

**MEMORANDUM OF UNDERSTANDING REGARDING
SOURCE WATERS AND WATER RECYCLING**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made this _____ day of _____ 2014, by and between Monterey Regional Water Pollution Control Agency, the Monterey County Water Resources Agency, the City of Salinas, the Marina Coast Water District, and Monterey Peninsula Water Management District, collectively the “Parties.”

The Monterey Regional Water Pollution Control Agency (“PCA”) was formed as a California Joint Powers Agency by a Joint Exercise of Powers Agreement for the Monterey Regional Water Pollution Control Agency, effective June 29, 1979. The Monterey County Water Resources Agency (“WRA”) was established in 1995 pursuant to the Monterey County Water Resources Agency Act. The City of Salinas (“Salinas”) is a California charter city and municipal corporation. The Marina Coast Water District (“MCWD”) is a county water district established in 1960 pursuant to Water Code §§30000, *et seq.* The Monterey Peninsula Water Management District (“MPWMD”) was established in 1977 as a California special district pursuant to the Monterey Peninsula Water Management District Law (Chapter 527 of the Statutes of 1977, as amended, found at Water Code Appendix (Water C. App.) §§118-1, *et. seq.*)

WITNESSETH:

WHEREAS, PCA entered into an Annexation Agreement, dated April 25, 1989, with MCWD providing, among other things, annexation of MCWD and for it to become a member entity of MRWPCA; and,

WHEREAS, the Annexation Agreement between PCA and MCWD provides MCWD a water right entitlement equal, as a minimum, to the “volume of MCWD wastewater treated by PCA”; and,

WHEREAS, PCA entered into an agreement with WRA, dated June 16, 1992, for construction and operation of a tertiary treatment system (the “1992 Agreement”), with subsequent amendments thereto, as follows: Amendment No. 1 on May 30, 1994; Amendment No. 2 on February 16, 1998; and, Amendment No. 3 on May 28, 2002; and,

WHEREAS, the 1992 Agreement, as amended, caused WRA to finance \$29,763,849.56 in tertiary treatment and related facilities; and,

WHEREAS, PCA and Monterey Peninsula Water Management District on May 20, 2013 entered into a Cost Sharing Agreement for the planning and development of the Pure Water Monterey Groundwater Replenishment (“GWR”) Project for the advanced treatment and recycling of a variety of source waters for indirect potable reuse;

NOW, THEREFORE, for and in reliance on the foregoing, the Parties hereby agree to negotiate a Definitive Agreement to establish contractual rights and obligations of all Parties, containing, as a minimum, the following provisions:

1. Protection of MCWD’s Recycled Water Right Entitlement

- a. Reaffirmation by PCA of MCWD’s recycled water right entitlement granted to MCWD pursuant to Paragraph 12 of the April 25, 1989 Annexation Agreement between PCA and MCWD.
- b. Reaffirmation that MCWD’s recycled water right is the senior right.
- c. MCWD, in use of its recycled water entitlement, will comply with all applicable requirements set forth in Contract No. 5-07-20-W1284, between the Bureau of Reclamation and WRA including, but not limited to, those contained in Paragraphs 10b and 10c, all at MCWD’s sole cost and expense.
- d. MCWD’s recycled water right entitlement may be made contractually available by MCWD to another Party and may be made available to WRA for CSIP if not utilized by MCWD, or its assignee, in any given year.

2. Provision of Recycled Water to WRA

- a. WRA to be supplied recycled water during the agricultural growing season in a minimum volume equal to the wastewater flows to the Regional Treatment Plant from all existing PCA members, plus treated waters originating from a variety of newly identified additional “incremental” and interruptible sources described in Section 3.a. hereof, subject to the provisions of Section 3.a.iii.
- b. The cost of primary and secondary treatment of Salinas agricultural wash water, estimated at \$179/acre-foot in 2014, to be paid to PCA by Salinas, the future rates for which to be established pursuant to Section 3(o) hereof.
- c. The cost of tertiary treatment of agricultural wash water to be paid to PCA by WRA, the future rates for which will be established by a protocol to be set forth in the Definitive Agreement.

