

**AGREEMENT TO FORM THE  
MONTEREY PENINSULA WATER SUPPLY PROJECT GOVERNANCE COMMITTEE**

This **AGREEMENT TO FORM THE MONTEREY PENINSULA WATER SUPPLY PROJECT GOVERNANCE COMMITTEE** (“**Agreement**”) is made and entered into as of February 14, 2013, by and among the **MONTEREY PENINSULA REGIONAL WATER AUTHORITY** (“**MPRWA**”), the **MONTEREY PENINSULA WATER MANAGEMENT DISTRICT** (“**MPWMD**”), the **COUNTY OF MONTEREY** (“**County**”), and the **CALIFORNIA-AMERICAN WATER COMPANY** (“**Cal-Am**”). The MPRWA, the MPWMD, the County, and Cal-Am are sometimes referred to herein as a “**Party**,” and collectively as the “**Parties**.”

**I. Formation of Governance Committee**

Pursuant to the terms of this Agreement, the Parties hereby form the Monterey Peninsula Water Supply Project Governance Committee (“**Governance Committee**”) comprised of representatives of the MPRWA, the MPWMD, the County, and Cal-Am to ensure efficient and effective public input into the development and operation of the Monterey Peninsula Water Supply Project (“**Project**”). Cal-Am’s entry into this Agreement is expressly conditioned upon its legal obligations to abide by the orders and decisions of the California Public Utilities Commission (“**CPUC**”). Therefore, should the CPUC order Cal-Am not to participate in this Agreement, Cal-Am shall be relieved of all obligations set forth in this Agreement and this Agreement may be terminated by Cal-Am upon such CPUC order. Further, if the CPUC issues any order or decision that conflicts with any particular provision of this Agreement, Cal-Am shall be relieved of any and all obligations to abide by the conflicting provision of this Agreement.

**II. Definitions**

A. Application A.12-04-019. Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates, filed with the CPUC on or about April 23, 2012.

B. ASR Infrastructure. The facilities used to inject into and extract potable water from the Seaside Groundwater Basin, as described in Application A.12-04-019. These facilities will include the Aquifer Storage and Recovery (“ASR”) wells and related appurtenances, the backflush pipeline, the recirculation pipeline and the ASR pipeline.

C. Cal-Am Notification. The time when Cal-Am notifies the Governance Committee that a matter is ready for consideration, consultation, or action by the Governance Committee as provided herein, and as further defined within Section V.B.

D. Contracts. One or more of the following contracts between Cal-Am and a selected contractor: (1) design-build contract(s) for the Desalination Infrastructure, (2) design-build contract(s) for the Source Water Infrastructure, (3) design-build contract(s) for the Brine Discharge Infrastructure contracted for by Cal-Am, (4) design-bid-build contract(s) for the Product Water Pipeline, (5) design-bid-build contract(s) for the Raw Water Pipeline; (6) design-bid-build contract(s) for ASR Infrastructure, and (7) design-bid-build contract(s) for the Terminal Reservoir Infrastructure. One or more of the contracts identified above in this definition may be combined into a single contract.

E. CPCN. The Certificate of Public Convenience and Necessity, if ordered by the CPUC, within Application A.12-04-019.

F. Brine Discharge Infrastructure. Facilities located outside the desalination plant site that are used to dispose of brine into the ocean. These facilities will include the brine disposal pipeline, the brine receiving station, any modification to the MRWPCA existing outfall, or a new outfall, or potentially the use of other existing outfalls with or without modifications.

G. Desalination Infrastructure. Facilities located within the desalination plant site that are used to create potable water from either an ocean source water, brackish source water or a combination thereof, and appurtenant facilities needed to dispose of brine to the Brine Discharge Infrastructure, dispose of wastewater (i.e. process water and sanitary discharge), and any needed facilities that may be required to return groundwater back to the Salinas Valley.

H. Desalination Project. The combination of the Desalination Infrastructure, the Brine Discharge Infrastructure, the Source Water Infrastructure, the Product Water Pipeline, the Raw Water Pipeline, and the Terminal Reservoir Infrastructure.

