

This **REIMBURSEMENT AGREEMENT FOR THE Technical Activities associated with obtaining the NPDES permit amendment and other regulatory approvals needed for the Advanced Water Treatment and Outfall Wastewater Disposal for the RUWAP Recycled Project** (this “Agreement”) is made this _____ day of _____, 2017 (“Effective Date”), by and between Marina Coast Water District (“MCWD”) and Monterey Regional Water Pollution Control Agency (“MRWPCA”) and hereinafter the “Parties.”

RECITALS

- A. The 1997 Fort Ord Base Reuse Plan (“BRP”) identifies the availability of water as a resource constraint and the BRP estimates that an additional 2,400 AFY of water is needed to augment the existing groundwater supply to achieve the permitted development level as reflected in the BRP (Volume 3, figure PFIP 2-7).
- B. The Fort Ord Reuse Authority (“FORA”) agreed under the 1998 Water/Wastewater Facilities Agreement that ownership of all of the then existing Fort Ord water and sewer facilities should be transferred to the MCWD subject to their conveyance from the Army to FORA; title to the Fort Ord water and sewer facilities and rights to water and sewage treatment capacity, except for those rights reserved by the Army, was transferred to MCWD in October 2001.
- C. Under Section 3.2.2 of the 1998 Water/Wastewater Facilities Agreement, FORA has the responsibility to determine, in consultation with MCWD, what additional water and sewer facilities are necessary for MCWD’s Ord Community service area in order to meet the BRP requirements, and that, once FORA determines that additional water supply and/or sewer conveyance capacity is needed, under Section 3.2.1, it is MCWD’s responsibility to plan, design, and construct such additional water and sewer facilities. Section 7.1.2 requires FORA to insure that MCWD recovers all of its costs for the new facilities and their operation.
- D. In 2002, MCWD, in cooperation with FORA, initiated the Regional Urban Water Augmentation Project (“RUWAP”) to explore water supply alternatives to provide the additional 2,400 AFY of water supply needed under the BRP.
- E. As a result of an extensive environmental review, FORA and MCWD agreed to adopt a modified Hybrid Alternative, which would provide 1,427 AFY of recycled water to the Ord Community without the need for seasonal storage, and this in turn resulted in the FORA Board adopting Resolution 07-10 (May 2007), which allocated that 1,427 AFY of RUWAP recycled water to its member agencies having land use jurisdiction.
- F. In June 2009, the Monterey Regional Water Pollution Control Agency (“MRWPCA”) and MCWD entered into a 50-year RUWAP Memorandum of Understanding, in which, subject to certain conditions specified therein, (a) MRWPCA committed 650 AFY of summer recycled water to MCWD for the Ord Community; (b) MCWD affirmed its separate commitment of 300 AFY of summer recycled water to the Ord Community; and (c) MRWPCA and MCWD committed to supply 477 AFY of recycled water during other

months to the Ord Community - for a total of 1,427 AFY.

- G.** MCWD has been and continues to work collaboratively with FORA and with the MRWPCA to carry out MCWD's obligation to provide the 1,427 AFY of recycled water for the Ord Community. On March 30, 2013, MRWPCA commenced environmental review of its Pure Water Monterey Project ("PWM"). The PWM is a water supply project that would serve northern Monterey County by providing: (1) purified recycled water for recharge of a groundwater basin that serves as drinking water supply; and (2) recycled water to augment the existing Castroville Seawater Intrusion Project's agricultural irrigation supply. The PWM includes a new pipeline to transport purified recycled water from a new Advanced Water Treatment Plant ("AWT") at MRWPCA's Regional Treatment Plant to new Injection Well Facilities overlying the Seaside Groundwater Basin ("Product Water Conveyance Pipeline"). The Environmental Impact Report ("EIR") for the PWM evaluated two alternative alignments for the Product Water Conveyance Pipeline, a Coastal Alignment and an alignment that follows the right-of-way for the existing and future RUWAP pipeline ("RUWAP Alignment"). The PWM EIR identified the environmental effects of constructing the Product Water Conveyance Pipeline along the RUWAP Alignment, and operating the Product Water Conveyance Pipeline for the PWM; however the EIR recognized that shared use of a single Product Water Conveyance Pipeline for both the PWM to supply recycled water to MCWD for the RUWAP would result in project cost savings but would necessitate further review under the California Environmental Quality Act ("CEQA"). Shared use of a single Product Water Conveyance Pipeline would necessitate expansion of the AWT in order to purify the recycled water destined for the RUWAP because all water flowing in the shared pipeline must be purified; by contrast if water to serve the RUWAP were conveyed in its own separate pipeline only tertiary treatment would be needed ("AWT Expansion").
- H.** On September 8, 2015, MCWD and MRWPCA tentatively agreed to work together on the PWM.
- I.** On October 8, 2015, the MRWPCA Board unanimously voted to certify the EIR for the PWM and to approve the PWM. The MRWPCA Board selected the RUWAP Alignment for the Product Water Conveyance Pipeline.
- J.** On October 9, 2015, the FORA Board unanimously voted to adopt a resolution to endorse the PWM as an acceptable option as the recycled component of the Fort Ord Regional Urban Water Augmentation Program.
- K.** On November 17, 2015, the MCWD Board unanimously voted to submit a Clean Water State Revolving Fund Financial Assistance Application to the State Water Resources Control Board for the Regional Urban Water Augmentation Project.
- L.** On April 8, 2016, MCWD and MRWPCA entered into the Pure Water Delivery and Supply Project Agreement pursuant to which the Pure Water Monterey's Product Water Conveyance Pipeline will be designed, constructed, owned, and operated by MCWD in accordance with the 1998 MCWD-FORA Water/Wastewater Facilities Agreement. Under this 2016 Agreement, MCWD will have the right to utilize for the Ord Community up to

