

Marina Coast Water District
Agenda Transmittal

Agenda Item: 5-B

Meeting Date: January 31, 2011

Submitted By: Kelly Cadiente
Reviewed By: Carl Niizawa

Presented By: Kelly Cadiente

Agenda Title: Consider Adoption of Resolution No. 2011-09 to Approve a Line of Credit Agreement with California American Water Company

Detailed Description: The Board of Directors is requested to consider adoption of Resolution No. 2011-09 to approve a line of credit agreement with California American Water Company (CAW). On February 24, 2010, the Board adopted Resolution No. 2010-12 to approve a reimbursement agreement with CAW which provided a mechanism for reimbursement from CAW to the MCWD and Monterey County Water Resources Agency (MCWRA) (the Public Agencies) for funds expended by the Public Agencies on the Regional Desalination Project (the Project). Under the reimbursement agreement, development costs for the Project were reimbursed until the earlier of (a) the date the Public Agencies obtain proceeds of financing for the Project sufficient to both meet the Public Agencies' ongoing direct project-related costs and commence repayment to CAW of funds reimbursed under this agreement, or (b) December 31, 2010. The reimbursement agreement has now expired.

On April 5, 2010, the Board adopted Resolution No. 2010-20 that approved MCWD's participation in the Project pursuant to the WPA and the Settlement Agreement, contingent on final approval from the California Public Utilities Commission (CPUC). The effective date of the WPA shall be January 11, 2011 based on CPUC approval of the Project on December 2, 2010, and with each of the Public Agencies and CAW satisfying the conditions precedent set forth in Article 25 of the WPA on January 11, 2011. Pursuant to the terms of Sections 7.1(c)(i) and (ii) of the WPA, CAW shall make available to each of the Public Agencies a revolving credit facility up to an aggregate total of Eight Million Dollars as a source of short term loans for the purpose of managing financial liquidity needs in connection with the Project.

MCWD will incur costs associated with securing permits and obtaining financing for the Project. In order to avoid delaying work on the Project or impacting MCWD's finances, staff recommends that the Board approve the line of credit from CAW. Once financing is obtained for the Project, proceeds from the financing will pay in full the line of credit from CAW.

Environmental Review Compliance: None required.

Prior Committee or Board Actions: Resolution No. 2010-12 to Approve a Reimbursement Agreement with CAW; Resolution No. 2010-20 to Adopt Findings and Mitigation Monitoring and Reporting Plan, and Conditionally Approving Regional Desalination Project which authorized the President and the General Manager and Secretary to execute the Water Purchase Agreement and the Settlement Agreement pursuant to this resolution and conditional approval.

Board Goals/Objectives: *Strategic Plan, Mission Statement – Providing High quality water, wastewater and recycled water services to the District's expanding communities through management, conservation and development of future resources at reasonable costs.*

Financial Impact: _____ Yes X No

Funding Source/Recap: CAW's line of credit will reduce the financial impact on MCWD in meeting its obligations in connection with the Regional Desalination Project.

Materials Included for Information/Consideration: Resolution No. 2011-09; CAW Credit Line Agreement, Water Purchase Agreement.

Staff Recommendation: The Board of Directors consider adoption of Resolution No. 2011-09 approving a line of credit agreement with California American Water Company.

Action Required: X Resolution _____ Motion _____ Review _____
(Roll call vote is required.)

Board Action

_____ Resolution No _____ Motion By _____ Seconded By _____

Ayes _____ Abstained _____

Noes _____ Absent _____

Reagendized _____ Date _____ No Action Taken _____

January 31, 2011

Resolution No. 2011-09
Resolution of the Board of Directors
The Marina Coast Water District
Approving a Line of Credit with California American Water Company

RESOLVED by the Board of Directors of the Marina Coast Water District (Board), at a special meeting duly called and held on January 31, 2011 at the business office of the District, 11 Reservation Road, Marina, California as follows:

WHEREAS, the Board adopted Resolution No. 2010-20 which authorized the General manager to execute the Water Purchase Agreement and directed the General Manager and staff to take all other actions that may be necessary to effectuate and implement the resolution and Conditional Project Approval; and,

WHEREAS, the Regional Desalination Project was approved by the California Public Utilities Commission on December 2, 2010; and,

WHEREAS, a short-term financing mechanism is needed in order for the Regional Desalination Project to keep moving forward without impacting the District's finances.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Marina Coast Water District does hereby approve the Line of Credit Agreement with California American Water Company and authorizes the General Manager to execute the Line of Credit Agreement as the District's Secretary, and to take the actions and execute the documents necessary or appropriate to give effect to the Line of Credit Agreement and this Resolution.

PASSED AND ADOPTED on January 31, 2011 by the Board of Directors of the Marina Coast Water District by the following roll call vote:

AYES: Directors _____

NOES: Directors _____

ABSENT: Directors _____

ABSTAINED : Directors _____

William Y. Lee, President

ATTEST:

Jim Heitzman, Secretary

CERTIFICATE OF SECRETARY

The undersigned Secretary of the Board of the Marina Coast Water District hereby certifies that the foregoing is full, true and correct copy of Resolution No. 2011-09 adopted January 31, 2011.

Jim Heitzman, Secretary

CAW CREDIT LINE AGREEMENT

This CAW Credit Line Agreement ("**Agreement**") is made and entered into this ____ day of January, 2011 (the "**Effective Date**") by and among **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 its principal address at 11 Reservation Road, Marina, CA 93933, **MONTEREY COUNTY WATER RESOURCES AGENCY**, a duly constituted Water Resources Agency created pursuant to the Monterey County Water Resources Agency Act, found at California Water Code, Appendix Chapter 52 ("**MCWRA**"), having its principal address at 893 Blanco Circle, Salinas, CA 93901 and **CALIFORNIA-AMERICAN WATER**, a California corporation and regulated public utility ("**CAW**"), having its principal address at 1033 B Avenue, Suite 200, Coronado, CA 92118. Each of MCWD, MCWRA and CAW are referred to individually as a "**Party**" herein and shall be collectively known as the "**Parties**." Each of MCWD and MCWRA are referred to individually herein as a "**Public Agency**" and shall be collectively known as the "**Public Agencies**."

RECITALS

WHEREAS, each of the Parties are parties to that certain Water Purchase Agreement dated April 6, 2010, as updated by the Parties on August 31, 2010 (the "**WPA**") pursuant to a filing by MCWD with the California Public Utilities Commission ("**Commission**") entitled "Marina Coast Water District's Notice Of Filing Of Conformed Copy Of Water Purchase Agreement Containing Previously-Announced Revisions Acceptable To The Signatories,"

WHEREAS, the WPA was one of the implementing agreements filed in connection with that certain Settlement Agreement and Motion to Approve the Settlement filed on April 7, 2010 (collectively, the "**Settlement**") in Commission Proceeding Application 04-09-019 ("**A.04-09-019**") with the Commission, which requested approval of a settlement and implementing agreement under which the Parties would build, own and operate various designated portions of a regional water desalination project designed to solve the long-standing water supply deficit on the Monterey Peninsula;

WHEREAS, on December 2, 2010, in Decision No. 10-12-016 (the "**Decision**"), after considering the Settlement and the entire record in A.04-09-019, the first ordering paragraph of the Decision sets forth the Commission's approval of the Settlement along with the implementing agreements as updated by the Parties on August 31, 2010;

WHEREAS, in accordance with the terms of the Settlement, the WPA is effective upon the date on which all of the conditions precedent set forth in Article 25 of the WPA are satisfied (the "**WPA Effective Date**");

WHEREAS, each of MCWD, MCWRA and CAW has satisfied the conditions precedent

set forth in Article 25, with the last such condition precedent satisfied on January 11, 2011, thereby making January 11, 2011 the WPA Effective Date;

WHEREAS, pursuant to the terms of Sections 7.1(c)(i) and (ii) of the WPA, following the WPA Effective Date, CAW shall make available a single revolving credit facility in an amount up to an aggregate total of Eight Million Dollars (\$8,000,000.00) as a source of short term loans (i.e., less than three years) for the purpose of managing financial liquidity needs of the Public Agencies directly related to the implementation or operation of the Regional Desalination Project (the “**Project**”);

WHEREAS, the execution of this Agreement and the incurrence of obligations hereunder by CAW have been authorized by the Commission in accordance with the Decision; and

WHEREAS, each of the Parties now desires to execute this Agreement and incur the obligations hereunder in order to assist with funding needs associated with the Project;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. **Recitals.** The recitals are hereby incorporated in this Agreement as if fully set forth herein.
2. **Interpretation.** Capitalized terms used in this Agreement, including the exhibits, attachments, schedules or appendices hereto, if any, shall have their respective meanings as set forth herein; provided, however, that capitalized terms not otherwise defined herein shall have their respective meanings as set forth in the WPA. Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa; and pronouns having masculine or feminine gender will be deemed to include the other. The headings in this Agreement are included for convenience only and shall not be deemed to modify or explain any of the terms of this Agreement.
3. **Line of Credit.** Provided that, with respect to the Public Agency submitting a Draw Request (as defined herein and in accordance with the requirements of Section 4), (i) no Event of Default (as defined hereunder) has occurred, and such Public Agency is in compliance with all of its obligations under this Agreement; (ii) no event of default has occurred, been properly noticed and is continuing under the WPA; (iii) no event of default has occurred, been noticed and is continuing under any CAW Loan; (iv) no event of default has occurred, been properly noticed and is continuing in connection with any of its agreements directly related to repayment of the Indebtedness for the Project, but specifically excluding any CAW Financing (the “**Non-CAW Financing Project Indebtedness**”); (v) after December 31, 2014 and following CAW’s employment of commercially reasonable efforts in accordance with Section 6 of this Agreement, either the Underlying Credit Line has been renewed or extended or a Succeeding Credit Line has been obtained by CAW; and (vi) the WPA remains in full force and effect, CAW shall provide such Public Agency with revolving loans (each, a “**Draw**”) under a revolving line of credit (the

“**Line of Credit**”) available to both Public Agencies in the maximum aggregate principal amount outstanding at any time of Eight Million dollars (\$8,000,000.00) (the “**Maximum Amount**”). As principal is repaid, each of the Public Agencies may request additional revolving loans up to the Maximum Amount, subject to borrowing availability and the other terms and condition of this Agreement. For avoidance of doubt, the Parties intend for this Agreement to create a single line of credit in the Maximum Amount for use by both Public Agencies, not two separate lines of credit, one for each Public Agency, each in the Maximum Amount.

4. **Draw Requests.**

(a) **Form of Draw Request.** Subject to borrowing availability pursuant to Section 5, the terms of Section 3 above and Draw Request providing the information required in this Section 4 below in sufficient specificity to allow CAW to process such Draw Request, Draws under this Line of Credit shall be funded by CAW as promptly as possible (but not more than ten (10) days) after the Public Agency has delivered a draw request to CAW (each, a “**Draw Request**”). Each Draw Request shall state the amount of the Draw requested, the intended purpose or purposes for which the Draw will be used, all types of borrowings (including durations of such borrowings) and interest rate elections the borrower would be required to make in requesting a draw under the Underlying Credit Line or then-current Succeeding Credit Line, and the agreement of the Public Agencies to the Draw Request or an instruction that Draw availability should be calculated as stated in Section 5(a) or 5(b) as applicable to the Public Agency making the Draw Request. The Public Agencies and CAW will regularly meet and confer regarding the types of borrowing (including durations of such borrowings) and interest rate elections available to the Public Agencies in an effort to obtain Line of Credit costs that are most advantageous for CAW Ratepayers. As a standing item on the agenda for every periodic meeting of the Advisory Committee, the Advisory Committee shall discuss the maturity and repayment status of all then-existing Draws on the Line of Credit, and the Advisory Committee shall adopt procedures to ensure the inclusion of such discussion on the agenda for every such meeting. Whenever any revision to either the Underlying Credit Line or a Succeeding Credit Line shall occur or whenever a Succeeding Credit Line shall be obtained which, in either event, would change the information that must be provided in order to make elections as discussed in this Section 4, CAW shall promptly provide to each Public Agency in writing a clear description of the necessary information that must be provided in making such elections so that the Public Agencies may provide such information in future Draw Requests. Notwithstanding the foregoing or anything to the contrary herein, the duration of any Draws pursuant to elections contained in Draw Requests shall not affect the agreed upon repayment period of such Draw as set forth in Section 10 or CAW's obligation to fund Draw Requests in accordance with the terms of this Agreement.

(b) **Reports of Use of Draws.** Any Public Agency having Draws outstanding shall provide a Notice to CAW at the end of each quarter, beginning with the first full quarter after a Draw has been funded, stating in detail the uses for each such Draw has been put during such preceding quarter.

(c) **Record of Draws.** As Draw Requests are made and funded and interest and principal payments of the Line of Credit are repaid, CAW shall record such information for each

Draw by each Public Agency generally in the form set forth on **Schedule A** attached hereto, which information shall be incorporated by reference herein. CAW shall periodically update the information on Schedule A and shall deliver updated copies of Schedule A to both of the Public Agencies to replace the then-current Schedule A no less often than quarterly and an updated Schedule A shall also be provided to the Public Agencies by CAW on request of the Public Agencies from time to time.

(d) **Use of Draws.** All Draws shall be used by the Public Agencies to manage their financial liquidity directly related to the implementation or operation of the Project.

5. **Borrowing Availability.** The “Available Line Amount” is the Maximum Amount, less the aggregate amount of loans under the Line of Credit previously drawn down by and still outstanding from both Public Agencies, from the Effective Date through and until such Determination Date. The amount available to be drawn down by either Public Agency under the Line of Credit (the “Draw Request Amount”), as of the date of any Draw Request (the “Determination Date”) submitted by such Public Agency, shall either be (a) the amount set forth in the Draw Request if such Draw Request is accompanied by the submission of an approval of the Draw Request amount by the other Public Agency, substantially in the form of **Exhibit A** attached hereto (each, a “Draw Request Approval”); or (b) in the absence of a Draw Request Approval, the amount calculated by either Subsection 5(a) or (b) below, as applicable:

(a) If the Draw Request is made by MCWD, then:

(i) If such Draw Request is made prior to the Acceptance Date, then the amount available to be drawn down by MCWD under the Line of Credit shall be equal to the product of (A) the Available Line Amount and (B) the quotient obtained by dividing (I) the MCWD Pre-Effective Date Costs and Expenses by (II) the sum of the MCWD Pre-Effective Date Costs and Expenses and the MCWRA Pre-Effective Date Costs and Expenses; or

(ii) If such Draw Request is made on or after the Acceptance Date, then the amount available to be drawn down by MCWD under the Line of Credit shall be equal to the product of (A) the Available Line Amount and (B) the quotient obtained by dividing (I) the MCWD Indebtedness by (II) the sum of the MCWD Indebtedness and the MCWRA Indebtedness

(b) If the Draw Request is made by MCWRA, then:

(i) If such Draw Request is made prior to the Acceptance Date, then the amount available to be drawn down by MCWRA under the Line of Credit shall be equal to the product of (A) the Available Line Amount and (B) the quotient obtained by dividing (I) the MCWRA Pre-Effective Date Costs and Expenses by (II) the sum of the MCWD Pre-Effective Date Costs and Expenses and the MCWRA Pre-Effective Date Costs and Expenses; or

(ii) If such Draw Request is made on or after the Acceptance Date, then the amount available to be drawn down by MCWRA under the Line of Credit shall be equal to the product of (A) the Available Line Amount and (B) the quotient obtained by dividing (I) the

MCWRA Indebtedness by (II) the sum of the MCWD Indebtedness and the MCWRA Indebtedness.

6. **Line of Credit Availability to Public Agencies.**

(a) **Underlying Credit Line.** CAW currently has available to it that certain Credit Agreement dated September 15, 2006 by and between American Water Capital Corporation (an Affiliate of CAW) and the lenders identified therein (the “**Underlying Credit Line**”), a copy of which Underlying Credit Line has been provided to the Public Agencies prior to entering into this Agreement. The Underlying Credit Line shall be available from and after the Effective Date until December 31, 2014 and for so long thereafter, during the Term of the WPA, as CAW is able to renew and extend the availability of the Underlying Credit Line after employing commercially reasonable efforts to do so.

(b) **Succeeding Credit Line.** During the Term of the WPA, after such time as CAW is no longer able to renew and extend the availability of the Underlying Credit Line, CAW shall employ commercially reasonable efforts in order to have available to it or cause an Affiliate of CAW to have available to it another revolving credit line in order to allow CAW to meet its obligations under this Agreement (each, a “**Succeeding Credit Line**”).

(c) **Future Succeeding Credit Lines.** If, at any point in time during the Term of the WPA, either (i) the Underlying Credit Line or any Succeeding Credit Line is no longer available to CAW or (ii) the Public Agencies have ceased requesting availability under either the Underlying Credit Line or any Succeeding Credit Line, and, thereafter, either Public Agency requests availability under the Line of Credit, CAW shall employ commercially reasonable efforts to reinstate, renew or extend the availability of the Underlying Credit Line or the most recent Succeeding Credit Line or, in the absence of being able to do so, shall seek to have available to it or cause an Affiliate of CAW to have available to it another Succeeding Credit Line in order to allow CAW to meet its obligations under this Agreement.

(d) **Access to Underlying Credit Line and Succeeding Credit Line Documents.** Within five (5) business days written request of either Public Agency, a copy of either the Underlying Credit Line or the then-current Succeeding Credit Line shall be provided to the Public Agencies and, if either the Underlying Credit Line or the then-current Succeeding Credit Line is not then available for public review, CAW shall either deliver a copy of such Underlying Credit Line or Succeeding Credit Line to the Public Agencies in a manner which is intended to protect such agreement from public disclosure and the Public Agencies shall, to the maximum extent they may legally do so, keep such Underlying Credit Line or Succeeding Credit Line confidential and not publicly disclose such agreement or the terms thereof, or make a copy of such Underlying Credit Line or Succeeding Credit Line available on three (3) days request from any Public Agency for review at CAW's office in Monterey County.

(e) **CAW's Obtaining of Credit Lines.** Nothing contained in this Agreement shall diminish CAW's obligation under the WPA to use commercially reasonable efforts to have available to it (or to arrange for an Affiliate of CAW to have available to it) a credit line (whether

the Underlying Credit Line or a Succeeding Credit Line) that will enable CAW or such Affiliate to provide the Line of Credit under this Agreement.

7. **Project Indebtedness.** Principal, interest and fees under the Line of Credit pursuant to this Agreement, shall, in accordance with the terms of the WPA, be treated as Indebtedness for the Project (“**Project Indebtedness**”) incurred by the Public Agencies.

8. **Interest Rate and Interest Payments.** If the Underlying Credit Line or the then-current Succeeding Credit Line provides the borrower thereunder with the right to elect different types of borrowings (including durations of such borrowings) and/or interest rates, the requesting Public Agency shall be entitled to the same types of borrowings (including durations of such borrowings) and interest rate elections in connection with its Draw Requests and shall state its elections in its Draw Request. All revolving loans advanced by CAW pursuant to Draws under this Agreement shall bear interest equal to the fixed or floating rate, as applicable, which CAW (or its Affiliate) would pay under the Underlying Credit Line or the then-current Succeeding Credit Line for the same borrowing with the same elections as of the time of the funding of the Draw and, provided further that if such rate is a floating rate, such rate shall thereafter adjust as provided under either the Underlying Credit Line or the then-current Succeeding Credit Line. Interest shall be payable by the borrowing Public Agency to CAW in the same manner and time as the interest under either the Underlying Credit Line or the then-current Succeeding Credit Line would be payable under the Underlying Credit Line or the then-current Succeeding Credit Line for the same borrowing with the same elections as of the time of the funding of the Draw. When requested by either Public Agency, CAW shall provide such Public Agency with the applicable interest rates available under either the Underlying Credit Line or any then-current Succeeding Credit Line and how and when the interest rate adjusts. In addition, while a Draw is unpaid, CAW shall provide to the borrowing Public Agency such rate information without request of the Public Agency no less often than on a quarterly basis. The Public Agencies shall be entitled, within five (5) business days of written request to CAW, to review the documentation associated with either the Underlying Credit Line or the then-current Succeeding Credit Line, as applicable, in order to confirm the applicable interest rate.

9. **Unused Line Fee.** In addition to all other amounts due to CAW hereunder, each Public Agency shall pay to CAW on the first Business Day of each April, July, October and January, an availability fee equal to 0.125% (12.5 basis points) per annum on the average daily unused Available Line Amount for the preceding quarter or portion thereof (each, an “**Unused Line Fee Payment**”). Within sixty (60) days following the end of each calendar year, representatives of the Public Agencies shall meet and confer in order to true-up the Unused Line Fee Payments made by each such Public Agency during the preceding calendar year such that the Unused Line Fee Payment of each Public Agency is adjusted to reflect their proportionate share of the outstanding average daily Draws during such calendar based on the information provided by CAW as shall be set forth in Schedule A.

10. **Principal and Interest Payments.** Amounts due under the Line of Credit shall be repaid as follows:

(a) Pre-Acceptance Date. During the term of the Agreement, but prior to the Acceptance Date:

(i) Up and until the Acceptance Date, any Public Agency shall make interest payments with respect to any Draws made prior to the Acceptance Date as and when due in accordance with the terms of either the Underlying Credit Line or the then-current Succeeding Credit Line; and

(ii) Principal amounts under Draws made prior to the Acceptance Date shall be repaid within three (3) years of when the Draw was made subject to the following:

(A) If a Public Agency which has made Draws under this Agreement, (I) still has a portion of its Pre-Effective Date Costs and Expenses which have not yet been reimbursed and (II) all or any portion of the Non-CAW Financing Project Indebtedness obtained by such Public Agency may be utilized to repay all or a portion of the outstanding principal amounts owing by such Public Agency on the Line of Credit, then to the extent allowable under the Non-CAW Financing Project Indebtedness and available in light of Project financing and cost priorities, such Public Agency may use the Non-CAW Financing Project Indebtedness for both the reimbursement of its Pre-Effective Date Costs and Expenses and repayment of the Line of Credit, provided that such Public Agency may only utilize such Non-CAW Financing Project Indebtedness to pay off its unreimbursed Pre-Effective Date Costs and Expenses so long as such Public Agency pays at least an equal amount towards its outstanding amounts due to CAW under the Line of Credit. Notwithstanding the foregoing, once such Public Agency has fully repaid the outstanding balance of the Line of Credit in accordance with the provisions above, then such Public Agency may, if it so chooses, utilize the Non-CAW Financing Project Indebtedness to pay off its remaining Pre-Effective Date Costs and Expenses.

(B) If a Public Agency which has made Draws under this Agreement, does not have any remaining unreimbursed Pre-Effective Date Costs and Expenses and all or any portion of the Non-CAW Financing Project Indebtedness may be utilized to repay all or a portion of its outstanding principal amounts owing by such Public Agency under the Line of Credit, then, to the extent allowable under the Non-CAW Financing Project Indebtedness and available in light of Project financing and cost priorities, such Public Agency shall use such Non-CAW Financing Project Indebtedness to repay its outstanding principal amounts due to CAW under the Line of Credit.

(C) If no portion of the Non-CAW Financing Project Indebtedness may be utilized to repay principal amounts owing to CAW under the Line of Credit, then any Public Agency that has made Draws under this Agreement must repay all principal amounts due to CAW no later than the end of the third year following the date of funding of the Draw. The Parties agree that a CAW Loan may be utilized as a source of funding for repayment of such principal amounts.

(b) Post-Acceptance Date. During the term of the Agreement, but following the Acceptance Date:

(i) If, as of the Acceptance Date, any Public Agency still has any Draw amounts outstanding under the Line of Credit, such Public Agency shall pay down the Line of Credit to the extent possible so long as each of the following requirements is met: (A) the Non-CAW Financing Project Indebtedness may be utilized to repay all or a portion of the outstanding amount under the Line of Credit; (B) such Public Agency still has Non-CAW Financing Project Indebtedness available which (I) has not been earmarked for other purposes, (II) was raised prior to the Acceptance Date, and (III) does not need to be retained in order to meet debt reserves related to the Non-CAW Financing Project Indebtedness; and (C) the use of such Non-CAW Financing Project Indebtedness shall not trigger the CPUC Settlement Cost Cap under the WPA. Otherwise, Draws by any Public Agency that were made prior to the Acceptance Date and not fully repaid prior to the Acceptance Date (including if repaid as described above) shall, as of the Acceptance Date, be converted to principal and amortized for repayment to CAW using the original interest rate elected by such Public Agency with respect to each such outstanding Draw and an amortization period which is the shorter of (A) an amortization period which would result in an increase in the cost of Product Water of ten percent (10%) provided, however, that under no circumstance shall such amortization period be for a period of less than one (1) year from the Acceptance Date, or (B) three years from the Acceptance Date;

(ii) Draws by any Public Agency that are made on or after the Acceptance Date shall be amortized, commencing on the funding of the initial Draw Request hereunder, over the shorter of either a term (the “**Line of Credit Amortization Term**”) (A) of ten (10) years, (B) the remainder of the Term of the WPA (taking into account whether the Term under the WPA will be extended by another renewal Term where a Non-Renewal Notice has not been provided in accordance with the provisions of Section 2.3 of the WPA); or (C) an amortization period which would result in an increase in the cost of Product Water of ten percent (10%); provided, however, that under no circumstance shall such Line of Credit Amortization Term be for a period of less than one (1) year or more than three (3) years from the date of such Draw.

(iii) Interest for any post-Acceptance Date amortization shall be computed on the basis of the interest rate under either the Underlying Credit Line or the then-current Succeeding Credit Line which most closely matches the above described amortization terms.

(c) CAW Inability to Renew or Obtain Either Underlying Credit Line or Succeeding Credit Line. Notwithstanding the provisions of this Section 10, if at any time CAW is unable to renew the Underlying Credit Line or obtain a Successor Credit Line despite using its commercially reasonable efforts to do so and there are then outstanding Draws, CAW or its Affiliate would nevertheless be required to repay the amounts owed by it under the Underlying Credit Line or Successor Credit Line, as applicable, but the Public Agencies would not be obligated to repay their Draws by reason of such non-renewal or failure to obtain a Successor Credit Line. In such event, each Party shall appoint a representative and all such representatives shall promptly meet and confer to seek to agree upon the manner in which amounts then due for outstanding Draws will be repaid by the Public Agencies.

11. **Prepayment.** Each Public Agency may prepay its Draws under the Line of Credit without penalty at any time, in whole or in part upon five (5) days written notice to CAW. Prepayments shall be applied first to interest and then to principal. The Public Agencies shall be entitled to

reborrow any principal amounts under the Line of Credit that are paid, subject to the borrowing availability terms set forth in Section 5 of this Agreement.

12. Public Agency Representations and Covenants.

(a) Each of the Public Agencies represents and warrants that it has obtained all required approvals and authorizations to execute and deliver, and to undertake and perform its obligations under, this Agreement and that the person executing this Agreement on behalf of each Public Agency is duly authorized to execute and deliver this Agreement on behalf of such Public Agency.

(b) With respect to each Draw Request, the Public Agency making such Draw Request, by making the Draw Request, the Public Agency shall be deemed to represent and warrant to CAW as of the date of such Draw Request: (i) that there exists no Event of Default (as defined below) by such Public Agency and there exists no fact or circumstance that, without regard to the passage of time or giving effect to an opportunity to cure, would result in an Event of Default by such Public Agency, (ii) the person executing the Draw Request is duly authorized to execute and deliver the Draw Request on behalf of the Public Agency delivering the Draw Request, (iii) except as noted in any written correspondence delivered to CAW, there exists no event of default or breach of the WPA by such Public Agency; (iv) except as noted in any written correspondence delivered to CAW, there exists no event of default by such Public Agency, and there exists no fact or circumstance that, without regard to the passage of time or giving effect to an opportunity to cure, would result in an event of default by such Public Agency, under any Non-CAW Financing Project Indebtedness, and (v) the funds received with respect to the Draw Request will be used only for the purpose of managing financial liquidity needs of the requesting Public Agency directly related to the implementation or operation of the Project.

(c) So long as each Public Agency is entitled to issue a Draw Request under this Agreement or owes any principal, interest or other payment obligation to CAW under this Agreement, each such Public Agency shall: (i) promptly furnish CAW with any non-privileged information or documents which CAW may request that directly concerning the Public Agency's borrowing under the Line of Credit; (ii) promptly notify CAW of any change in any fact or circumstances warranted or represented by such Public Agency in this Agreement or in any other instrument furnished by the Public Agency to CAW in connection with the Line of Credit; and (iii) promptly furnish CAW with true copies of all notices of default sent or received by such Public Agency with respect to any agreements relating to the Non-CAW Financing Project Indebtedness of such Public Agency.

13. Default. Each of the following shall constitute an “**Event of Default**” solely with respect to the Party for which such Event of Default applies:

(a) Except as otherwise provided in Section 14, if a Public Agency fails to make any payment to CAW when due under this Agreement in connection with the Line of Credit, which default continues for thirty (30) days after receipt of notice of the amount due and payable; provided, however, if such Public Agency disputes whether any amount is properly due, charged or calculated and notifies CAW of the disputed amount, and provides a detailed explanation of

the reasons the amount is disputed and pays the undisputed portion within such thirty (30) day period, such Public Agency shall not be subject to an Event of Default by reason of its withholding payment of the disputed amount and the Parties shall proceed to resolve the dispute in accordance with the provisions of Section 16 of this Agreement;

(b) A breach of any material covenant, representation, or warranty under this Agreement that, following notice thereof, is not cured within thirty (30) days of such notice; provided, however, the thirty (30) day cure period shall be suspended if and for so long as the Party is disputing such breach and has proceeded to resolve the dispute in accordance with the provisions of Section 16;

(c) If a Party files a petition in bankruptcy or for reorganization or for an arrangement pursuant to the Bankruptcy Code, or is adjudicated bankrupt or becomes insolvent or makes an assignment for the benefit of 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;

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

(e) If a receiver, trustee, or liquidator (or similar official) is appointed for, or takes possession or charge of a Party, or of all or substantially all of the assets of such Party or its estate or interest in the Project, and such official shall not be discharged within sixty (60) days thereafter;

(f) If the subject Public Agency receives a formal written notice of an event of default in direct connection with the Non-CAW Financing Project Indebtedness of such Public Agency, due to such Public Agency's failure to make a payment when due, which default continues for thirty (30) days after receipt of notice of the amount due and payable, or due to such Public Agency's failure to fulfill a non-monetary obligation under the Non-CAW Financing Project agreements and all applicable cure periods have passed without cure; or

(g) If the subject Public Agency receives a formal written notice of an event of default under a CAW Loan;

(h) With respect to the subject Public Agency, CAW fails to make funds available to that Public Agency under the Line of Credit after a Draw Request that complies with all requirements of Section 4(a), which default continues for thirty (30) days after receipt of notice thereof.