I. GWR Project. Groundwater replenishment project to be implemented by MRWPCA and/or MPWMD which involves advanced treatment of wastewater and the injection of this product water into the Seaside Groundwater Basin. This project includes facilities for the treatment, conveyance, and injection of the product replenishment water.

J. MRWPCA. The Monterey Regional Water Pollution Control Agency.

K. Product Water Pipeline. Facilities used to convey potable water from the Desalination Infrastructure to the Terminal Reservoir Infrastructure and to Cal-Am's existing distribution system at the Eardley Pump Station.

L. Project. The Monterey Peninsula Water Supply Project as proposed in Application A.12-04-019.

M. Public Entity Members of the Governance Committee. The MPRWA, the MPWMD, and the County. Cal-Am is not a Public Entity Member of the Governance Committee.

N. Raw Water Pipeline. Facilities used to convey feed water from the Source Water Infrastructure to the Desalination Infrastructure.

O. Source Water Infrastructure. Wells and appurtenant facilities (or alternative contingent intake facilities) that are used to extract and convey feedwater (i.e., raw water) to the Raw Water Pipeline. These facilities will include the slant intake wells and related appurtenances (if permitted) as well as alternate contingent intakes such as a Ranney Well or open ocean intake as submitted by Cal-Am in its contingency plans.

P. Terminal Reservoir. Facilities used to pump and store potable water in storage tanks east of the City of Seaside along General Jim Moore Boulevard. These facilities will include the Terminal Reservoir, Terminal Reservoir Pump Station, overflow facilities and related appurtenance needed to assist in the moving of water to and from the ASR Infrastructure, other ASR facilities, and Product Water Pipeline.

Q. Value Engineer. The professional engineer(s) to be retained by, or to consult with, Cal-Am to perform a value engineering analysis for the Desalination Project to potentially lower the costs of, or maximize the value of, the Desalination Project to Cal-Am's ratepayers, including matters concerning the cost effectiveness, performance, reliability, quality, safety, durability, effectiveness, or other desirable characteristics of the Desalination Project.

The Parties acknowledge that the Project is still under development and several aspects of the Project may be modified as planning continues and as may be ordered by the CPUC. If necessary to address future modifications to the Project, the Parties agree to cooperate in good faith to reach agreement to amend the definitions set forth herein as necessary to fulfill the purpose of this Agreement.

### III. Membership and Voting

Each of the public entities shall be represented on the Governance Committee by one elected member and one alternate who shall also be an elected official. If MPWRA ceases to exist, then the cities that are members of the MPWRA at the time of the MPWRA's termination shall collectively choose a "city representative" that will take the place of the MPWRA representative on the Governance Committee. Cal Am shall be represented by the President of Cal-Am or the President's alternate, which the President may designate to act on his or her behalf at anytime. The Governance Committee shall appoint a "Chair" and "Vice-Chair" from the primary (non-alternate) elected officials appointed to the Governance Committee. Each of the Public Entity Members of the Governance Committee shall have a single equal vote in decision-making. Cal-Am shall not have a vote for purposes of the issuance of decisions or recommendations by the Governance Committee. However, Cal-Am shall, unless it abstains from doing so, state its preference with respect to any decision or recommendation made by the Governance Committee (the "**Cal-Am Preference**") at the time that any decision or recommendation is made by the Governance Committee and the Cal-Am Preference shall be recorded within the meeting minutes together with a summary of any explanation provided by Cal-Am for the Cal-Am Preference.

### IV. Powers

A. Purpose. The purpose and function of the Governance Committee shall be to: (i) consult with, advise, and in some circumstances, provide direction, to Cal-Am concerning the design, permitting, construction, operations, maintenance, repairs, and replacements of the components of the Desalination Project; and (ii) serve as the entity which Cal-Am regularly updates as to Desalination Project status and issues. The members of the Governance Committee shall diligently consider all matters and cause the Governance Committee to timely and promptly issue decisions or recommendations brought before it as provided pursuant to the terms of this Agreement.

