent of the indemnifying Party if it is given written notice of the material terms and conditions of such settlement at least ten days before a binding agreement with respect to such settlement is reached.

11.4 The Parties agrees to cooperate fully with each other in connection with the defense, negotiation or settlement of any such proceeding, claim or demand.

12. Payment of Indemnified Claims. The indemnifying Party shall forthwith pay all of the sums owing to the indemnified Party, upon the happening of any of the following events:

12.1 Upon the rendition of a final judgment or award with respect to any proceeding of the nature described in paragraph 13, above, by a court, arbitration board or administrative agency of competent jurisdiction and upon the expiration of the time in which an appeal therefrom may be made; or

12.2 Upon the making of a settlement of such proceeding, claim or demand;
or

12.3 Upon the Parties' making of a mutually binding agreement with respect to each separate matter indemnified hereunder.

13. Contribution in the Event of Joint Liability. In the event any such proceeding is brought, in which allegations of fault are made against both of the Parties, the extent of any indemnification shall be determined in accordance with the findings of the court as to the relative contribution by each of the Parties to the damage, suffered by the Party seeking indemnity with respect to such proceeding.

14. General Insurance Requirements. Without limiting a Party's duty to indemnify, each party shall maintain in effect throughout the term of this Agreement, insurance coverage at least equivalent to its current insurance. Each Party will apply to have the other Party its officers, employees and agents, named as an additional insured or covered party with respect to claims arising out of the performance of this Agreement, including ongoing and completed operations, and shall further provide that its coverage is primary to any insurance or self-insurance maintained by the other Party and that the insurance of an additional insured or covered party shall not be called upon to contribute to a loss covered by the other Party's primary coverage.. The insurance currently in effect for MCWD is through a Joint Powers Insurance Agency ("JPIA") with the Association of California Water Agencies ("ACWA"), and

the insurance currently in effect for MRWPCA is through a JPIA with the California Sanitation Risk Management Authority ("CSRMA").

15. Workers' Compensation Insurance. Both Parties shall maintain workers' compensation plans covering all of their respective employees as required by Labor Code section 3700. The Parties' existing workers' compensation program shall satisfy the requirements of this paragraph.

16. Memoranda of Coverage. Memoranda of coverage, certifying MCWD's participation in ACWA's and MRWPCA's participation in CSRMA's pooled liability programs, shall be filed with the respective Parties' Representative prior to execution of this Agreement. Each memorandum of coverage shall certify the coverage afforded meets all requirements of this Agreement and is provided on an occurrence basis. Acceptance of the memorandum of coverage shall in no way modify or change the indemnification provisions of this Agreement, which shall remain in full force and effect. Each Party shall be provided with 30-days' prior written notice of any reduction in coverage or limit, cancellation or intended cancellation.

17. Self-insurance. MCWD's insurance with the ACWA JPIA and the MRWPCA's insurance with the CSRMA satisfies the general insurance requirement hereunder.

18. Compliance with Insurance Policies. MRWPCA 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.

19. Limits. The limits of insurance maintained by the Parties shall not be construed as limits on the indemnification obligations set forth in this Agreement.

20. Representations and Warranties.

20.1 General Representations. On the Execution Date, each Party represents and warrants to the other Parties that:

20.1.1 it is a duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and that it has the power and authority to enter into this Agreement and to carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement;

20.1.2 the execution, delivery and performance of this Agreement is within its powers, has been duly authorized by all necessary action and does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Legal Requirement or the like applicable to it;

20.1.3 all legislative, administrative and other governmental action required to authorize the execution, delivery and performance of this Agreement and the

transactions contemplated hereby has been taken except to the extent of actions which by the terms hereof are to be taken at a later time;

20.1.4 this Agreement constitutes a valid, legal and binding obligation enforceable in accordance with the terms hereof except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws;

20.1.5 it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;

20.1.6 there are no actions, suits or proceedings pending or, to such Party's best knowledge, threatened, against or affecting such Party before any court, administrative body or arbitral tribunal that might materially and adversely affect its ability to perform its obligations under this Agreement; and

20.1.7 The execution, delivery and performance of this Agreement will not contravene any provision of, or constitute a material default under, any other agreement or instrument to which it is a party or by which it or its property may be bound.

