

EXHIBIT 21-A

MPWMD Draft – 10/23/15

(Accepted all CAW 9/24/15 changes then revised)

WATER PURCHASE AGREEMENT FOR PURE WATER MONTEREY PROJECT

THIS WATER PURCHASE AGREEMENT (“Agreement”) is made this ____ day of _____, 2015 (the “Effective Date”) by and between California-American Water Company, a California corporation, hereinafter referred to as the “Company,” Monterey Regional Water Pollution Control Agency, hereinafter referred to as the “Agency,” and Monterey Peninsula Water Management District, hereinafter referred to as the “District.” The Company, the Agency, and the District are hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. The Company has a statutory duty to serve water in certain cities on the Monterey Peninsula and in a portion of Monterey County for its service area, the boundaries of which are described in **Exhibit A** attached hereto and incorporated herein.
- B. The Company has been ordered by the State Water Resources Control Board in orders 95-10 and WR 2009-0060 to find alternatives to the Carmel River to fulfill its duty to serve, and the Company has applied to the California Public Utilities Commission (“CPUC”) for an order seeking a Certificate of Public Convenience and Necessity for the construction of water supply facilities and authorizing the recovery of the costs for such construction in rates.
- C. The Agency will be responsible for the design, construction, operation, and ownership of facilities for the production and delivery of advanced treated recycled water, such facilities to be part of the Pure Water Monterey groundwater replenishment project.
- D. The District will buy advanced treated recycled water from the Agency for purpose of securing the financing of and paying the operating costs of the project. The District will sell the advanced treated recycled water to the Company subject to the terms of this Agreement.
- E. The Company desires to buy advanced treated recycled water from the District for the purpose of fulfilling its duty to serve its customers within its service area and the District is willing to sell advanced treated recycled water to the Company for this purpose on the terms and conditions provided for herein.
- F. The Agency has separately entered into agreement with the Monterey County Water Resources Agency, in which under certain conditions, the Monterey County Water Resources Agency may request additional irrigation water from Agency sources. When such a request

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is made, the District may make available Company Water from the Drought Reserve in order to satisfy the Company Allotment. Additionally, in order to ensure delivery of the Company Allotment in the event of an interruption in project operations, the District has established an Operating Reserve. Together the two reserves are called the Reserve Account and will be paid for by the District until deemed delivered to the Company if needed at a future date. *(NOTE: Parties expect to add language to the finding citing MRWPCA-MCWRA Agreement)*

NOW, THEREFORE, the Parties agree as follows:

1. Purpose of Agreement.

The purpose of this Agreement is to provide for the sale of advanced treated recycled water from the Agency to the District and from the District to the Company derived from the Pure Water Monterey groundwater replenishment project owned and operated by the Agency, and to serve the Company's customers within its service area. The Parties confirm that this Agreement constitutes a contractual right to purchase advanced treated recycled water, that no water right is conferred to the Company, and that no additional rights in the Seaside Groundwater Basin are conferred to the District or the Agency.

2. Definitions

The following terms shall, for all purposes of this Agreement have the following meanings:

“Additional Project Participant” means any public district, agency, or entity, or any private water company, other than the Company, that executes a water purchase agreement in accordance with Section 18 hereof, together with its respective successors or assigns.

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

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

“Applicable Law” means any federal, state or local statute, local charter provision, regulation, ordinance, rule, mandate, order, decree, permit, code or license requirement or other governmental requirement or restriction, or any interpretation or administration of any of the foregoing by any governmental authority, which applies to the services or obligations of any of the Parties under this Agreement.

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“AWT Facilities” means the advanced water treatment facilities portion of the Project that provides advanced treatment to source water that has undergone secondary treatment at the Regional Treatment Plant.

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

“Calendar Year” means a twelve-month period from January 1 through December 31. Any computation made on the basis of a Calendar Year shall be adjusted on a pro rata basis to take into account any Calendar Year of less than 365 or 366 days, whichever is applicable.

“Company Account” means the account managed by the District and the Company that tracks and records the quantity of Company Water delivered to the Delivery Point.

“Company Allotment” means 3,500 acre-feet of AWT Water.