B. Waiver of Action. Upon motion and affirmative vote of the Governance Committee, the Governance Committee may choose to waive its right to issue a decision or recommendation with respect to any matter for which the Governance Committee is afforded such right herein. The purpose of the Governance Committee's right to waive its right to make any specified decision or recommendation herein is to empower the Governance Committee to avoid issuing any decision or recommendation, which, in its determination, would violate any law, unreasonably delay efforts to develop water supplies for the Monterey Peninsula, or otherwise compromise the public interest.

### V. Governance Committee Action; Procedures

A. Matters Subject to Governance Committee Action. Matters for consideration, consultation, decision, or recommendation by the Governance Committee shall be divided among three categories, with varying processes for consultation, recommendations, and/or decision-making, as follows:

Category A: The Governance Committee makes the decision or recommendation respecting the matter after receipt of a written recommendation from Cal-Am, and upon issuance of its decision or recommendation, the Governance Committee provides a written explanation of the reasons for its decision to Cal-Am within seven (7) calendar days following its decision or recommendation. Thereafter, Cal-Am will comply with the decision or recommendation issued by the Governance Committee so long as the decision or recommendation is consistent with the terms of this Agreement. However, notwithstanding any provision of this Agreement, for any matter covered by Category A that relates to an action which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, as defined by section 21065 of the California Public Resources Code, no decision or recommendation shall be made by the Governance Committee as to the subject matter unless and until such time as the action has been subject to review by an appropriate agency in accordance with the California Environmental Quality Act ("CEQA"). The foregoing provision shall not be construed as an agreement or determination by or among any of the Parties that CEQA

applies to any action of the Governance Committee. This Agreement is itself not a “project” as defined by section 15378 of the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3) because it is an organizational activity that will not result in direct or indirect physical changes in the environment and this Agreement makes no commitment to any project.

Category B: The Governance Committee makes a recommendation respecting the matter after receipt of a written recommendation from Cal-Am. However, Cal-Am may determine, at its sole discretion, whether or not to follow the Governance Committee’s recommendation, provided that if Cal-Am chooses not to follow the recommendation, Cal-Am shall provide a written explanation of Cal-Am’s reasons for its decision not to follow the recommendation within ten (10) calendar days following the issuance of the Governance Committee’s recommendation. Further, should Cal-Am choose not to follow the recommendation of the Governance Committee, then any Party may raise the issue for review by the CPUC during Cal-Am’s next general rate case.

Category C: Cal-Am makes the decision respecting the matter after receiving a recommendation from the Governance Committee. Cal-Am need not issue a written explanation for its decision, although should Cal-Am choose not to follow the recommendation of the Governance Committee, then any Party may raise the issue for review by the CPUC during Cal-Am’s next general rate case.

B. Procedure for Cal-Am Notification. Whenever Cal-Am is presented with, or becomes aware of, a matter that falls within any of the subjects identified herein for consideration, consultation, or action by the Governance Committee that is ripe for presentation to the Governance Committee, Cal-Am shall, in writing, promptly notify the Chair of the Governance Committee (“Cal-Am Notification”), who shall schedule the matter for consideration by the Governance Committee. For purposes of this Agreement, a matter shall be deemed ripe for presentation to the Governance Committee at such time as either specified within the matters set forth below, or for any matter for which no specification is provided, Cal-Am shall determine the time(s) at which the matter is appropriate for presentation for consultation, decision, or recommendation by the Governance Committee consistent with the purpose of this Agreement. Unless a different period is specified herein, for all matters for which a decision or recommendation is to be made by the Governance Committee, the Governance Committee shall issue its decision or recommendation within ten (10) calendar days following receipt of the Cal-Am Notification. If the Public Entity Members of the Governance Committee determine that the Governance Committee requires more than the prescribed time period provided for in this Agreement to act on any matter that is the subject of the Cal-Am notification, the Chair of the Governance Committee may request a reasonable extension of time by written request to Cal-Am, and Cal-Am and the Public Entity Members of the Governance Committee shall cooperate in good faith to set a reasonable alternative deadline for action on the subject matter to the extent that such an extension would not unreasonably delay the Project, not unreasonable delay required CPUC filings by Cal-Am, or otherwise compromise the public interest. So as to avoid undue delay, if the Governance Committee fails to make any decision or provide any recommendation upon any matter brought before it (including all Category A decisions) on or before the expiration of the prescribed period for action by the Governance Committee (or the period of any extension agreed to by Cal-Am), or if the Governance Committee affirmatively waives its right to make a decision or recommendation respecting a matter before it, then Cal-Am may make the subject decision without a decision or recommendation, as applicable, by the Governance Committee.