20.2 Covenants. Each Party covenants that following the Effective Date and throughout the Term:

20.2.1 It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

20.2.2 It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

20.2.3 It shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Legal Requirements or the like applicable to it.

21. Encumbrance and Assignment.

21.1 Neither this Agreement nor the Outfall shall be mortgaged or pledged as security by MRWPCA. Any such mortgage or pledge shall be null and void.

21.2 Neither MRWPCA nor MCWD may assign or transfer any rights or privileges under this Agreement, either in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld for any transfer to a public agency.

22. Events of Default and Remedies.

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

22.1.1 if MCWD defaults in making any payment when due under the this Agreement, which default continues for 30 days after the same first becomes due and payable; or

22.1.2 if MRWPCA or MCWD defaults in the performance of any covenant, agreement or obligation on the part of MRWPCA or MCWD, as applicable, to be performed under this Agreement, and such default continues for a period of 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 90 days after the receipt of such notice as provided above); or

22.1.3 if MRWPCA 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

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

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

22.1.6 if, as of the time when the same shall have been made, any representation or warranty of MRWPCA or MCWD set forth herein, or in any consent, notice, certificate, demand, request or other instrument delivered by or on behalf of MRWPCA 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 30 days after MRWPCA or MCWD has Actual Knowledge thereof, unless such condition or circumstance is curable and MRWPCA 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 180 days after MRWPCA or MCWD has Actual Knowledge thereof); or

22.2 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.

22.2.1 Sue to terminate this Agreement upon a showing of good cause therefore.

22.2.2 Sue to specifically enforce this Agreement.

22.2.3 Sue to collect damages caused by the breach by the other Party, including, if applicable, following a default by MCWD, make a claim for accrued unpaid costs invoiced to MCWD.

22.3 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.

22.4 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 MRWPCA 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.

23. Dispute Resolution.

23.1 Scope of Section. This Section 23 governs the resolution of all disputes that arise under this Agreement.

23.2 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 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 15 days thereafter, a Party that still believes a dispute requires resolution may avail itself of the provisions of paragraph 23.3.

23.3 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 through 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. If the dispute is or cannot be resolved through mediation within 30 days, either Party may thereafter seek recourse in a court of law.

23.4 Remedies. The preceding paragraphs of this Section 23 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.

23.5 Attorney's Fees. In the event of any controversy, claim, dispute or litigation relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable expenses, costs and attorney's fees.

24. Representatives; Notices.

24.1 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. MRWPCA and MCWD hereby each designate their respective General Managers as their initial Authorized Representatives.

24.2 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.

24.3 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 facsimile or equivalent electronic transmission with original to follow in due course (failure to send such original shall not affect the validity of such faxed notice) and the giving of such communication shall be complete when the transmission is received.

24.3.1 if to MCWD, addressed to MCWD 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 MRWPCA in writing, or

24.3.2 if to MRWPCA, addressed to MRWPCA at its address set forth in the first paragraph of this Agreement, or at such other address in the continental United States as MRWPCA may furnish to MCWD in writing.

25. Cessation of Use. Upon the expiration or earlier termination of the Term, MCWD shall cease using the Outfall and MRWPCA may act to prevent MCWD's water from entering the Outfall.

26. Force Majeure. If by reason of Force Majeure 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.

27. Miscellaneous.

27.1 Further Actions. The Parties agree to execute such other documents and take such actions as may be necessary to give effect to the provisions of this agreement.

27.2 Approval; Cooperation. Whenever consent or approval or cooperation of a Party is required to give effect to any of the provisions of this agreement, that Party shall not unreasonably withhold such consent or approval or cooperation.

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

27.4 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.

27.5 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.

27.6 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.

27.7 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.

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

27.9 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.

27.10 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.

