

DRAFT 4/28/16

RETURN WATER PURCHASE AGREEMENT

By and Between

MONTEREY COUNTY WATER RESOURCES AGENCY

and

CALIFORNIA-AMERICAN WATER COMPANY

THIS RETURN WATER PURCHASE AGREEMENT ("Agreement") is made as of _____, 2017 (the "Effective Date") by and between the MONTEREY COUNTY WATER RESOURCES AGENCY, a Water Resources Agency created pursuant to the Monterey County Water Resources Agency Act found at California Water Code Appendix Chapter 52 ("Agency"), and CALIFORNIA-AMERICAN WATER COMPANY, a California corporation ("Cal Am"). Agency and Cal Am are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS:

A. The Agency is a public agency with jurisdictional boundaries that are coextensive with the boundaries of the County of Monterey and, under the Monterey County Water Resources Agency Act ("Agency Act"), Agency is responsible for, among other things, controlling groundwater extractions as required to prevent or deter the loss of usable groundwater through intrusion of seawater and prohibiting groundwater exportation from the Salinas River Groundwater Basin ("SRGB").

B. Cal Am is a public utility regulated by the California Public Utilities Commission ("CPUC") and provides water service in various areas within California, including a service area in Monterey County (as it may be subsequently amended or revised from time to time without the approval of the other Party) ("Cal Am Service Area").

C. Cal Am submitted an application to the CPUC on April 23, 2012, in Proceeding A.12-04-019 for approval of the Monterey Peninsula Water Supply Project ("Project"). The Project as proposed would consist of slant intake wells, brackish water pipelines, a desalination plant, product water pipelines, brine disposal facilities and related appurtenant facilities. Depending on the availability of water from the Monterey Regional Water Pollution Control Agency's proposed publicly-owned Groundwater Replenishment Project and on the CPUC's decision on the application, the desalination plant is expected to be sized at either 9.6 million gallons per day ("mgd") or 6.4 mgd to supply water for municipal use in the Cal Am Service Area.

D. The Project's slant intake wells are designed to pump seawater and to avoid or minimize the capture of groundwater from the SRGB in the process of producing source water for treatment by the selected desalination plant ("Project Source Water Production"). To meet applicable requirements of the Agency Act, Cal Am has proposed as part of the Project to make available for delivery to groundwater users overlying the SRGB a volume of water equal to the percentage of SRGB groundwater in the total Project Source Water Production ("Return Water").

E. The Castroville Seawater Intrusion Project ("CSIP") is an Agency project that provides recycled water and diverted Salinas River water for use in lieu of groundwater pumping for irrigated agricultural use in the Castroville area of the SRGB. Agency desires to purchase Return Water for ultimate distribution to CSIP agricultural users; however, prior environmental analyses reveal that there may be limitations in the capacity of CSIP to accommodate all of the Return Water under some conditions.

F. Cal Am intends to seek any CPUC approval necessary to allow for the sale of Return Water to Agency consistent with the terms of this Agreement, and Agency intends to support Cal Am’s request for any CPUC approval necessary to allow the sale of Return Water to Agency pursuant to the terms of this Agreement.

G. Pursuant to a separate agreement with Castroville Community Services District (“CCSD”) dated _____ and entitled Return Water Purchase Agreement By and Between CASTROVILLE COMMUNITY SERVICES DISTRICT and CALIFORNIA-AMERICAN WATER COMPANY (“CCSD Return WPA”), Cal Am is required to make available for delivery to CCSD 690 acre feet annually (“afa”) of Return Water (“CCSD Delivery Volume”).

H. Cal Am’s performance of its Return Water obligations under this Agreement and the CCSD Return WPA is intended to advance fulfillment of Cal Am’s Return Water obligations under that certain SETTLEMENT AGREEMENT ON MPWSP DESALINATION PLANT RETURN WATER, dated _____, 2016 (“Settlement Agreement”).

