

AMENDED AND RESTATED CONSTRUCTION AND OPERATION AGREEMENT
among the
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT,
CARMEL AREA WASTEWATER DISTRICT, PEBBLE BEACH
COMMUNITY SERVICES DISTRICT,
and
PEBBLE BEACH COMPANY
DATED AS OF DECEMBER 15, 2004

amending and restating the
WASTEWATER RECLAMATION PROJECT
CONSTRUCTION AND OPERATION AGREEMENT
dated as of November 1, 1990
among the parties

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AMENDED AND RESTATED CONSTRUCTION AND OPERATION AGREEMENT

This Amended and Restated Construction and Operation Agreement (the "Agreement") is entered into as of December 15, 2004, by and among the **MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**, a California public agency ("MPWMD"), **CARMEL AREA WASTEWATER DISTRICT**, a California public agency ("CAWD"), **PEBBLE BEACH COMMUNITY SERVICES DISTRICT**, a California public agency ("PBCSD"), and **PEBBLE BEACH COMPANY**, a California general partnership ("PBC"), amending and restating the Wastewater Reclamation Project Construction and Operation Agreement among the parties hereto dated as of November 1, 1990 (the "Original Construction and Operation Agreement").

RECITALS

A. MPWMD was created in 1977 and authorized to manage and regulate the use, reuse, and conservation of water on the Monterey Peninsula and the financing of related public works projects. In furtherance of this authority, MPWMD executed the Original Construction and Operation Agreement among MPWMD, CAWD, PBCSD and PBC, and executed certain other Related Agreements (as defined herein), and in 1992 issued Certificates of Participation in the amount of \$33.9 million to finance the design and construction of certain water recycling facilities, designed and intended by all parties to be capable of producing, from the secondary effluent emitted from CAWD's existing wastewater treatment plant, at least 800 acre feet per year of recycled water suitable for irrigation of vegetated areas on the Monterey Peninsula, and related distribution system and irrigation systems, thereby conserving potable water that would otherwise be used to irrigate such vegetated areas for other uses and purposes on the Monterey Peninsula.

B. CAWD owns and operates, and PBCSD has a contractual right for one-third of the capacity of, a wastewater treatment plant which is located on the Monterey Peninsula. Pursuant to the Original Construction and Operation Agreement, CAWD and PBCSD managed the design and construction of, and now own and operate, water recycling facilities, comprising the tertiary treatment facility and distribution system of the "Original Project" as defined herein.

C. The performance of the Original Project has not met the expectations of the parties with regard to either quantity or quality of recycled water due to a number of factors beyond the consideration of any of the parties participating in the Original Project. Prominent among these factors are: (1) the salt sensitivity of the dominant species planted in the greens of many of the irrigated golf courses; (2) inadequacy of the drainage facilities to conduct accumulated salts away from the greens; (3) increased salinity due to (a) smaller than anticipated amounts of secondary effluent due to decreased flows of influent to the CAWD wastewater plant (resulting in part from consumers' water conservation efforts), (b) the addition of water softening units, and (c) internal wastewater plant processes contributing additional salinity loading; (4) the lack of sufficient data concerning the composition of the secondary effluent produced by the CAWD Wastewater Treatment Plant or concerning the water quality and water quantity requirements for golf course irrigation; and (5) the absence of any seasonal storage of recycled

water.

D. The parties desire to improve the performance of the Original Project in order to meet the objectives of the Original Project, with respect to both quantity and quality of recycled water produced and delivered, through the improvement and addition of components to the Original Project (defined herein as the "Project Expansion"). These consist of the Advanced Treatment Component and the Forest Lake Component, as defined herein. CAWD and PBSCD are willing to manage the design, construction, operation and maintenance of the Project Expansion, and MPWMD desires that they do so, with financial assistance from PBC as further described in the Supplemental Financing Agreement, as defined herein.