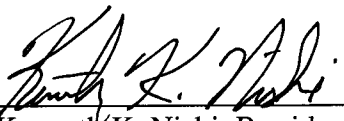
27.11 Venue. In connection with this Agreement, MRWPCA and MCWD hereby agree that any action, proceeding, or dispute regarding this Agreement shall be filed in the Superior Court of the State of California, in and for the County of Monterey. Nothing in this paragraph shall be construed as a waiver of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

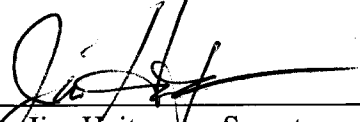
27.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, MRWPCA and MCWD 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.

MCWD

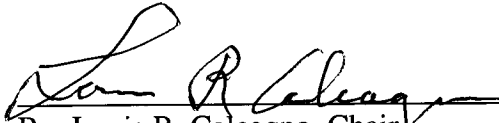
MARINA COAST WATER DISTRICT, a
California water district

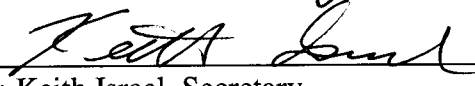

By: Kenneth K. Nishi, President


By: Jim Heitzman, Secretary

MRWPCA

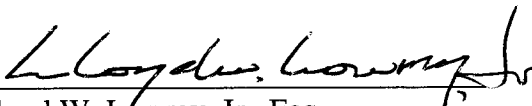
MONTEREY REGIONAL WATER
POLLUTION CONTROL AGENCY


By: Louis R. Calcagno, Chair


By: Keith Israel, Secretary

APPROVED AS TO FORM:

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

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

APPROVED AS TO FORM:

Wellington Law Offices
Legal Counsel to MRWPCA

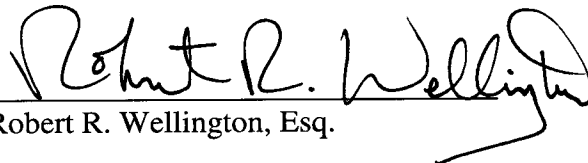
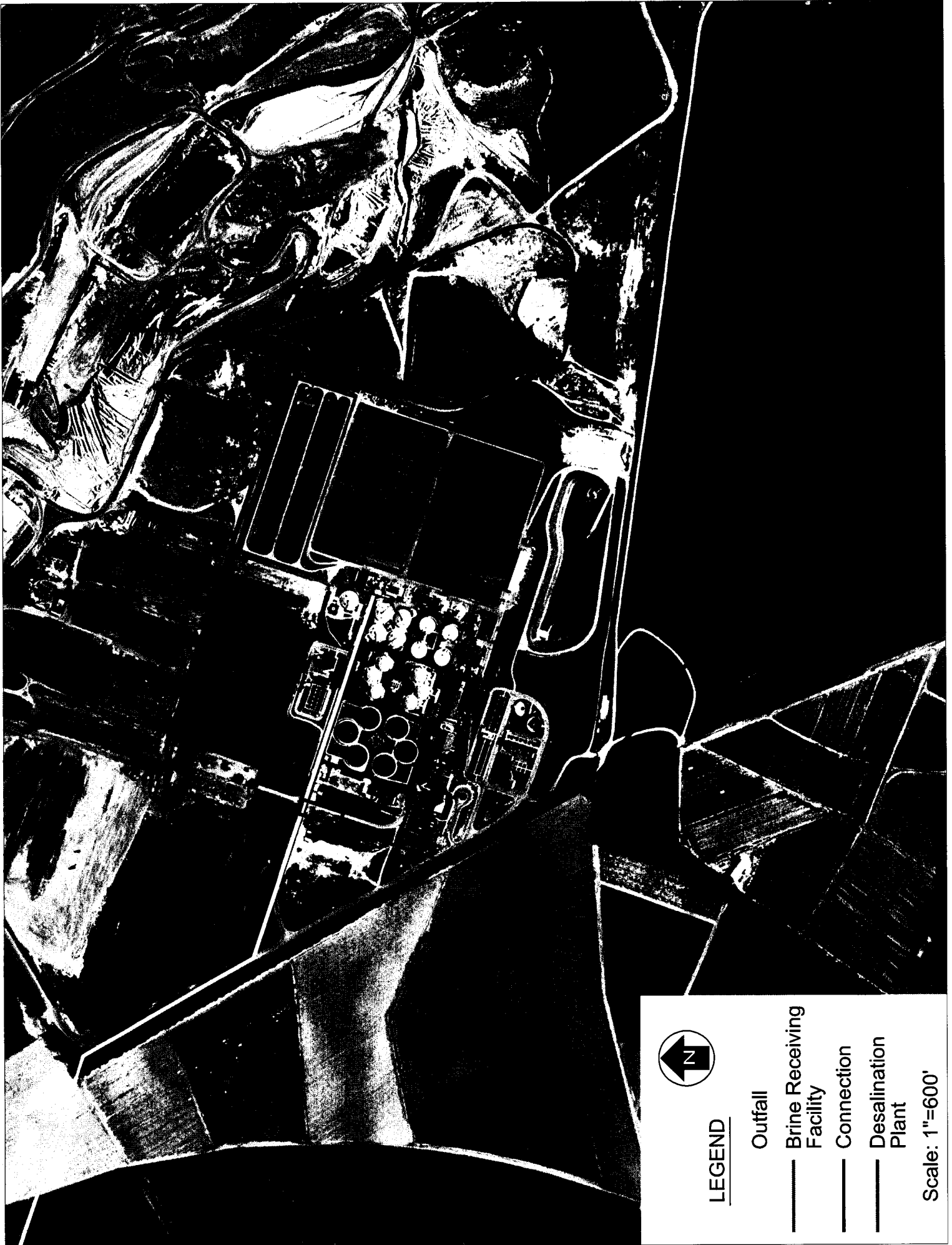
By: 
Robert R. Wellington, Esq.

