

**RENEWAL AND AMENDMENT NO. 1 TO MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF MONTEREY AND THE MONTEREY REGIONAL
WATER POLLUTION CONTROL AGENCY (NOW MONTEREY ONE WATER)**

This Renewal and Amendment No. 1 to the Memorandum of Understanding (“MOU”) between the County of Monterey, a political subdivision of the State of California (“County”) and the Monterey Regional Water Pollution Control Agency, a joint powers agency organized and operating under California Government Code Section 6500 et. seq. (“MRWPCA”) made by and between the County and MRWPCA on April 4, 2017 is made by and between the County and Monterey One Water (hereafter, “M1W”, formerly known as the MRWPCA), (hereafter, “Renewal and Amendment No. 1 to MOU”). County and M1W are sometimes hereafter collectively referred to as “the Parties” and in the singular as “a Party.” This Renewal and Amendment No. 1 to MOU is made and entered into as of the last date following the respective signatures below and effective as of January 31, 2018.

RECITALS

- A. M1W is experiencing lower wastewater flows into its regional treatment plant due to area wide conservation measures.
- B. M1W has available capacity to treat additional wastewater flows that are not being beneficially reused.
- C. County has had numerous inquiries by customers of other small wastewater systems to consider the feasibility of more economical treatment options.
- D. On December 13, 2016, the Monterey County Board of Supervisors directed staff to develop a Memorandum of Understanding with the MRWPCA for the preparation of a Focused Wastewater Service Area Study that will provide a current assessment of regional opportunities for sewer service area consolidation, including a Basis of Design for Infrastructure to serve the Toro Area as well as other small sewer systems in the Study Area.
- E. M1W is undertaking the development and revision of a Small Wastewater System Update to evaluate the opportunities to provide regional service to several small systems.
- F. County is interested in divesting from the operation and ownership of wastewater collection and treatment where determined to be appropriate and feasible.
- G. County has determined that achieving the purposes described herein will facilitate necessary and beneficial public services and increase overall public health and safety.
- H. M1W initiated a Request for Proposals for the Focused Wastewater Service Area Study and selected V. W. Housen & Associates to prepare the Study for the amount of \$100,425.00.

- I. M1W is working cooperatively with numerous agencies and cities in Monterey County to advance the use of effective and cost efficient methods for using water resources wisely including the use of alternative water supplies within Monterey County.
- J. M1W desires to maximize the use of its existing wastewater treatment and conveyance facilities.
- K. County and MRWPCA entered into an MOU on April 4, 2017 which County and M1W desire to renew and amend as set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals, the Parties hereby agree as follows:

- 1. The above recitals are hereby incorporated into this Renewal and Amendment No. 1 to MOU.
- 2. This Renewal and Amendment No 1 to MOU is authorized by Government Code section 6500 et. seq.
- 3. County will reimburse M1W's actual cost up to a maximum Not-to-Exceed amount of \$100,425.00. However, the Director of the Resource Management Agency ("RMA") may, in the Director's sole discretion, approve one (1) future amendment to the MOU as renewed and amended pursuant to this Renewal and Amendment No. 1 to MOU to increase that amount by a maximum of 10% (\$10,043.00) for a Cumulative Not-to-Exceed amount of \$110,468.00, for expenses incurred in developing the Focused Wastewater Service Area Study. County will reimburse M1W within 30 days of County Auditor Controller's receipt of an RMA-approved statement of accounting from M1W for costs reasonably incurred by M1W.
- 4. Additional funds may be requested by M1W from the County if the completion of contractual arrangements for completing the Small Wastewater System Update warrants additional data or research which can enhance the viability of the conversions of certain small wastewater systems. Additional funds will be authorized by a further amendment to the MOU subsequent to both County and M1W's respective Board actions.
- 5. The MOU, as amended by this Renewal and Amendment No. 1 to the MOU, shall terminate upon the occurrence of the following:
 - a. The Focused Wastewater Service Area Study is not completed by December 31, 2018;
 - b. County in its sole discretion may terminate this agreement within 30 days after providing written notice of intent to terminate. This right may be exercised by the County RMA Director or the Director's designee.
- 6. Miscellaneous:
 - a. In entering into this Renewal and Amendment No. 1 to MOU M1W and County represent that each has read all of the terms of this Renewal and

Amendment No. 1 to MOU and the terms of this Renewal and Amendment No. 1 to MOU are fully understood and voluntarily accepted by each.