C. Cal-Am Status Presentations and Governance Committee Recommendations Thereon. At each meeting of the Governance Committee, Cal-Am shall provide a report as to the status of the Project, which shall be presented by one or more individuals knowledgeable about the material aspects of the Project. Upon reasonable advance, written notice, the Governance Committee may request that Cal-Am include within its status presentation to the Governance Committee the status of any matter that is set forth in any of the three categories for decision, recommendation, or consultation established below, together with an explanation of any pending or soon-to-be-pending decisions or options concerning the subject matter. The Governance Committee may issue, in writing, any recommendation concerning a subject matter included within Cal-Am’s presentation. Cal-Am may determine, at its sole discretion, whether or not to follow the recommendation, provided that if Cal-Am

chooses not to follow the recommendation and the subject matter is a matter covered by either Category A or Category B, Cal-Am shall, within ten (10) calendar days following issuance of the Governance Committee's recommendation, provide a written explanation of the reason(s) for Cal-Am's decision not to follow the recommendation. If the subject matter is a matter covered by Category C or is not set forth within any of the three categories set forth below, Cal-Am need not issue a written explanation of Cal-Am's reasons for its decision not to follow the recommendation.

D. Categories for Matters Subject to Governance Committee Action. Matters for consideration, consultation, decision, or recommendation by the Governance Committee shall be divided among the following three categories as follows:

### **Category A**

1. This matter concerns the "GWR Recommendation," which specifically is whether Cal-Am shall: (i) pursue a water purchase agreement, acceptable to Cal-Am, for the purchase of water from the GWR Project, and consequently Cal-Am shall develop a smaller Desalination Infrastructure with a capacity of approximately 6.4 MGD (or as specified in the CPCN); or (ii) forgo the pursuit of a water purchase agreement for the GWR Project, and consequently Cal-Am shall develop a larger desalination facility with a capacity of approximately 9.6 MGD (or as specified in the CPCN). If the GWR Recommendation becomes ripe for recommendation before a CPCN is issued upon Application A.12-04-019, the Governance Committee shall not issue any binding recommendation concerning the GWR Recommendation. If the GWR Recommendation becomes ripe for recommendation after a CPCN is issued upon Application A.12-04-019, the Governance Committee shall decide whether Cal-Am shall pursue the GWR Project or not (as set forth above), which recommendation shall then be subject to CPUC approval or rejection pursuant to the procedure specified herein. The Governance Committee shall make this recommendation based upon criteria to be mutually-agreed to by the Parties, negotiating in good-faith, after the execution of this Agreement. The GWR Recommendation shall become ripe for a recommendation to be made by the Governance Committee no later than that date upon which Cal-Am is prepared to commence construction of the Desalination Infrastructure, after the GWR Project has received environmental review consistent with the provisions of CEQA, and there is sufficient time for the GWR Recommendation to be made and for the CPUC to review and approve that recommendation, without otherwise delaying the Project. The GWR Recommendation shall be made by the Governance Committee, in writing with an explanation of the reasons for its decision, within sixty (60) days following receipt of the Cal-Am Notification concerning this matter. The recommendation issued by the Governance Committee shall be submitted by Cal-Am to the CPUC for approval or rejection pursuant to a Tier 2 Advice Letter (or at the direction of the CPUC, an alternate form of submission) within ten (10) calendar days following issuance of the GWR Recommendation by the Governance Committee for the CPUC's review and approval.