14. Cessation of Obligations; Subordination. Notwithstanding any provision to the contrary contained herein, upon the receipt of written notice of an event of default by a Public Agency under its agreements directly related to its Non-CAW Financing Project Indebtedness, which event of default is directly related to repayment of the Non-CAW Financing Project Indebtedness

and provided such non-payment results in the acceleration of principal and any other amounts due under such Non-CAW Financing Project Indebtedness, any payments hereunder by such Public Agency shall be subordinate and junior to the repayment of such Public Agency's Non-CAW Financing Project Indebtedness by such payments being suspended (but interest will continue to accrue) and any rights to payment due to CAW from such Public Agency in connection with this Line of Credit shall not be reinstated, so long as such event of default under the agreements directly related to its Non-CAW Financing Project Indebtedness remains outstanding or the accelerated amounts remain due and outstanding; provided, further, that so long as such Public Agency cures any unpaid amounts under this Line of Credit which are due before or during the period of suspension within thirty (30) days of the termination of the suspension and cessation of payments under this Line of Credit, then such Public Agency's failure to make any payments under this Line of Credit during such period of suspension and cessation, shall not constitute an Event of Default under this Line of Credit or any other CAW Financing. CAW retains all other rights to enforce its remedies under this Line of Credit. In accordance with the terms of the WPA, each of the Parties agrees that the Line of Credit shall be subordinate and junior in repayment to any Non-CAW Financing Project Indebtedness incurred by the Public Agencies (i.e., relative to the priority of repayment in the case of a default as described above) and the Parties will prepare, execute and deliver any appropriate or necessary documentation to reflect such subordination. Furthermore, in accordance with the terms of the WPA and as described above, any CAW Loans shall be subordinate and junior in repayment to any Non-CAW Financing Project Indebtedness (i.e., relative to the priority of repayment in the case of a default as described above) and to the Line of Credit (i.e., relative to the priority of repayment in the case of an Event of Default under this Agreement) and the Parties will prepare, execute and deliver any appropriate or necessary documentation to reflect such subordination.

15. No Joint or Several Liability. Neither of the Public Agencies shall be jointly or severally liable for the obligations of the other Public Agency under this Agreement nor shall either Public Agency have any obligation whatsoever under this Agreement to make any payments of principal, interest or other fees in connection with any draws made by the other Public Agency.

16. Resolution of Disputes. Any disputes between the Parties in connection with the Line of Credit shall be resolved in accordance with the procedures set forth in this Section 16 and no dispute shall give rise to an Event of Default under Sections 13(a), 13(b) or 13(h) of this Agreement until the dispute resolution procedures of this Section 16 have been completed.

(a) **Good Faith Negotiations.** Any Party that believes a dispute exists under this Agreement shall notify the other Parties of the dispute in writing. Within five (5) business days of the day upon which written notice is deemed complete under Section 24, the Representatives of each Party will personally meet and confer and attempt in good faith to resolve the dispute. If the Representatives cannot resolve the dispute within ten (10) Business Days after the day upon which written notice is deemed complete under Section 24, 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) business days after the day upon which written notice is deemed complete under Section 24, a Party that still believes a dispute requires resolution may avail itself of the provisions of Section 16(b) of this Agreement. If the subject matter of the dispute relates to a

very time sensitive issue, the Parties shall reasonably cooperate with one another to expedite the above-described negotiation.

(b) **Non-Binding Mediation.** If the dispute is not settled or resolved pursuant to Section 16(a), the Parties shall endeavor to settle the dispute in an amicable manner, using non-binding mediation under the rules of JAMS before having recourse in a court of law. Each Party shall be responsible for the expenses of such Party's participants, consultants, experts or representatives and shall be paid by the Party producing such participants, consultants, experts or representatives. 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 in dispute, 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 all Parties in dispute. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery. The mediator must have substantial financing experience, with experience related to the financing of infrastructure projects being desirable. If any of the matters or issues involved in any dispute are outside the scope of expertise of the mediator, the mediator shall have the right to retain and rely on one or more experts with respect to the applicable matter or issue requiring expert advice. Any person selected as an expert shall be knowledgeable and experienced in the matters sought to be mediated and shall have no affiliation with the Parties; provided, however, the expert may have been utilized by either Party as a consultant not more recently than twelve (12) months prior to the time of engagement if the mediator determines that such expert will provide services unbiased by such prior consulting relationship. Mediation shall be completed within 60 days after request for the mediation by either Party, unless the Parties to the mediation otherwise agree in writing. If the subject matter of the dispute relates to a very time sensitive issue, the Parties shall reasonably cooperate with one another to expedite the above-described mediation.

(c) **Judicial Relief.** If mediation pursuant to Section 16(b) does not resolve a dispute, a Party or the Parties may seek relief in a court of competent jurisdiction.

17. **Remedies Upon Default.** Upon the occurrence and declaration by CAW of an Event of Default by a Public Agency, CAW shall have the right, at its option, upon written notice to the subject Public Agency, to terminate CAW's obligation to provide the Line of Credit to such Public Agency, to demand immediate payment of the amounts due under the Line of Credit by such Public Agency, in the case of an Event of Default based upon the Public Agency's failure to pay a monetary amount hereunder when due, to require that the unpaid amounts due hereunder accrue interest at the Default Rate, if applicable, and to enforce its rights and remedies under this Agreement and applicable law. For purposes of this Agreement, the "Default Rate," if any, shall be the rate set forth under either the Underlying Credit Line or the then-current Succeeding Credit Line, as applicable, to be paid by CAW under the applicable line of credit in the presence of an event of default as defined in such line of credit. Notwithstanding the foregoing, and for clarification purposes, an Event of Default affecting one of the Public Agencies, shall not constitute an Event of Default affecting the other Public Agency and CAW shall remain obligated to make funds available to such other Public Agency in accordance with the terms of

this Agreement up to the Maximum Amount in accordance with the borrowing availability terms of Section 5. Upon the occurrence and declaration by either Public Agency of an Event of Default by CAW, such Public Agency shall have the right to enforce its rights and remedies under this Agreement and applicable law including the right to offset any damages arising from such CAW Event of Default established pursuant to mediation or judicial action as described in Section 16 above against amounts owed by such Public Agency under this Agreement.

18. **Limitation on Damages.** Relative to damages, a non-defaulting Party may only claim and shall be entitled only to collect from a defaulting Party (a) an amount equal to the difference between (i) the reasonable cost of securing equivalent substitute performance from a financially responsible source, and (ii) all expenses saved by reason of Event of Default; (b) accrued unpaid costs invoiced to the defaulting Party; (c) fines and penalties levied on the non-defaulting Party by any governmental agency that regulates the non-defaulting Party and which are directly related to the defaulting Party's default; and (d) other direct actual damages, and may not claim or collect consequential damages, incidental damages, or punitive or exemplary damages.

19. **Remedies Cumulative.** No remedy herein conferred upon or reserved to CAW, whether exercised or not, is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and concurrent and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity.

20. **Waiver.** Neither the acceptance of any partial or delinquent payment by CAW nor CAW's failure to exercise any of its rights or remedies on default by either of the Public Agencies shall be a waiver of the default, a modification or an accord and satisfaction of this Agreement or any way affect such Public Agency's obligations under this Agreement, or a waiver of any subsequent default by such Public Agency.

21. **Third Party Beneficiaries.** No person shall be a third party beneficiary of any of the terms of this Agreement.

22. **Time Is of the Essence.** Time is hereby expressly declared to be of the essence of this Agreement.

23. **Successors and Assigns.** The obligations of the Parties shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the Parties; provided, however, that no Party shall be entitled to assign, transfer or delegate any of its rights, obligations or liabilities hereunder without the prior written consent of the other Party.

24. **Notices.** 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) so long as a Party has notified the other Parties by means of a method described in clauses (i) or (ii) above of such Party's email address

for notification purposes, email transmission of notices to such Party are also permitted provided an original is also sent via one of the other permitted means and the giving of such communication shall be complete when such email is received if such email is received before 5:00 pm PST; otherwise, such communication shall be deemed complete the next business day. The date on which notifications, notices, demands, requests and other communications are deemed complete shall be the earliest date arising under subsections (i), (ii) or (iii) of this Section 24. All notifications, notices, demands, requests and other communications to (a) CAW shall be addressed to its President with an additional copy to its General Counsel, (b) MCWD shall be addressed to its General Manager with an additional copy to its District Counsel; and (c) MCWRA shall be addressed to its General Manager with an additional copy to its County Counsel, each at its address set forth in the first paragraph of this Agreement, or at such other address in the continental United States as a Party may furnish to the other Parties in writing.

25. **Termination.** This Agreement will terminate upon the expiration of the Term under the WPA and the full and final performance of all obligations of the Parties hereunder. Notwithstanding the foregoing, whenever elected by a Public Agency, subject to such Public Agency's repayment in full of any principal, interest or fees owed or outstanding hereunder at such time, by notice to CAW and the other Public Agency, such Public Agency may terminate its right to draw upon the Line of Credit. If the other Public Agency has also elected to terminate its right to draw upon the Line of Credit, CAW may close either the Underlying Credit Line or the then-current Succeeding Credit Line; provided, however, that either Public Agency may request CAW to reestablish the Line of Credit thereafter at any time in accordance with the provisions of this Agreement, including and subject to Section 6 herein, and upon the making of such a request, CAW shall use its commercially reasonable efforts to obtain (or may arrange for an Affiliate of CAW to obtain) a credit line that will enable CAW or such Affiliate to provide the requested Line of Credit and CAW shall keep the Public Agencies informed on its or its Affiliate's progress in obtaining such credit line.

26. **Usury.** This Agreement and is subject to the express condition that at no time shall the Public Agencies be obligated or required to pay interest at a rate which could subject CAW to either civil or criminal liability as a result of being in excess of the maximum rate allowed by law ("**Maximum Legal Rate**"). If by the terms of this Agreement, the Public Agencies are at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the interest rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder.

27. **Attorneys Fees and Costs.** In the event of any action or proceeding to enforce a term or condition of this Agreement, any alleged disputes, breaches, defaults, or misrepresentations in connection with any provision of this Agreement in which it is found that an Event of Default has occurred, or any action or proceeding in any way arising from this Agreement, the prevailing party in such action, including the non-dismissing Party or Parties in circumstances in which the plaintiff voluntarily dismisses the action after a response to the complaint has been filed, shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorney fees and costs.

28. **California Law Applicable.** This Agreement shall be governed by and construed in accordance with the laws of the state of California.

29. **Severability of Provisions.** If any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or any other remaining provisions of this Agreement.

30. **Reimbursable Costs.** All costs and expenses (including reasonable attorneys' fees) incurred by either in the negotiation, preparation, and enforcement of this Agreement shall be treated as Pre-Effective Date Costs and Expenses or Project Administration and Oversight Expenses, as applicable in accordance with the terms of the WPA.

31. **Counterparts.** This Agreement may be executed in any number of counterparts, including by facsimile or digital scan delivered by electronic mail, and each such counterpart shall be deemed to be an original, but all of which, when taken together, shall constitute one agreement.

32. **Further Assurances.** Each Party shall execute and deliver such additional instruments and other documents and shall take such further actions as may be necessary or appropriate to effectuate, carry out and comply with all of the terms of this Agreement and the transactions contemplated hereby and/or to effectuate the intent of this Agreement including documents as may be reasonably requested by any Party in connection with the administration of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement is executed and effective as of the Effective Date.

**MARINA COAST WATER
DISTRICT**, a California County Water
District

**CALIFORNIA-AMERICAN WATER
COMPANY**, a California corporation and
regulated public utility

By:
Title:

By:
Title:

**MONTEREY COUNTY WATER
RESOURCES AGENCY**, a California
Water Resources Agency

By:
Title:

SCHEDULE A
DRAWS ON LINE OF CREDIT

DRAW BY MCWD:

Date	Draw Amount	Payments	Interest Paid	Balance

DRAW BY MCWRA:

Date	Draw Amount	Payments	Interest Paid	Balance

EXHIBIT A

FORM OF DRAW REQUEST APPROVAL

[To be attached]

WATER PURCHASE AGREEMENT

By and Among

MARINA COAST WATER DISTRICT,

MONTEREY COUNTY WATER RESOURCES AGENCY

And

CALIFORNIA-AMERICAN WATER COMPANY

Dated as of April 6, 2010

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THIS WATER PURCHASE AGREEMENT ("Agreement"), dated as of April 6, 2010 (the "Execution Date"), is by and among 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 its principal address at 11 Reservation Road, Marina, CA 93933; MONTEREY COUNTY WATER RESOURCES AGENCY ("MCWRA"), a duly constituted Water Resources Agency created pursuant to the Monterey County Water Resources Agency Act, found at California Water Code Appendix Chapter 52, having its principal address at 893 Blanco Circle, Salinas, CA 93901; and CALIFORNIA-AMERICAN WATER COMPANY, a California corporation and regulated public utility ("CAW"), having its principal address at 1033 B Avenue, Suite 200, Coronado, CA 92118. Each of MCWD, MCWRA and CAW are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS:

A. MCWD provides water service within a service area, as may be subsequently amended or revised from time to time without the approval of the other Parties, located in Monterey County, California, that includes lands within the City of Marina and certain other areas within Monterey County, including lands on the former Fort Ord (the "MCWD Service Area"). The current MCWD Service Area is depicted on **Exhibit A** attached hereto.

B. MCWD acts on behalf of persons served within the MCWD Service Area to furnish water for beneficial use, to protect the groundwater underlying MCWD, and to conserve the water supply for future as well as present use.

C. MCWRA's boundaries are coextensive with the external boundaries of the County of Monterey, and within those boundaries, MCWRA is responsible under the Agency Act, among other things, to increase, and prevent the waste or diminution of the water supply, including the control of groundwater extractions as required to prevent or deter the loss of usable groundwater through intrusion of seawater and the replacement of groundwater so controlled through the development and distribution of a substitute surface supply, and to prohibit groundwater exportation from the Salinas Basin.

D. CAW provides water service in various areas within California, including a service area in Monterey County (as may be subsequently amended or revised from time to time without the approval of the other Parties) (the "CAW Service Area"), adjacent to MCWD Service Area and within the boundaries of MCWRA. The current CAW Service Area is depicted in **Exhibit B** attached hereto.

E. On September 20, 2004, CAW filed Application No. 04-09-019 ("Application 04-09-019") seeking approval of the Coastal Water Project (as defined in Application 04-09-019) from the California Public Utilities Commission ("CPUC"). Application No. 04-09-019 was amended on July 14, 2005, and the application remains pending before the CPUC.

F. MCWD, MCWRA and CAW are active parties in Application No. 04-09-019.

G. On January 30, 2009, the CPUC, acting as Lead Agency under CEQA, issued a Draft Environmental Impact Report ("DEIR," State Clearinghouse No. 200610104) analyzing

the potential environmental impacts of a project designated the "Coastal Water Project" and alternatives to it. The CPUC duly received and analyzed extensive public comment on the DEIR. MCWD, MCWRA, and CAW provided comments on the DEIR.

H. On December 17, 2009, in Decision No. 09-12-017 which was issued in Application 04-09-019, the CPUC, as Lead Agency, after considering all relevant environmental documents, duly certified a Final Environmental Impact Report. The Final Environmental Impact Report described and studied three alternative projects which are being considered for approval by the Commission in the proceeding – the Moss Landing Project, the North Marina Project, and a third alternative project variously referred to as the "Regional Alternative" and the "Regional Project" and "Phase I of the Regional Project." The principal element of that latter alternative project is a regional desalination water supply project, with other smaller elements. This Agreement does not contemplate or address any elements other than "Phase I of the Regional Project."

I. On April 5, 2010, MCWD, and on April 6, 2010, MCWRA, each acting as a Responsible Agency under CEQA, and having fully considered all relevant environmental documents, including the Final Environmental Impact Report, approved this Agreement for a regional desalination project subject to CPUC approval, as more specifically described in Article 3 (the "Regional Desalination Project").

J. The Regional Desalination Project contemplates the development, construction and operation of a regional desalination water supply project as described and analyzed in the FEIR.

K. MCWD, MCWRA and CAW, individually and collectively, have determined and found that the Regional Desalination Project is the least costly of the proposed alternative projects, the most feasible of those projects, and is in the best interests of the customers served by each of MCWD and CAW and that the Regional Desalination Project as implemented by this Agreement serves the public interest and is consistent with the Agency Act. The Parties have also determined that the Regional Desalination Project best conserves and protects public trust assets, resources and values impacted by providing a water supply.

L. CAW has determined that purchasing Product Water from MCWD will allow CAW to provide its customers in CAW's Service Area with Product Water at a significantly lower cost than by means of any of the other proposed alternative projects described in the FEIR.

M. MCWD, MCWRA, and CAW, as part of a settlement of issues pending in Application 04-09-019, as set forth in that certain Settlement Agreement to be filed with the CPUC in Application 04-09-019 (the "Settlement Agreement"), have negotiated this Agreement and certain other agreements contemplated by the Settlement Agreement.

N. The Parties intend that the development, construction and operation of the Regional Desalination Project occur in accordance with the FEIR and that MCWD and MCWRA each act as a Responsible Agency in accordance with CEQA to implement the Regional Desalination Project.

O. The Parties further intend that the design, development, construction and operation of the Regional Desalination Project, including the Project Facilities, shall be on the terms set forth in this Agreement and the other agreements contemplated by the Settlement Agreement.

P. MCWD, MCWRA, and CAW intend that they respectively own and be responsible for different portions of the Regional Desalination Project as provided in this Agreement.

Q. The Parties intend by this Agreement to recognize MCWRA's authority under the Agency Act as applicable to the Regional Desalination Project.

R. The Parties intend that the Project Facilities be designed, constructed and operated to provide to CAW and MCWD the quantities and quality of water as described and analyzed in the FEIR.

S. The Parties intend that in consideration of receipt of Product Water from the Project Facilities, CAW and MCWD, at such time as MCWD either (i) requires MCWD Permanently Allocated Product Water or, (ii) for a given Calendar Year, receives more Product Water than the MCWD Agreed Allocation, will pay to the Project Escrow Account an amount that will fully pay all the costs and expenses incurred by MCWRA and MCWD in accordance with the terms set forth herein.

T. By purchasing Product Water from MCWD, CAW intends to comply with that certain Order WR 95-10 issued by the California State Water Resources Control Board "SWRCB") and that certain Cease and Desist Order related to compliance with Order WR 95-10, (Order WR 2009-0060), issued by SWRCB on October 20, 2009, which is presently stayed.

U. The Parties believe that time is of the essence and that the Regional Desalination Project provides the most expeditious, efficient and best alternative to satisfy the needs of MCWD's and CAW's customers as described in the FEIR in accordance with all Legal Requirements.

In consideration of the foregoing recitals and the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MCWD, MCWRA and CAW hereby agree as follows:

AGREEMENT

1. Governing Terms.

1.1 Recitals. The recitals are hereby incorporated in this Agreement as if fully set forth herein.

1.2 Interpretation. The following rules of interpretation shall apply:

(a) Capitalized terms used in this Agreement, including the exhibits and appendices hereto, if any, shall have their respective meanings as set forth in this Article 1, unless otherwise specified in this Agreement.

(b) Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa; and pronouns having masculine or feminine gender will be deemed to include the other.

(c) The headings in this Agreement are included for convenience only and shall not be deemed to modify or explain any of the terms of this Agreement.

(d) This Agreement is the product of negotiation between the Parties, no Party is to be deemed the drafter of this Agreement, and any ambiguities in this Agreement shall not be read against any Party to the Agreement.

1.3 **Definitions.** The following terms shall, for all purposes of this Agreement, have the following meanings:

“100% Construction Documents” means the final plans, specifications, contracts and related documents necessary for the commencement of construction of the Project Facilities.

“Acceptance” means demonstration by MCWRA and MCWD that the Project Facilities are ready for operation at the maximum firm capacity of 10 MGD, that the Acceptance Tests for each component of the Project Facilities have been run and such tests have been passed, and that the Project Facilities comply with applicable Legal Requirements, including but not limited to receipt of all necessary permits, including those required by California Department of Public Health.

“Acceptance Date” has the meaning set forth in Section 4.17.

“Acceptance Date Conditions” has the meaning set forth in Section 4.15.

“Acceptance Test” means a test protocol or test protocols designed by the Project Manager with respect to each of the MCWD Owned Facilities and the MCWRA Owned Facilities and approved in accordance with Section 4.13 that will certify that the respective Project Facilities are capable of delivering the quantity and quality of Product Water required hereunder.

“Acceptance Test Plan” has the meaning set forth in Section 4.13(b).

“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.

“Actual Water Quantities” shall refer to each of the CAW Actual Product Water Quantity, the MCWD Actual Product Water Quantity and the Total Actual Product Water Quantity.

“ACWA JPIA” means the Association of California Water Agencies Joint Powers Insurance Authority.

“Advisory Committee” has the meaning set forth in Section 6.1.

“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.

“AFY” means acre-feet per year of water.

“Agency Act” means the Monterey County Water Resources Agency Act as set forth in California Water Code Appendix, Chapter 52.

“Agreement” has the meaning set forth in the introductory paragraph.

“Annexation Agreements” means each of (i) that certain Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands executed on or about March 26, 1996; and (ii) that certain Agreement No. A-06404 between the United States of America and MCWD Concerning Annexation of Fort Ord Into Zones 2 and 2A of the Monterey County Water Resources Agency.

“Annual Contract Delivery” means the CAW Actual Product Water Quantity purchased from MCWD by, and delivered to, CAW in a given Calendar Year, which shall be an amount up to the CAW Allocation.

“Annual Outfall Expenses” means, other than the Initial Capital Outfall Expenses, any and all costs or expenses incurred by MCWD during a given Calendar Year pursuant to the Outfall Agreement.

“Annual Project Administration and Oversight Expenses” means the Project Administration and Oversight Expenses incurred during any Calendar Year.

“Application 04-09-019” has the meaning set forth in Recital E.

“ASR” means aquifer storage and recovery system which includes the pipelines, back flush facilities settling basin, test/production wells and monitoring wells and pumps/pump stations and appurtenances thereto which will primarily serve to convey excess flows from the Carmel River and/or Product Water from the Desalination Plant to the Seaside Groundwater Basin for storage.

“Authorization of Construction” means, upon agreement by the Party that is ready to proceed and after MCWRA has determined under Section 8.2 that the MCWD Agreed

Allocation will comply with Legal Requirements, the issuance by the Project Manager of authorization for a Party to proceed with construction of its respective portion of the Regional Desalination Project.

“Authorized Officer” means with respect to CAW, the president or any vice president or any other person designated by CAW as an Authorized Officer of CAW from time to time, including but not limited to any person granted authority by CAW in writing in connection with this Agreement, and with respect to MCWD and MCWRA, any person designated by MCWD or MCWRA in writing as an Authorized Officer for this Agreement.

“Average Percentage of Salinas Basin Water in Brackish Source Water” has the meaning set forth in Section 9.3(b).

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

“Best Industry Practices” means, subject to clauses (i) and (ii) below, any of the best practices, methods, techniques, acts or standards as established by industry organizations or standard setting bodies, whether governmental or not, such as but not limited to the American Water Works Association (AWWA), the American Society for Testing and Materials (ASTM), the National Sanitation Foundation (NSF), the National Safety Council (NSC), the Occupational Safety and Health Administration (OSHA), or other recognized professional organizations, as appropriate, which are generally recognized in the water treatment industry as having the subject matter expertise for the practice, method, technique, act or standard at issue provided that the particular practice, method, technique, act or standard that is considered best shall be those that: (i) at the time that such practice, method or action is employed, and in the exercise of reasonable judgment in light of the facts known at such time, would be most effective to accomplish the desired result consistent with applicable law, good business practices, safety, reliability, efficiency and expedition and giving due consideration to the capabilities of the Project Facilities, the effect on the Project Facilities and the effect on Product Water and the brine and solid material byproducts, and (ii) when engaged in are commonly used or approved by comparable water treatment and/or water utility facilities, regardless of whether or not subject to public utility corporation regulation, operating in the State of California. Best Industry Practices are not to be interpreted, construed as 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 a Party.

“Brackish Source Water” means the Brackish Water produced by the Brackish Source Water Wells.

“Brackish Source Water Receipt Point Meter” means the Meter located along the Brackish Source Water Pipeline which measures the amount of Brackish Source Water delivered from all of the Brackish Source Water Wells to the MCWD Owned Facilities, which Meter shall be part of the MCWD Owned Facilities.

“Brackish Source Water Pipeline” means the MCWRA Brackish Source Water Pipeline together with the MCWD Brackish Source Water Pipeline.

“Brackish Source Water Well” and “Brackish Source Water Wells” have their respective meanings as set forth in Section 3.2.

“Brackish Source Water Well Meter” and “Brackish Source Water Well Meters” have the meaning set forth in Section 10.3.

“Brackish Water” means water that because of a high concentration of TDS is not suitable for human consumption or agricultural use without treatment.

“Business Day” means every day except Saturday, Sunday and recognized holidays where banks are closed for business in California.

“Calendar Year” means a period from January 1st to December 31st of the subject year except that the first Calendar Year shall commence on the Acceptance Date and end on December 31 of the same year.

“CAW” has the meaning set forth in the introductory paragraph.

“CAW Actual Product Water Quantity” means the actual quantity of Product Water (as measured at the CAW Meter) received and used by CAW during a given Payment Period.

“CAW Allocation” means, in accordance with the FEIR and the terms of this Agreement, on an annual basis, the quantity of Product Water that is taken by CAW, up to 10,500 AFY less the MCWD Annual Allocation actually taken by MCWD during normal years and up to 10,900 AFY less the MCWD Annual Allocation actually taken by MCWD during Critically Dry Years, but never less than 500 AFY, and, during any Peak Demand Period, up to 10 MGD of Product Water on a daily basis, which allocation shall be measured at the CAW Meter.

“CAW Credit Line” has the meaning set forth in Section 7.1(c)(i).

“CAW Debt Service Allocation” has the meaning set forth in Section 11.3(a).

“CAW Estimated Product Water Quantity” means, based on the Water Delivery Schedule, the estimated quantity of Product Water to be received and used by CAW during a given Payment Period.

“CAW Facilities” has the meaning set forth in Section 3.7.

“CAW Financing” has the meaning set forth in Section 7.1(c)(i).

“CAW Loan” has the meaning set forth in Section 7.1(c)(i).

“CAW Meter” has the meaning set forth in Section 10.2.

“CAW Pipeline” has the meaning set forth in Section 3.7.

“CAW Product Water Contract Payments” has the meaning set forth in the initial paragraph of Section 11.3.

“CAW Project Administration and Oversight Expenses” means all reasonable and prudent costs incurred by CAW, and not previously recovered by CAW from ratepayers through existing CPUC approved rate recovery, in its performance of its obligations relating to the design, development and initial start-up of the Project Facilities from and after the Effective Date and up to and including sixty (60) days following Acceptance, such as (i) the portion of the salaries and wages of employees reasonably and fairly allocated to the time spent by such employee on such performance including time attending meetings, including meetings of the Advisory Committee, in connection with the Project Facilities, and reasonable and prudent travel expenses; (ii) if applicable, fees of auditors, accountants, attorneys or engineers in connection with the Project Facilities; and (iii) all other reasonable, necessary and prudent costs or charges required to be paid by CAW to comply with its obligations relating to the design, development and initial start-up of the Project Facilities, excluding, however, any costs related to CAW's negligence or failure to perform such obligations.

“CAW Project Escrow Account Payment” has the meaning set forth in Section 11.2(b).

“CAW Regional Desalination Project Related Expenses” means the Regional Desalination Project Related Expenses incurred by CAW not included in either (i) the CAW Preconstruction Cost Memorandum Account addressed in CPUC decision No. D.03-09-022 or (ii) the Special Request Surcharge 1 Balancing Account addressed in CPUC decision No. D.06-12-040, and not previously disallowed and not previously recovered by CAW from ratepayers through existing CPUC approved rate recovery.

“CAW Reserve Fund Payment” has the meaning set forth in Section 11.3(c).

“CAW Service Area” has the meaning set forth in Recital D.

“CEQA” means the California Environmental Quality Act, Public Resources Code Section 21000 et seq. and the CEQA Guidelines promulgated thereunder.

“CEQA Guidelines” means the Guidelines for the California Environmental Quality Act set forth at Sections 15000 through 15387, inclusive, of Title 14, Chapter 3 of the California Code of Regulations.

“Certified Value Engineer” means an engineer experienced in value engineering and licensed as a professional engineer in the State of California.

“Coastal Water Project” has the meaning set forth in Application 04-09-019.

“Community Involvement Forum” has the meaning set forth in Section 6.7.

“Construction Risks” has the meaning set forth in Section 4.4(c).

“Cost Estimate” has the meaning set forth in Section 4.3.

“Cover Damages” means an amount equal to the difference between (a) the reasonable cost of securing equivalent substitute performance from a financially responsible source, and (b) all expenses saved by reason of Event of Default, including but not limited to, with respect to

MCWD and MCWRA, any amount which would have been payable by CAW to MCWD or MCWRA, whichever is applicable, under this agreement for Brackish Source Water or Product Water that should have been delivered but was not.