3. Phase I – GWR Project Water and CSIP Area Additional Water

- a. Phase I to provide water from newly identified sources that are “incremental” additions over and above the incoming wastewater flows as identified in the 1992 Agreement, which consists of Salinas agricultural wash water, Salinas stormwater, all recoverable Reclamation Ditch water diverted at Davis Road, a portion of Tembladero Slough water diverted at Castroville, all recoverable Blanco Drain water, Lake El Estero stormwater, and reoperation of the Salinas ponds to store winter flows for summer use. Such waters may also include additional stormwater from other locations on the Monterey Peninsula. Phase I includes both (a) improvements to the SVRP in order to provide winter water to offset pumping at CSIP (contingent upon WRA completing hydraulic modifications to the existing CSIP system), and (b) treatment of wastewater from the Regional Treatment Plant that has been determined to be excess and not processed by the SVRP, provided, however, that PCA not curtail SVRP operations to produce said excess water, but in both cases such sources are not considered “incremental” additions.
 - i. Projected annual amounts are 4,320 acre-feet for GWR Project, and 5,292 acre-feet for CSIP Area Replacement Water, and 248 acre-feet GWR to be held in drought reserve. These are approximate amounts based on average year conditions, but actual amounts will vary annually;
 - ii. Projected costs of Phase I water are to be defined in the Definitive Agreement, consistent with Sections 3(k) and 3(l) below and subject to third party review as discussed in “Miscellaneous” below;
 - iii. Except for the commitments under Section 3.j. below, the Parties agree that Salinas agricultural wash water may be utilized by PCA for the time period necessary for an average annual amount of 4,320 acre-feet for the GWR Project to be achieved from Phase I Additional Sources. However, PCA is obligated to endeavor to develop the additional supplies identified under Section 3.a. and transition a portion of the agricultural wash water for the benefit of CSIP and WRA.

- iv. The Definitive Agreement to only apply to wastewater from existing PCA members and derived from the PCA's 2001 Service Area and water sources identified in Sections 3.a. and 3.q. Any future additions or annexations to the PCA Service Area or future sources outside of the 2001 Service Area will be subject to future agreement(s).
- b. Phase I to be operational in 2017, but the Parties will adjust schedule for construction and operation if and as needed.
- c. WRA's participation in Phase I to be contingent upon its successful completion of the Proposition 218 process, if applicable.
- d. In 2014 WRA filed an application with the State Water Resources Control Board ("SWRCB") for water rights to appropriate waters of the Blanco Drain for the purpose of providing additional waters for CSIP and for domestic supplies within the Salinas River Valley; and, for water rights to appropriate waters of the Reclamation Ditch and Tembladero Slough for the purpose of providing additional waters for CSIP and for domestic supplies within the Salinas River Valley. The Parties agree that such water rights shall be retained exclusively by WRA. The Parties to pay pro rata all costs associated with WRA's procurement and retention of Blanco Drain, Tembladero Slough, and Reclamation Ditch water rights. The Parties agree to work jointly on obtaining the water rights. The Parties may agree to apply for water rights in increments to facilitate issuance of permits.
- e. CSIP participants to be separately responsible for the tertiary treatment costs of the water processed and delivered through the SVRP. GWR participants to be separately responsible for the costs of advanced water treatment through the GWR facilities.
- f. The Parties to work cooperatively and collaboratively among themselves, in good faith, to determine appropriate crop irrigation water quality standards for water supplies.
- g. The Parties to work cooperatively and collaboratively among themselves, in good faith, to determine if, when, and how much of each water will be collected and sent to the RTP for treatment.

- h. Excess flows to be made available to each other Party, as may be desired. “Excess flows” to be defined in the Definitive Agreement, but are generally accepted to mean waters available for treatment at the SVRP or GWR facilities, but not desired by the project participants to be processed and delivered at that period of time.
- i. PCA to have rights to the first 4,320 acre-feet annually of the new “incremental” waters defined under Section 3.a. above, plus amounts in the six winter months to produce 200 acre-feet to be placed in drought reserve. WRA can request that PCA schedule withdrawals from the drought reserve in lieu of processing the incremental waters in order to make a like amount available to CSIP in time of need. Withdrawals will be limited to no more than the amount on deposit in the drought reserve.
- j. WRA to receive the agricultural wash water on terms similar to the *Produce Wash Water Agreement, dated 1 July 2014*, in 2015, 2016, and 2017 and until the GWR project becomes operational.
- k. PCA, at its cost and expense, to use its consultant to prepare a comprehensive rate analysis, to devise appropriate Interruptible Rates that will likely be less expensive than current non-Interruptible Rates for pumping, odor control, primary and secondary treatment. Separate Interruptible Rates to apply to each water source, but each separate Interruptible Rate to be subject to future escalation consistent with standard factors for operation and maintenance inflation over time. WRA will not pay rates for water it does not receive.
- l. Capital costs to be shared by PCA and WRA proportional to the waters projected to be made available on an average annual basis. Fixed pro rata capital costs to be paid annually by the Parties, irrespective of water requested or received. However, the calculation of pro rata shares of capital costs to be based only upon facilities actually built and average annual water expected to be made available vis the constructed facilities. In recognition of potential, yet undetermined, benefits of the existing operations of the Salinas Industrial Ponds to the recharge of the groundwater basin and the Salinas River for purposes of calculating water made available to CSIP 33% of the water attributable to the Salinas agricultural wash water would not be counted in the calculation of the proportional cost to WRA. Annual recovery of fixed capital costs to include any annual capitalized costs for facilities leased by PCA for the furnishing of water to the Parties.

