

CONSTRUCTION AND TRANSFER OF WATER SYSTEM
IMPROVEMENTS AGREEMENT BETWEEN MARINA COAST
WATER DISTRICT AND
MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT

DRAFT

This Agreement, dated July __, 2013 for purposes of reference only, is made and entered into by and between **Marina Coast Water District** ("Water District") and **Monterey Peninsula Unified School District** ("School District").

RECITALS

A. School District owns one (1) parcel of land consisting of approximately 19 acres and generally known as the Marina High School ("Schoolsite"). The Schoolsite is developed and currently used as a public high school campus. The Schoolsite is located on the former Fort Ord in the City of Marina, California ("City").

B. School District plans to construct certain improvements to the Schoolsite's existing water system in order to increase water flow to fire hydrants serving the Schoolsite for fire protection purposes; however, the planned improvements will not expand or increase the water capacity or allocation to the Schoolsite.

C. Upon completion of the improvements, School District and Water District intend for the improvements to be conveyed by School District to Water District pursuant to Education Code section 17556, which permits such dedication on terms and conditions as may be agreed upon by School District and Water District.

D. The parties, by this Agreement, intend to set forth the terms and conditions for the (1) design and construction of the water system improvements, (2) dedication of the improvements to Water District, and (3) maintenance and operation of the improvements by Water District.

AGREEMENT

1. Description of Improvements

School District shall construct improvements to the Schoolsite's existing water system ("Infrastructure Improvements") in accordance with plans, drawings and specifications prepared in compliance with the terms of this Agreement. The plans, drawings and specifications ("Plans") shall be attached hereto as *Exhibit A*.

2. Design and Construction Requirements

2.1 **Design.** The Infrastructure Improvements shall be designed, constructed and operable to Water District's requirements as set forth in this Section 2, which shall be a condition of Water District's acceptance of the Infrastructure Improvements under this Agreement. A licensed civil engineer registered in the State of California shall prepare the Plans. In the design of the Infrastructure Improvements, School District shall comply with applicable requirements of the following:

2.1.1 Water District's most current *Standard Plans and Specifications for Construction of Domestic Water, Sewer, and Recycled Water Facilities* ("Standards").

2.1.2 Water District's most current *Procedure Guidelines and Design Requirements* ("Procedures").

2.1.3 Water District's most current *Marina Coast Water District Code* ("Code").

2.1.4 Water District's most current *Construction Inspection Manual* ("Manual").

2.1.5 Other applicable State regulatory agency requirements, including but not limited to the Division of the State Architect ("DSA").

The most stringent requirements shall control, except as may be otherwise required by applicable law.

2.2 Inspection and Fees. Water District will inspect the construction of the Infrastructure Improvements and verify that construction conforms to the Plans. Water District will inform School District of field changes required, in the opinion of Water District, to conform such construction to the Plans.

2.1.5 Testing. The Infrastructure Improvements shall be tested to meet Water District requirements. Water District shall not accept the Infrastructure Improvements unless they meet the requirements of this Agreement. Water District shall have the right to inspect work in progress during the course of construction.

2.1.6 Water District Fees. School District, on a phased basis, agrees to pay all fees and charges, including additional plan review fees and construction inspection fees as required by Water District for the Infrastructure Improvements. The applicable fees and charges (collectively "fees") shall be those in effect when the fees are paid.

2.1.7 Plan Review Fees: Water District may require a prepaid fee to cover staff time before preliminary level or concept level plan review begins. (See *Procedures* section 100.6.2) If Water District's District Engineer determines consultant assistance is required for plan review or portion thereof, School District agrees to prepay the additional plan review fees if that cost exceeds the balance of the initial deposit. Water District shall obtain School District's written approval for any costs in excess of this initial deposit amount, for which approval shall not be unreasonably withheld. Upon the execution of this Agreement by both parties, School District shall deposit with Water District the applicable administration and plan review fees. Any surplus fees shall be returned to School District, or at School District's request, used to pay subsequent fees, e.g., construction inspection fees.

School District agrees that Water District may include in the fees payable under this subsection the Water District's legal fees incurred to review this Agreement.