“CPUC” has the meaning set forth in Recital E.

“CPUC Settlement Cost Cap” means the total limit for the Cost Estimate approved by the CPUC in the Settlement Agreement, including all related financing, insurance and attorneys’ fees and expenses, but excluding interest during construction and any debt service coverage required to obtain the Indebtedness.

“Critically Dry Year” means a year in which a determination has been made by April 1st of such Water Year, based on the indexing of estimated unimpaired mean daily flows at the Monterey Peninsula Water Management District stream gage on the Carmel River at Sleepy Hollow Weir, that shows that the expected annual mean flows are at or below the 25th percentile as compared to the indexing of prior periods, which determination shall apply for such Water Year.

“Debt Service” means, for any Payment Period, the aggregate of MCWD Debt Service and MCWRA Debt Service for the Payment Period.

“Decommissioning” has the meaning set forth in Section 2.4.

“DEIR” has the meaning set forth in Recital G.

“Delivery Point” has the meaning set forth in Section 3.5.

“Desalination Plant” has the meaning set forth in Section 3.1.

“Desalination Plant General Contractor” means the contractor selected by MCWD, in accordance with the provisions of Article 4, that is able to provide the necessary design and construction services, including engineering, architecture, construction contracting, and contract administration, for the Desalination Plant.

“Desalination Plant Product Meter” has the meaning set forth in Section 3.5.

“Effective Date” shall mean the date on which all conditions precedent set forth in Article 25 have been satisfied.

“Energy Costs” means the actual electricity and other energy costs incurred by MCWD or MCWRA in connection with the operation of the Project Facilities.

“Escrow Agent” has the meaning set forth in Section 11.2(a).

“Estimated Water Quantities” shall refer to each of the CAW Estimated Product Water Quantity, the MCWD Estimated Product Water Quantity and the Total Estimated Product Water Quantity.

“Event of Default” has the meaning set forth in Section 20.1.

“Execution Date” has the meaning set forth in the introductory paragraph.

“Fees” means rates, fees or charges collected, up to but not in excess of the Fees Limit, representing the total of (i) the portion of each connection fee that MCWD charges and collects for new connections to customers within the MCWD Service Area, which are designated to be applied towards water augmentation through capital facilities for desalination in accordance with MCWD’s 2008 rate study and which is subject to adjustment in accordance with any future rate studies; and (ii) all of the water augmentation fees MCWD has received from FORA.

“Fees Limit” shall be equal to twenty-two million dollars (\$22,000,000) less the sum of (i) 16.2% of any grant funds obtained by MCWD during the Term of this Agreement which are applied to reduce the MCWD Indebtedness; (ii) all prior payments of MCWD Debt Service Allocation; and (iii) any prior collected Fees that were utilized to pay or reduce either the MCWD Indebtedness or MCWD O&M Costs; provided, however, that the Fees Limit shall never be a negative amount.

“FEIR” means and refers to the Final Environmental Impact Report certified by the CPUC and considered by MCWD and MCWRA in exercising their independent judgment as Responsible Agencies, as set forth in Recital H and Recital I.

“Financing Failure” has the meaning set forth in Section 7.1(c).

“FORA” means the Ford Ord Reuse Authority which is responsible for the redevelopment of the former Fort Ord military installation located on Monterey Bay near the Monterey peninsula.

“Force Majeure” means an event, including but not limited to, any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes (other than of the workforce of the Party asserting the Force Majeure delay), lockouts (other than of the workforce of the Party asserting the Force Majeure delay), acts of the public enemy, wars, sabotage, terrorism, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, hurricanes, tornadoes, floods, washouts, civil disturbances, inability to access financial markets due to a capital market disruption, explosions, power outages, a defect in the Project Facilities not caused by the Party asserting the Force Majeure delay, the breach of another Party of its obligations under this Agreement or a related agreement (provided, however, that the breach of an obligation by a Party under a related agreement shall not be grounds for such Party to assert a Force Majeure under this Agreement where such Party’s breach under the related agreement causes one or more of the other Parties under this Agreement to be unable to meet their obligations hereunder), the acts or omissions of one Party which prevents or delays the ability of another Party to perform any of its obligations hereunder, the enactment or adoption of a Legal Requirement after the date of this Agreement (other than a Legal Requirement enacted by the Party asserting the Force Majeure delay where such Legal Requirement was enacted for the primary purpose of overriding such Party’s obligation to comply with this Agreement), the failure or inability to obtain any necessary governmental authorization (other than that of the Party asserting the Force Majeure delay) which has been sought or requested, as the case may be,

in good faith by all reasonable legal and political means, and any other cause, whether of the kinds herein enumerated or otherwise, not reasonably within the control of the affected Party that prevents the performance by the affected Party of an obligation hereunder despite the due diligence of the affected Party to overcome such prevention. The foregoing shall in no way excuse any Party from performing its obligations hereunder to monitor, administer and enforce its contracts with third parties relating to such Party's obligations under this Agreement.

"Indebtedness" means the MCWD Indebtedness and the MCWRA Indebtedness, taken as a whole.

"Indemnified Parties" means MCWD, MCWRA or CAW, as applicable, and all shareholders, officers, directors, employees, attorneys and agents of each of the foregoing.

"Indemnified Party" means any one of the Indemnified Parties.

"Initial Capital Costs" means the MCWD Initial Capital Costs and the MCWRA Initial Capital Costs.

"Initial Capital Outfall Expenses" means all costs incurred by MCWD pursuant to the Outfall Agreement, after the Effective Date but prior to Acceptance to obtain the right to use the MRWPCA Outfall Facilities, and cause them to be in a condition to accept desalination brine from the Project Facilities.

"Initial Delivery Date" has the meaning set forth in Section 2.2.

"Initial Delivery Term" has the meaning set forth in Section 2.2.

"Inland Water Monitoring Wells" means a series of monitoring wells that are to be located, at the reasonable discretion of MCWRA and in consultation with the Advisory Committee, at places best suited for monitoring, testing and measuring the inland water in the Salinas Basin, and may include existing or, if necessary and appropriate, up to seven (7) new monitoring wells.

"Insurance Requirements" has the meaning set forth in Section 16.1.

"JAMS" has the meaning set forth in Section 6.6.

"Lead Agency" means the public agency that has the principal responsibility for carrying out or approving a project that may have a significant impact upon the environment, pursuant to Section 15637 of the CEQA Guidelines.

"Legal Requirements" means all applicable laws, rules, orders, ordinances, regulations and requirements and conditional permissions, final decision and final judgment now existing or (except to the extent any exemption or so called "grandfathering" provision is available) hereafter enacted, promulgated, made or rendered, of every government, municipality or agency, including MCWD and MCWRA, and of any agency and court thereof having jurisdiction over CAW, MCWD, MCWRA, the Project Facilities, the Product Water or the Regional Desalination Project relating to the design, development, construction, ownership, use, occupancy,

maintenance or operation of the Project Facilities or equipment thereon or therein, or the quality or use of the Product Water or the streets, sidewalks, vaults, vault spaces, curbs and gutters adjoining the Project Facilities, or the appurtenances to the Project Facilities, or the franchises and privileges connected therewith or the transactions contemplated by this Agreement including, without limitation, the Agency Act, and all applicable building laws, health codes, safety rules, handicapped access, zoning and subdivision laws and regulations.

“Letter of Credit” has the meaning set forth in Section 7.5.

“Losses” has the meaning set forth in Section 14.1(b).

“Major Change Orders” means requested change orders that individually, or in the aggregate, result in an increase of the contract price of the subject construction contract by more than five percent (5%).

“Major Subcontractor” means a subcontractor that is either (i) designated by the Parties, in consultation with the Advisory Committee, as a Major Subcontractor, or (ii) responsible for fifteen percent (15%) or more of the cost of the contract price under the subject construction contract.

“MCWD” has the meaning set forth in the introductory paragraph.

“MCWD Actual Product Water Quantity” means the actual quantity of Product Water (as measured at the MCWD Meter) received and used by MCWD during a given Payment Period.

“MCWD Agreed Allocation” has the meaning set forth in Section 9.3(a).

“MCWD Annual Allocation” has the meaning set forth in Section 9.3(d).

“MCWD Brackish Source Water Pipeline” has the meaning set forth in Section 3.4.

“MCWD Debt Service” means, with respect to any Payment Period, an amount equal to the sum of (i) any interest accruing during the applicable Payment Period on the then-outstanding MCWD Indebtedness; and (ii) that portion of principal of the MCWD Indebtedness due and payable at the end of such Payment Period.

“MCWD Debt Service Allocation” has the meaning set forth in Section 11.4(a).

“MCWD Estimated Product Water Quantity” means, based on the Water Delivery Schedule, the estimated quantity of Product Water to be received and used by MCWD during a given Payment Period.

“MCWD G&A Costs” means, following the Acceptance Date, all of MCWD’s general and administrative expenses attributable to its services and the services of its employees under this Agreement and any MCWD Operations and Maintenance Agreement.

“MCWD Indebtedness” means bonds, notes or other evidence of indebtedness incurred by or on behalf of MCWD, including without limitation any CAW Loan and/or CAW Credit

Line to MCWD, in accordance with Article 7 of this Agreement in order to finance or refinance the MCWD Initial Capital Costs and/or any MCWD Replacement Indebtedness, and all reserves required to be established by the terms of the MCWD Indebtedness.

“MCWD Initial Capital Costs” means, to the extent permitted by the terms of the MCWD Indebtedness to be reimbursed to MCWD from the proceeds of the MCWD Indebtedness and without duplication of the MCWRA Initial Capital Costs, all of (i) the MCWD Pre-Effective Date Costs and Expenses, (ii) the Initial Capital Outfall Expenses, (iii) MCWD Project Administration and Oversight Expenses, (iv) the MCWD Real Property Acquisition Costs, (v) all other costs incurred by MCWD in connection with the planning, design, development, permitting, construction and proposed operation of the Project Facilities which are necessary to bring the Project Facilities to a commercially operable status (which will be deemed to have occurred on the occurrence of the Acceptance Date), (vi) an initial amount determined, in consultation with the Project Manager, by the Parties to be deposited into the Reserve Fund Payments Account from the proceeds of the MCWD Indebtedness which when combined with the MCWRA Initial Reserve Fund Payment shall be the greater of (A) \$6,000,000.00 or (B) three percent (3%) of the estimated direct contractor costs for labor, material, equipment and services of the Project Facilities (the “MCWD Initial Reserve Fund Payment”), (vii) Pre-Acceptance Defense Costs, (viii) capitalized interest and debt service reserve amounts, and (ix) the costs of obtaining the MCWD Indebtedness including all related financing, insurance and attorneys fees and expenses; provided, however, that MCWD Initial Capital Costs shall not include any O&M Costs.

“MCWD Initial Reserve Fund Payment” has the meaning set forth in the definition of MCWD Initial Capital Costs.

“MCWD Meter” has the meaning set forth in Section 10.2.

“MCWD Operations and Maintenance Agreement” means the then-current agreement or agreements, if any, by and between MCWD and another Person or Persons which collectively provide for the maintenance and operation of the MCWD Owned Facilities.

“MCWD Operator Expenses” means the aggregate of the MCWD G&A Costs and any other additional costs or expenses incurred by MCWD under and pursuant to any MCWD Operations and Maintenance Agreement.

“MCWD Outfall Facilities” has the meaning set forth in Section 3.6.

“MCWD Owned Facilities” means each of the Brackish Source Water Receipt Point Meters, MCWD Brackish Source Water Pipeline, the Desalination Plant, the MCWD Meter, the CAW Meter, the MCWD Product Water Pipeline, the MCWD Outfall Facilities and any related facilities, excluding MCWRA Owned Facilities and CAW Facilities.

“MCWD O&M Costs” means, subject to Article 7, both the fixed and variable costs of operating and maintaining the MCWD Owned Facilities, including without limitation, all of the Annual Outfall Expenses, the MCWD Operator Expenses, the MCWD Regional Desalination Project Related Expenses, Sludge Costs and any other direct and actual costs incurred by MCWD with respect to operating and maintaining the MCWD Owned Facilities and performing

its obligations under this Agreement including such additional costs and expenses as may be incurred to address a Force Majeure event affecting MCWD's obligations hereunder.

"MCWD Permanently Allocated Product Water" has the meaning set forth in Section 9.4(d).

"MCWD Potable Groundwater Limits" refers to the limits for the withdrawal of water from the Salinas Basin imposed by law or agreement upon MCWD for the development of the former Fort Ord.

"MCWD Pre-Effective Date Costs and Expenses" means any and all Pre-Effective Date Costs and Expenses incurred by MCWD that have not been previously reimbursed by CAW.

"MCWD Product Water Contract Payments" has the meaning set forth in the initial paragraph of Section 11.4.

"MCWD Product Water Pipeline" has the meaning set forth in Section 3.5.

"MCWD Project Administration and Oversight Expenses" means the Project Administration and Oversight Expenses incurred by MCWD.

"MCWD Project Escrow Account Payment" has the meaning set forth in Section 11.2(b).

"MCWD's Proportional Share of Debt Service" shall be calculated in accordance with the provisions of Section 11.5(b).

"MCWD's Proportional Share of O&M Costs" shall be calculated in accordance with the provisions of Section 11.6(b).

"MCWD Real Property" means, as agreed upon by the Parties and in accordance with Best Industry Practices, all real property interests reasonably required to build, construct, operate and maintain the MCWD Owned Facilities under this Agreement.

"MCWD Real Property Acquisition Costs" means the purchase price for the MCWD Real Property and any other costs related to the acquisition of the MCWD Real Property paid by MCWD.

"MCWD Regional Desalination Project Related Expenses" means the Regional Desalination Project Related Expenses incurred by MCWD.

"MCWD Replacement Indebtedness" means bonds, notes or other evidence of indebtedness incurred by MCWD, including any CAW Financing to MCWD pursuant to Section 7.1(c), to fund Replacements to the MCWD Owned Facilities in accordance with Section 7.2. In no event shall the MCWD Replacement Indebtedness include MCWD Initial Capital Costs.

"MCWD Reserve Fund Payment" has the meaning set forth in Section 11.4(c).

"MCWD Service Area" has the meaning set forth in Recital A.

“MCWRA” has the meaning set forth in the introductory paragraph.

“MCWRA Brackish Source Water Pipeline” has the meaning set forth in Section 3.3.

“MCWRA Debt Service” means, with respect to any Payment Period, an amount equal to the sum of (i) any interest accruing during the applicable Payment Period on the MCWRA Indebtedness; and (ii) that portion of principal of the MCWRA Indebtedness due and payable at the end of such Payment Period.

“MCWRA G&A Costs” means following the Acceptance Date, all of MCWRA’s general and administrative expenses attributable to its services and the services of its employees under this Agreement or any MCWRA Operations and Maintenance Agreement.

“MCWRA Indebtedness” means bonds, notes or other evidence of indebtedness incurred by or on behalf of MCWRA, including without limitation any CAW Loan and/or CAW Credit Line to MCWRA, in accordance with Article 7 of this Agreement to finance or refinance the MCWRA Initial Capital Costs and/or any MCWRA Replacement Indebtedness, and all reserves required to be established by the terms of the Indebtedness.

“MCWRA Initial Capital Costs” means, to the extent permitted by the terms of the MCWRA Indebtedness to be reimbursed to MCWRA from the proceeds of the MCWRA Indebtedness and without duplication of the MCWD Initial Capital Costs, (i) the MCWRA Pre-Effective Date Costs and Expenses, (ii) the MCWRA Initial Project Administration and Oversight Expenses, (iii) the MCWRA Real Property Acquisition Costs, (iv) all other costs incurred by MCWRA in connection with the planning, design, development, permitting, construction and proposed operation of the Project Facilities which are necessary in order to bring the Project Facilities to a commercially operable status (which will be deemed to have occurred on the occurrence of the Acceptance Date), (v) an initial amount determined, in consultation with the Project Manager, by the Parties to be deposited into the Reserve Fund Payments Account from the proceeds of the MCWRA Indebtedness, which when combined with the MCWD Initial Reserve Fund Payment shall be the greater of (A) \$6,000,000.00 or (B) three percent (3%) of the estimated direct contractor costs for labor, material, equipment and services of the Project Facilities (the “MCWRA Initial Reserve Fund Payment”), (vii) Pre-Acceptance Defense Costs, (viii) capitalized interest and debt service reserve amounts; and (ix) the costs of obtaining the MCWRA Indebtedness including all related financing, insurance and attorneys fees and expenses; provided, however, that MCWRA Initial Capital Costs shall not include any O&M Costs.

“MCWRA Initial Reserve Fund Payment” has the meaning set forth in the definition of MCWRA Initial Capital Costs.

“MCWRA Operations and Maintenance Agreement” means the then-current agreement or agreements, if any, by and between MCWRA and another Person or Persons which collectively provide for the maintenance and operation of the MCWRA Owned Facilities.

“MCWRA Operator Expenses” means the aggregate of the MCWRA G&A Costs and any other additional costs or expenses incurred by MCWRA under any MCWRA Operations and Maintenance Agreement.

“MCWRA Owned Facilities” means each of the Brackish Source Water Wells, each of the Brackish Source Water Well Meters, the MCWRA Brackish Source Water Pipeline and the Inland Water Monitoring Wells, and any related facilities, excluding the MCWD Owned Facilities.

“MCWRA O&M Costs” means, subject to Section 7.4, both the fixed and variable costs of operating and maintaining the MCWRA Owned Facilities, including without limitation, all of the Monitoring Expenses, the MCWRA Operator Expenses, the MCWRA Regional Desalination Project Related Expenses, the MCWRA G&A Costs and any other direct and actual costs incurred by MCWRA with respect to operating and maintaining the MCWRA Owned Facilities and performing its obligations under this Agreement, including such additional costs and expenses as may be incurred to address a Force Majeure event affecting MCWRA's obligations hereunder.

“MCWRA Pre-Effective Date Costs and Expenses” means any and all Pre-Effective Date Costs and Expenses incurred by MCWRA that have not been previously reimbursed by CAW.

“MCWRA Project Administration and Oversight Expenses” means the Project Administration and Oversight Expenses incurred by MCWRA.

“MCWRA Project Escrow Account Payment” has the meaning set forth in Section 11.2(b).

“MCWRA Real Property” means, as agreed upon by the Parties and in accordance with Best Industry Practices, all real property interests reasonably required to build, construct, operate and maintain the MCWRA Owned Facilities under this Agreement.

“MCWRA Real Property Acquisition Costs” means the purchase price for the MCWRA Real Property and any other costs related to the acquisition of the MCWRA Real Property paid by MCWRA.

“MCWRA Regional Desalination Project Related Expenses” means the Regional Desalination Project Related Expenses incurred by MCWRA.

“MCWRA Replacement Indebtedness” means bonds, notes or other evidence of indebtedness incurred by MCWRA, including any CAW Financing to MCWRA pursuant to Section 7.1(c), to fund Replacements to the MCWRA Owned Facilities in accordance with Section 7.2. In no event shall the MCWRA Replacement Indebtedness include MCWRA Initial Capital Costs.

“Measured Brackish Water TDS” means the average of Total Dissolved Solids of the Brackish Source Water drawn and measured at each of the Brackish Source Water Well Meters.

“Measured Inland Water TDS” means the average of Total Dissolved Solids drawn and measured from the Inland Water Monitoring Wells.

“Measured Ocean Water TDS” means the Total Dissolved Solids measured in water drawn from the ocean at locations to be selected, at the reasonable discretion of MCWRA and in

consultation with the Advisory Committee, that are best suited for monitoring, testing and measuring ocean water.

“Member” or “Members” has the meaning set forth in Section 6.3.

“Meter” or “Meters” has the meaning set forth in Section 10.2.

“MGD” means million gallons per day of water.

“Milestone” or “Milestones” has the meaning set forth in Section 4.9.

“Monitoring Expenses” means all MCWRA’s actual direct costs necessary for or associated with monitoring, testing and measuring related to the Brackish Source Water Wells pursuant to Sections 8.2(b) and 10.3 of the Agreement, including, without limitation, all costs associated with services of any and all consultants and contract service providers retained to assist in all such monitoring, testing and measuring.

“MRWPCA” means the Monterey Regional Water Pollution Control Agency.

“MRWPCA Outfall Facilities” means the conveyance facilities owned by MRWPCA and operated by MRWPCA to discharge treated wastewater, storm water and brine into the ocean.

“Non-renewal Notice” has the meaning set forth in Section 2.3.

“O&M Costs” means all costs of MCWD and MCWRA in connection with the Project Facilities, including, but not limited to, the aggregate of the MCWD O&M Costs, the MCWRA O&M Costs, the Energy Costs and the CAW Regional Desalination Project Related Expenses and any other costs subject to reimbursement under this Agreement, except those costs (i) previously reimbursed by CAW to MCWD or MCWRA, (ii) included in the Indebtedness, or (iii) paid from the Reserve Fund Payments Account.

“Operations and Maintenance Agreements” means, if applicable, the MCWD Operations and Maintenance Agreement or MCWD Operations and Maintenance Agreements and the MCWRA Operations and Maintenance Agreement or MCWRA Operations and Maintenance Agreements.

“Operator” means MCWD with respect to the MCWD Owned Facilities and MCWRA with respect to the MCWRA Owned Facilities and CAW with respect to the CAW Facilities.

“Outfall Agreement” means that certain agreement to be entered into by and between MCWD and MRWPCA, prior to the Effective Date, whereby MCWD is authorized to utilize the MRWPCA Outfall Facilities to transfer desalination brine from the MCWD Owned Facilities into the ocean.

“Parties” has the meaning set forth in the introductory paragraph.

“Party” has the meaning set forth in the introductory paragraph.

“Payment Period” has the meaning set forth in Section 11.8.

“Payment Period Payment Date” has the meaning set forth in Section 11.3(a).

“Payment Period Schedule” shall refer to the schedule to be prepared by the Parties in accordance with the provisions described in Section 11.8.

“Peak Demand Period” means, typically, the calendar months June, July and August during a given Calendar Year or the periods when, due to weather conditions, system emergencies and/or fire suppression demands, the demand for water from the CAW Service Area is high.

“Permit Failure” has the meaning set forth in Section 4.8.

“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.

“Potable” means water that satisfies the Legal Requirements for human use.

“ppm” means parts per million.

“Pre-Acceptance Defense Costs” has the meaning set forth in Section 14.2.

“Pre-Effective Date Costs and Expenses” means any and all of MCWD’s or MCWRA’s legal, staff and consulting fees and expenses and any other costs or expenses incurred, prior to the Effective Date, in connection with analysis and development of a desalination project in Monterey County commencing with the Regional Urban Water Augmentation Project (not including the recycled water component thereof) and continuing through CAW’s efforts to develop the Coastal Water Project. Such costs shall include, but not be limited to, costs incurred in CPUC proceedings in Application 04-09-019 and Application No. 09-04-015. All such costs and expenses, through and including December 31, 2009, are summarized in **Exhibit D** attached hereto. MCWD and MCWRA shall within ninety (90) days after the Effective Date, update and supplement **Exhibit D** to reflect the Pre-Effective Date Costs and Expenses incurred on or after January 1, 2010 through and including the Effective Date.

“Preliminary Design Documents” has the meaning set forth in Section 4.6.

“Prime Agreements” has the meaning set forth in Section 4.4(b).

“Procurement Documents” means the documents prepared by the Project Manager, in consultation with the Party which is the owner of the respective portion of the Regional Desalination Project addressed in such documents, which represent, as deemed appropriate, either the Preliminary Design Documents, a thirty percent (30%) design level for the Desalination Plant or any other level of design, including contract specifications, contract requirements (see Section 4.4(c)) and all other documents necessary for solicitation and selection of a contractor, consultant or service provider.

“Product Water” means water that is produced by the Desalination Plan, is potable and complies with all Legal Requirements for human consumption and use.

“Product Water Contract Payments” means the CAW Product Water Contract Payments and the MCWD Product Water Contract Payments.

“Program Initiation Date” shall be the later of (i) the date upon which the Regional Desalination Project PMA is executed by and among the Parties and the Project Manager; or (ii) the date of receipt by each of MCWD and MCWRA of public financing commitments with respect to the MCWD Indebtedness and the MCWRA Indebtedness, respectively, that is sufficient to fund all of the projected costs and expenses to be incurred in connection with the construction of the Project Facilities.

“Project Administration and Oversight Expenses” means the CAW Project Administration and Oversight Expenses and all reasonable and prudent costs incurred by MCWD and MCWRA of administering, overseeing and managing the subject Party's performance of its obligations under this Agreement and the other agreements entered into by such Party required for the design, development and initial start-up of the Regional Desalination Project from and after the Effective Date and up to and including sixty (60) days following Acceptance, such as (i) the portion of the salaries and wages of employees reasonably and fairly allocated to the time spent by such employee on such performance including time attending meetings in connection with the Regional Desalination Project, and reasonable and prudent travel expenses; (ii) fees of auditors, accountants, attorneys or engineers; (iii) insurance premiums; and (iv) all other reasonable, necessary and prudent costs or charges required to be paid by the subject Party to comply with the terms of such agreements excluding, however, any costs related to such Party's negligence or failure to comply with such agreements. In no event shall Project Administration and Oversight Expenses include Pre-Effective Date Costs and Expenses, Pre-Acceptance Defense Costs previously reimbursed by CAW, or O&M Costs. The Project Administration and Oversight Expenses shall be included in the Initial Capital Costs and reimbursed to MCWD and MCWRA from their respective Indebtedness.

“Project Escrow Account” has the meaning set forth in Section 11.2(a).

“Project Escrow Account Agreement” has the meaning set forth in Section 11.2(a).

“Project Escrow Account Fees” shall mean all fees and expenses of MCWD and MCWRA of or related to the establishment and maintenance of the Project Escrow Account, including reasonable attorney's fees of each of the Parties and the Escrow Agent's maintenance and service fees.

“Project Escrow Account Payments” has the meaning set forth in Section 11.2(b).

“Project Facilities” has the meaning set forth in Article 3.

“Project Manager” has the meaning set forth in Section 4.1.

“Project Schedule” has the meaning set forth in Section 4.10.

“Regional Desalination Project” has the meaning set forth in Recital I and generally consists of the Project Facilities and the CAW Facilities.

“Regional Desalination Project Annual Report” means a report which includes full accounting of the Regional Desalination Project costs, revenues and operations, including reporting on the Average Percentage of Salinas Basin Water, the MCWD Agreed Allocation, Total Actual Product Water Quantity and sales of Product Water.

“Regional Desalination Project Cessation” shall have the meaning set forth in Section 7.4.

“Regional Desalination Project PMA” has the meaning set forth in Section 4.4(a).

“Regional Desalination Project Related Expenses” are the direct prudent and reasonable costs or expenses incurred by a Party in connection with the following: obtaining a Letter of Credit or the insurance coverage required hereunder (Sections 7.5, 16.1 and 16.2); the third party resolution costs described in Section 6.6; the costs associated with the Community Involvement Forum pursuant to Section 6.7; the costs of arranging and documenting any CAW Financing; Project Escrow Account Fees; the cost of preparing the Regional Desalination Project Annual Report described in Section 11.13; the Losses described in Section 14.2 (other than Pre-Acceptance Defense Costs either paid from the Indebtedness or previously reimbursed by CAW); any deficiency described in Article 15; any taxes payable (excluding those attributable to the CAW Facilities) with respect to this or any Operations and Maintenance Agreements to which CAW and either or both MCWRA and MCWD are parties; and the cost of negotiating and preparing any amendments to this Agreement and obtaining any necessary approvals; provided, however, in no event shall any Product Water Contract Payments be included in Regional Desalination Project Related Expenses. Until repaid by means of the Product Water Contract Payments, any such Regional Desalination Project Related Expenses shall bear a rate of interest equivalent to the weighted average interest rate on the Indebtedness and such accrued interest shall constitute Regional Desalination Project Related Expenses.

“Renewal Term” has the meaning set forth in Section 2.3.

“Replacement Budget” has the meaning set forth in Section 7.2.

“Replacement Indebtedness” means any MCWD Replacement Indebtedness and/or MCWRA Replacement Indebtedness.

“Replacements” has the meaning set forth in Section 7.2.

“Representative” has the meaning set forth in Section 21.1.

“Reserve Fund Expenditure” has the meaning set forth in Section 7.2.

“Reserve Fund Payments” means the aggregate of the CAW Reserve Fund Payments and the MCWD Reserve Fund Payments due on each Payment Period Payment Date.

“Reserve Fund Payments Account” has the meaning set forth in Section 11.2(b).

“Reserve Percentage” has the meaning set forth in Section 11.3(d).

“Responsible Agency” has the meaning set forth in Section 15381 of the CEQA Guidelines.

“Salinas Basin” means the Salinas River Groundwater Basin as that term is used in the Agency Act. For purposes of the MCWRA’s authority under Section 9(u) of the Agency Act to prevent the export of groundwater from the Salinas River Groundwater Basin, “Salinas Basin” includes the former Fort Ord.

“Settlement Agreement” has the meaning set forth in Recital M.

“Scheduled Acceptance Date” has the meaning set forth in Section 4.12.

“Sludge Costs” means the actual costs and expenses incurred in connection with the treatment, removal and disposal of solids that are not otherwise disposed of in the brine that is produced by the Project Facilities.

“SRF” has the meaning set forth in Section 7.1(a).

“Substantial Completion” has the meaning set forth in Section 4.12(a).

“Substantive Amendments” means any amendment to this Agreement that will result in either (i) an increase in CAW Product Water Contract Payments of more than 10%; (ii) a an increase in the capacity of the Project Facilities of more than 500 AFY; or (iii) a material alteration of the water quality obligations set forth in Article 9 of this Agreement.

“SWRCB” has the meaning set forth in Recital T.

“TDS” means Total Dissolved Solids.

“Term” has the meaning set forth in Section 2.3 or such shorter period as may result from earlier termination of the Agreement as provided herein.