and including a net 600 AFY during Phase 1 and a net 1,427 AFY during Phase 2 to implement FORA Board Resolution 07-10.

M. MRWPCA must update their PWM environmental and regulatory documents to combine the PWM with RUWAP and to amend its NPDES permit for RUWAP.

N. An agreement is required to establish the reimbursement of costs to MRWPCA from MCWD for Technical Activities associated with obtaining the NPDES permit amendment and other regulatory approvals needed for the AWT and OWD for the RUWAP Recycled Project.

NOW, THEREFORE, for and in reliance of the foregoing, the Parties hereby agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to establish the extent and manner in which MCWD will contribute to MRWPCA's costs to Technical Activities associated with obtaining the NPDES permit amendment and other regulatory approvals needed for AWT and OWD for the RUWAP Recycled Project between MRWPCA and MCWD.

2. **DEFINITIONS.** For the purposes of this Agreement, unless expressly provided otherwise in this Agreement, the terms used in this Agreement shall have the same meaning as the same terms are defined in the 2016 MRWPCA-MCWD Agreement. As used in this Agreement, the term "Parties" or "Both Parties" shall mean MCWD and MRWPCA and their respective Boards.

3. OBLIGATIONS

3.01 MCWD Financial Obligation

(a) MCWD shall provide a total of \$263,319 towards the environmental and regulatory documents for AWT and OWD to be updated and to amend the NPDES permit for RUWAP with 1 MGD for a total of 5 MGD AWT production and waste discharge for the PWM and RUWAP. MCWD will provide a deposit of \$65,000 to MRWPCA from the above amount upon receipt of a consultant invoice requiring the deposit of these funds.

(b) Subject to the limit stated in subsection 3.01(a) above, MCWD shall honor and pay invoices for services rendered by MRWPCA's consultant, Larry Walker and Associates, Inc, and subconsultants as invoiced in providing the services enumerated below after the execution of this Agreement.

i. Scope and Fee Schedule for "Project Path 2 – Regulatory Compliance Analysis and documentation for MCWD RUWAP", Proposal for Pure Water Monterey Groundwater Replenishment Project NPDES Permitting and Other Regulatory Services submitted by Larry Walker Associates, dated April 17, 2017.

(c) MCWD shall have sole discretion as to the source of funds for use in satisfying its obligation under this Agreement.

3.02 Timing of MCWD Reimbursements

(a) MCWD shall reimburse MRWPCA for costs described in Section 3.01 and incurred after the execution of this Agreement based on the progress and completion of work by Larry Walker and Associates.

(b) MCWD shall review invoices submitted by MRWPCA and shall within ten (10) business days following receipt either approve such invoices or notify MRWPCA as to why such invoices are not approved. MRWPCA shall disburse RUWAP payment within ten (10) business days of approving the invoices. MRWPCA reserves the right to exclude disputed elements of any invoice from payment until any such dispute is resolved.

(c) In the event of a dispute regarding the approval of invoices as described in subsection 3.02(b) above, the Contract Administrators (identified in Section 6.04 below) shall work to resolve the dispute within ten (10) business days. If no resolution can be achieved it shall be resolved according to the Dispute Resolution Process in the 2016 Agreement.

3.03 MCWD coordination with MRWPCA

(a) MCWD will support MRWPCA in obtaining or acquiring any data or information necessary, facilitating meetings and assisting with implementation of the technical activities associated with obtaining the NPDES permit amendment and other regulatory approvals needed for the AWT and OWD for the RUWAP.