2.1.8 Construction Inspection Fees. On a phased basis, Water District shall require the construction inspection fee before undertaking a construction inspection review of the Infrastructure Improvements. As a condition precedent to Water District's obligation to undertake a construction inspection review of the Infrastructure Improvements, School District shall provide to Water District the construction inspection fee, which is currently

five hundred dollars (\$500.00) per unit plus three percent (3%) of Infrastructure Improvements' construction costs, pursuant to School District's engineer's estimate. (See *Procedures* section 200.3.2) Any surplus inspection fees shall be returned to School District.

3. Capacity Charge

3.1 Capacity charges are not required as a part of this Agreement. The proposed project does not represent any change in water or sewer capacity for the Schoolsite.

4. Contractor Licensing and Selection

4.1 School District shall retain a properly licensed contractor to perform the construction of the Infrastructure Improvements in accordance with applicable law, including the Business and Professions Code.

4.2 School District shall comply with any applicable State laws in the selection and retention of a contractor to perform the work, including the Education Code and Public Contract Code. The contractor retained by School District shall be skilled and competent in the performance of all work required under this Agreement. School District's selection and retention of a contractor in accordance with applicable State law shall be deemed to satisfy any obligations of School District in the selection and retention of a contractor contained in this Agreement.

5. Permits, Easements, and Related Costs

5.1 Except as otherwise provided in this Agreement, School District shall obtain all necessary local, county and state permits and conform to requirements thereof. School District shall obtain all easements, for other than public rights of way, necessary for ingress and egress to and from the Infrastructure Improvements for the purpose of construction, operation, and maintenance of the Infrastructure Improvements. Pipeline easements shall be 20 feet in width or as otherwise agreed by the District Engineer and School. Easements necessary for the dedication of the Infrastructure Improvements to Water District shall be in a form reasonably acceptable to Water District and shall be conveyed to Water District in recordable form.

6. Final Inspection

6.1 Water District's engineer shall inspect the completed Infrastructure Improvements or any portion thereof. Water District will not accept the Infrastructure Improvements until its engineer has given written approval that the Infrastructure Improvements have been designed and constructed in accordance with this Agreement. If the engineer determines that the Infrastructure Improvements have not been designed and constructed in accordance with this Agreement, then the engineer shall prepare a detailed statement of any alleged non-compliance. Water District shall provide a copy of the statement to School District for review and comment.

7. Underground Obstructions

7.1 Water District is not responsible for and does not assume any responsibility or liability

whatsoever for School District's (or its contractors') acts and omissions during the design and construction of the Infrastructure Improvements. Any location of underground utility lines or surface obstructions given to School District or placed on the project drawing by Water District are for School District's convenience, and must be verified by School District in the field. Water District assumes no responsibility for the sufficiency or accuracy of such information, lines, or obstructions.

8. As-Built Plans, Specifications, Values, Etc.

8.1 School District shall, as a condition of Water District's acceptance of the Infrastructure Improvements, provide to Water District, in accordance with Section 400.13 of the *Procedures*, the following:

8.1.1 A set of Mylar drawing prints and AutoCAD digitized files of the Plans which show the Infrastructure Improvements, and a hardcopy and electronic copy of the specifications, and any contract documents used for the construction of Infrastructure Improvements. These files may be in Adobe Acrobat format.

8.1.2 A complete, detailed statement of account, the form and content to be provided by the District at the time of conveyance, of the amounts expended for the construction of the System, with values applicable to the various components thereof, together with a list of any other materials and equipment (and their values) being transferred.

8.1.3 Any other documents required by Section 400.13 of the *Procedures*.

9. Indemnity, Insurance, and Sureties

9.1 Insurance and Liability – School District agrees to have its contractor provide the indemnity, defense, and save harmless statements and certifications to Water District, its officers, agents, and employees as provided in *Exhibit __*, attached hereto and hereby incorporated by reference. Insurance policies shall provide that such insurance is primary insurance. Coverages described in *Exhibit __* shall be maintained through the date of acceptance of the Infrastructure Improvements by Water District, and School District's contractor shall file with Water District prior to the commencement of construction, and as policy renewals occur, a Certificate of Insurance evidencing that the insurance coverages required herein have been obtained and are currently in effect.