“Total Actual Product Water Quantity” means for a given Payment Period, the sum of the CAW Actual Product Water Quantity and the MCWD Actual Product Water Quantity.

“Total Dissolved Solids” means the combined content of all inorganic and organic substances contained in a liquid which are present in a molecular, ionized or micro-granular suspended form small enough to survive filtration through a sieve size of two micrometres.

“Total Estimated Product Water Quantity” means for a given Payment Period, the sum of the CAW Estimated Product Water Quantity and the MCWD Estimated Product Water Quantity.

“Value Engineering” means a specialized cost control technique in which the owner and/or operators meet and confer with a Certified Value Specialist to conduct a systematic and creative analysis of the functions of a project or operation to determine how best to achieve the necessary function, performance and reliability at the minimum life cycle cost.

“Water Delivery Schedule” is defined in Section 9.4(b).

“Water Year” means October 1st through September 30th.

2. **Term.**

2.1 **Effective Date.** This Agreement shall be effective and enforceable on the Effective Date.

2.2 **Initial Delivery Term.** The term of this Agreement for the delivery of Product Water shall begin on the date on which the Parties jointly determine that Acceptance has occurred pursuant to Sections 4.13 through 4.16 of this Agreement and the Project Facilities are ready to deliver Product Water to CAW, which shall be the Acceptance Date as defined in Section 4.16, and shall continue from the Acceptance Date for a period of thirty-four (34) years thereafter (the “Initial Delivery Term”), unless sooner terminated or extended as hereinafter provided.

2.3 **Renewal Term(s).** Following the Initial Delivery Term or the applicable Renewal Term, so long as no Event of Default by CAW shall have occurred and be continuing on the last day of the Initial Delivery Term or the applicable Renewal 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 Delivery Term, the “Term”), unless either CAW or MCWD provides written notice to the other Parties (each, a “Non-renewal Notice”), at least five (5) years prior to the start of such Renewal Term, of such Party’s intention not to renew the Agreement; provided, however, and notwithstanding the foregoing, MCWD may only provide a Non-renewal Notice to CAW if CAW (or, for the purposes of this Section 2.3, any Affiliate of CAW) has access to an alternative water supply or supplies that (i) provides Product Water at a cost equivalent to or less than the then-current cost of Product Water to CAW; (ii) are of a capacity, individually or in the aggregate, which are at least equal to the CAW Allocation and may be used by CAW to provide water to its customers; and (iii) has been approved by the CPUC. At MCWD’s request, CAW shall seek and use its reasonable and diligent efforts to obtain the above described CPUC approval.

2.4 **End of Term Reserve Fund Payments Account Balance.** Upon the expiration or early termination of the Term, except in the case of the Project Facilities being decommissioned, the balance of the Reserve Fund Payments Account shall not be returned or released to any Party but shall remain in the Reserve Fund Payments Account and used to fund future Replacements. In the event the Project Facilities are being decommissioned, the Reserve Fund Payments Account shall be used to pay the costs of decommissioning the Project Facilities (“Decommissioning”). Decommissioning shall include any necessary measuring, testing and monitoring of the Salinas Basin that may need to occur in conjunction with Decommissioning following termination of this Agreement. If there is any portion of the Reserve Fund Payments Account remaining after Decommissioning, such remaining funds shall be returned for the benefit of the ratepayers of CAW and MCWD and the assesseees of MCWRA in proportion to each such Party’s payments into the Reserve Fund applying “first in, first out” accounting principles. If, however, the costs of Decommissioning exceed the amount of funds in the Reserve Fund Payments Account, CAW and MCWD shall be responsible for paying all

additional costs for Decommissioning pro rata based on the CAW Debt Service Allocation and the MCWD Proportional Share of Debt Service.

3. **Project Facilities and CAW Facilities Description.** The Project Facilities includes but is not limited to each of the elements described in subsections 3.1 through 3.6 of this Article 3, along with all roads, grounds, additions, repairs, replacements, easements, improvements, modifications and appurtenant structures thereto, as well as machinery and equipment therefor (collectively, the “Project Facilities”).

3.1 **Desalination Plant.** MCWD will design and construct, in consultation with CAW and MCWRA, a water desalination plant (the “Desalination Plant”), to be owned and operated by MCWD and located on the MCWD Real Property, for the purpose of desalinating Brackish Source Water such that the resulting treated water is Product Water.

3.2 **Brackish Source Water Facilities.** MCWRA will design and construct, in consultation with CAW and MCWD, new wells for extraction of Brackish Source Water (each, a “Brackish Source Water Well” and collectively, the “Brackish Source Water Wells”), to be owned and operated by MCWRA and located on the MCWRA Real Property. MCWRA will also own and operate existing monitoring wells as Inland Water Monitoring Wells, and, if necessary and after compliance with CEQA, may design and construct up to seven (7) new Inland Water Monitoring Wells to monitor the impact of the extraction of the Brackish Source Water on the Salinas Basin.

3.3 **MCWRA Brackish Source Water Pipeline.** MCWRA will design and construct, in consultation with CAW and MCWD, and MCWRA will own and operate, a series of water conveyance facilities (the “MCWRA Brackish Source Water Pipeline”), including a portion of pipeline and appurtenances to convey Brackish Source Water from each of the Brackish Source Water Meters to the Brackish Source Water Receipt Point Meter.

3.4 **MCWD Brackish Source Water Pipeline.** MCWD will design and construct, in consultation with CAW and MCWRA, and MCWD will own and operate, a series of water conveyance facilities (the “MCWD Brackish Source Water Pipeline”), including a portion of pipeline and appurtenances to convey Brackish Source Water from the Brackish Source Water Receipt Point Meter to the Desalination Plant.

3.5 **MCWD Product Water Pipeline.** MCWD will design and construct, in consultation with CAW and MCWRA, and MCWD will own and operate, a series of water conveyance facilities (the “MCWD Product Water Pipeline”), including a portion of pipeline and appurtenances to convey Product Water from the Desalination Plant to and including the CAW Meter located near First Street and Beach Range Road (at the Highway 1 under-crossing) near the Marina/Seaside Border, in the City of Marina, California (the “Delivery Point”). MCWD shall install, maintain and operate measuring and recording equipment (the “Desalination Plant Product Meter”) which is designed to measure the discharge of Product Water into the MCWD Product Water Pipeline.

3.6 **MCWD Outfall Facilities.** MCWD will design and construct, in consultation with CAW and MCWRA, and MCWD will own and operate, a series of water

conveyance facilities (the “MCWD Outfall Facilities”), including a holding tank and reservoir and a portion of pipeline and appurtenances to convey reject water from the Desalination Plant, to the Outfall.

3.7 CAW Facilities. CAW will design and construct, in consultation with MCWD and MCWRA, and CAW shall own and operate the water delivery system from the Delivery Point (and continuing beyond the Delivery Point and into the CAW distribution system) (the “CAW Pipeline”). None of the facilities owned by CAW and downstream of the CAW Meter (together with the CAW Pipeline and the ASR, the “CAW Facilities”) shall be part of the Project Facilities.

4. Design, Engineering, Construction and Permitting of the Regional Desalination Project.

4.1 Responsibility and Coordination. The Parties each will be responsible for the permitting, design and construction of their respective portions of the Regional Desalination Project. To facilitate coordination, the Parties will jointly retain a single Person to be the project manager for the design, construction and permitting of the Regional Desalination Project (the “Project Manager”). The duties of the Project Manager and the Parties relative to the supervision, administration and coordination of the design, construction and permitting of the Regional Desalination Project are further addressed in Section 4.5. In addition, as more particularly described in Article 6 below, the Advisory Committee will meet as often as required to assure coordination among the Parties with respect to the permitting, design and construction of their respective elements of the Regional Desalination Project.

4.2 Selection Process. The Project Manager shall be jointly selected by the Parties. Each Party, with the assistance of the Project Manager and in consultation with the Advisory Committee, shall manage the process of soliciting and receiving qualifications and/or proposals for all other design services, engineering services, construction management services, support services and one or more contractors to design, permit and construct the facilities to be owned by such Party. The Advisory Committee shall also develop and provide to the Parties recommended minimum qualifications and selection criteria for each contractor and Major Subcontractor and service provider and shall review and evaluate all proposals against the selection criteria and make recommendations to the applicable Party with respect to such Party's selection. However, in all cases, each Party shall retain ultimate authority and responsibility for selection relative to contractors and service providers with respect to its facilities. Among other criteria, each Party shall evaluate the following five primary criteria: (i) the financial terms of the subject proposal, (ii) the technical capabilities of the contractor or service provider, (iii) the reputation and financial responsibility of the contractor or service provider, (iv) the contractor's or service provider's experience with similar projects and/or scope of services, and (v) to the extent applicable, ability to cost-effectively coordinate with the permitting, design and construction of the other elements of the Regional Desalination Project so that the Regional Desalination Project is completed and is operable on a coordinated and integrated basis. The applicable Party shall determine the weighting of each criterion and the selection will be made by that Party after considering all criteria and not any single criterion and the Advisory Committee's recommendations.

4.3 Cost Management.

(a) Cost Estimate. The estimated Initial Capital Costs of the Project Facilities as of March 14, 2010, excluding interest during construction and any debt service coverage required to obtain the Indebtedness, is shown on **Exhibit C** hereto (the "Cost Estimate").

(b) Selection Process. Following the full execution and delivery of the Regional Desalination Project PMA, the selection process described in Section 4.2 above shall be completed by the Parties with respect to each of the contractors and/or consultants required to design, construct and permit their respective portions of the Regional Desalination Project. Such selection process relative to the contractors shall necessarily involve a competitive procurement process among those contractors which the applicable Party has determined have the required experience and qualifications to build the subject type of facility. The procurement process will specifically incorporate the required contract terms which the Parties, in consultation with the Advisory Committee, have determined shall be included in each construction contract to protect the interests of all Parties and the coordination of the design, construction and permitting of the Regional Desalination Project. All solicitation documents utilized in the competitive procurement process shall specifically reserve to the Party or Parties soliciting a proposal or proposals the absolute right to reject all such proposals. Where one contractor is qualified to construct portions of the Regional Desalination Project to be owned by different Parties, the applicable Parties shall cooperate among themselves to utilize a coordinated competitive procurement process designed to elicit reasonable proposals from the qualified contractors. Each of the Parties shall endeavor to obtain at least three (3) proposals from qualified contractors for each construction contract.

(c) Value Engineering. The Parties shall mutually engage an independent Certified Value Engineer to perform Value Engineering reviews of the plans of each Party's respective portion of the Regional Desalination Project. Each Party shall conduct Value Engineering for its facilities at least once on the basis of construction plans that are approximately 30% to 60% complete. In addition, each Party may, in its discretion, require that Value Engineering for its facilities occur at an earlier or later stage. Each Party shall be invoiced for the costs and expenses associated with Value Engineering services directly attributable to such Party's respective facilities and such costs shall constitute Initial Capital Costs (excluding the costs of the CAW Facilities); provided, however, that Value Engineering services which benefit all of the Regional Desalination Project, shall be reasonably allocated among the Parties by the independent Certified Value Engineer.

(d) Evaluation of Proposals. After the proposals required to construct the Regional Desalination Project are received, the Parties collectively, and each Party as to the facilities to be constructed, owned and operated by that Party, after consultation with the Advisory Committee and the Project Manager, shall:

(i) Evaluate the proposals and contractors or service providers against the criteria established by the Party or Parties pursuant to Section 4.2;

(ii) Evaluate design, specifications, construction materials and other items to determine whether changes should be made in relation to construction cost considerations;

(iii) Be permitted to reject any proposal not supported by the Value Engineering review.

(e) Costs in Excess of CPUC Authorization. If the contracted or the actual aggregate of the costs set forth in **Exhibit C** will exceed the total estimated costs set forth in CPUC Settlement Cost Cap, CAW shall seek CPUC approval of the costs in excess of the CPUC Settlement Cost Cap. Provided that CAW has diligently pursued the request for approval by the CPUC of the revised estimate of construction costs during such period, if such request for approval is denied or is not fully addressed and approved by the CPUC within six (6) months, CAW may terminate this Agreement by written notice to the other Parties; provided, however, that prior to any such termination, the Parties shall meet and confer in order to consider alternative means of addressing the overrun of the Cost Estimate in order to continue the Regional Desalination Project.

(f) Cost Effectiveness. Notwithstanding that the Cost Estimate anticipates a greater cost for any item or improvement, each Party shall endeavor in good faith to administer the Prime Agreements (as defined below) to which it is a party in a manner intended to result in the most cost effective construction and delivery of services considering all factors including the life cycle and functionality of the subject improvements.

4.4 Contracting.

(a) Regional Desalination Project PMA. Within sixty (60) days of the Effective Date, the Parties shall enter into an agreement (the "Regional Desalination Project PMA") with the Project Manager for the Project Manager's coordination and administration of those portions of design, engineering, construction, permitting and Acceptance testing of each portion of the Regional Desalination Project which prudent project management dictates should be performed in common for the Regional Desalination Project taken as a whole in order to help avoid and/or mitigate unnecessary costs and to facilitate the coordination and integration of the design, construction, permitting and operation of the Regional Desalination Project. In addition to and not in lieu of such the Regional Desalination Project PMA, each Party may enter into a separate contract with the Project Manager relating to the management of those aspects of the facilities to be owned by such Party which are not covered by the Regional Desalination Project PMA. Each Party shall be invoiced the costs and expenses associated with the Project Manager's services directly attributable to such Party's respective facilities and such costs shall constitute Initial Capital Costs (excluding the costs of the CAW Facilities); provided, however, that services of the Project Manager which benefit all of the Regional Desalination Project, shall be reasonably allocated among the Parties by the Parties.

(b) Prime Agreements. Subject to the terms of this Article 4, prior to when required by the Milestones, each Party shall enter into the construction contracts and service agreements (consulting, design and engineering agreements) required for the design,

permitting and construction of such Party's Facilities (collectively referred to herein as the "Prime Agreements").

(c) Required Contracting Terms. Prior to the execution of any design, construction, or design-build agreements, each Party, in consultation with the Advisory Committee, shall establish required contracting terms such as bonding, change order, indemnity, lien removal, liquidated damages, insurance, licensing requirements, acceptance testing, inspection, regular project meeting and reporting requirements, correction of non-conforming improvements, builder's risk insurance, errors and omissions, warranty terms, third party beneficiary terms and such other terms as may be necessary or desirable to facilitate the coordination of the design, construction and permitting of the Regional Desalination Project and/or required contract forms for each of the Prime Agreements. At a minimum, the contractors under any of the Prime Agreements and the Major Subcontractors, to the extent required by the Parties, shall warrant the work and materials for which it is responsible for a period of at least one (1) year after Acceptance. To the maximum extent practically and legally possible, the Parties intend for required contract terms to make the contractors primarily responsible for the risks of design, permitting in connection with construction, compliance with Legal Requirements, building and labor disputes (collectively, the "Construction Risks") and for such Construction Risks to be assumed by the contractors.

4.5 Project Management. The Parties shall, with the assistance of the Project Manager relative to its responsibilities under the Regional Desalination Project PMA and with the input of the Advisory Committee, supervise, administer and coordinate all design, engineering, permitting and construction relating to their respective portions of the Regional Desalination Project. The Regional Desalination Project PMA shall require the Project Manager to prepare and submit to each Party monthly written progress reports regarding the status of (i) the design, permitting and construction of the Regional Desalination Project; (ii) Authorization of Construction for the various portions of the Regional Desalination Project; (iii) the Prime Agreements and the contractor's, engineer's or consultant's performance thereunder; (iv) compliance with the Project Schedule and the reasons for any variance; (v) change orders, percentage completion, use of contingency, and variance from the budget for each component of the Regional Desalination Project; (vi) progress with respect to the Milestones; and (vii) any other subject reasonably required by the Advisory Committee to be reported on to the Parties by the Project Manager. The Parties and the Project Manager, under the supervision of each Party in regard to their respective portions of the Regional Desalination Project, shall supervise and administer the Prime Agreements so as to (i) complete the design and engineering, permitting and construction of each portion of the Regional Desalination Project in accordance with the Milestones and Project Schedule and so as to minimize costs that may arise from the failure to coordinate the design and engineering, permitting and construction of each portion of the Regional Desalination Project, and (ii) complete the Regional Desalination Project in a cost-effective and coordinated fashion which results in the Regional Desalination Project functioning as an integrated unit, including coordinating the interconnection of all components of the Regional Desalination Project. The Regional Desalination Project PMA shall also provide that the Project Manager shall assist the Parties in the selection of consultants, design professionals and the contractors; manage and coordinate permitting, subsequent environmental documentation, financing and design development, including preparation of funding applications; and manage the construction of the Regional Desalination Project. In addition, the

Regional Desalination Project PMA shall require the Project Manager to attend meetings of and consult with each Party as well as the Advisory Committee on a regular basis or as required by each such Party or the Advisory Committee and to provide to the Parties with the Project Manager's recommendations on matters related to cost control, design and/or functional processes, schedule and/or coordination problems in the overall design, construction and permitting of the Regional Desalination Project. The Regional Desalination Project PMA shall provide that, with respect to the coordination and functional integration of the Regional Desalination Project, the Project Manager shall regularly update the Advisory Committee.

4.6 Constructability Review. The Parties, in consultation with the Project Manager and the Advisory Committee, in accordance with Best Industry Practices, shall appoint a qualified Person or committee of qualified Persons who is/are independent from any Person or Persons who have designed any portion of the Project Facilities to review each of the Preliminary Design Documents, Procurement Documents and 100% Construction Documents, as appropriate, in order to provide an effective constructability review to assure that (i) the Project Facilities as detailed in the Preliminary Design Documents, Procurement Documents and 100% Construction Documents, can be constructed using construction methods, materials and techniques in compliance with Best Industry Practices; (ii) the Preliminary Design Documents and Procurement Documents provide the contractor or contractors, as applicable, with clear, concise information that can be utilized to prepare a competitive cost-effective proposal; (iii) the Regional Desalination Project when constructed in accordance with the Preliminary Design Documents, Procurement Documents and 100% Construction Documents will result in a Regional Desalination Project that can be maintained in a cost-effective manner by the Parties throughout the Term of this Agreement; and (iv) the Project Facilities when constructed shall consider the lowest achievable lifecycle cost to operate and maintain the Project Facilities over their useful life.

4.7 Preliminary Design Documents. Based on the description of the Regional Desalination Project set forth in this Agreement, each Party, in consultation with the Advisory Committee and the Project Manager, shall prepare preliminary design documents and preliminary specifications for such Party's respective portions of the Regional Desalination Project (the "Preliminary Design Documents").

4.8 Obtaining Required Permits. Each Party shall use its good faith diligent efforts, and shall require its applicable contractors and consultants to do the same, to obtain all governmental permits and approvals required for the construction of such Party's portion of the Regional Desalination Project. Such efforts shall commence as early as practically possible. If an event of Force Majeure arises with respect to any permit a Party or its contractor and consultants must obtain, subject to the terms of Section 24, where the failure to obtain a required permit results in a delay of any Milestone by 24 months, such a delay shall constitute a failure to obtain the required permit in a timely fashion (each, a "Permit Failure") despite such Permit Failure's continued characterization as a Force Majeure delay and any Party may terminate this Agreement by written notice to the other Parties.

4.9 Milestones. Subject to extension in accordance with the terms of Section 25 for actual delays caused by reason of Force Majeure, the applicable Party, working

with the Project Manager and in consultation with the Advisory Committee, shall be responsible for satisfying the following obligations (each, a “Milestone” and collectively, the “Milestones”).

(a) MCWRA-Owned Facilities. Completion by MCWRA of all of the following:

(i) Completion of Preliminary Design Documents for the MCWRA Owned Facilities: not later than 11 months after Program Initiation Date.

(ii) Selection of design engineer for the MCWRA Owned Facilities: not later than 2 months after completion of Preliminary Design Documents.

(iii) Authorization of design engineer for the MCWRA Owned Facilities: not later than 2 months after selection of design engineer.

(iv) Completion of 100% Construction Documents for the MCWRA Owned Facilities: not later than 9 months after authorization of design engineer.

(v) Substantial Completion of MCWRA Owned Facilities: not later than 16 months after completion of 100% Construction Documents.

(vi) Acceptance of the MCWRA Owned Facilities: not later than 2 months after Substantial Completion of the MCWRA Owned Facilities.

(b) MCWD-Owned Facilities. MCWD shall cause:

(i) Desalination Plant:

(1) Completion of Procurement Documents for the Desalination Plant: not later than 13 months after Program Initiation Date.

(2) Completion of selection process for Desalination Plant General Contractor for the Desalination Plant: not later than 2 months after completion of the Procurement Documents.

(3) Completion of 100% Construction Documents for the Desalination Plant: not later than 9 months after selection of Desalination Plant General Contractor.

(4) Substantial Completion of Desalination Plant: not later than 17 months after completion of 100% Construction Documents for the Desalination Plant.

(5) Acceptance of the Desalination Plant: not later than 4 months after Substantial Completion of the Desalination Plant.

(ii) MCWD Owned Facilities (excluding the Desalination Plant).

(1) Completion of Preliminary Design Documents for MCWD Owned Facilities (excluding the Desalination Plant): not later than 11 months after Program Initiation Date.

(2) Selection of design engineer for MCWD Owned Facilities (excluding the Desalination Plant): not later than 2 months after completion of Preliminary Design Documents.

(3) Authorization of design engineer for MCWD Owned Facilities (excluding the Desalination Plant): not later than 2 months after selection of design engineer.

(4) Completion of 100% Construction Documents for the MCWD Owned Facilities (excluding the Desalination Plant): not later than 9 months after authorization of design engineer.

(5) Substantial Completion of MCWD Owned Facilities (excluding Desalination Plant): not later than 16 months after completion of 100% Construction Documents for the MCWD Owned Facilities (excluding the Desalination Plant).

(6) Acceptance of the MCWD Owned Facilities (excluding Desalination Plant): not later than 2 months after Substantial Completion of the MCWD Owned Facilities (excluding Desalination Plant).

(c) CAW Facilities. CAW shall cause:

(i) Completion of Preliminary Design Documents for CAW Facilities: not later than 11 months after Program Initiation Date.

(ii) Selection of design engineer for CAW Facilities: not later than 2 months after completion of Preliminary Design Documents.

(iii) Authorization of design engineer for CAW Facilities: not later than 2 months after selection of design engineer.

(iv) Completion of 100% Construction Documents for CAW Facilities: not later than 9 months after authorization of design engineer.

(v) Substantial Completion of CAW Facilities: not later than 16 months after completion of 100% Construction Documents for the CAW Facilities.

(vi) Acceptance of CAW Facilities: not later than 2 months after Substantial Completion of the CAW Facilities.

4.10 Project Schedule. Following the Program Initiation Date and in conjunction with the Milestones set forth in Section 4.9 and the various Prime Agreements executed by the Parties, the Project Manager shall prepare a comprehensive schedule ("Project Schedule") for the completion of the major components of the Regional Desalination Project, taking into account risks, constraints, commitment of resources and other issues that require attention. The Project Manager shall be responsible for updating the Project Schedule and shall provide the Advisory Committee with updates at least monthly and in accordance with the provisions of Section 4.5. Except for the test well(s) contemplated under Section 8.2, no Party shall commence construction until it has received Authorization of Construction from the Project Manager and the Project Manager shall not issue any Authorization of Construction prior to MCWRA's determination pursuant to Section 8.2 that the MCWD Agreed Allocation will comply with Legal Requirements.

4.11 Inspection and Audit Rights. Each Party and the Project Manager shall have the right to review and audit the progress reports, progress payments, and other related information, including the right to independent inspection of each other Party's work in progress with respect to the Regional Desalination Project. During the progress of the work through Substantial Completion, each Party shall at all times during normal working hours afford the other Parties, their consultants and Project Manager and appropriate regulatory representatives every reasonable opportunity for observing work in progress by such Party's contractors. During any such observation, all representatives of the Project Manager, of each Party and the consultants of each Party and regulatory body representatives shall comply with all reasonable safety and other rules and regulations applicable to presence in or upon the construction site, and shall in no way interfere with any contractor's performance.

4.12 Substantial Completion of the Project Facilities. MCWD and MCWRA shall each give CAW at least thirty (30) days prior written notice of the expected date of any Substantial Completion and of commencement of start-up operations of the MCWD Owned Facilities or the MCWRA Owned Facilities, respectively, in preparation for conducting the Acceptance Test (the "Scheduled Acceptance Date").

(a) Conditions to Substantial Completion. MCWD shall not commence start-up operations of the Desalination Plant in preparation for conducting the Acceptance Tests until Substantial Completion has occurred. "Substantial Completion" shall occur only when all of the following conditions have been satisfied or waived by the Parties in writing:

(i) the applicable contractor or design professional has certified to MCWD or MCWRA, as applicable, that "substantial completion," as defined under the applicable construction contract, has occurred;

(ii) a preliminary or temporary certificate of occupancy has been issued with respect to the Project Facilities, if required by any Legal Requirements;

(iii) MCWD and MCWRA are authorized under any applicable Legal Requirements to conduct an Acceptance Test and to operate their respective facilities, and such authorization has not been withdrawn or revoked; and

(iv) MCWD and MCWRA have submitted written certification that all of the foregoing conditions have been satisfied.

4.13 Acceptance Testing.

(a) Separate Acceptance Tests Permitted. The MCWD Owned Facilities and MCWRA Owned Facilities shall be subjected to Acceptance Testing and certification of Acceptance Testing to be provided pursuant to Section 4.15. MCWD and MCWRA may conduct Acceptance Testing separately and at different times.

(b) Submittal of Acceptance Test Plan. At least one hundred (100) days before the earlier of any scheduled or projected Acceptance Date or the date upon which MCWD or MCWRA plan to begin Acceptance Testing, the Project Manager shall prepare and submit to each of MCWD, MCWRA and CAW for their respective review and consideration a detailed plan for the Acceptance Test for the MCWD Owned Facilities or the MCWRA Owned Facilities. Final approval of the respective Acceptance Test plans by each of MCWD and MCWRA for their respective Project Facilities shall constitute a final approval of the plan for the Acceptance Test (each, an "Acceptance Test Plan").

(c) Notice of Initiation of Acceptance Tests. MCWD and MCWRA shall also provide CAW with reasonable prior written notice of the expected initiation of the Acceptance Test for the MCWD Owned Facilities or the MCWRA Owned Facilities, whichever is applicable.

4.14 Conduct Of Acceptance Test. MCWD and MCWRA shall each conduct any Acceptance Tests in accordance with the Acceptance Test Plan, and shall notify CAW of the schedule for such Acceptance Testing. Personnel conducting the Acceptance Test shall include those personnel of the service provider who shall be responsible for operating the respective portion of the Project Facilities.

4.15 Acceptance Date Conditions. The following conditions shall constitute the "Acceptance Date Conditions," each of which must be satisfied in all material respects by MCWD and MCWRA, as applicable, in order for the Acceptance Date to occur, and each of which must be and remain satisfied as of the Acceptance Date or waived as agreed to by the Parties in writing:

(a) Achievement of Acceptance Test Plan Procedures and Standards. MCWD and MCWRA shall each have completed the required applicable Acceptance Test Plan and shall have demonstrated that the MCWD Owned Facilities or the MCWRA Owned Facilities, whichever is applicable, have passed the Acceptance Tests;

(b) Required Operation Period Insurance. The Parties shall have submitted to each other certificates of insurance for all insurance specified in Section 16; and

(c) Operating Governmental Approvals. All governmental approvals required under applicable Legal Requirements which are necessary for the continued routine operation of the Project Facilities shall have been duly obtained by MCWD and MCWRA and

shall be in full force and effect. Copies of all such governmental approvals shall have been delivered to CAW.

4.16 Test Report. Within sixty (60) days following conclusion of any required Acceptance Test, MCWD and MCWRA shall furnish CAW with a copy of a certified written report describing and certifying the applicable Acceptance Test has been conducted and if the procedures and standards relating thereto and all other requirements specified in the Acceptance Test Plan have been completed, that Acceptance has occurred. The written test report shall include copies of the original data sheets, log sheets and all calculations used to determine performance during the applicable Acceptance Test, as well as copies of laboratory reports conducted in conjunction with the Acceptance Test, including all laboratory sampling and test results.

4.17 Occurrence Of Acceptance Date. The “Acceptance Date” shall be the day on which MCWD and MCWRA have each delivered a certificate, accompanied by the report described in Section 4.16, to CAW certifying that all of the Acceptance Date Conditions have been achieved and, therefore, Acceptance has occurred.

4.18 No Payment During Start-Up And Testing. During start-up and testing, MCWD shall not be entitled to Product Water Contract Payments. All costs for design, construction, permitting, start-up, testing for any Acceptance, and any operations prior to the Acceptance Date, including costs for labor, materials, chemicals and utilities, shall be an Initial Capital Cost funded by the Indebtedness. Provided the capability to deliver Product Water exists, whether or not CAW physically receives such Product Water, immediately after Acceptance has occurred CAW shall commence making Product Water Contract Payments in accordance with the terms of this Agreement.

4.19 Reimbursement by MCWD and MCWRA of the CAW Project Administration and Oversight Expenses. When incurred, CAW shall allocate and invoice each of MCWD and MCWRA, as applicable, for the CAW Project Administration and Oversight Expenses as attributable to each of the MCWD Owned Facilities and MCWRA Owned Facilities. Each of MCWD and MCWRA shall review and pay such invoices that they respectively deem to be reasonably prudent within thirty (30) days of submission of such invoices. Each of MCWD and MCWRA shall act in good faith and shall not act arbitrarily and capriciously in choosing not to pay an invoice. Each of MCWD and MCWRA shall promptly provide written notice to CAW concerning denial of payment of any invoice or portion thereof, after which CAW and either MCWD or MCWRA, as applicable, shall meet and confer within five (5) business days to resolve the issue or issues leading to denial of payment. Subject to the foregoing, the CAW Project Administration and Oversight Expenses shall be reimbursed to CAW from the proceeds of the Indebtedness, as allocated and invoiced to either MCWD or MCWRA.