E. This Agreement constitutes an integral part of a series of Related Agreements among PBC, MPWMD, CAWD, PBCSD, and others to provide a reliable, high-quality recycled water supply for irrigation of golf courses and other Recycled Water Irrigation Areas (as defined herein), and thereby conserve, and make available for other uses and purposes, potable water on the Monterey Peninsula.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and the covenants and representations and warranties set forth in this Agreement, the parties hereto agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

1.1 Advanced Treatment Component. "Advanced Treatment Component" means that component of the Project Expansion consisting of the addition of advanced treatment components to the tertiary treatment plant facilities of the Original Project, as more particularly described in attached Exhibit "B."

1.2 Ancillary Project Costs. "Ancillary Project Costs" means net revenues (gross revenues less allocable operation and maintenance and administrative and general costs, as such terms are defined in accordance with generally accepted utility practices), with respect to the potable water, subject, from time to time, to the Water Entitlement, which net revenues Cal-Am does not receive by reason of operation of the Project, all as more fully described in the Ancillary Project Cost Agreement. Such costs shall not include any return on assets of Cal-Am which have been removed from the water distribution system rate base by reason of the Project. Such costs shall be reduced over time by net revenues received by Cal-Am by reason of sales of potable water to the Benefited Properties following the Commercial Operation Date. Cal-Am's and PBC's rights and responsibilities with respect to Ancillary Project Costs are set forth in the Ancillary Project Costs Agreement.

1.3 Ancillary Project Costs Agreement. "Ancillary Project Costs Agreement" means the Ancillary Project Costs Agreement, dated as of August 1, 1990, by and between Cal-Am and PBC, as amended from time to time.

1.4 Annual Charge. "Annual Charge" means (a) during the time the Certificates of Participation are outstanding, the aggregate amount of all monthly quantity, service, and equalization charges payable for any Water Year by each Owner under the Recycled Water Sales Agreement, as more specifically provided in Section 2.2 of each Recycled Water Sales Agreement; and (b) after the Certificates of Participation are fully paid off and retired, the aggregate amount charged for Recycled Water as provided in Section 2.3 of the Recycled Water Sales Agreement between MPWMD and each Owner.

1.5 Benefited Properties. "Benefited Properties" means all properties within the Del Monte Forest, as defined herein, to which a portion of the Water Entitlement is or may be dedicated and utilized in accordance with the Fiscal Sponsorship Agreement and the Supplemental Financing Agreement and such additional real property as has been designated and included as Benefited Properties under the Fiscal Sponsorship Agreement pursuant to amendments thereto as approved by MPWMD before the adoption of Ordinance 109.

1.6 Bond Carrying Costs. "Bond Carrying Costs" means the following costs incurred with respect to the Certificates of Participation: fees and expenses of trustees, remarketing agents, tender agents, and paying agents, any rebatable arbitrage required to be deposited pursuant to the Trust Agreement, arbitrage rebate calculation fees, costs and fees incurred in connection with the letter of credit or renewals of the letter of credit securing the Certificates of Participation or additional letters of credit (including bond, MPWMD, and bank counsel fees and rating agency fees), fees for preparing or updating offering circulars, auditor or accounting fees, bond counsel and other counsel fees generally, and other similar ordinary and necessary costs, incurred with respect to the Certificates of Participation. Each use of the term "letter of credit" herein has the same meaning as the term "Letter of Credit" as defined in the Trust Agreement.

1.7 Business Day. "Business Day" means any weekday which is not a federal or California state holiday.

1.8 Cal-Am. "Cal-Am" means the California American Water Company, a California corporation, and its successors and assigns.

1.9 Capital Costs. "Capital Costs" means the following costs related to all or any part of the Project:

(a) the cost of acquisition of all lands, structures, real or personal property rights, rights-of-way, franchises, easements, and interests acquired or used for the Project, inclusive of fees and commissions for acquisition;

(b) the cost of construction of the Project, including, without limitation, demolition, modification, repair, replacement, renovation, or improvement of existing structures, facilities, fixtures or equipment essential to the construction and operation of the Project; cost of improvements and materials; direct and indirect construction and administration expenses of each of the Public Participants properly allocable to the Project in accordance with generally accepted accounting principles; cost of painting, decorating, furnishing and landscaping; contractor and subcontractor profit; and costs related, by reason of the Project, to

plumbing, mains, tanks, or pipes which are modified, replaced or renovated, whether owned by any of the Public Participants or others;