9.2 Performance and Payment Surety – School District shall require the contractor to furnish School District with a performance and payment bonds in the amount of School District's estimate of the project construction cost to secure the completion of and payment for the work.

9.3 Submittal of Insurance Certificates and Surety - The required insurance certificates shall be delivered prior to commencement of construction, and payment surety shall be delivered to the District prior to District approval of plans and specifications.

10. Transfer of Infrastructure Improvements to Water District after Completion

10.1 School District will execute and deliver a grant deed to Water District substantially

similar in form and content to *Exhibit* ___ to this Agreement. This conveyance shall transfer unencumbered ownership of the Infrastructure Improvements to Water District together with all real property, interest in real property, easements and rights-of-ways (including any off-site easements or real property) other than those contained in public rights of way, and all overlying and other underground water rights that are a part of, appurtenant to, or belonging to the Schoolsite now or hereafter served by Infrastructure Improvements that are necessary or appropriate for the ownership and operation of the Infrastructure Improvements. Provided all other conditions set forth herein are satisfied, Water District shall accept the conveyance. The title to the Infrastructure Improvements shall be good, clear and marketable title, free and clear of all encumbrances, liens or charges. School District shall pay costs of title insurance deemed necessary by Water District and is reasonable and customary for the insured transaction type. All construction, including final inspection punch list items, must be completed prior to transfer, and the transfer shall not be completed until the conveyance transferring the Infrastructure Improvements has been formally accepted by Water District. After transfer, Water District shall own and be free in every respect to operate and manage the Infrastructure Improvements.

11. School District Assistance

School District shall, both before and after the transfer, provide information or data reasonably requested by Water District to take over the ownership, operation and maintenance of the Infrastructure Improvements.

12. Warranties

School District hereby warrants that as of the time of Water District's acceptance of the conveyance of the Infrastructure Improvements, the Infrastructure Improvements and all components thereof, will be in satisfactory working order and quality; and that the Infrastructure Improvements and all components thereof have been constructed and installed in compliance with specifications and as-built plans being provided to Water District, and in accordance with applicable requirements of any governmental agency having jurisdiction. School District also warrants that as of the time of Water District's acceptance of the conveyance, the Infrastructure Improvements will operate in good and sufficient manner for the purpose intended for one (1) year after the date of acceptance (see *Procedures* section 300.24) and School District shall indemnify Water District for any costs or expenses (including Water District's own labor costs) incurred by reason of failure, malfunction, replacements, repairs or any other expenses incurred by Water District during the one (1) year warranty period.

13. Assignment

13.1 Neither party may assign their rights or obligations under this Agreement without the written consent of the other party. This provision will cease to have any effect when the Water District accepts conveyance of the Infrastructure Improvements or the Agreement is terminated.

14. Dispute Resolution Procedure

14.1 Disputes arising under this Agreement shall be resolved as follows:

14.1.1 Prevention of Claims / Meet and confer - The parties agree that they share an interest in preventing misunderstandings that could become claims against one another under this Agreement. The parties agree to attempt to identify and discuss in advance any areas of potential misunderstanding that could lead to a dispute. If either party identifies an issue of disagreement, the parties agree to engage in a face-to-face discussion of the matter within three calendar days of the initial request. In the parties are unable to resolve the disagreement within thirty (30) days of the initial request for a face-to-face discussion, then either party may demand mediation pursuant to subsection 14.1.2.

14.1.2 Mediation - Either party may demand, and shall be entitled to, mediation of any dispute arising under this Agreement at any time after completing the meet and confer process described in subsection 14.1. Mediation shall commence not more than ten (10) days after the initial mediation demand and must be concluded not more than thirty (30) days after the date of the first mediation demand. If mediation is not concluded within that time, then either party may demand arbitration as set forth in Section 19.3.