EXHIBIT A



LEGEND

Outfall

Brine Receiving
Facility

Connection

Desalination
Plant

Scale: 1"=600'

EXHIBIT B

Brine Waste Disposal Study

c. Brine Waste Disposal Study

Prior to increasing the volume of brine waste discharged through the ocean outfall greater than 375,000 gallons average daily flow, the Discharger shall submit a brine waste disposal study to the Executive Officer for approval. The study shall include, at a minimum, the following elements: (1) a projection of the brine volume and characteristics; (2) an assessment of the impact of the increased brine volume on permit compliance; (3) an assessment of the impact of the increased brine volume on the minimum probable initial dilution at the point of discharge; (4) a detailed description of the brine waste disposal facilities which are proposed to accommodate the increased brine volume and facilitate blended secondary effluent and brine wastes flow metering and sampling; and (5) a schedule for the design and construction of the new brine disposal facilities.

[Parties to discuss scope]

EXHIBIT C

CALCULATION OF CAPACITY CHARGE FOR BRINE DELIVERED TO THE OUTFALL PURSUANT TO THIS AGREEMENT

Marina Coast Water District (MCWD) shall pay a capacity charge for delivering Regional Desalination Brine to the Monterey Regional Water Pollution Control Agency (MRWPCA) outfall. This charge does not include any costs associated with the Brine Receiving Station which are addressed separately in this Agreement. The Capacity Charge is calculated as stated below:

A = Outfall Capacity, gallons per day
B = Brine delivered to outfall, gallons per day
C = Outfall Asset Value
D = Unit cost of Outfall Capacity
E = Capacity Charge

FORMULA

$$C / A = D$$

$$D \times B = E$$

EXAMPLE ONLY BASED ON DECEMBER 31, 2009 ASSUMED CONNECTION TO THE OUTFALL:

$$\underline{\$12,469,276 / 65,000,000} = \$.192 \text{ per gallon}$$

$$\$.192 \times 12,700,000 = \$2,436,305 = \text{CAPACITY CHARGE}$$

OUTFALL ASSET VALUE

Outfall original cost	\$ 29,477,348
Less Grants Funds (approx. 72%)	20,203,241
Local Share Original Cost	\$ 9,274,107
Escalated cost based on the December 2009 ENR CCI	
From the month/year asset was acquired	\$ 18,305,246
Less: Accumulated Depreciation	5,835,970
Total (local share) Outfall Asset Value as of 12/31/09	\$ 12,469,276

EXHIBIT A