(c) the cost of demolishing or removing any buildings, fixtures, equipment, or structures on land so acquired, including, without limitation, the cost of acquiring any lands to which such buildings or structures may be moved;

(d) the cost of all new machinery, piping, equipment and furnishings, and the lesser of (i) the fair market value, or (ii) depreciated value for purposes of the applicable rate base, of machinery, piping, equipment and furnishings made obsolete or unusable to Cal-Am or any of the Public Participants by reason of the Project to the extent not replaced by the Project;

(e) costs of selling and issuing the Certificates of Participation, including, without limitation, the underwriter's discount;

(f) interest on any funds advanced to permit payment of any of the Capital Costs prior to, during, and for a reasonable period after completion of the acquisition and construction of the Project as determined by PBC and MPWMD, including, without limitation, capitalized interest on the Certificates of Participation;

(g) the Operation and Maintenance Reserve Fund, as defined herein (which is the fund defined as the "Operating Reserve" in the Fiscal Sponsorship Agreement); and

(h) the cost of architectural, engineering, planning, environmental analysis, financial, accounting, auditing and legal services, plans, specifications, estimates, administrative expenses, permits, fees, adverse claims, personnel and overhead costs (both direct and indirect, to the extent properly allocable to the Project in accordance with generally accepted accounting principles), and other expenses necessary or incident to determining the feasibility of construction of any portion of the Project or incident to the planning, construction, acquisition, or financing of any portion of the Project (subject to independent audit and review pursuant to this Agreement) including, without limitation:

(1) payment during the construction period of the premiums for all title and other insurance, bonds, or undertakings required to be obtained and maintained with respect to any part of the Project, to the extent such amounts are not paid by any contractor who constructs or installs any portion of the Project;

(2) payment of the taxes, assessments and other fees or charges, if any, that may become payable during the construction period with respect to any portion of the Project, or reimbursements thereof; and

(3) payment of expenses incurred in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to the acquisition, construction, or installation of any portion of the Project.

1.10 Capital Costs of the Project Expansion. "Capital Costs of the Project Expansion" means costs falling within the preceding definition of Capital Costs that apply specifically to the initial approval, design, and construction of the Project Expansion, including, without limitation, payment of costs incurred beginning on January 1, 1995, concerning the Project Expansion, the need for the Project Expansion, and the drafting, negotiation and execution of any and all agreements necessary or desirable to implement the design, construction, operation, and maintenance of the Project Expansion.

1.11 Capital Reserve Fund. "Capital Reserve Fund" means the reserve for depreciation, amortization, and obsolescence described in Section 5.2(b) of this Agreement.

1.12 CAWD. "CAWD" means the Carmel Area Wastewater District, a California public agency, its successors and assigns.

1.13 CAWD/PBCSD. "CAWD/PBCSD" means the combination of CAWD and PBCSD and/or their respective successors and assigns, which entities, pursuant to the Management Agreement, will separately own the various components comprising the Project and, through the Management Committee, manage, and be responsible for the design, construction, operation and maintenance of, their respective portions of the Project.

1.14 Certificates of Participation. "Certificates of Participation" means the Variable Rate Demand Certificates of Participation (Wastewater Reclamation Project) Series 1992 issued by MPWMD in the original principal amount of \$33,900,000 to finance the Capital Costs of the Original Project (and which has the same meaning as "Bonds" as defined in the Related Agreements).

1.15 Commercial Operation Date. "Commercial Operation Date" means the date the Original Project became operational.

1.16 Completed. "Completed" with respect to the Project Expansion shall mean that each of the following events has occurred: (1) all required permits or other approvals have been obtained, and (2) all construction activities for the Advanced Treatment Component, the Forest Lake Reservoir, and all treatment and distribution facilities associated therewith have been completed and tested in accordance with their respective approved plans, permits and other approvals, and (3) Forest Lake Reservoir has been filled to capacity with Recycled Water from the Advanced Treatment Component, and (4) all portions of the distribution system are capable of delivering such Recycled Water to the Recycled Water Irrigation Areas then in operation. The Project Expansion shall be deemed Completed only if and when each of the events described in the preceding sentence have occurred as reasonably determined by CAWD/PBCSD.