5. Ownership of MCWD, MCWRA, and CAW Facilities.

5.1 MCWD. Not later than when required to commence construction and comply with the Milestones, MCWD will acquire and own the MCWD Real Property required for the MCWD Owned Facilities, which interest shall be capable of being used to secure financing of the MCWD Owned Facilities. MCWD shall be the sole owner, excepting the

required security interest of any lender, of the MCWD Owned Facilities, which shall span from and including the Brackish Source Water Meter Receipt Point Meter to and including the MCWD Meter and the CAW Meter at the Delivery Point, and any related facilities and real property, as well as all infrastructure and permits relating to the operation of the MCWD Owned Facilities. Neither CAW nor MCWRA shall have any ownership interest in the MCWD Owned Facilities.

5.2 MCWRA. Not later than when required to commence construction and comply with the Milestones, MCWRA will acquire and own MCWRA Real Property required for the MCWRA Owned Facilities, which interest shall be capable of being used to secure financing of the MCWRA Owned Facilities, and will drill, construct and own the MCWRA Owned Facilities. MCWRA shall be the sole owner, excepting the required security interest of any lender, of the MCWRA Owned Facilities, as well as all infrastructure and permits relating to the operation of Brackish Source Water Wells.

5.3 CAW. CAW will own the CAW Facilities.

5.4 No CAW Ownership of MCWD or MCWRA Owned Facilities. Unless otherwise agreed among the Parties in a written and duly executed amendment to this Agreement, neither CAW's contractual payments under this Agreement nor any other contribution of funds made by CAW (if any) for improvements, expansion, repair, operation, maintenance, construction or otherwise, shall in any way extend or convey any ownership interest or right to physically control any portion of the Project Facilities that is owned or operated by MCWD or MCWRA or in which either of them has any legally recognizable interest or that is upstream of the CAW Facilities commencing from the CAW Meter at the Delivery Point. CAW hereby expressly disclaims and irrevocably waives any such claim of ownership in connection with the Project Facilities or any legal right to operate the Project Facilities including by reason of any payment(s) made by CAW, in the past, now or at any time in the future; provided, however, that notwithstanding such disclaimer and waiver, either MCWD or MCWRA may, in its sole discretion, contract with CAW to manage, operate and/or maintain their respective Project Facilities as a contract service provider.

6. Advisory Committee.

6.1 Establishment of Advisory Committee. Within sixty (60) days of the Effective Date, the Parties shall form a three Member committee (the "Advisory Committee") that will be composed of one Representative from each of the Parties.

6.2 Function of Advisory Committee. The function of the Advisory Committee shall be to: (i) in consultation with and assistance from the Project Manager, provide a recognized formal means for the Parties to coordinate among themselves the design, permitting, construction, operations, maintenance, repairs, and replacements of the Parties' respective components of the Regional Desalination Project; (ii) relative to the Regional Desalination Project PMA, serve as the entity which the Project Manager regularly updates; and (iii) consult with and provide advice to each of the Parties in connection with the Regional Desalination Project. The Members of the Advisory Committee shall diligently consider all matters and cause the Advisory Committee to timely and promptly make its final

recommendations. For all such matters, each Member of the Advisory Committee shall: (a) act promptly and in good faith; (b) utilize or consider the best available scientific evidence relevant to the matter including but not limited to data and analysis generated by numeric models that meet prevailing publicly-owned and privately-owned water utility industry standards for accuracy and reliability, and (c) apply Best Industry Practices. All recommendations of the Advisory Committee shall be arrived at promptly, giving due consideration to the nature of the matter requiring resolution or guidance, the context and all surrounding facts and circumstances including the timing of the action required by the Advisory Committee to avoid delay or additional delay in the design, construction, or permitting of the Regional Desalination Project. Furthermore, to the extent necessary, and at the recommendation of the Advisory Committee, the Parties may meet and confer in order to discuss or resolve any issues related to the Regional Desalination Project.

6.3 Meetings. Each Party's Representative on the Advisory Committee (sometimes referred to herein as a "Member" or collectively as the "Members") shall agree to a meeting schedule that is appropriate for the particular phase of the Regional Desalination Project, provided, however, that meetings of the Advisory Committee shall take place at least quarterly. On request of any Member, meetings of the Advisory Committee may take place by conference call or video conference unless an in-person meeting is desired by at least two (2) Members. In order to facilitate orderly meetings, the Advisory Committee may select one Representative to act as chairman and another Representative to act as secretary of the Advisory Committee. Minutes of the meeting shall be prepared by one of the Members. In addition to the above-described regularly scheduled meetings, if any Party desires to call a meeting of the Advisory Committee, it shall notify the other Parties and the Advisory Committee subjects such Party desires to have discussed or addressed. Unless the Members of the Advisory Committee otherwise mutually agree or emergency conditions otherwise dictate, such meeting shall take place within three (3) Business Days after receipt of such notice.

6.4 Construction Period Responsibilities. The Parties, in consultation with the Project Manager and the Advisory Committee, shall:

- (a) Determine the qualifications and selection criteria for design and engineering professionals, consultants and all contractors.
- (b) Review and evaluate qualified proposals for all contractors.
- (c) Review the selection of the design and engineering professionals, consultants and all contractors.
- (d) Monitor, coordinate and determine the design, construction and permitting of all elements of the Regional Desalination Project.
- (e) Determine contract terms to be required in all contracts for services for design or construction of the Regional Desalination Project.
- (f) Review and approve material changes in the Preliminary Design Documents or the Procurement Documents that are not the logical evolution of the plans previously approved.

- (g) Review material financial terms of the Prime Agreements.
- (h) Determine whether a subcontractor should be designated as a Major Subcontractor.
- (i) Approve Major Change Orders.
- (j) Prepare and update an overall construction budget for the Regional Desalination Project.
- (k) Prepare, update, review and approve operational monitoring and Acceptance Test plans and related budgets in connection with the Project Facilities.
- (l) When, and if, MCWRA and MCWD are not serving as the contract service provider for their respective Project Facilities, determine the selection criteria for a contract service provider that will provide operation and maintenance services for their respective Project Facilities, including but not limited to cost reasonableness, reliability, impact to lifecycle costs, Best Industry Practice, protection of capital investments, training requirements, safety and such other factors as the Parties deem appropriate.
- (m) Approve any amendments to the Outfall Agreement which would have a material adverse effect on the cost of Product Water.

6.5 Operational Period Responsibilities. The Parties, in consultation with the Advisory Committee, shall:

- (a) Review data from MCWRA's monitoring and operating of the MCWRA Owned Facilities, including MCWRA's testing and measuring the amount and quality of water produced by such wells and the impacts, if any, on hydrologic conditions in the Salinas Basin associated with the operation of Brackish Source Water Wells and provide their interpretations of such information relative to the impact of the operation of the Regional Desalination Plant on the Salinas Basin.
- (b) Determine any necessary demolition, restoration, repair, replacement, and/or rebuilding after damage, destruction, or other casualty, as set forth in Article 15 of this Agreement.
- (c) Determine changes necessary for the operation of the Regional Desalination Project due to changes in Legal Requirements.
- (d) Determine water quality and safety standards and procedures for the Regional Desalination Project to comply with such standards.
- (e) Determine Regional Desalination Project aesthetics.
- (f) Decide upon Reserve Fund Expenditures and Replacements not contemplated by the Replacement Budget, pursuant to Section 7.2.

(g) Determine the applicable Reserve Percentage pursuant to Section 11.3(d).

(h) From time to time as needed in order to determine future Product Water Contract Payments and true-up of such Product Water Contract Payments pursuant to Section 11.7, review and consider estimated MCWD O&M Costs, estimated MCWRA O&M Costs, estimated CAW Regional Desalination Project Related Expenses and estimated Energy Costs for the coming Calendar Year, Payment Period or calendar month, as applicable, prepared by each of the Parties. Furthermore, the Parties shall review and consent to the reasonableness and prudence of the O&M Costs for the coming Calendar Year.

(i) Review and consider opportunities to sell excess Product Water to third parties and determine the terms of any such sales of excess Product Water in accordance with the provisions of Section 9.5 and Legal Requirements.

(j) Establishment of the Replacement threshold amount set forth in Section 7.2(iii).

(k) From time to time, when, and if, MCWRA and MCWD are not serving as the contract service provider for their respective Project Facilities, determine the selection criteria for a contract service provider that will provide operation and maintenance services for their respective Project Facilities, including but not limited to cost reasonableness, reliability, impact to lifecycle costs, Best Industry Practice, protection of capital investments, training requirements, safety and such other factors as the Parties deem appropriate.

6.6 Decision Making by the Parties. Reference is made in Sections 6.4 and 6.5, to an approval or consent from all Parties or to a determination to be made by the Parties. Such approval, consent or determination shall be unanimous. In the event that the Parties are not able to reach a unanimous decision with respect to the foregoing provisions, any Party shall be entitled to provide a notice to the other Parties requiring the resolution of the issue by an independent third party. Within thirty (30) days of such notice, the Parties shall appoint an independent third party with appropriate expertise to address the issue or issues requiring resolution. The decision of such independent third party shall be binding on the Parties. If the Parties are unable to agree upon an independent third party within thirty (30) days after such notice, any Party may submit the selection of such independent third party to the office of Judicial Arbitration and Mediation Services, Inc. in its main San Francisco office ("JAMS"), any successor to JAMS, or any third-party dispute resolution service agreed upon by the Parties which shall select the independent third party. The independent third party so selected shall be knowledgeable and experienced in the matters sought to be resolved and shall have no affiliation with any of the Parties; provided, however, the independent third party may have been utilized by any Party as a consultant not more recently than twelve (12) months prior to the time of engagement if JAMS determines that such independent third party will provide a decision unbiased by such prior consulting relationship. Nothing herein precludes any of the Parties from submitting to JAMS, or any other third-party dispute resolution service utilized for selecting the independent third party, either (a) a list of recommended names to consider for selection as the independent third party; or (b) a briefing of the issue that will ultimately be submitted for determination by the independent third party. Each Party shall be entitled to provide the

independent third party with relevant background information and data. All third party costs and expenses incurred by the Parties under this Section 6.6 in order to reach a final determination, shall be considered a Regional Desalination Project Related Expense.

6.7 Community Outreach. During the Term of this Agreement, and commencing no later than ninety (90) days after the Effective Date, the Parties shall hold public community outreach meetings which will serve as a public forum (the "Community Involvement Forum") which shall be designed to provide a forum to discuss regional water supply issues and related subjects of interest to the general public including the subjects described in subsection (a) and (b) below. The Community Involvement Forum will be conducted and held by the Parties in a manner which satisfies the following requirements:

(a) the Community Involvement Forum should provide a recognized means for the public, other stakeholders, and the Parties to communicate between and amongst themselves as a group, prior to the Acceptance Date, regarding design and construction issues pertaining to the Regional Desalination Project, including but not limited to test wells, water modeling, final Brackish Source Water Well type and configuration, construction timelines, progress, and costs, and other issues related to completion of the Regional Desalination Project; and, after the Acceptance Date, regarding regional water quality and water supply issues relevant to the operation of the Regional Desalination Project;

(b) the Community Involvement Forum should promote discussion, in connection with the Regional Desalination Project, of advance risk management, appropriate technology, public health, equity among stakeholders, compliance with the Agency Act, compliance with environmental laws and consideration of public trust resources;

(c) the Parties shall, at a minimum, hold meetings of the Community Involvement Forum on a quarterly basis, except in cases where the meeting is attended by less than five (5) community members for two (2) consecutive meetings, in which case the Community Involvement Forum may be held less frequently or cease to be held, as determined by the Parties;

(d) the Community Involvement Forum shall be open to all members of the public, press, governmental agencies, non-governmental agencies, elected and appointed officials;

(e) each Party shall be represented at the meetings;

(f) all meetings shall be appropriately noticed to the public; and

(g) the meetings of the Community Involvement Forum shall be conducted by the Parties on a rotating basis or with the assistance of a contract facilitator at the office of the Monterey Peninsula Water Management District so long as such meeting space is available at no cost or such other location identified by the Parties in the Monterey Peninsula and available for such use at minimal cost. All costs of the Parties of conducting and participating in the meetings of the Community Involvement Forum shall constitute a Regional Desalination Project Related Expense.

7. **Financing of the Project Facilities.**

7.1 **Initial Capital Costs.**

(a) **MCWD and MCWRA Efforts to Obtain Financing for the Project Facilities.** Within one hundred and twenty (120) days after the Effective Date, subject to market conditions, MCWD and MCWRA will obtain all or a portion of the financing for the Pre-Effective-Date Costs and all other projected costs and expenses related to the development, environmental and engineering evaluations, design, permitting, construction, testing and start-up of the Project Facilities and administration and supervision of the foregoing. Such costs will include all of the MCWD Initial Capital Costs and all of the MCWRA Initial Capital Costs. The Parties will work cooperatively to secure, to the extent possible, the benefits from MCWD's and MCWRA's financing for the Regional Desalination Project. MCWD and MCWRA will employ reasonable efforts to obtain the maximum, best available financing, such as tax exempt private activity bonds, notes or other evidence of indebtedness that allows for prepayment in (i) the limited and exigent circumstances described in Section 7.4, or (ii) when State Revolving Fund ("SRF") loans any grant funds, or any other similar funding opportunities are received. MCWD and MCWRA shall use reasonable efforts to obtain SRF loans, any grants or any other similar funding opportunities for the Regional Desalination Project and, to the extent received, the proceeds thereof will be used to reduce the Indebtedness.

(b) **CAW Efforts to Obtain Financing for the CAW Facilities.** Subject to market conditions and when needed for CAW to timely comply with its obligations under this Agreement, CAW will obtain financing for the costs and expenses related to development, environmental and engineering evaluations, design, permitting and construction, testing and start-up of the CAW Facilities and administration and supervision of the foregoing. CAW will employ reasonable efforts to obtain the maximum, best available financing for the CAW Facilities.

(c) **Project Facilities Financing Shortfall and/or Use of Subordinated Indebtedness to Reduce Costs of Indebtedness.**

(i) **Subordinated Indebtedness; CAW Financing.** If any Initial Capital Costs, Pre-Effective Date Costs and Expenses, Preconstruction Development and Permitting Fees and Expenses or Pre-Acceptance Defense Costs are not permitted to be treated as Indebtedness by reason of the rules governing the Indebtedness or the Indebtedness is insufficient to fund the full amount of such costs or, if the Parties determine that the weighted average cost of the Indebtedness might be reduced by the issuance of Indebtedness (for a portion of such costs) which is subordinate to all other Indebtedness (referred to herein as "**Subordinated Indebtedness**"), then the Parties shall meet and confer to discuss alternative sources and options for financing any such shortfall and/or reducing the weighted average cost of the Indebtedness. If the Parties, after using their diligent efforts to investigate the same, are unable to find less costly alternative financing to fund such shortfall and/or reduce the weighted average cost of the Indebtedness, CAW shall loan (or may arrange for an Affiliate of CAW to loan) on the terms described below, to MCWD and/or MCWRA, as applicable, up to a total of \$17,500,000.00 (individually and collectively, a "**CAW Loan**") in fixed rate notes; provided, that MCWD or MCWRA, as applicable, has, in the case of a shortfall, provided CAW with reasonable evidence

reasonably acceptable to CAW of the subject cost and the basis for its exclusion from or non-inclusion in the Indebtedness and/or, relative to the costs of the Indebtedness, the reduction in the weighted average cost of the Indebtedness that will be realized as a result of the proposed CAW Loan. Any less costly means of providing funding of an Indebtedness shortfall and/or reducing the weighted average cost of the Indebtedness that is proposed by CAW and which is the financial equivalent to the above-described CAW Loan shall be reasonably considered by MCWD and MCWRA as an alternative to a CAW Loan. If Parties are unable to agree on whether the weighted average cost of the Indebtedness will be reduced by the utilization of any CAW Loan on the terms described in this Section 7.1(c), such determination shall be made by the underwriter for the Indebtedness issued by MCWD and MCWRA. In addition, at any time during the Term of this Agreement, CAW shall make available (or may arrange for an Affiliate of CAW to make available) on the terms described in this Section 7.1(c), up to a total of \$8,000,000.00 in revolving credit facilities (individually and collectively, a "CAW Credit Line," together with any and all CAW Loans, the "CAW Financing"). Any such CAW Financing shall be unsecured Subordinated Indebtedness but the CAW Credit Line shall be senior to the CAW Loan. For any such CAW Financing, the applicable Parties will enter into appropriate documentation reflecting the terms described in this Section 7.1(c). Neither the CAW Loan nor the CAW Credit Line shall increase the CPUC Settlement Cost Cap. The priority of utilization of either a CAW Loan or the CAW Credit Line by MCWD and MCWRA, at any given, time shall be determined by agreement of MCWD and MCWRA and, in the absence of such agreement being reached within ten (10) days of written notice of either Party's desire to utilize CAW Financing, shall be determined as follows: (i) prior to the Acceptance Date, each of MCWD and MCWRA shall be entitled to utilize any unused portion of the CAW Credit Line in an amount equal to its respective percentage of total Pre-Effective Date Costs and Expenses; and (ii) on and after the Acceptance Date, each of MCWD and MCWRA shall be entitled to utilize any unused portion of the CAW Credit Line in an amount equal to its respective percentage of total Indebtedness.

(ii) Terms of CAW Credit Line. It is intended by the Parties, that the CAW Credit Line shall (i) be used for short term loans (i.e., less than three years) to manage financial liquidity needs (e.g., the payment of costs (that will be covered by the Indebtedness) between draws of the Indebtedness and unanticipated financial requirements such as the cost of Replacements not covered by the Reserve Fund Account or Replacement Indebtedness as provided in Section 7.2); (ii) that the initial CAW Credit Line be available at least until December 31, 2014 and for so long thereafter as CAW or the CAW Affiliate providing the CAW Credit Line has a matching credit line from its lender; (iii) from the creation of the CAW Credit Line until terminated by MCWD or MCWRA, as applicable, require payment of an annual 25 basis point fee on the unused amount of the CAW Credit Line committed for either MCWD or MCWRA, as applicable; (iv) may be terminated by MCWD or MCWRA, as applicable, at any time when each of their applicable CAW Credit Line has been repaid in full and has no outstanding balance; (v) otherwise be on the same terms and conditions and floating rate then available to CAW or the CAW Affiliate providing the CAW Credit Line from its credit line lender; and (vi) any time during the Term of this Agreement when either MCWD or MCWRA, as applicable, requests availability to the CAW Credit Line, will be made available on the same terms as set forth in this Section 7.1(c)(ii). During the Term of this Agreement, CAW shall use its commercially reasonable efforts to have available to it (or may arrange for an Affiliate of CAW to have available to it) a credit line that will enable CAW or such Affiliate to

provide the CAW Credit Line. The CAW Credit Line may be repaid by either MCWD or MCWRA, as applicable, at any time without prepayment penalty, otherwise the term for repayment of the CAW Credit Line shall be the shorter of either (a) a term which, based on the above-described CAW Credit Line interest rate, will not result in an increase in the annual cost of the Product Water by more than ten percent (10%) prior to adding such amortization to the cost of the Product Water or (b) the shorter of ten (10) years or the remainder of the Term (taking into account whether the Term will be extended by another Renewal Term where a Non-renewal Notice has not been provided in accordance with the provisions of Section 2.3).

(iii) Terms of CAW Loans. From the date such CAW Loan is made until the first day of the first month after the Acceptance Date, MCWD and/or MCWRA (as applicable) shall pay interest monthly on the unpaid principal amount of each CAW Loan made to it at a fixed rate per annum (computed on the basis of a 360-day year of twelve 30-day months) equal to the 10 year U.S. Treasury rate plus 600 basis points. Commencing with the first day of the first month after the Acceptance Date, each CAW Loan shall be repaid by amortization payments based on the above-described CAW Loan interest rate. The term for repayment of each CAW Loan shall be the shorter of either (a) a term which, based on the above-described CAW Loan interest rate, will not result in an increase (considering all outstanding CAW Loans, if any) in the annual cost of the Product Water by more than ten percent (10%) prior to adding such amortization to the cost of the Product Water or (b) the shorter of ten (10) years or the remainder of the Term. No principal payments under the CAW Loan will be due until after the Acceptance Date. After the Acceptance Date, interest and principal of the CAW Loans shall be payable on the terms set forth herein from the proceeds of the Product Water Contract Payments. The portion of the Product Water Contract Payments to be utilized to repay the CAW Loans shall be separately identified and accounted for under the Escrow Account Agreement.

(iv) CPUC Approval of CAW Financing. By CPUC's approval of this Agreement, the making of any CAW Financing shall be authorized by CPUC and the terms of the same shall be deemed reasonable and prudent and if for any reason these loans are not recovered in the price of the Product Water, then the principal thereof and interest thereon shall be recoverable in rates.

(v) Exceeding CAW Loan and CAW Credit Line Limits. If the Indebtedness shortfall or the Subordinated Indebtedness needed to minimize the weighted average cost of the Indebtedness exceeds the full amount of the CAW Loan and the full amount of the CAW Credit Line, CAW shall be under no obligation to extend any further CAW Financing, however, the Parties shall meet and confer in order to attempt to decide on a means of funding the shortfall and/or obtaining the Subordinated Indebtedness or other credit enhancement desired to minimize the weighted average cost of the Indebtedness. As one alternative and provided the conditions to the making of any CAW Financing are satisfied, the Parties shall consider seeking CPUC approval for a different or additional loan by CAW or an Affiliate of CAW on terms acceptable to all the Parties. The terms and conditions of such loan and the method of repayment must be approved by the CPUC. If the Parties agree to attempt to address an Indebtedness shortfall and/or a reduction in the weighted average cost of the Indebtedness which requires a CAW Loan greater than \$17,500,000.00 and/or a CAW Credit Line greater than

\$8,000,000.00 or by some other means, CAW will use its reasonable efforts to timely obtain such approval from the CPUC.

(vi) Financing Failure. A “Financing Failure” shall be deemed to have occurred in the event that an Indebtedness shortfall and/or the desired reduction in the weighted average cost of the Indebtedness requires a CAW Loan greater than \$17,500,000.00 and/or a CAW Credit Line greater than \$8,000,000.00 and, within ninety (90) days of determining such requirement exists, the Parties have not agreed upon a means to fund such shortfall or obtain such reduction in the weighted average cost of the Indebtedness.

7.2 Funding of Replacements. Following Acceptance, the Parties, in consultation with the Advisory Committee, shall establish a budget for the current Calendar Year and a multi-Calendar Year budget (covering as many Calendar Years as the Parties determine is prudent) for the following repairs and replacements as required for the continued operation, safety and performance of the Project Facilities during the Term of this Agreement in accordance with Best Industry Practices and/or in order to satisfy MCWRA's and MCWD's obligations under Article 9 of this Agreement (the “Replacement Budget”): (i) routine or planned expenditures for capital equipment or facilities, capital additions, capital replacements, upgrades, betterments, extensions or improvements to the Project Facilities, (ii) unplanned expenditures of the type described in clause (i) above in order to address emergency and exigent circumstances, and (iii) individual expenditures for non-routine repairs which have a cost in excess of \$250,000.00 (or such other amount established by the Advisory Committee from time to time) (collectively, subsections (i) through (iii) above, the “Replacements”). Replacements shall be paid for from the Reserve Fund Payments Account (each, a “Reserve Fund Expenditure”), and the Project Escrow Account Agreement shall provide, as follows: If the Replacement is anticipated by the Replacement Budget for the current Calendar Year, MCWD or MCWRA, as applicable, shall cause the Replacement to be paid from the Reserve Fund Payments Account. If the Replacement is not anticipated by the Replacement Budget for the current Calendar Year, the Parties must approve the Replacement and the estimated cost thereof. If such approval is given, MCWD or MCWRA, as applicable, shall cause the Replacement to be paid from the Reserve Fund Payments Account. Should the Parties determine that Replacements for the MCWD Owned Facilities and/or the MCWRA Owned Facilities cannot be funded from the Reserve Fund Payments Account, MCWD, MCWRA, or both as the circumstance requires, shall use their reasonable efforts to obtain MCWD Replacement Indebtedness or MCWRA Replacement Indebtedness, as applicable, which represents the maximum, best available financing, such as tax exempt private activity bonds, notes, or other evidence of indebtedness, SRF loans, any grants or any other similar funding opportunities for the Regional Desalination Project. If such financing is not obtained or if such financing will not fund the full amount of the required Replacement, the CAW Credit Line shall be used to fund the costs of the Replacements that cannot be funded by the Reserve Fund Payments Account or Replacement Indebtedness, unless otherwise agreed by the Parties. If the cost of the Replacement exceeds the funds available from the Reserve Fund Payments Account, Replacement Indebtedness and the CAW Credit Line, CAW shall be under no obligation to make any loan for the same or reimburse MCWD or MCWRA for such shortfall, however, the Parties shall meet and confer in order to attempt to decide on a means of funding the shortfall. As one alternative, the Parties shall consider seeking CPUC approval for CAW payment of the shortfall, provided, (i) MCWD or MCWRA, as applicable, has provided CAW with reasonable evidence of the subject cost, and (ii) the CPUC has approved of the recovery by

CAW in the cost of the Product Water on terms reasonably acceptable to CAW. In such event, CAW will use its reasonable efforts to timely obtain such approval from the CPUC. In no event, however, will any such shortfall be a basis for any Financing Failure and it is the intention of the Parties that MCWD and MCWRA shall be reimbursed for any Replacements which cannot be funded from the Indebtedness incurred under this Agreement.

7.3 Reserve Fund Payments Account Funding. The Reserve Fund Payments Account shall be initially funded from the proceeds of the MCWD Initial Reserve Fund Payment and the MCWRA Initial Reserve Fund Payment. In addition, upon commencement of the Product Water Contract Payments, the CAW Reserve Fund Payments and the MCWD Reserve Fund Payments, if applicable, shall be deposited into the Reserve Fund Payments Account pursuant to the terms of the Project Escrow Account Agreement. As more particularly provided in Section 11.3, the Parties shall, with consultation from the Advisory Committee, adjust the Reserve Percentage from time to time.

7.4 Reimbursement of Expenses Upon Regional Desalination Project Cessation. If, for any reason the Regional Desalination Project does not reach Substantial Completion or reaches Substantial Completion, but Acceptance is unable to be achieved within twenty-four (24) months of Substantial Completion after diligent efforts by the Parties to achieve such Acceptance (including pursuing remedies against any responsible third-parties), including without limitation due to CAW's election of its termination option set forth in Section 4.3(e), a Permit Failure, a Financing Failure or other Force Majeure event (any of the foregoing, a "Regional Desalination Project Cessation"), CAW shall have the obligation to (i) reimburse each of MCWD and MCWRA for any and all costs or expenses including without limitation Initial Capital Costs incurred under this Agreement in connection with the Regional Desalination Project incurred by either such Party through and including the date of such Regional Desalination Project Cessation and which are not paid for from the proceeds of the Indebtedness, (ii) pay the cost of retiring or prepaying the Indebtedness including by utilizing the unexpended proceeds of the Indebtedness and any interest earnings thereon, and (iii) to the extent that either MCWD or MCWRA is indebted to CAW in connection with the Regional Desalination Project, by means of promissory note, any CAW Financing or otherwise, at the time of such Regional Desalination Project Cessation, CAW shall also forgive both the principal and interest components of any and all such indebtedness; provided, however, that (x) if the cause of any Regional Desalination Project Cessation is directly due to an Event of Default of MCWD or MCWRA, the defaulting Party responsible for such Regional Desalination Project Cessation shall not be entitled to reimbursement of its costs and expenses and such Party (rather than CAW) shall be liable to MCWRA or MCWD, whichever is not the defaulting Party, for such non-defaulting Party's costs described in this Section 7.4 above, and (y) the CPUC in approving this Agreement has approved the recovery by CAW from ratepayers in rates of the amount of reimbursement and/or debt forgiveness for such costs and expenses, which recovery shall be on terms reasonably acceptable to CAW. In addition, nothing contained in the foregoing shall limit any Party's liability for an Event of Default by such Party. The Parties shall diligently seek recovery of all costs and expenses incurred prior to a Regional Desalination Project Cessation. Upon the occurrence of a Regional Desalination Project Cessation, the Parties shall use commercially reasonable efforts to sell the assets of the Project Facilities at the best obtainable price and shall use the proceeds from the sale of such assets to offset costs CAW is obligated to pay under this Section 7.4.

7.5 CAW Letter of Credit. On or before the Effective Date, CAW shall obtain a letter of credit in form, on terms and from an issuer reasonably acceptable to MCWD and MCWRA in the amount of \$12,000,000.00 (the "Letter of Credit") which may be drawn upon by MCWD and MCWRA to reimburse such Party for Cover Damages it incurs as a result of a CAW Event of Default hereunder. The Letter of Credit shall have a term to and be effective until the first anniversary of the Acceptance Date. If the Letter of Credit is an annual letter of credit, it shall either automatically renew annually by its terms or shall be renewed annually by CAW prior to its expiration date. From and after the one year anniversary of the Acceptance Date, CAW shall cancel the Letter of Credit and MCWD's and MCWRA's right to draw upon the Letter of Credit shall cease. CAW's costs of obtaining the Letter of Credit shall be a CAW Regional Desalination Project Related Expense.

8. **Brackish Source Water Supply and Management.**

8.1 **Brackish Source Water for Desalination Plant.**

(a) **Delivery of Brackish Source Water.** MCWRA, as Operator of the Brackish Source Water Wells, shall take all necessary steps to comply with the Legal Requirements for the Brackish Source Water and to deliver to MCWD at the Brackish Source Water Receipt Point Meter sufficient Brackish Source Water to produce up to 10 MGD of Product Water.