Mediation shall be submitted first to a mediator with at least ten years experience. The mediator shall be selected by mutual agreement of the parties. Failing such mutual agreement, a mediator shall be selected by the presiding judge of the Monterey County Superior Court. In the interest of promoting resolution of the dispute, nothing said, done or produced by either party at the mediation may be discussed or repeated outside of the mediation or offered as evidence in any subsequent proceeding. The parties acknowledge the confidentiality of mediation as required by Evidence Code 1152.5.

No mediator shall submit, and no arbitrator or court shall consider, any mediator recommendations, declarations, or findings unless the parties give their written consent to the proposed mediator statement.

15. Waiver of Rights

15.1 Waiver. No waiver of any breach or default by either party shall be considered to be a waiver of any other breach or default. The waiver by any party for the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act to be performed at a later time. None of the covenants or other provisions in this Agreement can be waived except by written consent of the waiving party.

16. Notices

16.1 All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered, or mailed by certified mail, return receipt requested, or delivered by reliable overnight courier, to the respective party as follows:

To Water District: Marina Coast Water District
Attn: General Manager
11 Reservation Road
Marina, California 93933

To School District: Monterey Peninsula Unified School District
Attn: Director of Facilities
700 Pacific Street
Monterey, CA 93940

The address to which notice may be sent may be changed by written notification of each party to the other as above provided.

17. Severability

17.1 If any portion or provision of this Agreement is found to be contrary to law or policy of the law or unenforceable in a court of competent jurisdiction, then the portion so found shall be null and void, but all other portions of the Agreement shall remain in full force and effect.

18. Paragraph Headings

18.1 Paragraph headings are for convenience only and are not to be construed as limiting or amplifying the terms of this Agreement in any way.

19. Successors and Assignees

19.1 This Agreement shall be binding on and benefit the assignees or successors to this Agreement in the same manner as the original parties hereto.

20. Integrated Agreement

20.1 This Agreement integrates and supersedes all prior and contemporaneous Agreements and understandings concerning the subject matter herein. This Agreement constitutes the sole agreement of the parties and correctly sets forth the rights, duties and obligations of each to the other. Future amendments must be in writing signed by the parties. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

21. Negotiated Agreement

21.1 This Agreement has been arrived at through negotiation between the parties. Neither party is deemed the party that prepared the Agreement within the meaning of Civil Code Section 1654.

22. Indemnity Regarding Public Works

22.1 Water District and School District understand and agree that the project is a public work for purposes of California Labor Code section 1771. School District will defend and indemnify Water District in an action or proceeding brought against Water District related to or rising from the payment of prevailing wages on the Infrastructure Improvements work pursuant to Labor Code section 1771 et seq. Water District agrees to reasonably cooperate and assist School District in any the defense of any such action.

23. No Third Party Beneficiaries

23.1 There are no intended third party beneficiaries to this Agreement.

24. Compliance with Laws

24.1 School District will comply with all applicable laws, rules and regulations in carrying out its obligations under this Agreement.

25. Counterparts

25.1 This Agreement may be executed in counterparts, and each fully executed counterpart shall be deemed an original document.

By: *MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT*

By *MARINA COAST WATER DISTRICT*

*General Manager
Marina Coast Water District*

EXHIBIT A

INFRASTRUCTURE IMPROVEMENT PLANS

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EXHIBIT B

LEGAL DESCRIPTION OF SCHOOLSITE

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EXHIBIT C

MAP OF SCHOOLSITE

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EXHIBIT D

INDEMNIFICATION AND INSURANCE REQUIREMENTS

SCHOOL DISTRICT and its CONSTRUCTION CONTRACTORS

Workers' Compensation Insurance – School District shall require its contractor (Contractor) for the Infrastructure Improvements to certify that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of the work of the School's contract.