I. Cal Am contemplated two separate pipelines delivering Return Water from the Project desalination plant, one to CSIP ponds and one to CCSD’s wellsite #3 (“CCSD Wellsite”). Through negotiations and discussions, the Parties determined the cost of new infrastructure could be decreased by connecting with existing CSIP infrastructure. That connection allows a single pipeline, rather than two pipelines, to be constructed from the desalination plant to the CCSD Wellsite that will connect with an existing CSIP pipeline (“CSIP Connection”). The elimination of a separate pipeline to the CSIP ponds avoids certain pipeline and pump station costs and results in an estimated cost savings to Cal Am of approximately \$1,300,000. A preliminary cost estimate for a pipeline and ancillary facilities necessary to convey water from the Project desalination plant to the CCSD Wellsite (“Delivery Pipeline”) is approximately \$6,500,000. Cal Am believes that if the Delivery Pipeline is constructed by Cal Am there will be economies of scale achieved which may reduce the cost of the Delivery Pipeline to approximately \$4,400,000, assuming that Cal Am will secure contracts for construction of the pipeline and that environmental review and permitting will be performed in conjunction with the Project. CCSD estimates its cost to construct a new deep well with treatment facilities would cost approximately \$2,800,000. Thus, CCSD submits that it may not be able to prudently fund the Delivery Pipeline for more than \$2,800,000, and that capital obligations for the Delivery Pipeline would necessitate long-term commitments by CCSD and certainty of source water supply for CCSD.

NOW THEREFORE, 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, Agency and Cal Am 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 hereto, shall have their respective meanings as set forth 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) Any act required to occur by or on a certain day is required to occur before or on that day unless the day falls on a Saturday, Sunday or federal holiday, in which case the act must occur before or on the next day this is not a Saturday, Sunday or federal holiday.

(d) 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.

(e) 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.

(f) All references in this Agreement to a “year” shall mean a “water year,” and all references to a “water year” shall mean the 12-month period beginning on October 1 of a given year and ending on September 30 of the following year. All calculations herein based on the period of a year shall be prorated to account for any time frame that is less than a 12-month period.

1.3 Agency Act Compliance. Cal Am shall comply with the Agency Act. Notwithstanding any other provisions of this Agreement, the Agency will retain all rights, discretion and authority conferred on the Agency under the Agency Act to ensure that the pumping, production, desalination, and distribution of project source water from the SRGB for the selected desalination plant complies with the Agency Act, and the long-term viability of the SRGB as a water supply for water for agricultural, domestic and municipal use. Neither this Section 1.3 nor any other provision of this Agreement shall be interpreted: (a) to affect, diminish, or enhance the Agency’s regulatory authority under the Agency Act; (b) to affect, diminish, excuse, or forgive Cal Am’s obligation to comply with the Agency Act; or (c) to preclude any argument by Cal Am that there is no violation of the Agency Act.

2. Term.

2.1 Effective Date. This Agreement shall be effective on the Effective Date and shall continue in effect until expiration of the Delivery Term (defined in Section 2.2 below) or until earlier termination as provided for in Section 10.

2.2 Delivery Term. The “Delivery Term” shall begin on the date on which Cal Am has determined that it is ready to deliver Return Water to the Delivery Point (defined in Section 3.1 below), the anticipated location of which is depicted on Exhibit A, and shall continue for a period of thirty (30) years thereafter. Cal Am shall provide Agency with written notice of

the commencement date of the Delivery Term, promptly upon Cal Am's determination of such date.

2.3 Right of First Refusal. If this Agreement has not been terminated as provided for in Section 10, Agency shall have a right of first refusal to enter into a new return water purchase agreement on terms to be negotiated by the Parties at the time the right is exercised. In order to exercise the right, Agency shall provide Cal Am written notice of its intent to do so no earlier than 730 days and no later than 365 days prior to expiration of this Agreement. Agency acknowledges that pursuant to the CCSD Return WPA CCSD also has a right of first refusal to enter into a new return water purchase agreement with respect to its agreement with Cal Am.

2.4 Expiration or Non-Renewal. Upon termination, expiration or non-renewal of this Agreement, Cal Am shall continue to make Return Water available for delivery to the SRGB for use in lieu of existing groundwater production, unless Cal Am demonstrates that Return Water is not needed to prevent legal injury to prior groundwater rights holders in the SRGB or to avoid significant adverse effects to SRGB groundwater resources. If Cal Am desires to make such a showing, it shall initially do so by providing a demonstration in writing to all parties to the Settlement Agreement using the notice provisions of Section 11. Within 21 days thereafter, the Parties shall meet to seek to reach agreement regarding whether Cal Am has made the requisite demonstration. If the Parties do not reach agreement within 30 days after the initial meeting, any Party may on or after the 31st day, but no later than the 91st day, invoke the provisions of Section 9. For the avoidance of doubt, nothing in this section 2.4 in any way affects the provisions, scope and application of Section 1.3.