(b) **No Sale of Brackish Source Water or Product Water by MCWRA; Recovery of Costs.** Notwithstanding anything to the contrary contained in this Agreement, at no point during the Term shall MCWRA be deemed a seller of Product Water nor shall MCWRA be entitled to sell or charge for the Brackish Source Water provided under this Agreement; provided, however, that this provision is not intended to nor shall be interpreted to deprive MCWRA of its right to receive or collect any payments which MCWRA is entitled to under this Agreement.

8.2 **Agency Act and Urban Water Management Planning.** The Parties intend to construct and manage the Brackish Source Water Wells in a manner to maximize the intake of seawater on a cost-effective basis, considering both potential operational and capital costs over the Term of the Agreement.

(a) **Test Well or Wells.** In order to provide more precise and actual data with respect to the TDS and chloride levels in the Brackish Source Water to be provided by MCWRA to MCWD under this Agreement, before any Authorization of Construction of any portion of the Regional Desalination Project other than a test well, MCWRA shall drill at least one vertical test well and at least one slant test well, all designed to be converted to operational Brackish Source Water Wells, complying with Legal Requirements in doing so. As a condition precedent to any Authorization of Construction of any portion of the Regional Desalination Project other than a test well, MCWRA shall analyze the data obtained from the drilling and pumping of one or more test wells and other pertinent data and, based on such analysis and exercising its reasonable discretion, MCWRA shall determine whether, in MCWRA's opinion, the MCWD Agreed Allocation as calculated under section 9.3 would comply with Legal Requirements, after which MCWRA shall report its determination in writing to MCWD, CAW

and the Project Manager. In the event MCWRA reasonably determines that the MCWD Agreed Allocation would not comply with Legal Requirements, the Parties shall meet and confer, using diligent good faith efforts, to develop a plan of action in accordance with the procedures set forth in Section 8.2(c) of this Agreement. If the Parties develop a plan of action that requires the expenditures of additional funds not approved by the CPUC in the Settlement Agreement or would significantly reduce the amount of Product Water available to CAW for its customers as contemplated under this Agreement, CAW may seek CPUC approval for such plan of action. If, after meeting and conferring, the Parties are unable to agree upon a plan of action that in MCWRA's opinion complies with Legal Requirements or CAW determines that the CPUC will not approve the plan of action, any Party may by notice to the other Parties either (i) invoke the procedure set forth in Sections 19.2 and 19.3, but not 19.4, or (ii) provide a notice of termination, which shall constitute a Regional Desalination Project Cessation. All costs of designing, permitting, and drilling any such test well or wells, including but not limited to costs incurred for services of professionals and consultants and costs incurred to purchase required materials, all costs of the MCWRA analyses described in this sub-paragraph, and all costs of the Parties in reviewing the report of MCWRA, and, if necessary and whether or not successful, in meeting and conferring, developing a plan of action to address the MCWRA report and resolving any disputes related thereto, shall be treated as MCWRA Initial Capital Costs. Upon availability of test well results, if determined to be prudent by the Parties, a Brackish Source Water contingency plan will be prepared by a mutually acceptable engineer.

(b) Monitoring of Water and Measurement of Total Dissolved Solids. Incident to its compliance with the Agency Act and its obligation to supply Brackish Source Water, MCWRA shall periodically monitor, test and measure (i) the Measured Ocean Water TDS, the Measured Brackish Water TDS, and the Measured Inland Water TDS, (ii) chloride concentrations, and (iii) elevation of the Salinas Basin.

(c) Operations to Meet the Agency Act. MCWRA shall use reasonable efforts to operate the Brackish Source Water Wells so as to maximize the percentage of seawater in the Brackish Source Water. In the event that monitoring, testing, and measurement under Section 8.2 leads MCWRA to reasonably conclude that compliance with requirements of the Agency Act with respect to nonexportation of groundwater from the Salinas Basin is not reasonably ensured, MCWRA shall notify the other Parties and the Parties shall meet and confer with MCWRA to mutually determine whether or not changes in the supply of Brackish Source Water are required to ensure compliance with requirements of the Agency Act and or to ensure that the average MCWD Agreed Allocation does not exceed 1,700 AFY when the CAW Allocation is 8,800 AFY and, if so, what changes will be made in such supply, including but not be limited to modifying Brackish Source Water Well operations; replacing, moving, redrilling, or drilling new Brackish Source Water Wells; or determining whether curtailment of delivery of some quantity of Brackish Source Water will ensure such compliance. The Reserve Fund Payments Account established under Sections 7.2 and 11.3 shall provide funding for implementing the plan of action. The plan of action described in this Section 8.2 shall be developed and implemented in accordance with CEQA. MCWRA will serve as lead agency with respect to any required CEQA Compliance. CAW shall utilize reasonable efforts to inform the CPUC in writing as soon as reasonably possible in advance of implementation of any plan to replace, move, redrill or drill any new Brackish Source Water Wells and the associated cost and revenue requirement impact on CAW ratepayers. This obligation to inform shall be

without penalty to CAW and if CAW fails to perform such obligation, it may rectify such failure to perform within ninety (90) days of receipt of written notice from the CPUC.

(d) Coordination with Urban Water Management Planning. The Project Facilities shall be managed and operated, to the extent practicable, to provide reliable water service for at least the useful life of the Project Facilities with implementation plans in 5-year increments. Operation and management of the Project Facilities shall be coordinated with and governed by the planning process provided by Division 6, Part 2.6 of the California Water Code, relating to Urban Water Management Planning.

8.3 Reservation of Authority by MCWRA. Notwithstanding any other provisions of this Agreement, MCWRA will retain all rights, discretion and authority to ensure both that the pumping, production, desalination, and distribution of Product Water from the Regional Desalination Project complies with the obligations and responsibilities of MCWRA under the Agency Act, and the long-term viability of the Salinas Basin as a water supply for water for agricultural, domestic and municipal use. Neither this Section 8.3 nor any other provision of this Agreement shall be interpreted either to diminish or enhance MCWRA's regulatory authority under the Agency Act, nor to preclude any argument by MCWD or CAW that there is no violation of the Agency Act.

9. Water Supply Obligations and Deliveries.

9.1 Operation. MCWD, MCWRA and CAW each shall be the Operator of their respective portions of the Regional Desalination Project. Each of MCWD and MCWRA may contract for the operation and maintenance of any or all of their respective portions of the Project Facilities by another Person working under its supervision. Each Operator shall manage, operate and maintain all facilities which it owns, in accordance with Best Industry Practices, either directly or through the services of a contract services provider. Subject to the terms of Article 8, Force Majeure and Section 9.8, MCWRA shall operate or cause to be operated the MCWRA Owned Facilities so as to supply Brackish Source Water in a quantity to produce Product Water which satisfies both the CAW Allocation and the MCWD Annual Allocation. Subject to MCWRA supplying an adequate quantity of Brackish Source Water and the terms of Article 8, Force Majeure, and Section 9.8, MCWD shall operate or cause to be operated the MCWD Owned Facilities so as to supply Product Water which satisfies the quality and quantity requirements of this Article 9. Notwithstanding the foregoing and without releasing any Party from its obligations under other Articles of this Agreement, to the extent the foregoing obligations are dependent on the Project Facilities having been designed and built in accordance with applicable Legal Requirements so as to meet the technical specifications required to produce such quality and quantity of Product Water, such Party's obligations under this Article 9 shall be subject to the completion of such repairs or Replacements as may be necessary to satisfy of such Legal Requirements or technical specifications.

9.2 CAW Allocation. During the Term of this Agreement from and after Acceptance and subject to the terms of Section 9.1, MCWD shall be required to provide to CAW at the Delivery Point the CAW Allocation.

9.3 MCWD Annual Allocation and MCWD Agreed Allocation.

(a) MCWD Agreed Allocation. To comply with the Agency Act, an amount of Product Water shall be utilized within the Salinas Basin by means of delivering Product Water to MCWD for distribution in the MCWD Service Area within the Salinas Basin (calculated as set forth below for the purpose of this Agreement, the “MCWD Agreed Allocation”). From and after Acceptance, MCWRA shall monitor TDS levels in the Brackish Source Water by sampling each Brackish Source Water Well and shall use the data to determine the average percentages of seawater and Salinas Basin water in the total amount of Brackish Source Water delivered to the Brackish Water Receipt Point Meter on at least a quarterly basis, taking into consideration the TDS levels in the Brackish Source Water from each Brackish Source Water Well and the amount of Brackish Source Water supplied from each Brackish Source Water Well. The respective percentages shall be determined by applying the formula set forth in **Exhibit E** to the measured TDS of seawater, the measured average TDS of the Brackish Source Water, and the TDS for Salinas Basin water measured in a part of the Salinas Basin not affected by seawater intrusion as determined by MCWRA.

(b) Average Percentage of Salinas Basin Water in Brackish Source Water. The Parties agree that during the first five Calendar Years following Acceptance, the MCWD Agreed Allocation shall be based on the test well and Brackish Source Water Well data and the hydrologic modeling done as part of the test well protocol and, considering all factors that may or may not cause a future variance in the percentage of seawater in the Brackish Source Water; provided, however, based on the actual data obtained during the first five Calendar Years, the Parties may determine, subject to Section 6.5(a), that it is prudent to use the then-average actual percentage of Salinas Basin water in the Brackish Source Water to calculate the MCWD Agreed Allocation; and, provided, further, for purposes of determining the MCWD Agreed Allocation, the Parties have agreed that the Average Percentage of Salinas Basin Water in Brackish Source Water shall be deemed not to exceed fifteen percent (15%) during the first five Calendar Years. After the first five Calendar Years, or sooner if the Parties agree, the average actual percentage of Salinas Basin water in the Brackish Source Water over the prior five Calendar Year period (or shorter period if the Parties so agree) shall be used to calculate the MCWD Agreed Allocation. The percentage described in the prior two sentences to be used to calculate the MCWD Agreed Allocation is referred to herein as the “Average Percentage of Salinas Basin Water in Brackish Source Water.”

(c) Calculation of MCWD Agreed Allocation. The MCWD Agreed Allocation will be calculated by multiplying the amount of Product Water produced by the Desalination Plant during a Calendar Year by the Average Percentage of Salinas Basin Water in Brackish Source Water. The MCWD Agreed Allocation shall be estimated by the Parties at the beginning of each Calendar Year and again thereafter at least quarterly, based on the CAW Estimated Product Water Quantity for the Calendar Year and the then-Average Percentage of Salinas Basin Water in Brackish Source Water (as described in this Section 9.3).

(d) MCWD Annual Allocation. Subject to the terms of Sections 9.1, 9.5 and 9.6, during each Calendar Year, MCWD shall be provided an amount of Product Water (the “MCWD Annual Allocation”) which is the greater of (i) the then MCWD Permanently Allocated Product Water or (ii) the then MCWD Agreed Allocation.

(e) CAW Priority During Peak Demand Periods. MCWD acknowledges that during CAW's Peak Demand Periods, CAW shall be entitled to have priority to receive Product Water that would have been delivered to MCWD as part of the MCWD Annual Allocation and CAW may receive and use such Product Water for its own use; provided, however, subject to the terms of Section 9.6, CAW shall ensure that MCWD shall receive an adequate amount of Product Water at other times during the course of that Calendar Year to ensure the receipt of the MCWD Annual Allocation on an annual basis. The MCWD Agreed Allocation shall be used by MCWD to serve its customers in the MCWD Service Area in lieu of providing its customers with potable groundwater from the Salinas Basin.

9.4 Delivery Schedule.

(a) Brackish Source Water Deliveries. The Advisory Committee shall meet not less than quarterly to review the prior quarter's quantity of pumped Brackish Source Water, the average TDS and chloride concentrations thereof and the elevation of the Salinas Basin, and to discuss and make recommendations to Parties about the current quarter's pumping and delivery of Brackish Source Water to ensure that CAW and MCWD receive the amount of Product Water required hereunder.

(b) Product Water Deliveries. The Advisory Committee shall meet not less than quarterly to prepare a monthly schedule of estimated Product Water deliveries that coordinates MCWD's and CAW's rights to Product Water produced under this Agreement and ensures that the CAW Allocation and the MCWD Annual Allocation are fully met; provided, however, such schedule shall recognize the priority of CAW to 10 MGD of Product Water during CAW's Peak Demand Period (the "Water Delivery Schedule"). The Parties intend that CAW's requirement for 10 MGD of Product Water will be satisfied during the Peak Demand Period and, subject to the terms of Section 9.6, for the MCWD Annual Allocation to be satisfied during those portions of the Calendar Year other than the Peak Demand Period. During a Critically Dry Year, taking into account and satisfying the MCWD Agreed Allocation (as the same is subject to terms of Section 9.6), CAW shall be authorized to take and receive up to 10,900 AFY, if feasible, from the Regional Desalination Project for distribution to its customers. Notwithstanding the foregoing, even if there is a Critically Dry Year or successive, multiple Critically Dry Years which occur during the Term of this Agreement, MCWD must have received the MCWD Annual Allocation in accordance with the terms of this Agreement and subject to the true-up provisions of Section 9.6.

(c) Cooperation and Conservation Efforts. MCWD and CAW shall cooperate to permit maximum deliveries of Product Water to CAW during CAW's Peak Demand Period and so that the MCWD Annual Allocations are delivered during other times of the Calendar Year, as described above. During a Critically Dry Year, each of the Parties understand that there will be the need to implement, with respect to delivery of Product Water to each of the MCWD Service Area and the CAW Service Area, a series of water conservation and rationing policies in order to reduce water demand and extend the water supply. Each of MCWD and CAW shall cooperate to implement such policies in order to effectively allocate Product Water deliveries. At all times, not just during Critically Dry Years, each of the Parties have and will continue to stress conservation efforts and implement conservation programs within their respective service areas. Any such conservation efforts may include consideration of joint

solutions to enhance conservation efforts, such as collaboration with fish and wildlife agencies on opportunities to provide critical habitat water supplies, methods of addressing shortages in a unified fashion, and other criteria.

(d) MCWD Permanently Allocated Product Water. For purposes of this Agreement, "MCWD Permanently Allocated Product Water" means the aggregate quantity of Product Water in AFY at the MCWD Meter (taking into account an estimated loss factor between the source and the final water user if the quantity of water is expressed in terms of a quantity received by the ultimate user) needed to satisfy MCWD customers' demand in MCWD's Service Area that cannot be satisfied by MCWD's Potable Groundwater Limits. MCWD shall notify CAW when MCWD has a legally enforceable water supply commitment that requires MCWD Permanently Allocated Product Water. Such notice shall state the amount of the MCWD Permanently Allocated Product Water. On request from CAW, and from time to time when the same is updated by MCWD, and for the purpose of informing CAW of the then-MCWD Potable Groundwater Limit, MCWD shall deliver to CAW a summary of MCWD's then-MCWD Potable Groundwater Limit and MCWD's then-current Urban Water Management Plan created pursuant to Division 6, Part 2.6 of the California Water Code. Unless consented to in writing by CAW, in no event shall MCWD seek or cause to have more than 1,700 AFY of Product Water (at the MCWD Meter) deemed to be MCWD Permanently Allocated Product Water or apply for or seek to obtain or establish any right, title, permit or permission to have more than an aggregate of 1,700 AFY of Product Water (at the MCWD Meter) deemed to be MCWD Permanently Allocated Product Water.

9.5 Sale of Excess Product Water. Notwithstanding anything to the contrary contained herein, MCWD may, on the terms set forth herein (including Article 11 regarding payment), take and receive for MCWD's Service Area customers, any Product Water which may be available which is both (a) in excess of any Product Water not required for the CAW Allocation and not taken by CAW during that Calendar Year and (b) in excess of the MCWD Annual Allocation. To the extent MCWD decides not to take and receive any additional Product Water under this Section 9.5 in excess of the MCWD Annual Allocation, the Parties, in consultation with the Advisory Committee, shall explore opportunities for the sale of such excess Product Water to third parties on an interim basis and pursuant to terms which will allow the Parties to reduce the cost of Product Water Contract Payments while complying with Legal Requirements. Any such excess Product Water sold to a third party under this Section 9.5 shall not be included in the MCWD Annual Allocation and is therefore excluded for purposes of determining MCWD's Product Water Contract Payments.

9.6 MCWD Agreed Allocation True-up. As promptly as possible following the end of each Calendar Year after the Acceptance Date, the Parties shall examine the data gathered by MCWRA and MCWD to calculate the Average Percentage of Salinas Basin Water in Brackish Source Water, the actual amount of Product Water produced by the Desalination Plant during such Calendar Year and the MCWD Agreed Allocation. Based upon the data, a true-up of the amount of Product Water delivered to MCWD as the MCWD Agreed Allocation shall occur by either crediting or debiting the anticipated amount of the MCWD Agreed Allocation for the current Calendar Year by the amount of Product Water actually delivered to MCWD as the MCWD Agreed Allocation during the prior Calendar Year less the actual MCWD Agreed Allocation for such immediately prior Calendar Year. For clarification purposes only,

Exhibit E attached hereto contains sample calculations under this Section 9.6. Notwithstanding the foregoing and anything to the contrary contained herein, to the extent MCWD receives and uses Product Water in excess of the MCWD Annual Allocation, where such excess Product Water was not specifically requested by MCWD, but was provided to MCWD in order to satisfy the true-up provisions contained in this Section 9.6 in order to meet the MCWD Agreed Allocation, such excess Product Water shall not be counted for purpose of the calculations utilized in Sections 11.5 and 11.6.

9.7 Water Quality.

(a) Generally. The quality of Product Water produced by the Desalination Plant under this Agreement shall comply with all applicable Legal Requirements including provisions of local, state and federal law, rules and regulations relating to the then-current primary and secondary standards for domestic water quality and monitoring regulations adopted by the California Department of Public Health and the United States Environmental Protection Agency for domestic use without requirement for further treatment. In order to comply with the foregoing water quality obligation, MCWD shall add or cause to be added to the Product Water pH and other chemical adjustments, consistent with Best Industry Practices, to minimize in-system water quality degradation and corrosion, for both the Product Water and the mixed water streams. Other than treatments or adjustments to water quality which occur downstream of either the MCWD Meter or the CAW Meter, all such treatments or adjustments pursuant to this Section 9.7 shall be treated as O&M Costs.

(b) TDS Standards. In addition to Legal Requirements, MCWD also recognizes that the Product Water may require treatment to meet reasonable standards of acceptance to MCWD's customers and CAW's customers and to the public. Such Legal Requirements or standards for acceptability may require that, after mixing, the Product Water TDS constituents, including without limitation boron, sodium and chlorides, be further reduced to comply with such standards and a "second pass" treatment of all or a portion of the Product Water may be necessary. Furthermore, regarding boron or other contaminants, the Parties may implement a margin of safety that exceeds the current minimum legal requirements, and may acquire the appropriate technology to achieve this margin of safety. In addition to cost and Legal Requirements, factors that shall be considered in reaching such a decision include the protection of susceptible sub-populations, consistency with Best Industry Practice, anticipation of possible tightening of regulatory standards, evolving technology, the uncertainty levels underlying regulatory standards, and the relative cost-effectiveness of acting proactively vs. retrofitting. After taking into account the foregoing factors, if a second pass or other form of treatment is required to ensure that the applicable standards and/or Legal Requirements will be met, such second pass or other treatment shall be deemed necessary and reasonable when required to ensure that the applicable standards and/or Legal Requirements will be met.

(c) Water Mixing. In addition, MCWD shall apply Best Industry Practices to satisfy the mixing requirements or objectives of both MCWD and CAW to the fullest extent possible as follows: After the MCWD Meter, Product Water produced by the MCWD Owned Facilities and delivered to MCWD will be mixed with other water in the MCWD System. After the CAW Meter, Product Water produced by the MCWD Owned Facilities and delivered to CAW will be mixed with other water in the CAW System. Given that the chemical

9.8 MCWD and MCWRA Temporary Interruption in Deliveries. MCWRA and MCWD may temporarily discontinue or reduce the delivery of water if and to the extent necessary for routine or emergency investigation, inspection, maintenance, repair or replacement of any of the facilities necessary for the treatment and delivery of water. To the extent within the control of the Operator, such temporary interruptions in service shall occur during times that will least impact the delivery of Product Water and shall be kept to the minimum duration necessary for the investigation, inspection, maintenance, repair or replacement. The Parties shall coordinate as far in advance as possible of any such temporary discontinuance or reduction and the estimated duration of such discontinuance or reduction. Throughout the Term of this Agreement, and especially during Peak Demand Periods, the Parties agree to use their best efforts to make any such discontinuance or reduction in the delivery of Product Water occur during a period of low water demand considering the then-current Water Delivery Schedule and which will take into account the impacts on other water sources that may be utilized to supplement water supply during a discontinuance or reduction in the delivery of Product Water.

10. Measurement of Water.

10.1 Need for Measurement. The Parties recognize that continuous and accurate measurement of the volume of Brackish Source Water deliveries from the Brackish Source Water Wells to the Desalination Plant, and of Product Water deliveries from the Desalination Plant to the MCWD Meter and the CAW Meter, is necessary for (i) calculating the costs to be allocated in accordance with this Agreement, (ii) implementation of other provisions of this Agreement, and (iii) effective operation and maintenance of the Project Facilities.

10.2 MCWD Measurement. It shall be the responsibility of MCWD to obtain and record the above-described volumetric measurements. To do so, MCWD shall install, own, maintain and operate measuring and recording equipment (each, a "Meter," collectively, the "Meters") at each of the Brackish Source Water Receipt Point, the Desalination Plant Product Meter and the Delivery Point. It is anticipated that there shall be one (1) Meter at the Brackish Source Water Receipt Point and two (2) Meters at the Delivery Point. The Meter at the Brackish Source Water Receipt Point shall be the Brackish Source Water Receipt Point Meter and shall measure the amount of Brackish Source Water delivered to the MCWD Intake Pipeline for

delivery to the Desalination Plant. The first Meter at the Delivery Point shall measure the amount of Product Water that is delivered to MCWD's facilities in order to serve MCWD's customers (the "MCWD Meter"). The second Meter at the Delivery Point shall measure the amount of Product Water that is delivered to the CAW Pipeline in order to service CAW's customers (the "CAW Meter"). An independent, certified third party of MCWD's choosing shall inspect, test, service and calibrate each of these Meters as per manufacturer specifications or at least once per Calendar Year in order to ensure that they remain accurate in compliance with each such Meter's specifications. MCWD shall keep and maintain accurate and complete records thereof. MCWD will provide a monthly report of the monthly readings of the Brackish Source Water Receipt Point Meter, the MCWD Meter and the CAW Meter. Upon request, such inspection tests and results and records of water amounts shall be made available for review, inspection and copying by the other Parties. Upon request, each of MCWRA and CAW shall have the right to inspect the standard measuring devices and equipment used to measure the Brackish Source Water or Product Water, as applicable.

10.3 MCWRA Brackish Source Water Well Measurement. In addition to the measurement responsibilities of MCWD, MCWRA shall obtain and record measurements of the volume of Brackish Source Water delivered from each of the Brackish Source Water Wells to the MCWD Owned Facilities. In order to do so, MCWRA shall install, maintain and operate measuring and recording equipment (each, a "Brackish Source Water Well Meter," and collectively, the "Brackish Source Water Well Meters") to be located at each of the Brackish Source Water Wells. An independent, certified third party of MCWRA's choosing shall inspect, test, service and calibrate each of the Brackish Source Water Well Meters as per manufacturer specifications or at least once per Calendar Year in order to ensure that they remain accurate in compliance with such meter's specifications. MCWRA shall keep and maintain accurate and complete records thereof. MCWRA will provide to the other Parties a monthly report regarding the amounts of Brackish Source Water delivered pursuant to this Agreement. Upon request, (a) such inspection tests and results and records of water amounts shall be made available for review, inspection and copying by the other Parties, and (b) MCWD and CAW shall have the right to inspect the standard measuring devices and equipment used to measure Brackish Source Water.

11. Payment Provisions.

11.1 Generally. In consideration of the supply of Product Water under this Agreement, CAW shall pay to MCWD and MCWRA, through the Project Escrow Account, an amount equal to the Debt Service costs of the Project Facilities and O&M Costs of the Project Facilities, less MCWD's Proportional Share of Debt Service and MCWD's Proportional Share of O&M Costs as specified below in this Agreement, and MCWD shall pay to the Project Escrow Account an amount equal to MCWD's Proportional Share of Debt Service and MCWD's Proportional Share of O&M Costs. Not later than the beginning of each Calendar Year the Debt Service and O&M Costs of the Project Facilities shall be projected for such Calendar Year based on the terms of the Indebtedness and the O&M Costs for such Calendar Year. Not later than the beginning of each Calendar Year the Debt Service and O&M Costs of the Project Facilities shall be projected for such Calendar Year based on the terms of the Indebtedness, MCWD's estimate of MCWD O&M Costs, MCWRA's estimate of MCWRA O&M Costs, CAW's estimate of CAW Regional Desalination Project Related Expenses and MCWD's and MCWRA's estimate of

Energy Costs for the coming Calendar Year, Payment Period or calendar month, as applicable, and any other applicable costs. O&M Costs under this Agreement shall be reported in the form normally used by each of MCWD and MCWRA in reporting to their respective boards. Pursuant to Section 6.5(h), such estimates shall be reviewed and considered by the Parties in consultation with the Advisory Committee.

11.2 Procedures for Payment to MCWD and MCWRA.

(a) Project Escrow Account. MCWD, MCWRA and CAW shall enter into a mutually acceptable escrow agreement (the "Project Escrow Account Agreement") to establish an escrow account (the "Project Escrow Account") with a mutually acceptable third-party escrow agent (the "Escrow Agent") that will disburse the proceeds of the Product Water Contract Payments from the Project Escrow Account in a manner which reflects the provisions of Section 11.2(b) herein. All accounts under the Project Escrow Account Agreement shall be interest bearing accounts and any interest earned on funds paid into such accounts shall be retained in such accounts and applied against future payments from such accounts.

(b) Disbursement of Product Water Contract Payments. Pursuant to the terms of the Project Escrow Account Agreement, the Escrow Agent shall release and disburse, as and when required under the Project Escrow Account Agreement, (i) an amount to MCWRA or as directed by MCWRA equal to the MCWRA Debt Service and the MCWRA O&M Costs for the subject Payment Period (each such disbursement by the Escrow Agent shall be referred to as a "MCWRA Project Escrow Account Payment"); (ii) an amount to MCWD or as directed by MCWD equal to MCWD Debt Service and the MCWD O&M Costs for the subject Payment Period (each such disbursement by the Escrow Agent shall be referred to as a "MCWD Project Escrow Account Payment") and (iii) an amount to CAW or as directed by CAW equal to the CAW Regional Desalination Project Related Expenses (the "CAW Project Escrow Account Payment," together with the MCWD Project Escrow Account Payments and the MCWRA Project Escrow Account Payments, the "Project Escrow Account Payments"). In addition to the Project Escrow Account Payments, as and when required by the Project Escrow Account Agreement, the Escrow Agent shall also release and deposit the Reserve Fund Payments contained in the Project Escrow Account into an interest-bearing account established by the Parties (the "Reserve Fund Payments Account"), to be held for use in accordance with the provisions of Section 7.2

(c) Suspension of Payments. At such time as either CAW or MCWD is in breach of its obligation to make all or any portion of its Product Water Contract Payments, such Party's rights to receive any disbursement from the Project Escrow Account shall be suspended.

(d) Prudence of Costs. All costs of the Parties pursuant to this Agreement shall be reasonably and prudently incurred. All payments made by CAW under this Agreement shall be deemed reasonable and to the extent practicable be included in the cost of the Product Water. To the extent not already included in the CAW Product Water Contract Payments and not previously recovered by CAW from ratepayers through existing CPUC approved rate recovery, any CAW costs, fees and expenses incurred under this Agreement that are not CAW Regional Desalination Project Related Expenses or CAW Project Administration

and Oversight Expenses shall be included in the O&M Costs and shall be included in and recovered by CAW from the cost of the Product Water.

11.3 CAW Payment Obligations. Unless otherwise agreed upon in writing by the Parties, beginning with the Acceptance Date, CAW shall have the following payment obligations (collectively, the "CAW Product Water Contract Payments"):

(a) CAW Debt Service Allocation. In connection with each Payment Period during the Term, seven (7) days prior to the last day of such Payment Period (each, a "Payment Period Payment Date"), CAW shall pay to the Project Escrow Account an amount (each such payment, a "CAW Debt Service Allocation") equal to (i) one hundred percent (100%) of the Debt Service of the Project Facilities attributable to such Payment Period (which for purposes of this calculation shall never be less than one dollar (\$1.00)); less (ii) the MCWD Debt Service Allocation attributable to such Payment Period as calculated pursuant to Sections 11.4 and 11.5.

(b) CAW O&M Costs Allocation. CAW shall pay to the Project Escrow Account (i) one hundred percent (100%) of the O&M Costs of the Project Facilities for each calendar month, less (ii) the MCWD Proportional Share of O&M Costs for such month as calculated pursuant to Section 11.6. CAW shall pay such amount to the Project Escrow Account within thirty (30) days after receipt of MCWD's and MCWRA's respective invoices for the amount of the MCWD O&M Costs and the MCWRA O&M Costs, respectively, which invoices will be sent as soon as possible after the end of each calendar month.

(c) CAW Reserve Costs Allocation. On each Payment Period Payment Date, in addition to the CAW Debt Service Allocation, CAW shall pay to the Project Escrow Account an amount (each such payment, a "CAW Reserve Fund Payment") equal to the then applicable Reserve Percentage of the concurrently paid CAW Debt Service Allocation.

(d) Reserve Percentage. The Parties, in consultation with the Advisory Committee, shall establish annually in connection with the updating of the Replacement Budget and every five years in connection with the urban water management plan process described in Section 8.2(d), a percentage amount that will be used to fund the Reserve Fund Payments Account for the purpose of paying for such Replacements as may be necessary to assure the continuing and long-term viability and utility of the Project Facilities in accordance with Best Industry Practices (the "Reserve Percentage"). Initially, the Reserve Percentage shall be three percent (3%). The Parties, in consultation with the Advisory Committee, shall determine whether the Reserve Percentage should be increased or decreased to best manage the Reserve Fund Payments Account balance so that the same is appropriate, without being excessive, to fund future Replacements as may be necessary to assure the continuing and long-term viability and utility of the Project Facilities in accordance with Best Industry Practices. Notwithstanding the foregoing, at no time shall the Reserve Percentage exceed five percent (5%).