“Company Water” means the AWT Water delivered to the Delivery Point to be used and owned by the Company and will be counted toward the Company Allotment.

“CPUC Decision” means the California Public Utilities Commission decision in Application A.12-04-019 (or a successor application) authorizing recovery from rates related to the Monterey Peninsula Water Supply Project, and shall include any CPUC proceeding that addresses the Project.

“Delivery Point” means any of the metered points of delivery identified in Exhibit C.

“Delivery Start Date” means the date that the Agency and the District commence delivery of AWT Water to the Delivery Point.

“Drought Reserve” means one of the two sub-accounts that comprise the Reserve Account. The District expects to deposit 200 acre-feet per year into the Drought Reserve up to the Drought Reserve Minimum.

“Drought Reserve Minimum” means 1,000 acre-feet of Drought Reserve Water in the Drought Reserve.

“Drought Reserve Water” means Excess Water in the Drought Reserve Account at any given time.

“Event of Default” means each of the items specified in Section 19 which may lead to termination of this Agreement upon election by a non-defaulting Party.

“Excess Water” means a quantity of AWT Water in excess of the Company Allotment delivered by the District to the Delivery Point in any given Fiscal Year.

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“Fiscal Year” means a twelve-month period from July 1 through June 30. Any computation made on the basis of a Fiscal Year shall be adjusted on a pro rata basis to take into account any Fiscal Year of less than 365 or 366 days, whichever is applicable.

“Fixed Project Costs” means pre-construction, development, capital costs, including debt service and reserves for the payment of debt service, incurred by the Agency or District in accordance with Section 6 hereof as estimated in **Exhibit D**.

“Force Majeure Event” means any act, event, condition or circumstance that (1) is beyond the reasonable control of the Affected Party, (2) by itself or in combination with other acts, events, conditions or circumstances adversely affects, interferes with or delays the Affected Party’s ability to perform its obligations under this Agreement, and (3) is not the fault of, or the direct result of the willful or negligent act, intentional misconduct, or breach of this Agreement by, the Affected Party.

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

“Minimum Allotment” means 2,800 acre-feet of AWT Water.

“Operating Reserve” means one of the two sub-accounts that comprise the Reserve Account.

“Operating Reserve Minimum” means 1,000 acre-feet of Operating Reserve Water in the Operating Reserve.

“Operating Reserve Water” means Excess Water in the Operating Reserve at any given time.

“Performance Start Date” means the date set forth in a written notice provided by the District to the Company upon which the District’s performance obligations with respect to the Water Availability Guarantee and the Water Delivery Guarantee shall commence, such date not to be more than six months following the Delivery Start Date.

“Product Water Facilities” means the product water conveyance facilities portion of the Project used to transport the AWT Water from the AWT Facilities to the Injection Facilities.

“Project” means the Pure Water Monterey groundwater replenishment project, including (a) Source Water Facilities, (b) AWT Facilities, (c) Product Water Facilities, and (d) Injection Facilities, all as additionally described in **Exhibit B**.

“Project Operation and Maintenance Expenses” means all expenses and costs of management, operation, maintenance, repair, replacement, renovation, or improvement of the Project properly chargeable to the Project in accordance with generally accepted accounting principles, including, without limitation (a) salaries, wages, and benefits of employees, contracts for professional

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services, power, chemicals, supplies, insurance, and taxes; (b) an allowance for depreciation, amortization, and obsolescence; (c) all administrative expenses of the District and the Agency incurred in connection with the Project; and (d) a reasonable reserve for contingencies, in each case incurred by the Agency or District with respect to the project. Initial annual Project Operation and Maintenance Expenses are estimated in **Exhibit D**.

“Project Operating Revenues” means all income, rents, rates, fees, charges, or other moneys derived by the Agency or District from the ownership or operation of the Project, including, without limiting the generality of the foregoing: all income, rents, rates, fees, charges, or other moneys including AWT Water Payments derived from the sale, furnishing, and supplying of the AWT Water.

“AWT Water Payments” means payments made by the Company to the District pursuant to Section 13 hereof for the furnishing of AWT Water. Such AWT Water Payments shall include Fixed Project Costs and Project Operations and Maintenance Expenses.