3. Delivery of Return Water

3.1 Priority of Return Water for In-Lieu Use. Agency will use the Return Water only within the existing CSIP service area and will use it to the greatest extent possible to offset existing groundwater pumping. Unless the amounts of groundwater pumped and Return Water purchased are not publicly available through routine Agency reports, Agency will annually report to the parties to the Settlement Agreement the amount of groundwater pumped and Return Water purchased for use within the CSIP service area, delivery of which report shall occur under the notice provisions of section 11 of this Agreement.

3.2 Cal Am Return Water Pipeline. Subject to satisfaction of the Conditions Precedent set forth in Sections 3.3(a), (b), (c), (d), (e), and (f), Cal Am will design and construct (in consultation with Agency) the Delivery Pipeline including a metered delivery point ("Delivery Point") as set forth in Exhibit A. Cal Am will install, operate, and maintain the meter at the Delivery Point in accordance with CPUC General Order 103-A or other applicable CPUC or water industry standards which will measure the volume of Return Water delivered at the Delivery Point ("Cal Am Meter"). Agency shall use good faith diligent efforts to support Cal Am's efforts to obtain any such CPUC approval. The Parties shall cooperate in good faith to seek grants to offset the costs of the Delivery Pipeline.

3.3 Conditions Precedent. Any delivery of Return Water pursuant to this Agreement is subject to the following conditions precedent:

(a) any required CPUC approval to amend Cal Am's Service Area to allow for the sale of Return Water consistent with the terms of this Agreement; and

(b) any required CPUC approval of a tariff to allow for the sale of Return Water consistent with the terms of this Agreement, which tariff may change from time to time with the approval of the CPUC and shall govern over any inconsistent terms or conditions set forth in this Agreement; and

(c) the completion of California Environmental Quality Act ("CEQA") review by the CPUC as lead agency for the Project; and

(d) the CPUC's issuance of a Certificate of Public Convenience and Necessity ("CPCN") for the Project; and

(e) completion of construction, and acceptance by Cal Am, of the Project desalination plant such that it is able to produce and transport Return Water to the Delivery Point; and

(f) A Cal Am Annual Return Water Obligation in any given year (defined in Section 3.4 below) in excess of the CCSD Delivery Volume; and

(g) Agency's ability to take delivery of the Return Water at the Delivery Point. Agency shall use best efforts to ensure it has the ability to take such delivery.

With respect to Sections 3.3(a), (b), (c) and (d), Cal Am shall use good faith diligent efforts to seek any such required CPUC approval as is reasonably possible following the Effective Date.

3.4 Annual Return Water Obligation. Cal Am shall have an annual Return Water obligation ("Annual Return Water Obligation") that shall be calculated based on the percentage of SRGB groundwater in the total Project Source Water Production. Agency agrees that any Return Water delivered by Cal Am to the Delivery Point as contemplated by this Agreement, any Return Water delivered to CCSD as contemplated by the CCSD Return WPA, and any Return Water delivered to Monterey Regional Waste Management District and Monterey Regional Water Pollution Control Agency, should such delivery occur as discussed in the Settlement Agreement, shall be applied to satisfy Cal Am's Annual Return Water Obligation.

3.4.1 The volume of the Annual Return Water Obligation will be determined as set forth in Section 2.c. of the Settlement Agreement. For reference purposes, Section 2.c. of the Settlement Agreement is attached as Exhibit C hereto.

3.4.2 The Parties acknowledge that Cal Am could be legally required by a regulatory agency, including the CPUC in this proceeding, or by a court, to make water deliveries to other locations in the SRGB to the extent necessary to mitigate any groundwater impacts from the Project that were demonstrated in relation to a specific location overlying the SRGB ("Other Return Water Obligation"). Such Other Return Water Obligation could also serve to satisfy Cal Am's obligations to return water to the SRGB under the Agency Act, the

CEQA, or common-law water law principles. Under such circumstances, the Parties agree that it would be inequitable to Cal Am and its ratepayers to fund both the Other Return Water Obligation and the Return Water obligations specified herein as this would result in a duplicative liability to Cal Am and its ratepayers. Cal Am's obligation to make available the CCSD Delivery Volume shall be reduced in the event and to the extent that a regulatory agency or court has required Cal Am to deliver Return Water in a manner or location different than as specified in this Agreement. Agency shall have the right to terminate this Agreement as set forth in Section 10.3 if it determines that the reduced amount of Return Water would not be sufficient to justify its water purchase as contemplated herein.