1.17 Costs of Sale. "Costs of Sale" means the costs incurred by PBC and by the Public Participants (to the extent that they have not been advanced or reimbursed by PBC) in connection with the negotiation, documentation, marketing, and sale of the Water Entitlement by PBC, including, without limitation, the costs thus incurred for outside attorneys' fees for time spent developing Ordinance 109 and the agreements to implement Ordinance 109 and/or the actual documentation to offer, sell, and convey portions of the Water Entitlement to individual buyers; mailing and copying costs for the subscription agreements; all costs of escrow, including

escrow fees, recording costs, and any other fees or other governmental or title company charges in connection with the closing; and any other miscellaneous costs related to the sale and reasonably and necessarily incurred.

1.18 COP Documents. "COP Documents" means the Official Statement and all other documents prepared in connection with the execution and delivery of the \$33,900,000 Variable Rate Demand Certificates of Participation (Wastewater Reclamation Project) Series 1992 including, without limitation, the authorizing resolutions and the Trust Agreement, as defined in this Agreement.

1.19 Del Monte Forest. "Del Monte Forest" means all real property within the boundaries of the unincorporated portions of Monterey County known as the Del Monte Forest and shown on the map attached as part of Exhibit "D."

1.20 Distribution System. "Distribution System" has the meaning set forth in Section 2 of Exhibit "A" to this Agreement.

1.21 Escrow Account. "Escrow Account" means the escrow account established to deposit the funds received from the sale of portions of PBC's Water Entitlement pursuant to the terms of the Supplemental Financing Agreement.

1.22 Final Cost Estimate. "Final Cost Estimate" has the meaning set forth in Section 4(a) of this Agreement.

1.23 Financial Commitment. "Financial Commitment" means the commitment of PBC, as Fiscal Sponsor, or any subsequent Fiscal Sponsors, to assume and guarantee payment of (a) Capital Costs of the Original Project (including the payment of principal and interest of the Certificates of Participation or any bonds or other obligations issued by the Public Participants), (b) any Net Operating Deficiency; and (c) any Ancillary Project Costs, as more specifically provided in the Fiscal Sponsorship Agreement and the Supplemental Financing Agreement.

1.24 Financing Implementation Agreement. "Financing Implementation Agreement" means the Financing Implementation Agreement Relating to Wastewater Reclamation Project, dated as of December 1, 1992, by and between MPWMD and PBC, as amended from time to time.

1.25 Fiscal Sponsor. "Fiscal Sponsor" means PBC and any person or persons (including partnerships, corporations, municipal corporations, or other public entities) that may succeed PBC and assume, as the Fiscal Sponsor, all of PBC's obligations pursuant to the Fiscal Sponsorship Agreement and the Supplemental Financing Agreement.

1.26 Fiscal Sponsorship Agreement. "Fiscal Sponsorship Agreement" means the Wastewater Reclamation Project Fiscal Sponsorship Agreement between MPWMD and PBC dated as of October 3, 1989, as amended from time to time (including the amendments thereto made by the Financing Implementation Agreement).

1.27 Fiscal Year. "Fiscal Year" means the fiscal year for the Project, and shall be the same as the current fiscal year of CAWD/PBCSD (July 1 through June 30) unless otherwise changed by unanimous agreement of the parties.

1.28 Forest Lake Component. "Forest Lake Component" means the addition of storage, treatment, and distribution facilities at or associated with the Forest Lake Reservoir located within the Del Monte Forest, as more particularly described in attached Exhibit "B."

1.29 General Manager. "General Manager" means either the General Manager of CAWD or the General Manager of PBCSD, or the General Manager of MPWMD, as the context requires.