- b. The Parties acknowledge that each Party has reviewed this Renewal and Amendment No. 1 to MOU and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this MOU and Renewal and Amendment No. 1 to MOU.
- c. The effective date of the MOU as renewed and amended pursuant to this Renewal and Amendment No. 1 to MOU shall be April 4, 2017 ("Effective Date") and the date of termination shall be extended from January 31, 2018 to December 31, 2018 ("Termination Date") to allow for the completion of the Study. The term may be extended at any time prior to the Termination Date by the mutual written agreement of M1W and County. Either Party may also terminate the MOU as renewed and amended pursuant to this Renewal and Amendment No. 1 to MOU by providing written notice to the other Party 30 calendar days prior to the effective date of such notice. County's right to so terminate this MOU and Renewal and Amendment No. 1 to MOU may be exercised by the County RMA Director or the Director's designee. In the event the MOU is terminated neither Party shall have any further right or obligation except payment by County to M1W for the actual and reasonable services rendered and expenses incurred by M1W pursuant to the MOU as renewed and amended per this Renewal and Amendment No. 1 to MOU.
- d. Nothing herein shall require County to perform any action under the MOU if County has insufficient available funds to perform such action.
- e. The MOU as renewed and amended pursuant to this Renewal and Amendment No. 1 to MOU sets forth the understanding of the Parties in connection with the subject matter herein. Neither Party has made any statement or inducement for the other Party to enter into the MOU, except as is expressly set forth in the MOU as renewed and amended pursuant to this Renewal and Amendment No. 1 to MOU. It is expressly understood and agreed that the MOU as renewed and amended pursuant to this Renewal and Amendment No.1 may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of the Parties hereto. The Parties agree that they will make no claim at any time or place that the MOU as amended pursuant to this Renewal and Amendment No. 1 to MOU has been orally altered or modified or otherwise changed by oral communication of any kind or character.
- f. The MOU as renewed and amended pursuant to this Renewal and Amendment No. 1 to MOU shall be governed by the laws of the State of California. Venue shall be in the Superior Court of the County of Monterey, State of California.
- g. In the event that any portion of the MOU as renewed and amended pursuant to this Renewal and Amendment No. 1 to MOU is deemed to be unenforceable, or

is in conflict with applicable law as determined by a Court of competent jurisdiction, the remainder of the MOU as renewed and amended pursuant to this Renewal and Amendment No. 1 to MOU shall be enforced and shall remain in full force and effect, unless the portion which is deemed to be unenforceable by said Court is a material consideration to a Party to the MOU as renewed and amended pursuant to this Renewal and Amendment No. 1 to MOU.

- h. The Parties agree to cooperate fully and to execute any and all documents, and to take all additional actions that may be necessary or reasonably appropriate to give full force and effect to the basic terms and intent of the MOU as renewed and amended pursuant to this Renewal and Amendment No. 1, and which are not inconsistent with its terms.
- i. The individuals whose signatures appear herein below represent, warrant and guarantee that they have the authority to execute this Renewal and Amendment No. 1 to MOU on behalf of those entities on whose behalf they purport to execute this Renewal and Amendment No. 1 to MOU.
- j. Notice: Any notice to be given hereunder may be delivered in person to the addresses identified below, or may be delivered by Federal Express, or other private commercial delivery or courier service for next business day delivery, or may be deposited in the United States Postal Service mail, duly certified or registered, return receipt requested, with postage prepaid, and addressed to the Party for whom intended, as follows:

Monterey County:

Carl Holm, AICP
Director, Monterey County
Resource Management Agency
1440 Schilling Place
Salinas, California 93901

Monterey One Water:

Paul Sciuto
General Manager
5 Harris Court, Bldg. D
Monterey, California 93940

Notice shall be deemed effective two (2) days after mailing.

- k. This MOU may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, it being understood that all Parties need not sign the same counterparts. This Agreement may also be executed by signatures to facsimile or electronic transmittal documents in lieu of an original.

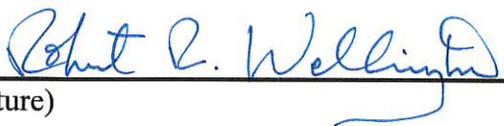
IN WITNESS WHEREOF, Monterey One Water and the County of Monterey have executed this Renewal and Amendment No. 1 to MOU on the date written below, as follows.

MONTEREY ONE WATER

By: 
Paul Sciuto, General Manager

Date: MAY 7, 2018

Approval as to form and legality:
M1W Agency Legal Counsel


(Signature)

Robert R. Wellington
(Print/Type Name/Agency Legal Counsel)

Date: May 7, 2018

COUNTY OF MONTEREY
Resource Management Agency

By: _____
Carl Holm, AICP, Director

Date: _____, 2018

Approval as to form and legality:
Office of the County Counsel – Risk Management
Charles J. McKee, County Counsel - Risk Manager

By: _____
Mary Grace Perry, Deputy Counsel

Date: _____, 2018