2. The Governance Committee shall select a Value Engineer(s) (to facilitate and report on the proposed value engineering for the Desalination Project), with consideration given to any recommended engineer submitted by any member of the Governance Committee. This matter shall be ripe for decision before Cal-Am accepts the 30% Design from the design-build contractor retained for the Desalination Infrastructure, or at any other time that Cal-Am intends to retain a Value Engineer for any other infrastructure constructed as a component of the Desalination Project.

3. Subsequent to the issuance of the CPCN and subsequent to the selection of any design-build contractor(s) for the Desalination Infrastructure, the Governance Committee may issue decisions concerning the Desalination Infrastructure's architectural renderings. The Governance Committee shall be presented with architectural renderings for decisions regarding the same when such architectural renderings are complete and upon any subsequent modifications thereto. The Governance Committee may also, in its discretion, appoint a representative to consult with Cal-Am regarding other external features or aesthetics of the Desalination Project. Upon a determination of the Governance Committee or its representative, the Governance Committee's representative and Cal-Am shall present to the Governance Committee options pertaining to the Desalination Project's external feature or aesthetics, upon which the Governance Committee may decide which option to pursue. Notwithstanding any

provision of this paragraph, the Governance Committee may not issue a binding decision concerning the Desalination Infrastructure's architectural renderings, or the Desalination Project's external features or aesthetics, if the decision would in the opinion of the design-build contractor, increase the capital or operational cost of the Desalination Infrastructure.

4. Subsequent to the issuance of the CPCN and subsequent to the selection of the design-build contractor for the Desalination Infrastructure, the Governance Committee may issue decisions concerning procurement of additional (non-Pacific Gas & Electric) energy supplies for the Desalination Infrastructure, including but not limited to waste-to-energy, so long as such decisions result in lowering the Desalination Infrastructure's estimated unit price for power. This matter shall be ripe for decision at any time a formal written proposal concerning alternative power is presented by one or more of the Parties for consideration.

### **Category B**

1. Prior to the issuance of a request for qualifications, request for proposals, or request for bids, as applicable, the Governance Committee may recommend qualifications and selection criteria for the Contracts not previously executed for the Project.

2. Prior to the execution of any Contract, and upon presentation and recommendation by Cal-Am to the Governance Committee after Cal-Am has reviewed and evaluated proposals or bids, as applicable, and negotiated with the contractor a Contract that, in the opinion of Cal-Am, is ready for execution by and between Cal-Am and the contractor, the Governance Committee may recommend which contractor should be retained under the Contract. When presenting a Contract to the Governance Committee for its consideration and recommendation, Cal-Am shall provide to the Governance Committee a copy of all responsive proposals or bids received for the pertinent work, except for any proprietary information provided by contractors submitting responsive proposals or bids, together with a written description of the process Cal-Am undertook to select a recommended Contractor, a summary of the considerations that Cal-Am deems pertinent to support its recommendation, and any other information that Cal-Am believes will assist the Governance Committee in its review of the recommended Contract and contractor.

3. The Governance Committee may review and issue recommendations concerning major changes to the Desalination Project at key stages of the design process, including:

- Basis of Design
- 30% Design
- 60% Design
- Value Engineering
- 90% Design, and
- Final Design

As used in this paragraph, major changes to the Project shall include changes having an increase or decrease in costs of the Desalination Project that exceed \$1 million.

4. The Governance Committee may issue recommendations concerning the establishment of a community outreach program.

5. The Governance Committee may recommend the Desalination Project's aesthetic attributes and design consistent with community values if not covered by Category A(3) above;

6. The Governance Committee may coordinate with Cal-Am and recommend solutions to issues concerning the use of the Brine Discharge Infrastructure and issue recommendations concerning the same;

7. The Governance Committee may review and recommend whether to adopt any value engineering recommendations issued by the Value Engineer;

8. The Governance Committee may review and recommend whether to approve any change order pertaining to any component or components of the Desalination Project, if the change order exceeds \$1 million.