1.30 Independent Recycled Water Users Group or IRWUG. "Independent Recycled Water Users Group" or "IRWUG" means the unincorporated association of the owners of Cypress Point Golf Club, Poppy Hills Golf Course, and the Monterey Peninsula Country Club.

1.31 Interruption. "Interruption" means an interruption for longer than 12 hours in the supply of Recycled Water to a Recycled Water Irrigation Area.

1.32 Irrigation System. "Irrigation System" means each of the recycled water irrigation systems installed and operating on each of the Recycled Water Irrigation Areas and owned, operated, and maintained by the Owners.

1.33 Management Agreement. "Management Agreement" means the Reclamation Water Management Agreement dated as of February 22, 1991, between CAWD and PBCSD, as amended from time to time.

1.34 Management Committee. "Management Committee" means a committee composed of (a) two representatives of CAWD, (b) two representatives of PBCSD, (c) one representative of PBC, and (d) one non-voting representative of IRWUG. After the Certificates of Participation are fully paid and retired, IRWUG will become a voting member of the Management Committee, subject to and in compliance with Section 11.4(b) below.

1.35 Monterey Peninsula Water Management District Law. "Monterey Peninsula Water Management District Law" means Chapter 527 of the California Statutes of 1977, as amended from time to time.

1.36 Net Operating Deficiency. "Net Operating Deficiency" for a Fiscal Year means the amount by which Operation and Maintenance Expenses exceed Operating Revenues for such Fiscal Year.

1.37 Net Operating Revenues. "Net Operating Revenues" for a Fiscal Year means the amount by which Operating Revenues exceed Operation and Maintenance Expenses and Bond Carrying Costs during such Fiscal Year.

1.38 Operating Revenues. "Operating Revenues," as applied to the Project, means all income, rents, rates, fees, charges and other moneys derived by the Public Participants from the ownership or operation of the Project, including, without limiting the generality of the foregoing: (i) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of the Recycled Water (or from potable water supplied in lieu thereof); (ii) insurance and condemnation proceeds resulting from damage to or destruction of the Project facilities, or from the condemnation of any of such facilities; and (iii) interest earned on all revenues mentioned in (i) and (ii) above or on any fund or account relating to the Project under the COP Documents (excluding any amounts required to be rebated to the United States pursuant to Section 148 of the Internal Revenue Code); provided, however, that such term shall not include customers' deposits or any other deposits subject to refund until such deposits have become the property of one of the Public Participants or the water supply surcharge retained by MPWMD in connection with the sale of Recycled Water in accordance with the Financing Implementation Agreement.

1.39 Operation and Maintenance Expenses. "Operation and Maintenance Expenses," as applied to the Project, means all expenses and costs of management, operation, maintenance, repair, replacement, renovation, or improvement of the Project properly chargeable to the Project in accordance with generally accepted accounting principles, including, without limitation, (a) payments to be made by any of the Public Participants under agreements with Cal-Am for the purchase of potable water; (b) an allowance for depreciation, amortization, and obsolescence determined according to Section 5.2.(b) of this Agreement; (c) all administrative expenses of MPWMD, CAWD, and PBCSD, incurred in connection with, and properly allocable as an expense relating to, the Project and the Certificates of Participation; and (d) an amount equal to any reduction in real property taxes allocated to MPWMD caused by a change in California state law which results in a reduction of such tax allocation based on the collection of the Operating Revenues from the sale of the Recycled Water, as more specifically provided in the Financing Implementation Agreement.

1.40 Operation and Maintenance Reserve Fund. "Operation and Maintenance Reserve Fund" means the fund which shall be maintained and held separate and apart from other funds to pay for Operation and Maintenance Expenses as they become due and payable during a Fiscal Year to the extent the timing or amount of Operating Revenues for such Fiscal Year are insufficient to provide for such payments.

1.41 Operation and Maintenance Reserve Requirement. "Operation and Maintenance Reserve Requirement" means the annual reserve amount determined by the Management Committee as part of the annual budget for each Fiscal Year of the Project in accordance with generally accepted accounting principles. The Management Committee may, but shall not be required to, adjust the annual reserve amount determined upon adoption of the annual budget for a Fiscal Year in the event of subsequent budget adjustments during the course of such Fiscal Year.