Indemnification - To the fullest extent permitted by law, School District will require the Contractor to indemnify and hold harmless and defend Water District, its directors, officers, employees, or authorized volunteers, and each of them from and against:

- a. Any and all claims, demands, causes of action, damages, costs, expenses, losses or liabilities, in law or in equity, of every kind and nature whatsoever for, but not limited to, injury to or death of any person including School District and/or Contractor, or any directors, officers, employees, or authorized volunteers of School District or Contractor, and damages to or destruction of property of any person, including but not limited to, School District and/or Contractor or their directors, officers, employees, or authorized volunteers, arising out of or in any manner directly or indirectly connected with the work to be performed under this agreement, however caused, regardless of any negligence of District or its directors, officers, employees, or authorized volunteers, except the sole negligence or willful misconduct or active negligence of Water District or its directors, officers, employees, or authorized volunteers;
- b. Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;
- c. Any and all losses, expenses, damages (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the work and all of the Contractor's obligations under the contract between School District and Contractor. Such costs, expenses, and damages shall include all costs, including attorneys' fees, incurred by the indemnified parties in any lawsuit to which they are a party.

School District will require its Contractor to defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Water District or Water District's directors, officers, employees, or authorized volunteers.

School District will require its Contractor to pay and satisfy any judgment, award or decree that may be rendered against Water District or its directors, officers, employees, or authorized volunteers, in any such suit, action or other legal proceeding.

School District will require its Contractor to reimburse Water District or its directors, officers, employees, or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

School District will require its Contractor to agree to carry insurance for this purpose as set out in the specifications. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Water District, or its directors, officers, employees or authorized volunteers.

Commercial General Liability and Automobile Liability Insurance - School District will require its Contractor to provide and maintain the following commercial general liability and automobile liability insurance:

Coverage - Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office Commercial **General Liability** Coverage (Occurrence Form CG 0001)
2. Insurance Services Office **Automobile Liability** Coverage (Form CA 0001), covering Symbol 1 (any auto) (owned, non-owned and hired automobiles)

Limits - The Contractor shall maintain limits no less than the following:

1. **General Liability** - Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to Water District) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability** - One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.

Required Provisions - The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

1. Water District, its directors, officers, employees, or authorized volunteers are to be given insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of

activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to Water District, its directors, officers, employees, or authorized volunteers.

2. For any claims related to this project, the Contractor's insurance shall be primary insurance as respects Water District, its directors, officers, employees, or authorized volunteers. Any insurance, self-insurance, or other coverage maintained by Water District, its directors, officers, employees, or authorized volunteers shall not contribute to it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Water District, its directors, officers, employees, or authorized volunteers.
4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to Water District.

Such liability insurance shall indemnify the Contractor and his/her sub-contractors against loss from liability imposed by law upon, or assumed under contract by, the Contractor or his/her sub-contractors for damages on account of such bodily injury (including death), property damage, personal injury and completed operations and products liability.

The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, underground excavation and removal of lateral support.

The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A-:VII or equivalent or as otherwise approved by Water District.

Workers' Compensation and Employer's Liability Insurance - School District will require its Contractor and all sub-contractors to insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the construction site, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The Contractor shall provide employer's liability insurance in the amount of at least \$1,000,000 per accident for bodily injury and disease.

Responsibility for Work - Until the completion and final acceptance by Water District of all the

work under and implied by this Agreement, School District will require the work to be under the Contractor's responsible care and charge. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs as required pursuant to the terms of the contract between School District and Contractor.

School District or the Contractor will provide and maintain builder's risk insurance (or installation floater) covering all risks of direct physical loss, damage or destruction to the work in the amount specified in the General Conditions, to insure against such losses until final acceptance of the work by Water District. Such insurance shall include¹ explosion, collapse, underground excavation and removal of lateral support. Water District shall be a named insured on any such policy. The making of progress payments to the Contractor by School District shall not be construed as creating an insurable interest by or for Water District or be construed as relieving the Contractor or his/her subcontractors of responsibility for loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by Water District.

School District will require its Contractor's insurer to waive all rights of subrogation against Water District, its directors, officers, employees, or authorized volunteers.

Evidences of Insurance - Prior to the commencement of construction activities subject to this Agreement, School District will require its Contractor to file with Water District a certificate of insurance signed by the insurer's representative.

School District will require its Contractor, upon demand of Water District, to deliver to Water District such policy or policies of insurance and the receipts for payment of premiums thereon.

All insurance correspondence, certificates, binders, etc., shall be mailed to:

Marina Coast Water District
11 Reservation Road
Marina, CA 93933
Attn: Management Services Administrator