### **Category C**

1. Cal-Am shall monitor the design, engineering, and permitting of all elements of the Desalination Project, and report on such monitoring to the Governance Committee as described in Section VI. The Governance Committee shall discuss Cal-Am's report and may issue recommendations to Cal-Am pertaining to the Desalination Project;

2. The Governance Committee may review and issue recommendations concerning contract terms relating to the Contracts;

3. The Governance Committee may review and issue recommendations concerning the preparation and quarterly update of an overall construction budget for the Desalination Project;

4. The Governance Committee may review and issue recommendations concerning a plan for acceptance testing, including follow-up reporting, for the Desalination Project;

5. The Governance Committee may annually review and issue recommendations concerning the Desalination Project operations and maintenance budget and rate impacts;

6. The Governance Committee may review and issue recommendations to Cal-Am with respect to local and regional permit requirements; and

7. The Governance Committee may review and issue recommendations concerning the preparation of quarterly progress reports during major design milestones (i.e., 30% design, 60% design, 90% design, and final design) and information on any material challenges to the Project Design.

E. Additional Matters. If agreed unanimously by all members of the Governance Committee, including Cal-Am, additional matters not provided for herein may be added to Category A for decision by the Governance Committee or to Category B for recommendation from the Governance Committee. Additional matters may also be added to Category C for recommendations from the Governance Committee upon affirmative vote of the Governance Committee unless Cal-Am determines that the addition of the matter to Category C would unreasonably delay the Project or otherwise compromise the public interest. If Cal-Am determines that a matter affirmed by the Governance Committee for addition to Category C should not be so added, Cal-Am shall issue a written explanation to the Governance Committee within ten (10) calendar days following the Governance Committee's vote to add the matter to Category C that explains the reasons supporting Cal-Am's determination.

## **VI. Meetings and Action of the Governance Committee; Agendas and Minutes**

A. Meetings. During the pre-construction and construction phases of the Project, regular meetings of the Governance Committee shall be scheduled by the Chair, upon reasonable advance notice, and held on a monthly basis. During the operational phase of the Project, regular meetings of the Governance Committee shall be scheduled by the Chair, upon reasonable advance notice, and held on a quarterly basis for the first two years of the Project's operation and semi-annually thereafter. By unanimous agreement of the Parties, any regular meeting may be canceled. Special meetings of the Governance Committee may be called by the Chair or by any member of the Governance Committee upon request of the Chair. Meetings of the Governance Committee shall be held at the office of the MPWMD or other location agreed to by the Parties. Governance Committee meetings shall be conducted

in compliance with the Ralph M. Brown Act (Government Code sections 54950, et seq.). The Board may use teleconferencing in connection with any meeting in conformance with and to the extent authorized by applicable law. The following shall be the order of business of all meetings of the Governance Committee:

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Public Comment
5. Report from Governance Committee Members
6. Approval of Minutes of the Previous Meeting
7. Project Status Report by Cal-Am
8. Agenda Items
9. Adjournment

B. Action by the Governance Committee. All decisions and recommendations of the Governance Committee issued to Cal-Am shall be in writing, signed by the Chair. All other actions of the Governance Committee shall be by motion recorded in written minutes.

C. Agendas and Minutes. Agendas and minutes of the meetings of the Governance Committee shall be taken, maintained, and distributed by a designated staff member of the MPWMD.

#### **VII. Quorum and Affirmative Action of the Governance Committee**

To constitute a quorum at all meetings of the Governance Committee for the transaction of business, representatives of at least two of the three Public Entity Members of the Governance Committee must be present in person or represented by proxy. Action by the Governance Committee shall require the affirmative vote of at least two of the three Public Entity Members of the Governance Committee.