“Regional Treatment Plant” means the Agency’s Regional Wastewater Treatment Plant.

“Reserve Account” means the account managed by the District that tracks and records (a) quantities of Excess Water delivered to the Delivery Point, and (b) quantities of Reserve Water debited from the Reserve Account to satisfy the Company Allotment.

“Seaside Basin” means the Seaside Groundwater Basin.

“Service Area” means the Company’s service area as of the Effective Date of this Agreement, as shown in **Exhibit A**, and as amended from time-to-time by the CPUC.

“Storage and Recovery Agreement” means the storage and recovery agreement among the Company, the District and the Watermaster that allows for injection of AWT Water into the Seaside Basin for purposes of continued storage or withdrawal.

“Source Water Facilities” means the source water diversion and conveyance facilities portion of the Project used to divert and convey new source waters to the Regional Treatment Plant.

“Watermaster” means the Seaside Groundwater Basin Watermaster.

“Water Availability Guarantee” means the water availability guarantee set forth in Section 13.

“Water Delivery Guarantee” means the water delivery guarantee set forth in Section 12.

“Water Treatment Guarantee” means the water treatment guarantee set forth in Section 14.

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OPERATIVE PROVISIONS

3. Commencement of Service.

The Performance Start Date shall be no later than January 1, 2020. Failure of the Agency and the District to meet this deadline shall constitute an Event of Default upon which the Company may terminate this Agreement in accordance with Section 19. The Company shall not incur any costs or be responsible for any payments under this Agreement prior to the Performance Start Date.

4. Term of Agreement.

This Agreement shall be effective as of the Effective Date and shall remain in effect until the date that is thirty (30) years after the Performance Start Date (the “Expiration Date”), unless earlier terminated as provided in this Agreement.

5. Option for Continued Service.

The Company may extend the Expiration Date of this Agreement for one or more periods not to exceed ten (10) years, in total. The Company shall notify the Agency and the District, in writing at least 365 days prior to the then-applicable Expiration Date, of its intent to extend the Expiration Date and such notice shall indicate the new Expiration Date.

6. Agency and District to Develop Project.

Subject to all terms and conditions of the Agency’s water rights, permits and licenses, and all agreements relating thereto, the Agency and District will cause and complete the design, construction, operation, and financing of the Project, the production and delivery of AWT Water, the obtaining of all necessary authority and rights, consents, and approvals, and the performance of all things necessary and convenient therefor. The Agency will own and operate the Project.

As consideration for funding environmental, permitting, design, and other pre-construction costs, as well as for pledging revenues for repayment of future costs under this Agreement in the event AWT Water Payments are insufficient, the District shall (i) own AWT Water for sale and delivery to the Company, (ii) have the right to sell AWT Water to the Company or any Additional Project Participant (if approved by the Company pursuant to Section 18), (iii) have the right to bill the Company or any Additional Project Participant for AWT Water Payments, and (iv) have the right to apply all AWT Water Payments to payment of Fixed Project Costs and Project Operation and Maintenance Expenses.

7. Obligation to Pay Design and Construction Costs.

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The Agency shall be solely responsible for the design, construction, implementation and performance of the Project, and shall bear all costs associated with such design, construction, implementation and performance. Title to the structures, improvements, fixtures, machinery, equipment, and materials constituting the Project shall remain with the Agency and the Agency shall bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment, and materials.

8. Obligation to Pay Operation and Maintenance Costs.

The Agency shall be solely responsible for the operation, maintenance, repair and replacement of the Project, and shall bear all costs associated with such operation, maintenance, repair and replacement.

9. Point of Delivery and Ownership of AWT Water.

All AWT Water shall be delivered to the Delivery Point. Water utilized to backflush an injection well that percolates into the ground is considered delivered AWT Water.

The Agency shall own the AWT Water until the point it leaves the AWT Facilities. The District shall own the AWT Water from the point it leaves the AWT Facilities to the Delivery Point if the water is Company Water. If, however, the water is Excess Water after the Delivery Point, then ownership of such water shall remain with the District. The District shall own any water in the Reserve Account, until such time as Operating Reserve Water or Drought Reserve Water is used to satisfy the Water Availability Guarantee at which point it shall be owned by the Company.

