

**DEPOSIT AND REIMBURSEMENT AGREEMENT BETWEEN
TAMC AND CALIFORNIA AMERICAN WATER FOR
MPWSP PROPOSED EASEMENT ACQUISITION**

This Deposit and Reimbursement Agreement ("**Agreement**") is made and entered into by and between the Transportation Agency for Monterey County ("**TAMC**"), a California local area agency created pursuant to California Government Code section 67930, and California-American Water Company, a California corporation ("**CAWC**"). TAMC and CAWC are individually referred to herein as a "Party," and collectively as the "Parties."

RECITALS

A. In April of 2012, CAWC filed an application for a Certificate of Public Convenience and Necessity ("**CPCN**") with the California Public Utilities Commission ("**CPUC**") for approval of the Monterey Peninsula Water Supply Project ("**MPWSP**"). As proposed, the MPWSP would include slant source water wells, a desalination plant, product water pipelines, and related appurtenant facilities.

B. TAMC owns the fee title of the abandoned rail line of the Southern Pacific Transportation Company known as the Monterey Branch Line ("**TAMC ROW**"), which includes an area extending from the City of Seaside to the unincorporated community of Castroville, within the County of Monterey.

C. CAWC proposes to purchase a temporary easement for construction purposes and a permanent easement for water pipeline and related purposes within the TAMC ROW ("**Easements**") in order to convey product water from the MPWSP desalination plant to CAWC's distribution system ("**CAWC's Proposal**").

D. The CPUC is the lead agency for the MPWSP under the California Environmental Quality Act ("**CEQA**"). The Draft Environmental Impact Report/Environmental Impact Statement ("**DEIR/DEIS**") was released for public comment in January of 2017. The DEIR/DEIS evaluates the proposed facilities and improvements, including those proposed to be located in the TAMC ROW.

E. TAMC is willing to consider CAWC's Proposal, and expects to incur certain evaluation costs and expenses, including costs associated with obtaining appraisals; legal assistance; negotiation assistance; review of legal descriptions and plats; CEQA review as a responsible agency; and staff administrative time. Further, if CAWC's Proposal is ultimately approved by TAMC, TAMC expects to incur construction oversight costs including costs associated with plan checking, encroachment permitting, and independent compliance inspection of the construction (collectively, "**TAMC Costs**").

F. CAWC and TAMC desire to enter into this Agreement to provide for reimbursement to TAMC of the TAMC Costs reasonably incurred in evaluating CAWC's Proposal and, if applicable, in oversight of construction by CAWC or its contractors within the Easements ("**TAMC Activities**").

G. CAWC and TAMC both acknowledge that this Agreement is intended to cover TAMC Costs only and is not intended to cover any payments to TAMC by CAWC for the purchase of the Easements or any other interests in real property.

NOW THEREFORE, in consideration of the above Recitals, which are true and correct and incorporated herein by this reference, and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Term. The term of this Agreement shall commence on the date it has been executed by both Parties and expire upon the completion of the TAMC Activities, unless earlier terminated by one of the Parties. Either Party may terminate this Agreement for any reason or for no reason, upon ten (10) days prior written notice to the other Party. For purposes of this Agreement, the date of completion of the TAMC Activities shall be established by written notice from TAMC to CAWC.

2. Deposit; Additional Advances; Accounting; Survival.

A. Deposit. Within fourteen (14) days of execution of this Agreement by both Parties, CAWC shall deposit with TAMC the sum of Forty Thousand Dollars (\$40,000) ("**Initial Deposit**") that shall be used solely to reimburse TAMC for its reasonably incurred TAMC Costs.

B. Additional Deposits. If the Initial Deposit balance is reduced to \$5,000.00 or less, TAMC shall so notify CAWC in writing and provide to CAWC for its approval a budget describing TAMC's anticipated additional reasonable expenditures necessary to complete evaluation of CAWC's Proposal. CAWC shall exercise its reasonable discretion in reviewing the proposed budget and shall consult with TAMC staff before disapproving any item in the proposed budget.

If CAWC does not approve the budget, TAMC shall have no obligation to continue to perform the TAMC Activities and either Party may terminate this Agreement. If CAWC approves the budget, CAWC shall deposit with TAMC such additional sums as necessary to cover TAMC's anticipated remaining costs and expenses described in the budget, up to the Initial Deposit amount. This process may be repeated as necessary, for example if TAMC approves CAWC's Proposal, the budget may be revised to include construction oversight costs. Notwithstanding the foregoing, TAMC may cease all work related to the TAMC Activities until any additional deposit amounts have been received by TAMC. The Initial Deposit and any additional deposits shall be collectively referred to as the "**Deposit(s)**."

C. Accounting. The Deposit(s) may be commingled with other TAMC funds for purposes of investment and safekeeping, but TAMC shall at all times maintain records as to the expenditure of the Deposit(s). TAMC shall provide CAWC with an accounting of TAMC's use of the Deposit(s) upon written request by CAWC, but not more frequently than once every thirty (30) days.