3.5 Scheduling of Deliveries. On an annual basis during the Delivery Term, Cal Am shall make available for delivery to Agency for CSIP use the volume of Cal Am's Annual Return Water Obligation in excess of the CCSD Delivery Volume, if any. If available and requested by Agency, Cal Am will endeavor to cooperate with Agency to deliver Return Water to the Delivery Point in volumes and at times that satisfy Agency's needs.

4. Payment Provisions.

4.1 Generally. Cal Am will invoice Agency for deliveries of Return Water to the Delivery Point based on the volumes measured at the Cal Am Meter. Agency shall pay such invoices within 30 days of receipt.

4.2 Pricing. For each acre-foot of Return Water delivered by Cal Am, the Agency shall pay a rate intended to represent the CSIP customers' marginal avoided cost for groundwater produced for use by the CSIP customers, currently estimated to be \$102 per acre foot, which will be the rate as of the beginning of the Delivery Term. Upon Cal Am's reasonable request, and not more than once per year, Agency shall provide Cal Am with all information relating to CSIP customers' marginal avoided cost for groundwater pumping reasonably requested by Cal Am to support Agency's calculation of CSIP customers' marginal avoided cost for groundwater pumping. Using Agency's calculation and information provided under this Section 4.2, Cal Am will annually review the rate and following such review, if necessary, update its CPUC tariff through a Tier 2 advice letter filing with the CPUC. If at any time the CPUC approves or imposes a price for Return Water that exceeds CSIP customers' marginal avoided cost for groundwater pumping, Agency may terminate this Agreement as provided in Section 10.3, but Cal Am's obligation to provide Return Water shall not be affected by such termination.

5. Compliance with Laws/Cooperation. The Parties shall comply with all applicable laws in their respective performance under this Agreement and shall cooperate to take the actions and execute the documents necessary to perform under this Agreement.

6. Indemnification; Fees and Expenses

6.1 Indemnification.

(a) To the fullest extent permitted by law, Cal Am shall indemnify and hold harmless, but shall have no obligation to defend, Agency and its directors, officers, agents and employees, from any claims, actions or liability for any damages or costs (including

reasonable attorneys' fees and costs of defense) arising either from any injury to persons or property or from any violation of any law or regulation, which damages result from either the negligent acts, errors, or omissions, or the willful misconduct, of Cal Am, its directors, officers, employees, or agents in performing under this Agreement, but only to the extent such damages resulted from such negligent acts, errors, or omissions, or from such willful misconduct, of Cal Am or its directors, officers, agents and employees, such that Cal Am's indemnity obligation shall only apply to its percentage of fault multiplied by the total damages in issue.

(b) To the fullest extent permitted by law, Agency shall indemnify and hold harmless, but shall have no obligation to defend, Cal Am and its directors, officers, agents and employees from any claims, actions or liability for any damages or costs (including reasonable attorneys' fees and costs of defense) arising either from any injury to persons or property or from any violation of any law or regulation, which damages result from either the negligent acts, errors, or omissions, or the willful misconduct, of Agency, its directors, officers, employees, or agents in performing under this Agreement, but only to the extent such damages resulted from such negligent acts, errors, or omissions, or from such willful misconduct, of Agency or its directors, officers, agents and employees, such that Agency's indemnity obligation shall only apply to its percentage of fault multiplied by the total damages in issue. Notwithstanding the foregoing, the Parties acknowledge and agree that nothing in this Section 6.1(b) or otherwise contained in this Agreement constitutes or shall be asserted to constitute a waiver of any defense Agency possesses or may possess, including but not limited to any defense of sovereign or statutory immunity, to liability at law or in equity.

7. **Insurance.** The Parties will keep in full force and effect the insurance coverage described in Exhibit B.

8. **Assignment.** A Party may not assign its rights or obligations under this Agreement without the written consent of the other Party, which consent may not be unreasonably withheld.