The Company recognizes and agrees that it acquires no interest in or to any portion of the District's system or any Agency facilities.

Delivery by the District and withdrawal by the Company shall be governed by the Storage and Recovery Agreement.

10. Points of Withdrawal.

All AWT Water furnished pursuant to this Agreement shall be taken from storage by the Company at the points of withdrawal controlled by the Company and permitted by the California Department of Public Health. The Company shall be solely responsible for operating and maintaining all of its facilities for withdrawal of water.

11. Measurement.

All AWT Water furnished pursuant to this Agreement shall be measured by the Agency at the Delivery Point. Such measurement shall be with equipment chosen by the Agency, installed by

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the Agency on Agency facilities, and approved by the District and Company in writing. All measuring equipment shall be installed, maintained, repaired and replaced by the Agency. The Agency will provide annual meter calibration by an outside contractor and provide a copy of results of such calibrations to District and Company. The Agency shall have the primary obligation to measure the quantity of AWT Water delivered to the Company. The Company may request, at any time, investigation and confirmation by the District or Agency, at the District or Agency's expense, of the measurement being made as well as the charges associated with those measurements. Errors in measurement and charges discovered by the investigation will be corrected in a timely manner by the Agency and the District. The Company may, at its own expense, at any time, inspect the measuring equipment and the record of such measurements for the purpose of determining the accuracy of the equipment and measurements.

12. Water Delivery Guarantee.

- (a) Beginning on the Performance Start Date and in every Fiscal Year throughout the term of this Agreement, the District shall use its best efforts to deliver Company Water to the Delivery Point in quantities at least equal to the Company Allotment.
- (b) Beginning on the Performance Start Date and in every Fiscal Year throughout the term of this Agreement, the District shall deliver Company Water to the Delivery Point in quantities at least equal to the Minimum Allotment (the "Water Delivery Guarantee").
- (c) All AWT Water delivered by the District to the Delivery Point between the Delivery Start Date and the Performance Start Date shall be deemed Operating Reserve Water and allocated to the Operating Reserve. Beginning on the Performance Start Date and in every Fiscal Year throughout the term of this Agreement, the first 3,500 acre-feet of AWT Water delivered to the Delivery Point each Fiscal Year shall be Company Water.

13. Water Availability Guarantee.

- (a) Beginning on the Performance Start Date and throughout the term of this Agreement, the District and the Agency must deliver enough AWT Water to the Delivery Point so that the Company may draw AWT Water (including Company Water, Operating Reserve Water, and Drought Reserve Water released by the District to the Company) from the Seaside Basin every Fiscal Year in an amount at least equal to the Company Allotment (the "Water Availability Guarantee").
- (b) If in any Fiscal Year the District delivers Excess Water, any such amount shall be credited to the Reserve Account. The Reserve Account will have two sub-accounts: the Operating

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Reserve and the Drought Reserve. The District will allocate all Excess Water into either the Operating Reserve or the Drought Reserve as it shall determine in its sole discretion.

- (c) If the amount of Operating Reserve Water in the Operating Reserve at any time is less than the Operating Reserve Minimum, then all Excess Water in a Fiscal Year must be allocated to the Operating Reserve until the Operating Reserve Minimum is achieved, except for up to 200 acre feet for the Drought Reserve if the balance in the Drought Reserve is less than the Drought Reserve Minimum. In no instance shall the District reduce Company Water deliveries to make available additional irrigation water to the Monterey County Water Resources Agency from Agency sources in an amount exceeding the balance available in the Drought Reserve. ***(NOTE: Cal-Am desires access to amounts in the Drought Reserve in time of interruption; District disagrees – cannot subordinate commitment to MCWRA under MRWPCA-MCWRA Agreement; Under discussion)***
- (d) If in any Fiscal Year the District delivers Company Water to the Delivery Point in quantities less than the Company Allotment, the Company shall have the right, but not the obligation, to draw Operating Reserve Water from the Operating Reserve to make up for any such shortfall in Company Water. In addition, if a shortfall still exists after any Operating Reserve Water is drawn by the Company, the District may, in its sole discretion, use Drought Reserve Water available in the Drought Reserve to satisfy the Water Availability Guarantee.
- (e) Every six months the District will report to the Company the balances and activity in the Operating Reserve and Drought Reserve.