#### **VIII. Submission of Project Information to the Governance Committee; Project Inspections**

Concurrent with Cal-Am's submission of any documents concerning the Project to the CPUC, Cal-Am shall provide a copy of the documents to the Chair of the Governance Committee. The Chair may notice a meeting on his or her own initiative, or upon the request of any member of the Governance Committee to review any financial matter addressed by the documents. Cal-Am, upon request of the Chair of the Governance Committee, shall be afforded an opportunity to provide a presentation or any oral explanation relating to the noticed financial matter. Further, upon reasonable advanced notice and subject to safety and security concerns and precautions as determined in good faith by Cal-Am, any member(s) of the Governance Committee may inspect any physical facility or structure constructed or being constructed as an element of the Desalination Project, and Cal-Am shall provide an employee, consultant, or other representative, who is knowledgeable of the aspects and elements of the physical facility or structure, to accompany the member(s) of the Governance Committee during the inspection.

#### **IX. Term and Termination of Agreement**

This Agreement shall continue in effect until the earlier of forty (40) years from the effective date of this Agreement or the cessation of operations of the Desalination Project by Cal-Am, unless: (1) terminated following the issuance of an order from the CPUC ordering Cal-Am not to participate in this Agreement, as provided for in Section I above; (2) the CPUC denies or rescinds Application A.12-04-019 or denies Cal-Am's development of, or subsequently rescinds Cal-Am's authority to develop, the Desalination Project within the CPUC's issuance of a CPCN upon Application A.12-04-019; or (3) terminated early upon the affirmative written agreement of no less than three of the four members of the Governance Committee. If this Agreement terminates at the expiration of forty (40) years from the effective date of this Agreement, but the Desalination Project is still operational, the Parties shall meet and negotiate in good faith no less than six (6) months before the expiration of said forty (40)-year period to seek a renewal of this Agreement, upon mutually acceptable terms, to provide continued public oversight and input



concerning the operation, maintenance, repair, modification, and/or replacement of the Desalination Project. If this Agreement terminates as a result of a CPUC order denying or rescinding Application A.12-04-019 or Cal-Am's authority to develop the Desalination Project, but Cal-Am intends to seek CPUC approval to develop a substitute project to provide water supplies for its Monterey District, then the Parties shall meet and negotiate in good faith to seek agreement, upon mutually acceptable terms, for a substitute agreement to provide public oversight and input concerning the design, permitting, construction, operation, maintenance, repair, modification, and/or replacement of such substitute project.

## **X. Miscellaneous**

A. Further Assurances. The Parties shall execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of this Agreement.

B. Construction. The provisions of this Agreement shall be liberally construed to effectuate its purposes. The language of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against any Party, as each Party has participated in the drafting of this Agreement and had the opportunity to have their counsel review it.

C. Choice of Law. This Agreement shall be governed and construed under the laws of the State of California, with venue proper only in Monterey County.

D. Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provision or part thereof, shall be stricken from this Agreement, and such provision shall not effect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part of this Agreement is stricken in accordance with the provisions of this section, then the stricken provision shall be replaced, to the extent possible and as agreed to by the Parties, with a legal, enforceable and valid provision that is as similar in content to the stricken provision as is legally possible.

E. Dispute Resolution. If a dispute arises between two or more of the Parties relating to this Agreement, or the rights and obligations arising therefrom, and if the Parties in dispute are unable to resolve the controversy through informal means, the Parties in dispute may, upon mutual agreement, submit the dispute to mediation, upon terms mutually agreed to by the Parties in dispute. Any Party not in dispute as to the disputed matter shall be afforded an opportunity to participate in the mediation. In addition, if the Parties in dispute are unable to resolve the controversy through mediation, the Parties in dispute may, upon mutual agreement, submit the dispute to binding arbitration, upon terms mutually agreed to by the Parties in dispute. Any Party not in dispute as to the disputed matter may, upon the mutual agreement of the Parties in dispute, be invited to participate in the arbitration.

F. Members to Bear their Own Costs. Each Party shall bear its own costs relating to the rights and obligations of each Party arising from this Agreement and its participation in the Governance Committee and, therefore, no Party shall be entitled to any reimbursement from another Party as a result of any provision of this Agreement.