(e) Payments to Project Escrow Account. CAW shall make the CAW Product Water Contract Payments, as and when required by this Section 11.3, by remitting such payments directly to the Project Escrow Account.

11.4 MCWD Payment Obligations. Unless otherwise agreed to in writing by the Parties, beginning with the Acceptance Date, MCWD shall have the following payment obligations (collectively, the “MCWD Product Water Contract Payments”):

(a) MCWD Debt Service Allocation. On each Payment Period Payment Date, MCWD shall pay the Project Escrow Account an amount (each such payment, a “MCWD Debt Service Allocation”) equal to the lesser of (i) MCWD's Proportional Share of Debt Service as calculated pursuant to Section 11.5 or (ii) the Fees Limit.

(b) MCWD O&M Costs Allocation. MCWD shall pay the Project Escrow Account MCWD's Proportional Share of O&M Costs as calculated pursuant to Section 11.6 for each Payment Period. MCWD shall make such payment within thirty (30) days after transmitting to CAW an invoice as provided in Section 11.3(b).

(c) MCWD Reserve Costs Allocation. On each Payment Period Payment Date, MCWD shall pay to the Project Escrow Account an amount (each such payment, a “MCWD Reserve Fund Payment”) equal to either (i) so long as the Fees Limit is greater than zero, in addition to the MCWD Debt Service Allocation, the then applicable Reserve Percentage of the concurrently paid MCWD Debt Service Allocation; or (ii) from and after the point in time where the Fees Limit is equal to zero, an amount equal to the product of (x) the CAW Debt Service Allocation, (y) the percentage described in clause (ii) of Section 11.5(b), and (z) the Reserve Fund Percentage.

11.5 MCWD's Proportional Share of Debt Service.

(a) Below Potable Groundwater Limits and MCWD Annual Allocation. So long as there is no MCWD Permanently Allocated Product Water nor has MCWD requested to receive or use Product Water in excess of the MCWD Agreed Allocation (subject to the provisions of Section 9.6), then the MCWD Proportional Share of Debt Service shall be equal to zero.

(b) Above Either Potable Groundwater Limits or MCWD Annual Allocation. Once MCWD has created MCWD Permanently Allocated Product Water or has requested to receive or use Product Water during the Payment Period in excess of its MCWD Annual Allocation (subject to the provisions of Section 9.6), then the “MCWD Proportional Share of Debt Service” shall be equal to:

The product of (i) one hundred percent (100%) of the Debt Service of the Project Facilities attributable to such Payment Period (which for purposes of this calculation shall never be less than one dollar (\$1.00)) and (ii) the result obtained by dividing (A) the sum of (1) the aggregate amount of MCWD Permanently Allocated Product Water in AFY (prorated for the subject Payment Period) and (2) the greater of (x) zero or (y) the amount of Product Water in AFY actually received and used by MCWD during such Payment Period less the greater of (I) its MCWD Agreed Allocation (prorated for the subject Payment Period) and (II) aggregate amount of MCWD Permanently Allocated Product Water in AFY (prorated for the subject Payment Period) by (B) 10,500 AFY (prorated for the subject Payment Period).

Once the permits requiring MCWD Permanently Allocated Product Water are issued, the MCWD Proportional Share of Debt Service shall be calculated in accordance with this Section 11.5(b) for the remainder of the Term. Notwithstanding anything to the contrary contained herein, neither (i) any sales of Product Water by MCWD to third parties (other than to MCWD Service Area customers) in excess of the MCWD Annual Allocation in accordance with the provisions of Section 9.5 nor (ii) any Product Water received and used by MCWD in excess of the MCWD Annual Allocation that was not specifically requested by MCWD and which was provided pursuant to Section 9.6, shall be included in calculating the MCWD Proportional Share of Debt Service. For clarification purposes only, **Exhibit E** attached hereto contains sample calculations under this Section 11.5(b).

11.6 MCWD's Proportional Share of O&M Costs.

(a) Below Potable Groundwater Limits and MCWD Annual Allocation. So long as MCWD has either not created MCWD Permanently Allocated Product Water or has not received and used Product Water in excess of its MCWD Agreed Allocation (subject to the provisions of Section 9.6), then the MCWD Proportional Share of O&M Costs shall be MCWD's then-current per acre-foot cost of providing potable groundwater from the Salinas Basin to MCWD's customers (as established annually by MCWD and as more particularly described and illustrated in **Exhibit F**) multiplied by the MCWD Agreed Allocation. Upon request from CAW, from time to time, MCWD shall provide CAW with reasonable evidence of such cost.

(b) Above Either Potable Groundwater Limits or MCWD Annual Allocation. Once MCWD has received and used Product Water during the calendar month in excess of its MCWD Agreed Allocation (subject to the provisions of Section 9.6), then the MCWD Proportional Share of O&M Costs shall be equal to:

The amount determined under Section 11.6(a) plus the product of (i) one hundred percent (100%) of the O&M Costs attributable to such calendar month and (ii) the amount of Product Water received and used by MCWD during such calendar month, which, when considered in the aggregate with the Product Water received and used by MCWD in prior calendar months of the subject Calendar Year, is in excess of its MCWD Agreed Allocation (subject to true-up under Section 9.6) divided by the Total Actual Product Water Quantity. For clarification purposes only, **Exhibit E** attached hereto contains sample calculations under this Section 11.6(b).

11.7 True-up on Product Water Contract Payments. In calculating each of the Product Water Contract Payments, the Parties understand that the calculation of certain aspects of payments under this Agreement shall initially be based on Estimated Water Quantities and estimated O&M Costs. On a rolling basis, following each Calendar Year, Payment Period or calendar month, as applicable, the Parties agree that the original calculations previously utilized in determining CAW's payment obligations and MCWD's payment obligations under this Article 11 shall be revised based on Actual Water Quantities and actual O&M Costs for such Calendar Year, Payment Period or calendar month, as applicable. Any discrepancies between the original calculations and the revised calculations shall be applied towards future payments in order to true-up the amounts due hereunder.

11.8 Payment Period Schedule. For purposes of this Agreement, a “Payment Period” shall relate to the period of time between each required payment by MCWD or MCWRA in accordance with the payment terms of the MCWD Indebtedness and/or MCWRA Indebtedness, as applicable (the “Payment Period Schedule”). On or before the Acceptance Date and at least ninety (90) days prior to the beginning of each Calendar Year following the Effective Date, MCWD and MCWRA shall each provide CAW with an Payment Period Schedule updated to reflect the required payment schedule for the coming Calendar Year.

11.9 Minimum Obligation of CAW. To ensure that during the Term of this Agreement there will always be Product Water delivered to CAW, thus requiring CAW to make Product Water Contract Payments to pay the Debt Service costs and the O&M Costs of the Project Facilities, CAW agrees to take and receive at least 500 AFY during each Calendar Year (or a prorated portion thereof for any partial Calendar Year).

11.10 No Accumulation of Water Allocations. Except as otherwise provided in Section 9.6, to the extent that either CAW fails to take and receive the maximum CAW Allocation or MCWD fails to take and receive the MCWD Annual Allocation during any Calendar Year, irrespective of any payments made as required under this Agreement, such Party shall not be entitled to use Product Water not used in any prior Calendar Year in subsequent Calendar Years and neither Party shall be entitled to carry forward the balance of any unused water from a given Calendar Year for use in any subsequent Payment Period or Calendar Year.

11.11 MCWRA and CAW Submittal of Cost Information. Recognizing that the O&M Costs are comprised of several component costs, incurred by MCWRA and CAW pursuant to the terms of this Agreement, as such costs are incurred by either MCWRA or CAW such parties shall deliver to MCWD a statement of such costs and reasonable evidence that the same are includable in those components of O&M Costs attributable to such Party. As set forth in Section 11.2, as Product Contract Water Payments are made, the Escrow Agent shall cause to be disbursed to the respective Parties in accordance with the terms of the Project Escrow Account Agreement those O&M Costs which are to be reimbursed to the Party. MCWRA and CAW shall cooperate with any requests by MCWD for additional information it reasonably requires to confirm that their respective cost statements reflect only those costs which each has the right to include in the O&M Costs pursuant to the terms of this Agreement. MCWRA and CAW acknowledge that MCWD is not responsible to pay or reimburse either of them from MCWD's own funds and that the sole source of reimbursement to MCWRA and CAW are the portion of the Product Water Payments based on O&M Costs.

11.12 Records and Audit Rights. All business records relating to the design, construction, ownership, operation, maintenance and/or administration of the MCWD Owned Facilities and the MCWRA Owned Facilities and costs which are includable in Product Water Contract Payments are the property of the Party who owns the subject facility or who incurred the subject cost; however, MCWD and MCWRA shall cooperate with CAW's requests to make such Party's business records relating to the design, construction, ownership, operation, maintenance and/or administration of the Project Facilities available for review, inspection and/or copying by CAW. MCWD and MCWRA agree that all such records and information shall be preserved and maintained by them in their customary manner. With respect to those business records relating to the design, construction, and construction costs of the Project

Facilities, each of MCWD and MCWRA shall retain such records for a period of time not less than the longer of the term of the Indebtedness, SRF loans, any grants or any other similar funding opportunities used to finance or fund such Project Facilities. Each Party shall keep the books, records and accounts maintained with respect to each Calendar Year until at least the seventh anniversary of the last day of each such Calendar Year (or such longer period as may be appropriate to account for any dispute then pending) and upon reasonable notice, shall make such books and records available to the other Parties for review, inspection and/or copying. If any such review determines that any amount owed hereunder was overstated or understated, an appropriate adjustment in any sum next due hereunder shall be made until the overpayment or underpayment is fully credited or paid. The provisions of this Section shall survive until the seventh anniversary of the termination of this Agreement.

11.13 Regional Desalination Project Annual Report. CAW shall be responsible for preparing a Regional Desalination Project Annual Report on an annual basis and will be made available to each of the Parties within one hundred and twenty (120) days following the end of each Calendar Year. The Regional Desalination Project Annual Report shall be available on CAW's website. Each of MCWD and MCWRA shall provide information to and shall cooperate with CAW in order to prepare the Regional Desalination Project Annual Report. The cost and expenses for preparing the Regional Desalination Project Annual Report shall constitute a CAW Regional Desalination Project Related Expense.

11.14 Water Fees.

(a) Collection of Fees. From and after the Acceptance Date and continuing until the Fees Limit is zero, MCWD will impose and collect Fees in accordance with its standard practices and procedures.

(b) Application of Fees. On the thirtieth day following the first full calendar quarter after the Acceptance Date and on the thirtieth day following the first day of each calendar quarter thereafter and continuing until the Fees Limit is zero, Fees collected prior to the first day of such calendar quarter and not already applied as described in this Section 11.14, will be used, to the extent possible, to pay down the MCWD Indebtedness. If either (i) any Fees remain after repaying all possible MCWD Indebtedness or (ii) for any reason, Fees cannot be applied to pay or reduce the MCWD Indebtedness, then MCWD shall apply the remaining Fees collected prior to the first day of such calendar quarter towards the MCWD O&M Costs next incurred.

(c) MCWD Obligations. MCWD will use commercially reasonable efforts, including MCWD's standard practices and procedures where applicable, to (i) impose appropriate connection fees, a portion of which are Fees, by utilizing Best Industry Practices in conducting any future rate studies or in establishing future connection fees designated to be applied towards water augmentation through capital facilities for desalination; and (ii) collect any due, but unpaid Fees. Notwithstanding anything to the contrary contained herein, MCWD shall not be obligated to apply any Fees collected in excess of the Fees Limit towards either the MCWD Indebtedness or MCWD O&M Costs and may retain such Fees for use as MCWD deems appropriate in its sole discretion.

12. **Compliance with Laws.** MCWD, MCWRA and CAW shall cooperate to take the actions and execute the documents necessary to comply with laws and regulations governing the construction, operation and use of the Project Facilities and the delivery of water hereunder.

13. **No MCWD or MCWRA Responsibility for Delivery and Distribution of Water by CAW.** To the extent permitted by law and, in the case of MCWD, except to the extent arising from the quality of Product Water for which MCWD is responsible, neither MCWD nor MCWRA, nor any of their respective officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, or distribution of Product Water supplied to CAW after such water has been delivered to CAW at the Delivery Point in accordance with the terms of this Agreement; nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water that has been delivered to CAW at the Delivery Point and including attorneys fees and other costs of defense in connection therewith.

14. **Indemnification; Fees and Expenses**

14.1 **Indemnification.**

(a) CAW shall indemnify and hold harmless MCWD and MCWRA, and their respective officers, agents and employees from any claims of damages described in Section 13.

(b) Each Party shall indemnify and hold harmless the other Parties and their respective applicable Indemnified Parties against all liabilities, obligations, expenses, losses, actions, suits and causes of action, or claims, of any kind or nature, including, without limitation, reasonable attorneys' fees, expert fees and litigation costs (the foregoing, collectively, "Losses") to the extent arising from or relating to (i) a default or breach of this Agreement by the indemnitor Party, (ii) the negligence, fraud or willful misconduct of the indemnitor Party, or (iii) the breach or default of the indemnitor Party in connection with the Settlement Agreement, the Outfall Agreement, the Regional Desalination Project PMA, any Operations and Maintenance Agreements, the Project Escrow Account Agreement, or the agreements entered into by the indemnitor Party in connection with the design and construction of the Regional Desalination Project.

14.2 **Costs Not Covered By Indemnification.** All Losses other than those described in Section 14.1 arising from any claim, action, suit or cause of action brought by a third party directly relating to this Agreement, or directly relating to the other agreements entered into by the Parties in connection with the Settlement Agreement or the Regional Desalination Project, including litigation challenging the legality or validity of this Agreement or its execution or performance including, without limitation, litigation under the California Environmental Quality Act, the Agency Act (other than litigation commenced by either MCWD or CAW), and inverse condemnation litigation shall constitute a Regional Desalination Project Related Expense of the Party incurring the subject Loss; provided, however, that any such Loss that is incurred by any of the Parties prior to Acceptance or in connection with litigation that is initiated prior to Acceptance shall be, with respect to each Party, "Pre-Acceptance Defense Costs" which shall be

reimbursed to MCWD and MCWRA from the Indebtedness (not including any CAW Financing) or, if such costs are not permitted by the terms of the Indebtedness (not including any CAW Financing) to be funded by the Indebtedness (not including any CAW Financing), reimbursed to MCWD and MCWRA from the proceeds of a CAW Loan or the CAW Credit Line which CAW will make (or arrange for an Affiliate of CAW to make) to MCWD and MCWRA (as applicable) on the terms and conditions set forth in Section 7.1(c) and in an aggregate amount up to \$3,000,000 as requested by MCWD and MCWRA provided that all CAW Loans and the CAW Credit Line do not exceed \$25,500,000. In the event of any claim, action, suit or cause of action described in this Section 14.2, the Parties shall meet to determine whether, under the circumstances of the particular case, one counsel or a single lead counsel (with monitoring by separate counsel for each affected Party) may feasibly represent all of the Parties in the defense of such claim, action, suit, or cause of action after taking into consideration whether any actual or potential conflicts of interest exist among the Parties or their attorneys with respect to such claim, action, suit or cause of action and whether any requirements or rules to which each Party is subject to would prevent such joint representation; provided, however, that MCWRA shall retain sole discretion to select counsel to defend MCWRA in litigation related to the Agency Act. Within the limitations of such considerations, the Parties shall determine the most cost efficient and effective way to defend against such claim or cause of action by all Parties named therein.

14.3 No Third-Party Beneficiary Indemnification Rights. Nothing in this Article 14 or in Article 15 hereof shall be construed to give rise to any third-party beneficiary rights with respect to any Person who is not an Indemnified Party.

15. Casualty Loss.

15.1 MCWD Owned Facilities. If the MCWD Owned Facilities, or any part thereof, shall be damaged or destroyed by fire, 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 MCWD Owned Facilities in order to restore them 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. MCWD, MCWRA and CAW shall meet and confer regarding casualty repairs, including but not limited to, the nature of the repairs, replacement equipment, contractor qualifications, potential disruptions to operations, and scheduling. The repair and restoration work done by MCWD pursuant to this Section shall comply with the terms of the MCWD Indebtedness and with any restriction, easement, condition or covenant or other matter affecting title to the MCWD Owned Facilities, and all repair and restoration work done by MCWD pursuant to this Article shall be undertaken with promptness 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 MCWD Owned Facilities. If the proceeds of the casualty insurance policy required to be maintained by MCWD by the terms of this Agreement or the MCWD Indebtedness are less than the estimated cost of restoring, replacing or rebuilding the MCWD Owned Facilities to the condition and fair market value required above in this Section, then CAW and MCWD shall share and pay any such deficiency in the same proportion as each of the CAW Debt Service Allocation and the MCWD Proportional Share of Debt Service.

15.2 MCWRA Owned Facilities. If the MCWRA Owned Facilities, or any part thereof, shall be damaged or destroyed by fire, earthquake or other casualty, MCWRA shall proceed with diligence and promptness to carry out any necessary demolition and to restore, repair, replace, and/or rebuild them 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. MCWRA, MCWD and CAW shall meet and confer regarding casualty repairs, including but not limited to, the nature of the repairs, replacement equipment, contractor qualifications, potential disruptions to operations, and scheduling. The repair and restoration work done by MCWRA pursuant to this Section shall comply with the terms of the MCWRA Indebtedness and the terms of any restriction, easement, condition or covenant or other matter affecting title to the MCWRA Owned Facilities, and all repair and restoration work done by MCWRA pursuant to this Article shall be undertaken with promptness 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 MCWRA Owned Facilities. If the proceeds of any casualty insurance policy required to be maintained by MCWRA by the terms of this Agreement or MCWRA Indebtedness are less than the estimated cost of restoring, replacing or rebuilding the MCWRA Owned Facilities to the condition and fair market value required above in this Article, then CAW and MCWD shall share and pay any such deficiency in the same proportion as each of the CAW Debt Service Allocation and the MCWD Proportional Share of Debt Service.

16. Insurance.

16.1 Requirements. Prior to the commencement of the Term, MCWD shall procure and maintain with respect to MCWD's use and operation of the Desalination Plant the following valid and enforceable insurance (collectively, the "Insurance Requirements");

- (a) Commercial General Liability Insurance or Comprehensive General Liability Insurance with Broad Form CGL endorsement with limits of not less than \$3,000,000 each occurrence and \$5,000,000 general aggregate.
- (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 (including coverage for loss or damage by water, flood, collapse, subsidence and earthquake) with a limit equal to the replacement cost of the MCWD Owned Facilities during the Term.
- (d) Builders risk insurance, business interruption insurance and other course of construction insurance as appropriate.
- (e) MCWD and MCWRA may satisfy the foregoing insurance requirements by obtaining equivalent insurance through the ACWA JPIA that provides

equivalent or better protection against the subject risk than commercially available third party insurance and which relies on an issuer whose financial standing and capacity is at least as strong as a third party commercial insurance company with a Best's rating of at least A+ and who maintains reserves and retentions (in solvent, liquid and secure financial accounts or investments) in an amount based on accepted actuarial insurance industry methods . Such insurance may be in the form of ACWA JPIA's Liability Program, Property Program and/or Worker's Compensation Program and, provided the foregoing conditions are satisfied, will satisfy MCWD's and MCWRA's obligation under this Section 16.1 and Section 16.3 below.

16.2 CAW Insurance Obligations. During the Term, CAW also shall be responsible for maintaining the type of insurance described in subsections 16.1(a) and (b) with respect to the CAW Facilities.

16.3 MCWRA Insurance Obligations. During the Term, MCWRA also shall be responsible for maintaining the type of insurance described in subsections 16.1(a) through (d) with respect to the MCWRA Owned Facilities.

16.4 General Requirements. In addition to the foregoing, every insurance policy maintained in accordance with this Article 16 shall: (i) with respect to property insurance, name each of the other Parties as additional loss payees as their interests may appear; (ii) with respect to property insurance, provide that the issuer waives all rights of subrogation against the Parties or any other person insured under such policy, (iii) with respect to general liability insurance, name each other Party as an additional Named Insured, (iv) provide that thirty (30) days advance written notice of cancellation, material modification, termination or lapse of coverage shall be given to each of the Parties; and (v) be primary relative to the respective Party's liability and without right or provision of contribution as to any other insurance carried by any of the Parties or any other interested Party. Subject to the terms of Section 16.1(e), each policy required under Section 16 shall be issued by an insurance company which maintains a Best's rating of at least A+ during the term of the applicable policy or is otherwise reasonably acceptable to the other Parties. Subject to the terms of Section 16.1(e), to the extent that an insurance company providing a policy required under this Section 16 fails to maintain a Best's rating of at least A+ and is not otherwise reasonably acceptable to the other Parties, the insuring Party shall promptly replace such insurance company with a company meeting the requirements of this Section 16.4. Subject to the terms of Section 16.1(e), the current Insurance Service Office (ISO) or other reasonable and customary policies, forms and endorsements or broader shall be used where applicable.

16.5 Certificates of Insurance. Each of the Parties shall each deliver to the each of the other Parties prior to the Term certificates of insurance, reasonably satisfactory to each other Party, evidencing all of the insurance required under Sections 16.1, 16.2 and 16.3 of this Article 16. At least fifteen (15) days prior to 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.

16.6 Correspondence With Coverage Requirements. Each Party shall comply with all of the terms and conditions of each insurance policy maintained by it pursuant to the

terms of this Agreement to the extent necessary to avoid invalidating such insurance policy or impairing the coverage available thereunder.

16.7 No Limitations or Liability. The limits of insurance contained in this Article shall not be construed as limits on the indemnification obligations set forth in Article 15.

17. Representations and Warranties.

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

(a) 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;

(b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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 enter into this Agreement and/or perform its obligations under this Agreement; and

(g) 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.

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

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

(b) 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

(c) 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.

18. Assignment.

18.1 No Mortgage or Pledge as Security. CAW shall not mortgage or pledge as security any portion of the Project Facilities. Any such mortgage or pledge shall be null and void.

18.2 Permitted Assignment. Neither CAW nor MCWD may assign its interest in this Agreement except in connection with the consolidation or merger of such Party into any other Person or the sale, agreement or other transfer or disposal of all or substantially all of such Party'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 such Party'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 the transferring Party, assumes all of the transferring Party'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 any Party, including but not limited to any and all licensing requirements applicable to the Operator(s) of the Project Facilities.

19. Dispute Resolution

19.1 Scope of Article. Subject to the provisions of Section 6.6, this Article governs the resolution of all disputes that arise under this Agreement. Except as set forth in Sections 19.5, 20.1(a), and 20.1(b)(i), no dispute shall give rise to an Event of Default under this Agreement until the dispute resolution procedures of this Article 19 have been completed.

19.2 Good Faith Negotiations. Except as provided in Section 19.5, any Party that believes a dispute exists under this Agreement shall notify the other Parties of the dispute in writing. Within five (5) Business Days of the day upon which written notice is deemed complete under Section 21.3, the Representatives of each Party will personally meet and confer and attempt in good faith to resolve the dispute. If the Representatives cannot resolve the dispute within ten (10) Business Days after the day upon which written notice is deemed complete under Section 21.3, 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) Business Days after the day upon which written notice is deemed complete under Section 21.3, a Party that still believes a dispute requires resolution may avail itself of the provisions of Section 19.3. If the subject matter of the dispute relates to a very time sensitive issue, the Parties shall reasonably cooperate with one another to expedite the above-described negotiation.

19.3 Non-Binding Mediation. Except as provided in Section 19.5, if the dispute is not settled or resolved pursuant to Section 19.2, the Parties shall endeavor to settle the dispute in an amicable manner, using non-binding mediation under the rules of JAMS before having recourse in a court of law. Each Party shall be responsible for the expenses of such Party's participants, consultants, experts or representatives and shall be paid by the Party producing such participants, consultants, experts or representatives. 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 all 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/treatment industry, including both publicly-owned and privately-owned water utilities. If any of the matters or issues involved in any dispute are outside the scope of expertise of the mediator, the mediator shall have the right to retain and rely on one or more experts with respect to the applicable matter or issue requiring expert advice. Any person selected as an expert shall be knowledgeable and experienced in the matters sought to be mediated and shall have no affiliation with the Parties; provided, however, the expert may have been utilized by either Party as a consultant not more recently than twelve (12) months prior to the time of engagement if the mediator determines that such expert will provide services unbiased by such prior consulting relationship. Mediation shall be completed within 60 days after request for the mediation by either Party, unless the parties to the mediation otherwise agree in writing. If the subject matter of the dispute relates to a very time sensitive issue, the Parties shall reasonably cooperate with one another to expedite the above-described mediation.

19.4 Judicial Relief. If mediation pursuant to Section 19.3 does not resolve a dispute, a Party or the Parties may seek relief in a court of competent jurisdiction.

19.5 Remedies. This Article 19 is intended to provide the primary procedure to resolve all disputes under this Agreement, except as provided in Sections 6.6, 19.5, 20.1(a), and 20.1(b)(i). Except as provided below, it is expected that all disputes that would traditionally be filed in a court of law will not be filed in a court of law unless first subject to the procedure described in Sections 19.2 and 19.3 above. However, the Parties recognize that certain circumstances could give rise to the need for one or more of the Parties to seek equitable remedies from a court that are traditionally available from a court of equity, such as emergency, provisional, summary, or injunctive relief. Notwithstanding the terms of this Article 19, in those instances where the interests of expediency and/or the avoidance of irreparable harm, any Party may seek equitable relief or remedies without first having complied with the terms of Sections 19.2 and 19.3, but in such circumstance, the Party who intends to seek such relief must give immediate notice to the other Parties of the intent to seek such relief, even if such notice is not yet required under applicable procedure from the Code of Civil Procedure, the California Rules of Court, local court rules, or any other body of law providing applicable procedure.

20. **Events of Default and Remedies.**

20.1 **Events of Default:** Subject to the terms of Section 20.2, any of the following occurrences or acts, unless excused by an event of Force Majeure, shall constitute an event of default under this Agreement (each an "**Event of Default**"):

(a) if CAW defaults in making any payment when due under the terms of this Agreement, which default continues for thirty (30) days after receipt of notice of the sum due and payable; provided, however, if CAW disputes whether any sum is properly charged or calculated and notifies MCWD or MCWRA (as applicable) of the disputed amount, and provides a detailed explanation of the reasons the amount is disputed and pays the undisputed portion within such thirty (30) day period, CAW shall not be subject to an Event of Default by reason of its withholding payment of the disputed amount and MCWD and CAW shall proceed to resolve the dispute in accordance with Article 19; or

(b) if CAW, MCWD or MCWRA defaults in the performance of any material covenant, agreement or obligation on the part of CAW, MCWD or MCWRA, as applicable, to be performed under this Agreement, and (i) the effect of the default is to allow or create a problem of an emergency nature relating to the quality or quantity of Product Water and the defaulting Party fails to cure the default as expeditiously as the circumstances warrant applying Best Industry Practices but in all events not more than 72 hours after the defaulting Party is given written notice by facsimile or similar transmission by any non-defaulting Party of the default, or (ii) in all other cases, such default continues for a period of thirty (30) days after written notice thereof is deemed complete under Section 21.3, unless such default is not curable within thirty (30) days, in which case, so long as the defaulting Party has commenced its cure within thirty (30) days after notice and shall thereafter diligently proceed 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) such Party shall not be considered to be in default or subject to an Event of Default; or

(c) if CAW, MCWD or MCWRA 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, MCWD or MCWRA as bankrupt, or proposing its reorganization pursuant to the Bankruptcy Code, and (i) CAW, MCWD or MCWRA, as applicable, consents to the filing thereof, or (ii) 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, MCWD or MCWRA, or of all or substantially all of the business or assets of CAW, MCWD or MCWRA or its estate or interest in the Regional Desalination Project, and such official shall not be discharged within sixty (60)

days thereafter, or if CAW, MCWD or MCWRA consents to or acquiesces in such appointment;
or

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

(g) if CAW or MCWD violates the terms of Sections 18.1 or 18.2.

20.2 Rights and Remedies of Non-defaulting Party. This Agreement and the Term are subject to the limitation that, whenever an Event of Default shall have occurred or been alleged to have occurred and be continuing, then except for Events of Default under Sections 20.1(a) and 20.1(b)(i), the procedures of Article 19 shall apply before any Party may exercise remedies with respect to such an Event of Default. For Events of Default under Sections 20.1(a) and 20.1(b)(i), and for other Events of Default still existing after the completion of the procedures of Article 19, a non-defaulting Party may, at its option, elect to exercise any one or more of the following rights and remedies:

(a) Any remedy specifically provided by this Agreement;

(b) Subject to Section 20.3, sue in a court of law to collect damages caused by the breach by the defaulting Party, including, if applicable, following a default by CAW, make a claim for accrued unpaid costs invoiced to CAW.

(c) Subject to Section 20.3, a 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, seeking specific performance or injunctive relief.

(d) The remedies set forth in this Section 20.2 shall be the sole and exclusive remedies available to a non-defaulting Party for an Event of Default. However, no right or remedy discussed in this Article 20 is intended to be exclusive of any other right or remedy also set forth in this Article 20, and every such right and remedy shall be cumulative and in addition to any other legal or equitable right or remedy discussed in or at any time existing under this Article 20.

20.3 Limitations on Damages. Relative to damages, a non-defaulting Party may only claim and shall be entitled only to collect from a defaulting Party Cover Damages (as defined herein), accrued unpaid costs invoiced to the defaulting Party, fines and penalties levied on the non-defaulting Party by any governmental agency that regulates the non-defaulting Party and which are directly related to the defaulting Party's default, and other direct actual damages,

and may not claim or collect consequential damages, incidental damages, or punitive or exemplary damages.