14. Water Treatment Guarantee.

All AWT Water delivered by the District to the Delivery Point must meet the water quality requirements set forth in Applicable Law (the “Water Treatment Guarantee”). If at any time the District fails to meet the Water Treatment Guarantee, the District shall give the Company immediate notice thereof shall promptly meet with the Company to discuss the circumstances of such failure and the District’s and the Agency’s action plan for remediation so that the Water Treatment Guarantee will be met. AWT Water delivered by the District to the Delivery Point that does not meet the Water Treatment Guarantee shall not be considered Company Water or Excess Water.

15. Budgeting.

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Not later than May 1 each year, the Fixed Project Costs and Project Operation and Maintenance Expenses shall be estimated for the following Fiscal Year. Such estimates shall be made available for review by the Parties prior to adoption by the Parties' respective boards.

16. Rate of Payment for AWT Water.

For AWT Water furnished to the Company under this Agreement, the Company shall pay AWT Water Payments to the District on a monthly basis the costs allocable to the portion of the Project Allotment delivered the previous month. The Company shall not pay for deliveries to the Operating Reserve and the Drought Reserve until such reserves are designated by the District as a portion of the Project Allotment in a month.

Estimated Fixed Project Costs and Project Operation and Maintenance Expenses for the first year of project operation are attached as **Exhibit D**.

The Company shall have the right, at its cost, to have an independent engineering firm review the estimated costs contained in **Exhibit D**.

The rate of payment for AWT Water shall be \$_____ per acre-foot and is computed as the sum of Fixed Project Costs and Project Operating and Maintenance Expenses as shown in Exhibit D divided by 3,500 acre-feet.

The rate of payment shall be adjusted each year by the escalation in Project Operating and Maintenance Expenses in that year.

If the actual aggregate of the Fixed Project Costs and Project Operation and Maintenance Expenses will exceed the total estimated costs set forth in the CPUC Decision, the Company shall seek CPUC approval for costs in excess of those authorized. If the actual aggregate of Fixed Project Costs and Project Operation and Maintenance Expense are less than the total estimated costs set forth, the rate of payment shall be reduced accordingly. The Company shall have no obligation to make AWT Water Payments in excess of the amount set forth in the CPUC Decision unless and until the CPUC approves payment and recovery of those payments in rates.

The District covenants and agrees to pay to the Agency the revenues received from the Company from the AWT Water Payments, provided however it will reduce the payment amount by any portion of the Fixed Project Costs and Project Operating Expenses paid directly by the District.

17. Time and Method of Payments.

The District shall send the Company a detailed monthly statement of charges due for all Company Water delivered to the Delivery Point, and all Operating Reserve Water and Drought

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Reserve Water used to satisfy the Water Availability Guarantee, during the preceding month as measured by the Agency meters, which shall be read on a monthly basis. The Company shall not be billed for Excess Water that goes into the Reserve Account.

The Company shall pay all complete and unchallenged statements within forty-five (45) days after receipt. Statements shall be mailed to the Company at the following address:

California American Water Company
Director of Operations
511 Forest Lodge Rd # 100
Pacific Grove, CA 93950

The Agency shall send the District a monthly statement of charges due for all AWT Water actually delivered to the District during the preceding month as measured by the meters, which shall be read on a monthly basis. The District shall pay all statements within forty-five (45) days after receipt. Statements shall be mailed to the District at the following address:

Monterey Peninsula Water Management District
Administrative Services Division Manager
5 Harris Court, Building G
Monterey, CA 93940

If payment of any amount due hereunder is not made when due, simple interest will be payable on such amount at the legal rate of interest charged on California judgments, as provided in California Code of Civil Procedure Section 685.010, and shall be calculated on the basis of a 365-day year from the date such payment is due under this Agreement until paid.

The Company is obligated to pay to the District the payments becoming due under this Agreement, notwithstanding any individual default by its water users or others in the payment to the Company of assessments or other charges levied by the Company.