G. Notices and Communication. Any notice or communication hereunder shall be deemed sufficient if given by one Party to the other Parties in writing and either delivered in person, transmitted by electronic mail or facsimile and acknowledgment of receipt is made by the receiving Party(s), or deposited in the United States mail in a sealed envelope, certified and with postage and postal charges prepaid, and addressed as follows:

If to Cal-Am: California-American Water Company  
Attn: Robert MacLean  
1033 B Avenue, Suite 200  
Coronado, CA 92118  
Email: robert.maclean@amwater.com

with a copy to: California-American Water Company  
Attn: Anthony Cerasuolo  
1033 B Avenue, Suite 200  
Coronado, CA 92118  
Email: [acerasuolo@amwater.com](mailto:acerasuolo@amwater.com)

If to the MPRWA: Monterey Peninsula Water Management District  
Attn: Lesley Milton  
Clerk of the Board  
City of Monterey  
351 Madison St. Monterey, CA 93940  
[milton@monterey.org](mailto:milton@monterey.org)

with copies to: Monterey Peninsula Water Management District  
Attn: Donald Freeman  
General Counsel  
San Carlos & 8th Avenue  
Carmel, CA 93921  
cityatty@ix.netcom.com

Monterey Peninsula Water Management District  
Attn: Russell McGlothlin  
Special Counsel  
21 E. Carrillo St.,  
Santa Barbara, CA 93101  
rmcglathlin@bhfs.com

If to the MPWMD: Monterey Peninsula Water Management District  
Attn: David J. Stoldt  
General Manager  
5 Harris Court – Bldg G  
Monterey, CA 93940  
Email: dstoldt@mpwmd.net

with a copy to: Monterey Peninsula Water Management District  
Attn: David C. Laredo  
General Counsel  
5 Harris Court – Bldg G  
Monterey, CA 93940  
[dave@laredolaw.net](mailto:dave@laredolaw.net)

If to the County: County of Monterey Board of Supervisors  
C/O Clerk of the Board of Supervisors  
168 West Alisal Street  
1<sup>st</sup> Floor  
Salinas, CA, 93901  
[112-clerkoftheboardeveryone@co.monterey.ca.us](mailto:112-clerkoftheboardeveryone@co.monterey.ca.us)

with a copy to: Monterey County Counsel  
Attn: Charles J. McKee  
168 West Alisal Street  
3<sup>rd</sup> Floor  
Salinas, CA 93901  
[mckeecj@co.monterey.ca.us](mailto:mckeecj@co.monterey.ca.us)

or to such other address or to such other person as each Party shall have last designated for receipt of notices pursuant to this Agreement. Where this Agreement provides for written notices or communication from Cal-Am to the Governance Committee, such written notice, explanation, or communication shall be directed to the Chair of the Governance Committee at the address set forth above for notices to the public entity from which the Chair is appointed, and when provided shall be deemed provided to all Public Entity Members of the Governance Committee. The effective date of any written notice, explanation, or communication shall be the earlier of the date of actual receipt, acknowledgment of receipt, or three days following deposit in the United States mail.

H. Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the parties and their respective legal representatives, successors, and assigns.

I. Effective Date. This Agreement shall take effect on date first stated above.

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

*[signature page to follow]*

California-American Water Company By: \_\_\_\_\_  
Robert MacLean, President

Monterey Peninsula Regional Water Authority By: \_\_\_\_\_  
Chuck Della Sala, President

Agreed as to form:

By: \_\_\_\_\_  
Donald Freeman, Authority Counsel

Monterey Peninsula Water Management District By: \_\_\_\_\_  
David Pendergrass, Chair

Agreed as to form:

By: \_\_\_\_\_  
David Laredo, District Counsel

County of Monterey By: \_\_\_\_\_  
Fernando Armenta, Chair of the Board of Supervisors

Agreed as to form:

By: \_\_\_\_\_  
Charles McKee, County Counsel