9. **Dispute Resolution**

9.1 **Scope of Article.** This Article governs the resolution of all disputes that arise under this Agreement.

9.2 **Disputes.** If a dispute arises concerning any controversy or claim arising out of or relating to this Agreement or the breach thereof, or relating to its application or interpretation, the aggrieved Party will notify the other Party of the dispute in writing within twenty (20) days after such dispute arises. If the Parties fail to resolve the dispute within sixty (60) days after delivery of such notice, each Party will promptly nominate a senior officer of its organization to meet at any mutually-agreed time and location to resolve the dispute. The Parties shall use their best efforts to reach a just and equitable solution satisfactory to both Parties. If the Parties are unable to resolve the dispute to their mutual satisfaction within sixty (60) days thereafter, the dispute will be subject to mediation, pursuant to Section 9.3. The time periods set forth in this Section 9.2 are subject to extension as agreed to by the Parties.

9.3 **Mandatory Non-binding Mediation.** If a dispute is not resolved pursuant to Section 9.2, the Parties agree to first endeavor to settle the dispute in an amicable manner,

using mandatory non-binding mediation initiated and conducted under the applicable rules of the American Arbitration Association in effect as of the Effective Date or other rules agreed to in writing by the Parties, before having recourse in a court of law. Each Party shall bear its own legal expenses, and the expenses of witnesses for either side shall be paid by the Party producing such witnesses. All expenses of the mediator, including required travel, 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, including without limitation any materials prepared or submitted or any positions taken by or on behalf of either Party, shall be confidential and 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 the Parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery. The mediation shall be completed within sixty (60) days after selection of the mediator, unless the Parties agree to extend the mediation period.

9.4 Judicial Relief. If mediation pursuant to Section 9.3 does not resolve a dispute, either Party may seek relief in a court of competent jurisdiction.

9.5 Limitations on Damages. No Party shall be entitled to consequential damages, incidental damages, or punitive or exemplary damages from the other Party in any action or proceeding in connection with this Agreement.

9.6 Attorneys' Fees and Costs. In any action or proceeding to enforce a term or condition of this Agreement, in any disputes relating to the Agreement, and in any actions for breaches, defaults, or misrepresentations in connection with any the Agreement, a prevailing Party (as determined by a court of competent jurisdiction) shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs.

10. Termination

10.1 Termination for Non-Performance. A Party may terminate this Agreement if the other Party fails to perform a material provision of this Agreement as required herein, provided that the Party seeking termination shall provide prior written notice of its intention to terminate to the other Party, which notice shall fully describe how the other Party failed to perform a material provision of this Agreement, and provided further that the dispute has not been resolved by following the procedures set forth in Section 9 above. If the Parties are unable to resolve the dispute following the procedures set forth in Section 9, the Party seeking termination may provide a written notification of termination to the other Party, and such termination shall become effective thirty (30) days after the other Party has received such written notification. The procedures of this Section 10.1 shall not apply to terminations under Section 10.2 and 10.3 of this Agreement.

10.2 Termination for Failure of Conditions Precedent. Either Party may terminate this Agreement if, by January 1, 2025, Cal Am has not obtained any and all required CPUC approval of the matters described as conditions precedent in Sections 3.2(a), (b), (c) and (d) by providing a written notification of termination to the other Party, and such termination

shall become effective thirty (30) days after the other Party has received such written notification.

10.3 Termination Based on Regulatory Requirements. Either Party may terminate this Agreement if Cal Am is legally required by a regulatory agency, including the CPUC, or by a court, to make water deliveries to locations in the SRGB other than CSIP or CCSD by providing a written notification of termination to the other Party, and Agency may terminate this Agreement if at any time the CPUC approves a price for Return Water to be included in Cal Am's tariffs that exceeds CSIP customers' marginal avoided cost for groundwater pumping. Any termination under the preceding sentence shall be preceded by thirty (30) days' written notice, and such termination shall become effective thirty (30) days after the other Party has received such written notification. Cal Am's obligation to provide Return Water shall not be affected by such termination.

11. **Representatives; Notices.**

11.1 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"). 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 Party.

11.2 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.