GENERAL PROVISIONS

18. Additional Project Participants.

The District and Agency may enter into water purchase agreements for AWT Water with Additional Project Participants subsequent to the Effective Date of this Agreement to the extent the District determines sufficient capacity exists, after accounting for the need to maintain the Operating Reserve Minimum and the Drought Reserve. The Company shall have the right to approve in writing any Additional Project Participants deriving water from new water sources identified for the Project, but not for Additional Project Participants deriving water from prior existing rights to wastewater flows to the Regional Treatment Plant or from future additional

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sources, as yet unidentified. Any Additional Project Participant will pay for its proportionate share of capital costs and operation and maintenance expenses and the District and Agency will provide supporting documentation to the Company to ensure the Company's AWT Water Payments do not include any costs properly allocable to an Additional Project Participant. *(NOTE: Language will be tightened to clarify what are "new water sources identified for the Project" and what are prior rights or future sources.)*

19. Breach, Event of Default and Termination.

- (a) Remedies for Breach – The Parties agree that, except as otherwise provided in this section with respect to termination rights, if any Party breaches this Agreement, any other Party may exercise any legal rights it may have under this Agreement and under Applicable Law to recover damages or to secure specific performance. No Party shall have the right to terminate this Agreement for cause except upon the occurrence of an Event of Default. If a Party exercises its rights to recover damages upon a breach of this Agreement or upon a termination due to an Event of Default, such Party shall use all reasonable efforts to mitigate damages. If a Force Majeure Event occurs, the Affected Party shall be entitled to relief from determination of a breach pursuant to Section 23 of this Agreement.
- (b) Event of Default – The following shall each constitute an "Event of Default" under this Agreement:
- (1) The Delivery Start Date does not occur on or before July 1, 2019.
 - (2) The Performance Start Date does not occur on or before January 1, 2020.
 - (3) The failure of the District to deliver Company Water to the Delivery Point in quantities at least equal to the Company Allotment in each of three consecutive Fiscal Years.
 - (4) The failure of the District to meet the Water Delivery Guarantee in each of two consecutive Fiscal Years, **or failure to deliver 1,800 acre-feet in any Fiscal Year. (recently discussed.)**
 - (5) The failure of the District to meet the Water Availability Guarantee in a Fiscal Year.
 - (6) The failure of any Party to perform any material term, covenant, or condition of this Agreement, and the failure continues for more than thirty (30) days following

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the defaulting Party's receipt of written notice of such default from a non-defaulting Party; provided, however, that if and to the extent such default cannot reasonably be cured with such thirty (30) day period, and if the defaulting Party has diligently attempted to cure the same within such thirty (30) period and thereafter continues to diligently attempt to cure the same, then the cure period provided for herein shall be extended from thirty (30) days to one hundred twenty (120) days.

(7) The Company no longer has a statutory duty to serve water in the Service Area.

(c) Termination for Event of Default – If an Event of Default occurs, any non-defaulting Party may terminate this Agreement immediately upon written notice to the other Parties. A non-defaulting Party may enforce any and all rights and remedies it may have against a defaulting Party under Applicable Law.

20. Dispute Resolution.

Representatives from each Party shall meet and use reasonable efforts to settle any dispute, claim, question or disagreement (a "Dispute") arising from or relating to this Agreement. To that end, the Parties' representatives shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to the Parties. If the Parties do not reach such a solution within a period of thirty (30) days after the first notice of the Dispute is received by the non-disputing Parties, then the Parties shall pursue non-binding mediation to be completed within one-hundred twenty (120) days after the notice of the Dispute is received by the non-disputing Parties. If the Parties do not settle the Dispute within the one-hundred twenty (120) day period, any Party may pursue any and all available legal and equitable remedies.

21. Indemnification.

Each Party (an "Indemnifying Party") shall fully indemnify the other Parties and their respective officers, directors, employees, consultants, contractors, representatives and agents (the "Indemnified Persons") against, and hold completely free and harmless from, all liability and damages including any cost, expense, fine, penalty, claim, demand, judgment, loss, injury and/or other liability of any kind or nature, including personal or bodily injury, death or property damage, that are incurred by or assessed against the Indemnified Persons and caused by, resulting from, or attributable to the fault, failure, breach, error, omission, negligent or wrongful act of the Indemnifying Party, or its officers, directors, employees, consultants, contractors, representatives and agents, in the performance or purported performance of the Indemnifying Party's obligations under this Agreement. ***(NOTE: Parties are discussing language that would***

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introduce “proportionate fault” in the event that there are more than one potential cause for harm, by more than one Party, within the Agreement or causes outside the Agreement.)