20.4 Attorneys Fees and Costs. In the event of any action or proceeding to enforce a term or condition of this Agreement, any alleged disputes, breaches, defaults, or misrepresentations in connection with any provision of this Agreement in which it is found that an Event of Default has occurred, or any action or proceeding in any way arising from this Agreement, the prevailing party in such action, including the non-dismissing Party or Parties in circumstances in which the plaintiff voluntarily dismisses the action after a response to the complaint has been filed, shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorney fees and costs.

21. Representatives; Notices.

21.1 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 Representative shall be either the General Manager or Chief Executive Officer of a Party or a Person designated by such Party who shall have at least five (5) years of direct experience and technical expertise in public or private water utility operations. 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 and changes to a designation must be made in a writing delivered to the other Parties.

21.2 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.

21.3 Notice. All notifications, notices, demands, requests and other communications herein provided for or made pursuant hereto shall be in writing and shall be 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) so long as a Party has notified the other Parties by means of a method described in clauses (i) or (ii) above of such Party's email address for notification purposes, email transmission of notices to such Party are also permitted provided an original is also sent via one of the other permitted means and the giving of such communication shall be complete when such email is received if such email is received before 5:00 pm PST; otherwise, such communication shall be deemed complete the next Business Day. The date on which notifications, notices, demands, requests and other communications are deemed complete shall be the earliest date arising under subsections (i), (ii) or (iii) of this Section 21.3. All notifications, notices, demands, requests and other communications to (a) CAW shall be addressed to its President with an additional copy to its General Counsel Party, (bi) MCWD shall be addressed to its General Manager with an additional copy to its District Counsel; and (c) MCWRA shall be addressed to its General Manager with an

additional copy to its County Counsel, each at its address set forth in the first paragraph of this Agreement, or at such other address in the continental United States as a Party may furnish to the other Parties in writing.

22. **Cessation of Delivery and Use.** Upon the expiration or earlier termination of the Term, MCWD shall cease the delivery of water and CAW shall cease receiving water from the Project Facilities.

23. **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 shall not limit any rights of MCWD or any other Person under applicable law relating to fraudulent transfers or voidable preferences.

24. **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 Parties as 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. Upon occurrence of the Force Majeure, the affected Party, in addition to notifying the other Parties as provided above, shall as promptly as possible provide such Parties a written description of the Force Majeure, the cause thereof (to the extent known), the date the Force Majeure began, its expected duration and an estimate of the specific relief requested or to be requested such Party. Furthermore, the Party affected by such Force Majeure shall use diligent efforts to reduce costs resulting from the occurrence of the Force Majeure, fulfill its performance obligations under this Agreement and otherwise mitigate the adverse effects of the Force Majeure. While the Force Majeure continues, the affected Party shall give the other Parties regular updates of the information previously submitted. The affected Party shall also provide prompt written notice to the other Parties of the cessation of the Force Majeure. Notwithstanding anything to the contrary contained herein, the occurrence of a Force Majeure shall not, however, excuse or delay any obligation to pay monies previously accrued and owing to another Party under this Agreement, or for the Party to perform any obligation under this Agreement not affected by the occurrence of the Force Majeure.

25. **Conditions Precedent.** Except for the terms of this Section 25 and the terms of Article 26, which are effective immediately, this Agreement shall become effective upon, and the duties of the parties to perform under this Agreement shall be subject to, the satisfaction all of the following conditions precedent:

25.1 All CEQA compliance, except any legal challenges, have been completed by each of MCWD, MCWRA and the CPUC.

25.2 The execution and delivery of an Outfall Agreement by MCWD and MRWPCA.

25.3 Final approval by the CPUC of this Agreement and the Settlement Agreement and the other agreements contemplated by the Settlement Agreement without modification except as approved, in their sole discretion, by each of the Parties affected by the modification.

Each of the Parties shall use their good faith diligent efforts to cause the conditions set forth in Sections 25.1, and 25.3 to be satisfied as promptly as possible. MCWD shall use its good faith diligent efforts to cause the condition set forth in Section 25.2 to be satisfied as promptly as possible. CAW shall use its good faith diligent efforts to obtain CPUC approval of the Settlement Agreement, this Agreement and all other agreements contemplated by the Settlement Agreement as promptly as possible.

26. **Other Provisions.**

26.1 **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.

26.2 **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.

26.3 **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 themselves out as partners, shareholders, or members of a business entity.

26.4 **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 and, in the case of any Substantive Amendments, receipt of CPUC approval of any such Substantive Amendment.

26.5 **No Waiver by Failure to Act.** No failure, delay, forbearance or indulgence on the part of any Party in insisting upon the strict performance of any provision, or in exercising any option, right, power, privilege or remedy hereunder, shall operate or be construed as a waiver or relinquishment thereof, or as an acquiescence in any breach, nor shall any single or partial exercise of any option, right, power, privilege or remedy hereunder preclude any other or further exercise thereof or the exercise of any other option, right, power, privilege or remedy.

26.6 **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.

26.7 Venue. Except in those circumstances where the California Supreme Court has original jurisdiction, MCWD, MCWRA and CAW agree that any action or proceeding regarding this Agreement seeking judicial relief shall be filed in the Superior Court of the State of California, but that nothing in this Section 26.7 shall be construed as a waiver of any Party's rights under California Code of Civil Procedure Section 394.

26.8 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.

26.9 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 hereto; nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third person to any party; and this Agreement does not create any duty, liability or standard of care to any person who is not a Party.

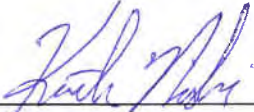
26.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute but one and the same instrument.

26.11 Consents and Approvals. Except as otherwise expressly set forth in this Agreement, all consents and approvals which may be given under this Agreement shall be in writing and shall not be unreasonably withheld or delayed unless otherwise expressly provided herein. The granting of any consent or approval by a Party to perform any act requiring consent or approval under the terms of this Agreement or the failure on the part of a Party to object to any such action taken without the required consent or approval, shall not be deemed a waiver of the right to require such consent or approval for any further similar act by the Party whose consent was required. If any Party requests in writing another Party's approval of a particular matter pursuant to a Section of this Agreement that requires the receiving Party's consent or approval and in such request refers to the Section in question, and the Party receiving the request fails to respond for ten (10) Business Days after the day upon which written notice is deemed complete under Section 21.3 and, after the expiration of such ten (10) Business Day period, the requesting Party sends a second request to the receiving Party in which the requesting Party states in bold or underscored typeface that "Pursuant to Section ___ of the Agreement, the receiving Party will be deemed to have consented to or approved this request if it does not respond within five (5) Business Days after receipt of this second request", and the receiving Party fails to respond to such second notice within five (5) Business Days after the day upon which the second written notice is deemed complete under Section 21.3, then the receiving Party shall be deemed to have consented to or approved of the matter in question. No fees or charges of any kind or amount shall be required by any Party as a condition of the grant of any consent or approval which may be required under this Agreement.

[SIGNATURE PAGE TO FOLLOW]

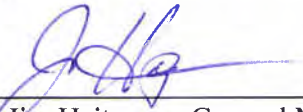
IN WITNESS WHEREOF, each of the Parties hereto have each caused this Agreement to be duly executed and delivered in their name and on their behalf, respectively, as of the day and year first written above.

MARINA COAST WATER DISTRICT, a
California water district


By: Kenneth Nishi, President

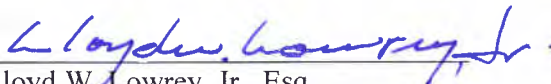
CALIFORNIA-AMERICAN WATER
COMPANY, a California corporation

By: Robert G. MacLean, President


By: Jim Heitzman, General Manager and
Secretary

APPROVED AS TO FORM:

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

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

MONTEREY COUNTY WATER
RESOURCES AGENCY,
as duly constituted Water Resources Agency
created pursuant to the Monterey County
Water Resources Agency Act

By: Simon Salinas, Monterey County Water
Resources Board of Supervisors Chairman

By: Curtis V. Weeks, General Manager

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MARINA COAST WATER DISTRICT, a
California water district

CALIFORNIA-AMERICAN WATER
COMPANY, a California corporation



By: Kenneth Nishi, President

By: Robert G. MacLean, President

By: Jim Heitzman, General Manager and
Secretary

APPROVED AS TO FORM:

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

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

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as duly constituted Water Resources Agency
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Resources Board of Supervisors Chairman

By: Curtis V. Weeks, General Manager

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MARINA COAST WATER DISTRICT, a
California water district

CALIFORNIA-AMERICAN WATER
COMPANY, a California corporation

By: Kenneth Nishi, President

By: Robert G. MacLean, President

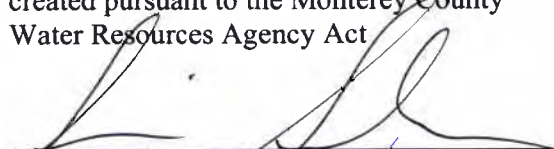
By: Jim Heitzman, General Manager and
Secretary

APPROVED AS TO FORM:

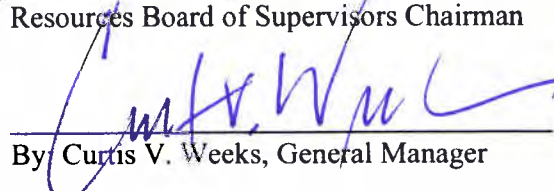
Noland, Hamerly, Etienne & Hoss,
A Professional Corporation,
Legal Counsel to MCWD

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

MONTEREY COUNTY WATER
RESOURCES AGENCY,
as duly constituted Water Resources Agency
created pursuant to the Monterey County
Water Resources Agency Act



By: Simon Salinas, Monterey County Water
Resources Board of Supervisors Chairman

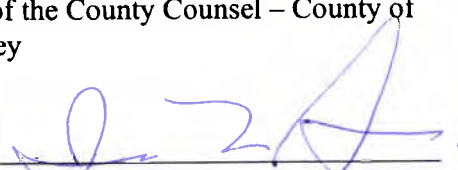


By: Curtis V. Weeks, General Manager

APPROVED AS TO FORM:

Irven L. Grant
Deputy County Counsel
Office of the County Counsel – County of
Monterey

By:


Irven L. Grant, Esq.

FURTHER APPROVED AS TO FORM:

Downey Brand LLP,
Legal Counsel to MCWRA

By:


Kevin M. O'Brien, Esq.

EXHIBIT A

MCWD SERVICE AREA

[Please see attached]

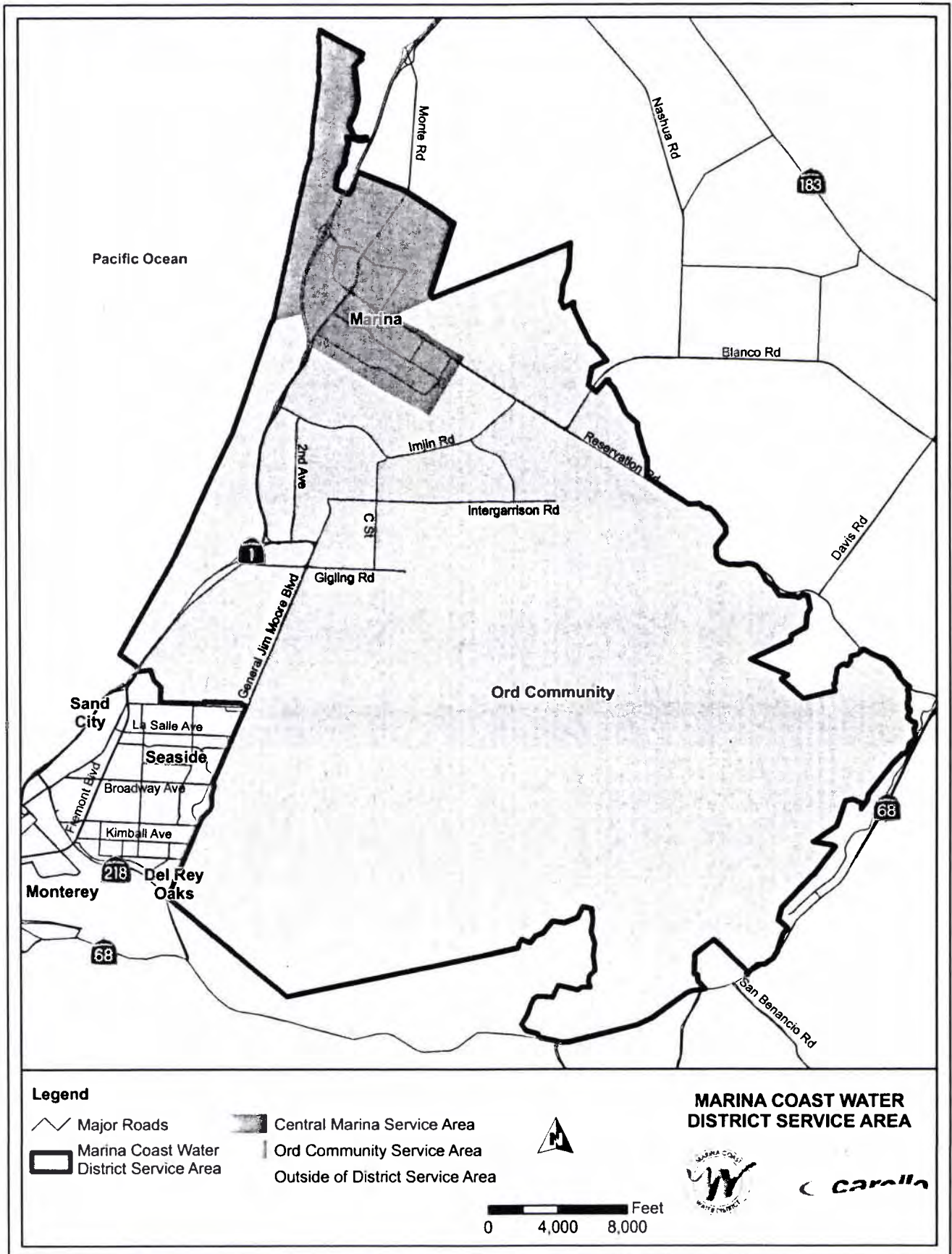


EXHIBIT B

CAW SERVICE AREA

[Please see attached]

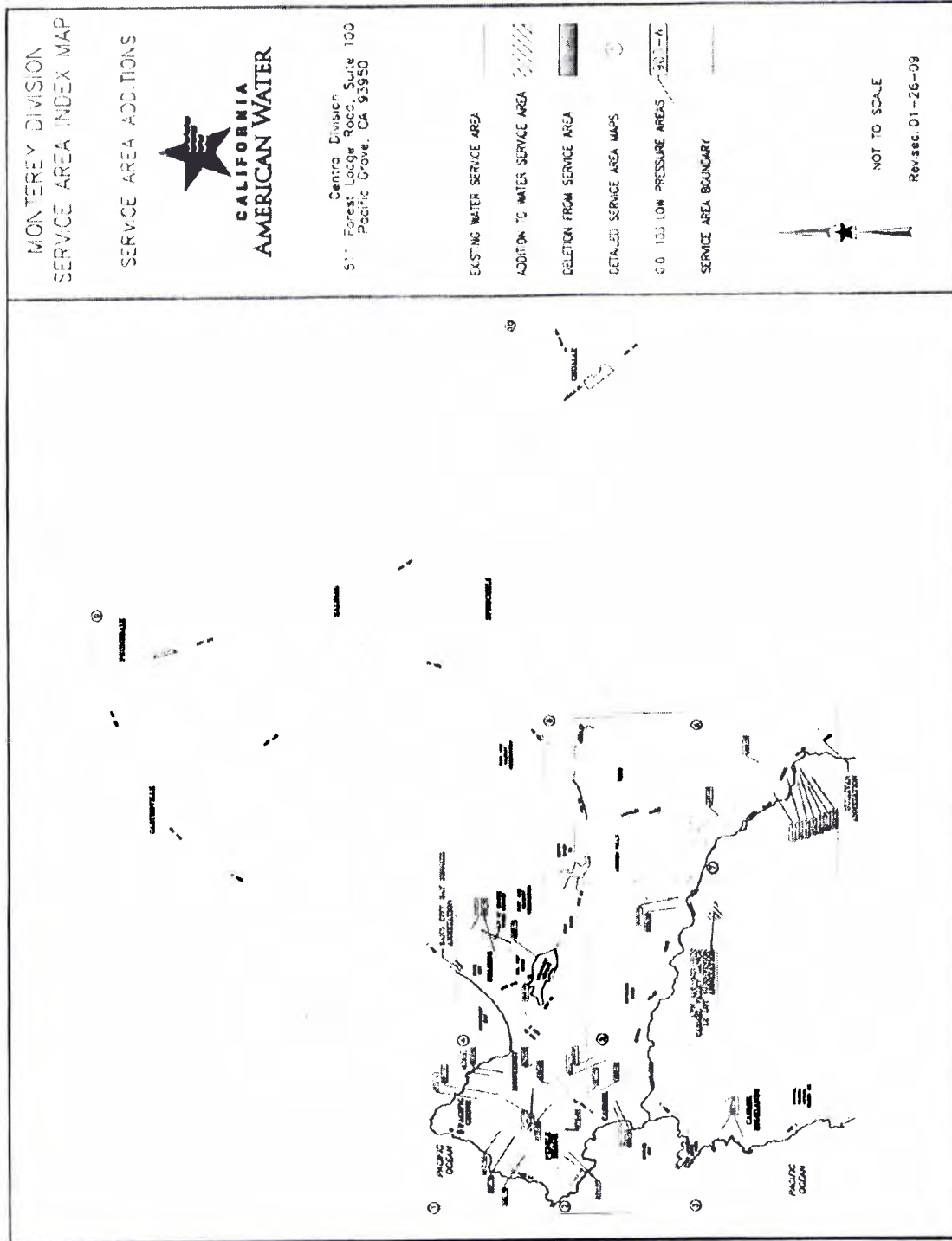


EXHIBIT C

Cost Estimate

Item	Cost
Project Facilities Estimated Base Construction Costs	\$ 140,100,000
Implementation, Start-up and Acceptance Costs	\$ 29,600,000
Initial Capital Outfall Expenses	\$ 3,000,000
MCWD and MCWRA Real Property Acquisition Costs	\$ 2,000,000
Mitigation Costs	\$ 2,000,000
Pre-Effective Date Costs and Expenses	\$ 14,000,000
Project Administration and Oversight Expenses	\$ 3,000,000
Subtotal - Estimated Project Facilities Cost	\$ 193,700,000
Project Contingency	\$ 46,700,000
Subtotal - Estimate Project Facilities Cost	\$ 240,400,000
High End Allowance of Design Development	\$ 42,070,000
Total Overall Estimated Project Facilities Cost	\$ 282,470,000
Reserve Fund Payments Account	\$ 6,000,000
Costs of obtaining the Indebtedness including all related financing, insurance and attorneys fees and expenses, but excluding interest during construction and any debt service coverage required.	\$ 9,000,000
Total	\$ 297,470,000

Notes:

Costs of indebtedness assume a rated and insured bond indebtedness. All bonds sold in 2010.

EXHIBIT D

PRE-EFFECTIVE DATE COSTS AND EXPENSES THROUGH DECEMBER 31, 2009

MARINA COAST WATER DISTRICT

CPUC Related Legal and Consulting Costs	\$ 780,437
Consulting Expenses	4,690,127
MCWD Staff Costs	<u>372,293</u>
<i>Subtotal MCWD Costs</i>	\$5,842,857

Monterey County Water Resource Agency

Legal Costs	\$445,257
Consulting Expenses	117,134
MCWRA Staff Costs	142,806
Travel and Miscellaneous Expenses	<u>16,937</u>
<i>Subtotal MCWRA Costs</i>	<u>\$722,133</u>

Total Pre Effective Date Costs and Expenses Through December 31, 200	\$6,564,990
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EXHIBIT E

EXAMPLES UNDER SECTIONS 9.3(a), 9.6, 11.5(b) and 11.6(b)

SECTION 9.3(a):

Example of Calculation of Percentage of Salinas Basin water in Brackish Source Water:

(seawater salinity)(Percentage of seawater) + (inland water salinity)(Percentage of Salinas Basin water) = brackish water salinity

EXAMPLE #1

Assumed Data for Example #1 Purposes Only:

35,000 mg/l = Measured seawater TDS ("seawater salinity")

500 mg/l = Measured Salinas Basin water TDS ("inland water salinity")

30,000 mg/l = Measured Brackish Source Water TDS ("brackish water salinity")

Unknowns:

Percentage of seawater = x

Percentage of Salinas Basin water (inland water) = y

But the sum of the percentage must equal 100% or 1. Therefore, $y+x = 1$ or $y = 1-x$.

So, substituting the equation with the assumed data for Example #1:

$$35,000(x) + 500(y) = 30,000$$

$$35,000(x) + 500(1-x) = 30,000$$

$$35,000(x) + 500 - 500(x) = 30,000$$

$$34,500(x) + 500 = 30,000$$

$$34,500(x) = 29,500$$

$$x = 29,500/34,500$$

$$x = 0.855 \text{ or } 85.5 \text{ percent}$$

Thus,

$$y = 1-x$$

$$y = 1-.855$$

$$y = 0.145 \text{ or } 14.5\%$$

Therefore,

Percentage of seawater = 85.5% and Percentage of Salinas Basin water (inland water) = 14.5%

EXAMPLE #2

EXHIBIT E

Assumed Data for Example #2 Purposes Only:

35,000 mg/l = Measured seawater TDS (“seawater salinity”)

400 mg/l = Measured Salinas Basin water TDS (“inland water salinity”)

31,540 mg/l = Measured Brackish Source Water TDS (“brackish water salinity”)

Unknowns:

Percentage of seawater = x

Percentage of Salinas Basin water (inland water) = y

But the sum of the percentage must equal 100% or 1. Therefore, $y+x = 1$ or $y = 1-x$.

So, substituting the equation with the assumed data for Example #2:

$$35,000(x) + 400(y) = 31,540$$

$$35,000(x) + 400(1-x) = 31,540$$

$$35,000(x) + 400 - 400(x) = 31,540$$

$$34,600(x) + 400 = 31,540$$

$$34,600(x) = 31,140$$

$$x = 31,140/34,600$$

$$x = 0.90 \text{ or } 90\%$$

Thus,

$$y = 1-x$$

$$y = 1-.90$$

$$y = 0.10 \text{ or } 10\%$$

Therefore,

Percentage of seawater = 90% and Percentage of Salinas Basin water (inland water) = 10%

Section 9.3(c):

Example of Calculation of MCWD Agreed Allocation:

MCWD Agreed Allocation = (Percentage of Salinas Basin water)(Total Actual Product Water Quantity)

EXAMPLE #1:

Assumed Data for Example #1 Purposes Only:

Total Actual Product Water Quantity = 9,000 AFY

Percentage of seawater = $x = 90\%$

Percentage of Salinas Basin water = $10\% = y$

Unknowns:

MCWD Agreed Allocation = z

So, substituting the equation with the assumed data for Example #1:

$$z = (y)(9,000)$$

$$z = 0.10(9,000) = 900 \text{ AFY}$$

Therefore,

MCWD Agreed Allocation = 900 AFY

CAW Actual Product Water Quantity = $9,000 - 900 = 8,100 \text{ AF}$

EXAMPLE #2:

Assumed Data for Example #2 Purposes Only:

Total Actual Product Water Quantity = 10,000 AFY

Percentage of seawater = $x = 85\%$

Percentage of Salinas Basin water = $15\% = y$

Unknown Data:

MCWD Agreed Allocation = z

So, substituting the equation with the assumed data for Example #2:

$$z = (y)(10,000)$$

$$z = 0.15(10,000) = 1,500 \text{ AFY}$$

EXHIBIT E

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Therefore,

MCWD Agreed Allocation = 1,500 AFY

CAW Actual Product Water Quantity = $10,000 - 1,500 = 8,500$ AF

Section 9.6:

Assumptions for 2019 Product Water

Total Product Water Quantity = 9,000 AFY
Salinas Basin Water as Percentage of Brackish Water = 10%
Water Sales to Third Parties in the Salinas Basin by MCWD = 0
MCWD Agreed Allocation = 900 AFY
Actual Product Water Delivered to MCWD = 1,000 AFY
Allocation Credit to be Applied to 2020 Allocation = $1,000 - 900 = 100$ AFY

Advisory Committee meets on January 15, 2020

Total Product Water Quantity Planned for 2020 = 8,800 AFY
Salinas Basin Water as Percentage of Brackish Water = 10%
Water Sales to Third Parties in the Basin by MCWD = 0
MCWD Agreed Allocation for 2020 = 880 AFY

True up Agreed Allocation for 2020

MCWD Agreed Allocation - Credit for 2019 Allocation = Planned Product Water to be Delivered to MCWD for 2020

$$880 - 100 = 780 \text{ AFY}$$

Assumptions for 2022

Total Product Water Quantity = 9200 AFY
Salinas Basin Water as Percentage of Brackish Water = 10%
Water Sales to Third Parties = 0
MCWD Agreed Allocation = 920 AFY
Actual Product Water Delivered to MCWD = 880 AFY
Allocation Debit to be Applied to 2023 Allocation = $920 - 880 = 40$ AFY

Advisory Committee meets on January 15, 2023

Total Product Water Planned for 2023 = 9,200 AFY
Salinas Basin Water as Percentage of Brackish Water = 10%
Water Sales to Third Parties in the Basin by MCWD = 0
MCWD Agreed Allocation for 2023 = 920 AFY
True up Agreed Allocation for 2023

MCWD Agreed Allocation + Debit for 2022 Allocation = Planned Product Water to be Delivered to MCWD for 2023
 $920 + 40 = 960$ AFY

Section 11.5(b):

Example of Calculation of MCWD Proportional Share of Debt Service (as pro rated for any given Payment Period and subject to the provisions of Section 9.6):

Terms:

A = MCWD Agreed Allocation

P = MCWD Permanently Allocated Product Water

T = Amount of Product Water actually requested and taken by MCWD (subject to the provisions of Sections 9.6 and 11.5(b))

Y = the fraction that is used to calculate MCWD's share of Debt Service

Formula:

$$Y = \frac{P \text{ plus (the greater of zero or (T - (greater of P or A))) }}{10,500}$$

Assumed date for A, P and T and Examples of the calculation of the fraction that is used to calculate MCWD's share of Debt Service:

A	=	1200		1000		1200		1200		1200		1200		1200
P	=	0		0		1000		1400		1000		1400		1400
T	=	1000		1200		1200		1400		1300		1300		1500
		0		200		1000		1400		1100		1400		1500
		10500		10500		10500		10500		10500		10500		10500
Y	=	0		.01905		.09524		.13333		.10476		.13333		.14286

To arrive at the MCWD Proportional Share of Debt Service, Y is multiplied by one hundred percent (100%) of the Debt Service of the Project Facilities attributable to such Payment Period.

Section 11.6(b):

MCWD PROPORTIONAL SHARE OF O&M COSTS:

Example of Calculation of MCWD Proportional Share of O&M Costs (as pro rated for any given calendar month and subject to the provisions of Section 9.6):

A. Where there is neither (i) any MCWD Permanently Allocated Product Water; or (ii) MCWD has not received and used any amount of Product Water in excess of the MCWD Agreed Allocation, **then:**

MCWD Proportional Share of O&M Costs =

(MCWD's then-current per acre-foot cost of providing potable groundwater from the Salinas Basin)(MCWD Agreed Allocation)

OR

B. Where the amount of Product Water received and used by MCWD is in excess of the MCWD Agreed Allocation, **then:**

MCWD Proportional Share of O&M Costs =

(The result obtained from Formula A above + ((100% of the O&M Costs)(amount of Product Water received and used by MCWD in excess of the MCWD Agreed Allocation)))/Total Actual Product Water Quantity

EXAMPLE #1:

Assumed Data for Example #1 Purposes Only:

100% of the O&M Costs of the Project Facilities = \$1,000,000.00.

MCWD Permanently Allocated Product Water = 0 AFY

MCWD Agreed Allocation = 1,050 AFY

Amount of Product Water in excess of MCWD Agreed Allocation = 0 AFY

Total Quantity of Product Water = 10,500 AFY

Then-current Per AF Cost of Groundwater = \$200

Unknowns:

MCWD Proportional Share of O&M Costs = \$ w

So, substituting the equation with the assumed data for Example #1:

w = (\$200)(1,050)

w = \$210,000

Therefore,

MCWD Proportional Share of O&M Costs = \$210,000

EXAMPLE #2:

Assumed Data for Example #2 Purposes Only:

100% of the O&M Costs of the Project Facilities = \$1,000,000.00.

MCWD Permanently Allocated Product Water = 1700 AFY

MCWD Agreed Allocation = 1,050 AFY

Amount of Product Water in excess of MCWD Agreed Allocation = 650 AFY (i.e., 1700 – 1,050)

Total Quantity of Product Water = 10,500 AFY

Then-current Per AF Cost of Groundwater = \$200

Unknowns:

MCWD Proportional Share of O&M Costs = \$ w

So, substituting the equation with the assumed data for Example #2:

$$w = (\$200)(1,050) + (((1,000,000)(650))/10,500)$$

$$w = \$210,000 + \$61,905$$

$$w = \$271,905$$

Therefore,

MCWD Proportional Share of O&M Costs = \$271,905

EXHIBIT F

MCWD Variable Extraction Cost Determination Methodology

$$\begin{array}{r} \text{Total Power Costs for Extraction of Water} \\ + \\ \text{Total Chemical Cost for Extraction of Water} \\ \hline \text{Total AF of Extracted Water} \\ \hline \end{array}$$

Example: 2009 - Water Extraction Variable Cost

$$\begin{array}{r} \$603,180 + \$4,734 \\ \hline 4094 \text{ AF} \end{array}$$

= \$ 148.49 / AF