11.3 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 Party 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 on a business day before 3:00 pm Pacific Time; 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 11.3. All notifications, notices, demands, requests and other communications shall be sent to the Parties as follows:

To Agency:

David E. Chardavoyne

General Manager
Monterey County Water Resources Agency
893 Blanco Circle
Salinas, CA 93901

To Cal Am:

Eric J. Sabolsice
Director, Operations
Coastal Division
California-American Water Company
511 Forest Lodge Road, Suite 100
Pacific Grove, CA 93950

12. **Force Majeure**. If by reason of Force Majeure (defined below), 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 describes the particulars of such Force Majeure in writing to the other Party as promptly as possible after the occurrence of the cause relied on, then the affected Party shall be excused from performance hereunder without liability, but only so far as and to the extent that it is affected by such Force Majeure; 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 Party as provided above, shall as promptly as possible provide such Party 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 by 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 Party regular updates of the information previously submitted. The affected Party shall also provide prompt written notice to the other Party of the cessation of the Force Majeure. Notwithstanding anything to the contrary contained herein, the occurrence of a Force Majeure shall not, however, (i) 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; or (ii) excuse or delay Cal Am's obligation to comply with the Agency Act.

For purposes of this Section 12, "Force Majeure" means any act, event, condition or circumstance that (A) is beyond the reasonable control of a Party, (B) by itself or in combination with other acts, events, conditions or circumstances adversely affects, interferes with or delays a Party's ability to perform its obligations under this Agreement, expands the scope of a Party's obligations under this Agreement, or increases a Party's cost of performing its obligations under this Agreement, and (C) is not the direct result of the willful or negligent act, intentional misconduct, or breach of this Agreement by the affected Party.

13. **Other Provisions.**

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

13.2 **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.

13.3 **Relationship of Parties.** Each Party is an independent entity. This Agreement will not constitute any Party as the agent of the other Party. 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.

13.4 **Amendments or Waivers.** No term or provision hereof or Exhibit hereto may be amended, changed, waived, discharged, terminated or replaced except by a writing executed by each of the Parties hereto.

13.5 **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.

13.6 **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.

13.7 **CEQA.** This Agreement helps to define a stable and finite project description that will facilitate the CPUC's completion of CEQA review for the Project. The legal effectiveness of this Agreement is contingent on the completion of CEQA review and this Agreement does not irretrievably commit the Parties to carrying out any physical activities that would be required for Cal Am to meet the Annual Return Water Obligation or would otherwise be required for the Parties to comply with the terms of this Agreement. The Parties acknowledge and intend that the CPUC as lead agency and other responsible agencies under CEQA will retain full discretion with respect to deciding whether to approve water purchase or any other commitments necessary or convenient for Cal Am to meet the Annual Return Water Obligation, including discretion to modify commitments to avoid or reduce any significant adverse physical environmental effects (i) from Return Water activities that are within their jurisdiction, and (ii) from the Parties' compliance with other terms of this Agreement.

13.8 **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.

13.9 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. However, this Section 13.9 is not intended to, and shall not, limit the right of Settlement Agreement Parties to meet and confer under Section 6 of the Settlement Agreement in response to any conflict that is noted or alleged to exist between the terms of this Agreement and the terms of the Settlement Agreement.

13.10 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.

13.11 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.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered in their name and on their behalf.

MONTEREY COUNTY WATER RESOURCES AGENCY

By: _____

Printed Name: _____

Title: _____

Approved as to Form:

By: _____

Printed Name: _____

Title: _____

CALIFORNIA-AMERICAN WATER COMPANY

By: _____

Printed Name: _____

Title: _____

EXHIBIT A

Depiction of Anticipated Location of Delivery Pipeline and Delivery Point

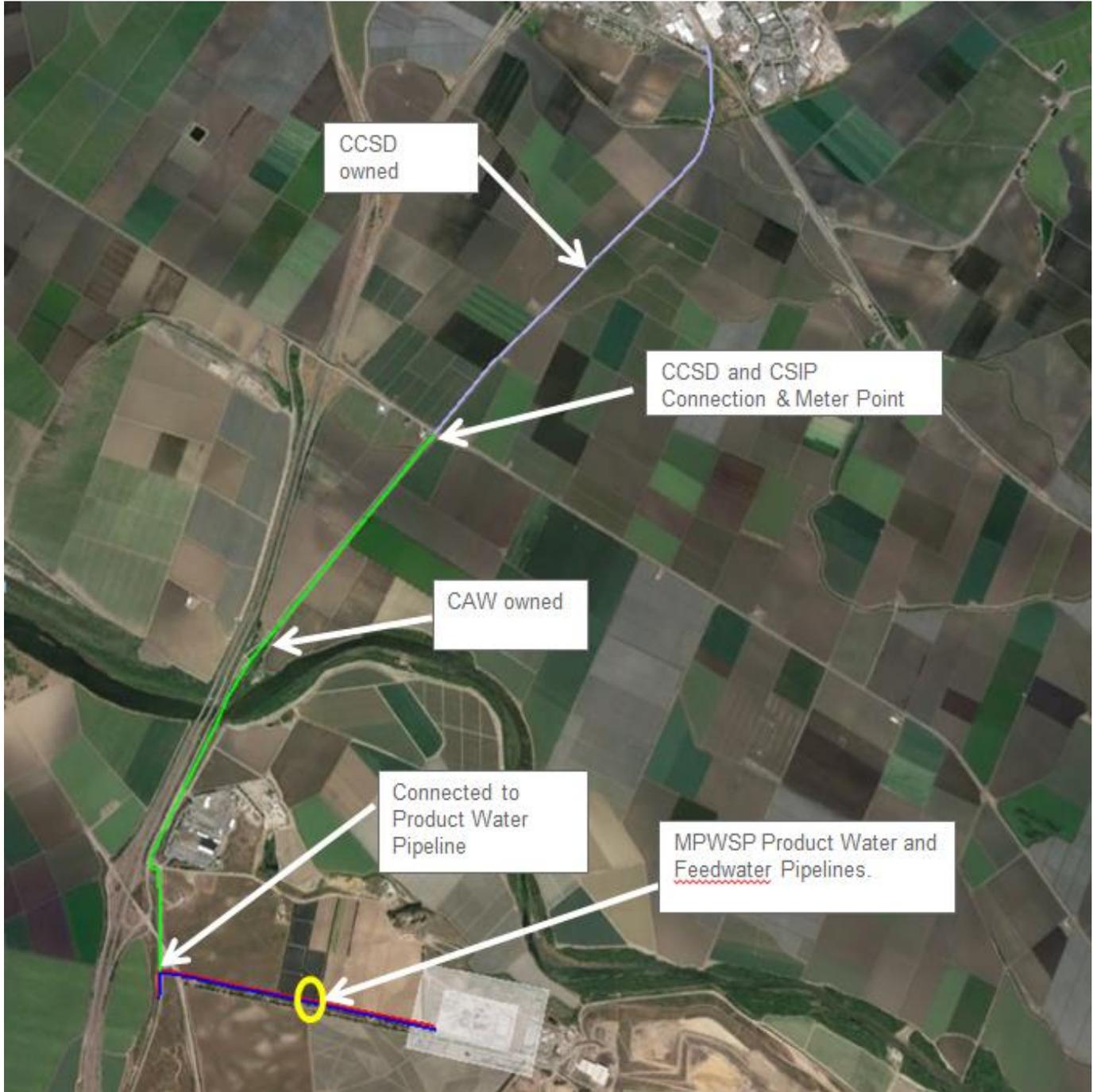


EXHIBIT B

INSURANCE REQUIREMENTS

Each Party to this Agreement shall initially provide information regarding and thereafter at all times maintain Commercial General Liability (“CGL”) insurance, or be analogously self-insured or insured through a pooling arrangement, in the minimum amount of \$1,000,000 per occurrence with an aggregate limit of \$2,000,000. Subject to the immediately preceding sentence, each Party may change insurance and/or insurers, and if a Party does so, it shall provide notice to the other Party within seven (7) days of such change.

Cal Am declares that it currently has a CGL policy with limits of \$2,000,000 per occurrence with an aggregate limit of \$25,000,000 and a \$2,000,000 deductible. Coverage is issued through Travelers Property Casualty Company of America.

The Agency declares that it is self-insured through the County of Monterey for acts and omissions that would be covered by a CGL policy issued by a private insurer. The limits of such self-insurance are \$1,000,000 per occurrence with an aggregate limit of \$2,000,000.

DRAFT

EXHIBIT C

SECTION 2.C. OF SETTLEMENT AGREEMENT

[TO BE PROVIDED UPON FINALIZATION OF SETTLEMENT AGREEMENT]