22. Force Majeure Event Relief.

- (a) If a Force Majeure Event occurs, the Affected Party shall be entitled to (1) relief from its performance obligations under this Agreement to the extent the occurrence of the Force Majeure Event prevents or adversely affects Affected Party’s performance of such obligations, and (2) an extension of schedule to perform its obligations under this Agreement to the extent the occurrence of the Force Majeure Event prevents or adversely affects Affected Party’s ability to perform such obligations in the time specified in this Agreement. The occurrence of a Force Majeure Event shall not, however, excuse or delay the other Parties’ obligation to pay monies previously accrued and owing to Affected Party under this Agreement, or for Affected Party to perform any obligation under this Agreement not affected by the occurrence of the Force Majeure Event.

- (b) Upon the occurrence of a Force Majeure Event, Affected Party shall notify the other Parties in accordance with the notice provisions set forth herein promptly after Affected Party first knew of the occurrence thereof, followed within fifteen (15) days by a written description of the Force Majeure Event, the cause thereof (to the extent known), the date the Force Majeure Event began, its expected duration and an estimate of the specific relief requested or to be requested by the Affected Party. Affected Party shall use commercially reasonable efforts to reduce costs resulting from the occurrence of the Force Majeure Event, fulfill its performance obligations under the Agreement and otherwise mitigate the adverse effects of the Force Majeure Event. While the Force Majeure Event continues, the Affected Party shall give the other Parties a monthly update of the information previously submitted. The Affected Party shall also provide prompt written notice to the other Parties of the cessation of the Force Majeure Event.

23. Amendments.

No change, alteration, revision or modification of the terms and conditions of this Agreement shall be made, and no verbal understanding of the Parties, their officers, agents or employees shall be valid, except through a written amendment to this Agreement duly authorized and executed by the Parties.

24. Remedies Not Exclusive.

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The use by any Party of any remedy for the enforcement of this Agreement is not exclusive and shall not deprive the Party using such remedy of, or limit the application of, any other remedy provided by law.

25. Mitigation of Damages.

In all situations arising out of this Agreement, the Parties shall attempt to avoid and minimize the damages resulting from the conduct of another Party.

26. Failure of CPUC Approval.

If this Agreement is not approved by the CPUC in a manner acceptable to the Parties, any Party may, within sixty (60) days after the effective date of the decision or order of the CPUC relating to the approval of this Agreement, give written notice to the other Parties that the Agreement will terminate ten (10) days after receipt of such notice. Those acts and obligations that are to be performed on or after the Execution Date shall be discharged and no Party shall thereafter be obligated to continue to perform this Agreement or any provision hereof. Whether this Agreement is approved by the CPUC in a manner acceptable to the Parties or not, those acts and obligations performed prior to the date of termination shall be final and no party shall have any claim to be restored to its pre-Execution Date status with regard to any of those acts or obligations. *(NOTE: This section is currently being revised by Cal-Am; District and Agency will review.)*

(NOTE: Cal-Am wants a new section under which the MPWMD and MRWPCA assume joint and several liability for each other's performance obligations. The District and the Agency are unwilling to do so; Parties are currently at impasse)

27. Insurance.

The Agency and District will each obtain insurance, to the extent available, to secure their performance under the Agreement, including but not limited to the Water Delivery Guarantee, the Water Availability Guarantee, and the Water Treatment Guarantee, as well as general liability insurance on all facilities. In the failure of such insurance to satisfy the requirements of the Agreement the District and the Agency will utilize their own resources, including Prop 218 revenue raising capacity, to the extent allowable by law, to satisfy its obligations.

28. No Waiver.

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Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by another Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any default or breach shall affect or alter this Agreement, and each and every covenant, term, and condition hereof shall continue in full force and effect to any existing or subsequent default or breach.