3.04 MRWPCA Obligations

(a) In accordance with Section 3.03 (a) MRWPCA will cooperate and coordinate with MCWD to obtain NPDES permit amendment and other regulatory approvals.

(b) MRWPCA will apply MCWD's financial contributions only towards the types of costs listed in subsections 3.01.

(c) MRWPCA shall provide MCWD the right to review and comment on the technical activities associated with obtaining the NPDES permit amendment and other regulatory approvals.

(d) MRWPCA shall provide status updates on the progress of the project to MCWD staff which will include current and cumulative information on the project in support of reimbursement invoicing.

(e) MRWPCA shall submit reimbursement(s) requests to:

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

(f) Upon completion of the Project, MRWPCA shall provide proof of payment in full to the consultant for the project.

4. INDEMNIFICATION. MRWPCA agrees to indemnify, defend and hold MCWD harmless from and against any loss, cost, claim, or damages directly related to MRWPCA's actions or inactions under this Agreement. MCWD agrees to indemnify, defend and hold MRWPCA harmless from and against any loss, cost, claim, or damage directly related to MCWD's actions or inactions under this Agreement.

5. DISPUTE RESOLUTION. All disputes arising under this Agreement shall be submitted to the Dispute Resolution Procedure in the 2016 Agreement.

6. GENERAL PROVISIONS

6.01 Governing Law. This Agreement shall be governed by and interpreted by and in accordance with the laws of the State of California.

6.02 Attorney's fees. If either Party commences an action against the other Party arising out of or in connection with this Agreement, the prevailing Party shall be entitled to have and recover from the losing Party reasonable attorneys' fees and costs.

6.03 Entire Agreement; Amendments. This Agreement, along with any exhibits and attachments hereto, constitutes the entire agreement between the Parties concerning the specific subject matter hereof. No amendment or modification shall be made to this Agreement, except in writing, approved by the respective Boards and duly signed by both Parties.

6.04 Contract Administrators

(a) MCWD hereby designates its General Manager as its contract administrator for this Agreement. All matters concerning this Agreement which are within the responsibility of MCWD shall be under the direction of or shall be submitted to the General Manager or such other MCWD employee in MCWD as the General Manager may appoint. MCWD may, in its sole discretion, change its designation of the contract administrator and shall promptly give written notice to MRWPCA of any such change.

(b) MRWPCA hereby designates its General Manager as its contract administrator for this Agreement. All matters concerning this Agreement which are within the responsibility of MRWPCA shall be under the direction of or shall be submitted to the Executive Officer or such other MRWPCA employee in MRWPCA as the Executive Officer may appoint. MRWPCA may, in its sole discretion, change its designation of the contract administrator and shall promptly give written notice to MCWD of any such change.

6.05 Assignment. Any assignment of this Agreement shall be void without the written consent of the non-assigning Party.

6.06 Negotiated Agreement. This Agreement has been arrived at through negotiation between the Parties. Neither Party is to be deemed the Party which prepared this Agreement within the meaning of Civil Code Section 1654.

6.07 Time is of Essence. Time is of the essence of this Agreement.

6.08 Headings. The article and paragraph headings are for convenience only and shall not be used to limit or interpret the terms of this Agreement.

6.09 Notices. All notices and demands required under this Agreement shall be deemed given by one Party when delivered personally to the principal office of the other Party; when faxed to the other Party, to the fax number provided by the receiving Party; or five (5) days after the document is placed in the US mail, certified mail and return receipt requested, addressed to the other Party as follows:

To MRWPCA:

General Manager
MRWPCA
5 Harris Court, Bldg D
Monterey, CA 93940
Fax: (831) 372-6178

To MCWD:

General Manager
MCWD
11 Reservation Road
Marina, CA 93933
Fax: (831) 883-5995

6.10 Execution of Documents. The Parties will execute all documents necessary to complete their performance under this Agreement.

6.11 Waiver. No waiver of any right or obligation of any of the Parties shall be effective unless in writing, specifying such waiver, executed by the Party against whom such waiver is sought to be enforced. A waiver by any of the parties of any of its rights under this Agreement on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

6.12 Written Authorization. For any action by any Party which requires written authorization from the other Party, the written authorization shall be signed by authorizing Party's General Manager, or the written designee.

In witness whereof, the Parties execute this Agreement as follows:

MRWPCA

Dated: _____

Board Chair, Board of Directors

Approved as to form:

Dated: _____

Counsel, MRWPCA

MCWD

Dated: _____

President, Board of Directors

Dated: _____

Counsel, MCWD