D. Survival. The provisions of this Section 2 shall survive the expiration or termination of this Agreement, until all TAMC Costs reasonably incurred prior to the termination of the Agreement are paid.

3. Administration of Deposit(s). The Deposit(s) shall be administered as follows:

A. TAMC may draw upon the Deposit(s) from time to time to pay the reasonably incurred TAMC Costs. Direct costs, including consultant and legal costs, shall be reimbursed without markup. The hourly, fully burdened rates to be charged to CAWC for TAMC staff anticipated to provide services necessary to evaluate CAWC's Proposal and provide any construction oversight are attached as Exhibit A. TAMC may use the Deposit(s) to pay for TAMC staff costs at the rates shown in Exhibit A; TAMC staff shall track and record such time and have such records available for review by CAWC as provided for in Section 2.C.

B. Within thirty (30) calendar days following written notice from TAMC to CAWC that the TAMC Activities are complete, or within thirty (30) calendar days following the expiration or termination of this Agreement, TAMC shall refund any unused portion of the Deposit(s) to CAWC and provide a final accounting of TAMC's use of the Deposit(s).

4. Indemnification. CAWC shall indemnify, defend, and hold harmless TAMC, the members of its governing body, its officers, employees, and agents (collectively, "**Indemnitees**"), from and against any claim, demand, damage, liability, loss, cost, expense, causes of action, proceedings, judgments, penalties, liens and losses, of any nature whatsoever, including reasonable fees of accountants, attorneys and other professionals, and all reasonable costs associated therewith, death or injury to any person or injury to any property (collectively, "**Damages**"), whether actual, alleged or threatened, arising out of, pertaining to, or relating to the performance of the TAMC Activities, except for Damages arising from the active negligence, sole negligence, recklessness or willful misconduct of Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties. The provisions of this Section 4 shall survive the expiration or termination of this Agreement.

5. Assignment. CAWC shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without TAMC's prior written consent.

6. Notices. Any notices that either Party may desire to give to the other Party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, including Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the Party as set forth below or at any other address as that Party may later designate by notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To TAMC:	TAMC 55-B Plaza Circle Salinas, California 93901 Attention: Hank Myers
----------	---

To CAWC:	California American Water 511 Forest Lodge Road, Suite 100 Pacific Grove, California 93950 Attn: Engineering Manager
----------	---

7. Modifications. This Agreement may be supplemented, amended or modified only by a writing signed by both Parties.

8. Governing Law; Forum; Attorney Fees. TAMC and CAWC understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the Parties to this Agreement and also govern the interpretation of this Agreement. The Parties may agree to mediate or arbitrate any dispute concerning this Agreement. Any litigation concerning this Agreement shall take place in the superior or federal district court with geographic jurisdiction over TAMC (Monterey County). In the event such litigation is filed by one Party against the other to enforce its rights under this Agreement, the prevailing Party, as determined by the judgment of the court or an arbitrator, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

9. Word Usage. Unless the context clearly requires otherwise, (a) the word "shall" is mandatory, and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" and "including" are not limiting. The term "days" shall mean calendar days.

10. Time of Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance.

11. Severability. If a court or an arbitrator of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid for any reason, the validity and enforceability of the remaining provisions of this Agreement shall not be affected.

12. Ambiguities. Each Party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement.

13. Waiver. No delay or omission to exercise any right, power or remedy accruing to TAMC under this Agreement shall impair any right, power or remedy of TAMC, nor shall it be construed as a waiver of, or consent to any breach or default. No waiver of any breach, any failure of any condition, or any right or remedy under this Agreement (1) shall be effective unless it is in writing and signed by the Party making the waiver; (2) shall be deemed to be a waiver of, or consent to any other breach, failure of a condition, or right or remedy, or (3) shall be deemed to constitute a continuing waiver unless the writing expressly so states.

14. Entire Agreement. This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each Party is entering into this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such Party deems material.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

16. Authority to Execute this Agreement. The person or persons executing this Agreement on behalf of CAWC and TAMC warrant and represent that he or she has the authority to execute this Agreement on behalf of CAWC or TAMC as applicable and has the authority to bind CAWC or TAMC as applicable to the performance of its obligations hereunder.

The Parties hereto have executed this Agreement on the dates set forth below.

CAWC:

CALIFORNIA-AMERICAN WATER
COMPANY, a California corporation

By: _____
Christopher Cook, Engineering Manager

Date:

TAMC:

TRANSPORTATION AGENCY FOR MONTEREY
COUNTY, a California local area agency

By: _____
[INSERT NAME AND TITLE]

Date:

Approved as to Form:

By: _____
Agency Counsel

EXHIBIT A

TAMC Staff Rates

[INSERT]