- m. PCA subject to concurrence by the rate study to waive all capacity charges for use of water on an Interruptible basis from presently identified water sources to be included in Phase I or Phase II.
- n. Pursuant to subsequent agreement and lease, PCA and Salinas to negotiate a separate agreement and lease and develop a seasonal working protocol for diversion of Salinas Industrial Ponds (Agricultural Wash Water) and storm water as allowed by available storage. PCA to pay Salinas an annual lease payment to be recovered in the cost of water in accord with criteria to be established in the Definitive Agreement.
- o. PCA, if it uses tertiary treated water for the GWR Project, to comply with all applicable requirements set forth in Contract No. 5-07-20-W1284, between the Bureau of Reclamation and WRA including, but not limited to, those contained in Paragraphs 10b and 10c, all at PCA's sole cost and expense.

Phase II – CSIP Area Additional Water

- p. Phase II to provide water from newly identified sources that are “incremental” additions over and above the incoming wastewater flows as identified in the 1992 Agreement, as amended, and may consist of diversion of remaining Tembladero Slough water, potential future advanced treated water, and UniKool water.
- q. Phase II to approximate up to 3,754 AFA of new water.
- r. Phase II to be operational by 2022.
- s. Projected costs of Phase II will be determined in the future, consistent with engineering feasibility analysis, preliminary design, and third party rate consultant analysis.
- t. Phase II would be contingent on its successful completion of the Proposition 218 process, if applicable.

4. Accounting Protocols

PCA to enter into a separate agreement with WRA by December 31, 2014 to achieve the following:

- a. PCA's adoption of activity-based costing for all its CSIP, SRDF and SVRP activities.
- b. Revision of the various financial protocols currently utilized to achieve one standard protocol for each of CSIP, SRDF and SVRP.
- c. Allocation methodologies for costs associated with CSIP, SRDF, and SVRP.
- d. An annual audit of PCA's financial transactions related to CSIP, SRDF and SVRP at WRA expense.
- e. PCA to credit to the CSIP and SVRP accounts any pro rata revenues it receives from byproducts of tertiary treated wastewater.
- f. A third-party agreed upon by both PCA and WRA to be hired to design and implement these Accounting Protocols.

MISCELLANEOUS

1. This Memorandum of Understanding is intended to provide a framework for negotiation of a Definitive Agreement. This Memorandum is not intended to create binding contractual obligations and other essential terms in addition to those set forth in this Memorandum are to be negotiated and agreed upon before the Parties reach a Definitive Agreement.
2. It is recognized and acknowledged that the Parties may not agree upon or enter into a Definitive Agreement. In such an event, no Party shall make any claim against any other Party related to the failure to enter into a Definitive Agreement.
3. An independent third-party review of proposed capital and operating costs to be performed before WRA Board approval of the Definitive Agreement.
4. The term of the Definitive Agreement to be 30 years or as subsequently agreed upon in the Definitive Agreement.
5. The Definitive Agreement may result in an Amendment to the 1992 Agreement and the amendments thereto. All previous Amendments will be reviewed to ensure conformity and continuity of relevant provisions. Amendment No.3 to be novated by the Definitive Agreement and any terms of Amendment No.3 that remain applicable will be restated in the Definitive Agreement.

6. The Definitive Agreement will incorporate standard contract language to govern enforcement and resolution of disputes.
7. This Memorandum of Understanding will expire the earlier of (i) execution of a Definitive Agreement, or (ii) March 31, 2015.
8. Individuals whose signatures appear on this document represent, warrant, and guarantee they are authorized to execute this document on behalf of those entities on whose behalf they purport to execute this document.

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WITNESS, the Monterey Regional Water Pollution Control Agency, the Monterey County Water Resources Agency, the City of Salinas, and the Monterey Peninsula Water Management District entered into this Memorandum of Understanding as of the date first written above.

MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY

By: _____

Its: _____

MONTEREY COUNTY WATER RESOURCES AGENCY

By: _____

Its: Chair of the Monterey County Water Resources Agency Board of Supervisors

CITY OF SALINAS

By: _____

Its: _____

MARINA COAST WATER DISTRICT

By: _____

Its: _____

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

By: _____

Its: _____