29. Successors in Interest, Transferees, and Assignees.

This Agreement and all the rights and obligations created by this Agreement shall be in full force and effect whether or not any of the Parties to this Agreement have been succeeded by another entity, or had their interests transferred or assigned to another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest, transferee, or assignee. In the event the Company is succeeded by another entity, it shall assign this Agreement to its successor. No succession, assignment or transfer of this Agreement, or any part hereof or interest herein, by a Party shall be valid without the prior written consent of the other Parties, such consent not to be unreasonably withheld.

30. Covenants and Conditions.

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

31. Governing Law.

This Agreement and the rights and obligations of the Parties shall be governed, controlled and interpreted in accordance with the laws of the State of California.

32. Headings.

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

33. Construction of Agreement Language.

The provisions of this Agreement shall be construed as a whole according to its common meaning and purpose of providing a public benefit and not strictly for or against any Party. The Agreement shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the Parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

34. Drafting Ambiguities.

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This Agreement is the product of negotiation and preparation between the Parties. The Parties and their counsel have had the opportunity to review and revise this Agreement. The Parties waive the provisions of Section 1654 of the Civil Code of California and any other rule of construction to the effect that ambiguities are to be resolved against the drafting Party, and the Parties warrant and agree that the language of this Agreement shall neither be construed against nor in favor of any Party unless otherwise specifically indicated.

35. Partial Invalidity; Severability.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

36. No Third Party Beneficiaries.

Nothing in this Agreement is intended to create any third Party beneficiaries to the Agreement, and no person or entity other than the Parties and the permitted successors, transferees and assignees of either of them shall be authorized to enforce the provisions of this Agreement.

37. Relationship of the Parties.

The relationship of the Parties to this Agreement shall be that of independent contractors. Each Party shall be solely responsible for any workers compensation, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work or obligations assigned to them under this Agreement.

38. Signing Authority.

The representative of each Party signing this Agreement hereby declares that authority has been obtained to sign on behalf of the Party such person is representing.

39. Further Acts and Assurances.

The Parties agree to execute, acknowledge and deliver any and all additional papers, documents and other assurances, and shall perform any and all acts and things reasonably necessary in connection with the performance of the obligations hereunder and to carry out the intent of the Parties.

40. Opinions and Determinations.

Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review or determination of any Party hereto, such terms are not intended to be and

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shall never be construed as permitting such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable.

41. Interpretation of Conflicting Provisions.

If there is any conflict, discrepancy or inconsistency between the provisions of this Agreement and the provisions of any exhibit or attachment to this Agreement, the provisions of this Agreement shall prevail and control.

42. Integration.

This Agreement, including the exhibits, represent the entire Agreement between the Parties with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the Parties as of the Effective Date.

43. Counterparts.

All signatures need not appear on the same counterpart of this Agreement and all counterparts of this Agreement shall constitute one and the same instrument.

44. Notices.

All notices to a Party required or permitted under this Agreement shall be in writing and shall be deemed delivered (i) when delivered in person; (ii) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); or (iii) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery. Notices to the Parties shall be sent to the following addresses or to other such addresses as may be furnished in writing by one Party to the other Parties:

Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 93940
Attention: General Manager

Monterey Regional Water Pollution Control Agency
5 Harris Court, Building D
Monterey, CA 93940
Attention: General Manager

California American Water

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Attn: President
1033 B Avenue, Suite 200
Coronado, CA 92118

SIGNATURE PAGE FOLLOWS

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

**MONTEREY REGIONAL WATER POLLUTION
CONTROL AGENCY,**

By: _____

[NAME]

Board Chair, Agency Board of Directors

**MONTEREY PENINSULA WATER MANAGEMENT
DISTRICT,**

By: _____

[NAME]

Chair, District Board of Directors

CALIFORNIA-AMERICAN WATER COMPANY,

By: _____

Robert G. MacLean
President

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EXHIBIT A

Service Area

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EXHIBIT B

Description of Project

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EXHIBIT C

Delivery Point

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EXHIBIT D

Estimated Annual Fixed Project Costs and Project Operation and Maintenance Expenses

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