1.42 Ordinance 39. "Ordinance 39" means MPWMD Ordinance No. 39 adopted by MPWMD on February 13, 1989.

1.43 Ordinance 109. "Ordinance 109" means MPWMD Ordinance No. 109 adopted by MPWMD on May 27, 2004.

1.44 Original Construction and Operation Agreement. "Original Construction and Operation Agreement" means the Wastewater Reclamation Project Construction and Operation Agreement, dated as of November 1, 1990, among MPWMD, CAWD, PBCSD, and PBC.

1.45 Owner. "Owner" means each of the owners of the Recycled Water Irrigation Areas who have entered into a Recycled Water Sales Agreement with MPWMD.

1.46 Original Project. "Original Project" means and consists of (1) a tertiary treatment facility at the present CAWD wastewater treatment plant site, designed to produce at least 800 acre feet per year of disinfected recycled water suitable for irrigation of the Recycled Water Irrigation Areas, as more specifically described as the Tertiary Facility in attached Exhibit "A," and (2) the distribution system which is capable of distributing the recycled water from the Tertiary Facility to a point of distribution in the Del Monte Forest for further distribution to the Recycled Water Irrigation Areas then in operation, as more specifically described as the Distribution System in attached Exhibit "A." Improvements to the Irrigation System on each of the Recycled Water Irrigation Areas then in operation were also financed and constructed as part of the Original Project.

1.47 PBCSD. "PBCSD" means the Pebble Beach Community Services District, a California public agency, its successors and assigns.

1.48 Proceeds. "Proceeds" means the funds received from the separate sale and conveyance of a portion of PBC's Water Entitlement pursuant to the Supplemental Financing Agreement and deposited in the Escrow Account, less the Costs of Sales paid from the Escrow Account, as provided in this Agreement.

1.49 Project. "Project" means the Original Project and the Project Expansion.

1.50 Project Expansion. "Project Expansion" means and consists of components intended to improve the Original Project, principally including (but not limited to) (a) the addition of advanced treatment components to the treatment facilities of the Original Project (the "Advanced Treatment Component"), and (b) the addition of storage, treatment, and distribution facilities at or associated with the Forest Lake Reservoir located within the Del Monte Forest (the "Forest Lake Component"), both as more particularly described in attached Exhibit "B."

1.51 Public Participant. "Public Participant" means any one or more of the following: MPWMD, CAWD, PBCSD, or any successor public agency to any of them, including, without limitation, any joint powers agency formed by one or more of such agencies.

1.52 Recycled Water. The meaning of the term "Recycled Water" depends upon whether or not the Project Expansion is Completed. As used in any of the Related Agreements, the term "Reclaimed Water" means "Recycled Water" as defined below.

(a) Before the Project Expansion is Completed, "Recycled Water" shall mean water originating from the Tertiary Facility.

(b) After the Project Expansion is Completed, "Recycled Water" shall mean water originating from the Advanced Treatment Component and/or the Forest Lake Component and meeting the water quality standards set forth in the Attached Exhibit "E."

1.53 Recycled Water Irrigation Areas. "Recycled Water Irrigation Areas" means the golf courses and other vegetated areas as set forth on attached Exhibit "C" and located within the Del Monte Forest that now or in the future may be irrigated with Recycled Water supplied by the Project.

1.54 Recycled Water Sales Agreement. "Recycled Water Sales Agreement" means each Agreement for Sale of Reclaimed Water, dated as of 1992 and currently in effect, by and between MPWMD and the owners of the Recycled Water Irrigation Areas and, after the Project Expansion is Completed, each Agreement for Sale of Recycled Water by and between MPWMD and the then current owners of the Recycled Water Irrigation Areas.

1.55 Related Agreements. "Related Agreements" means the agreements, in form and substance satisfactory to each of the parties to such agreements and PBC, between or among two or more of CAWD, PBCSD, MPWMD, Cal-Am, an Owner of one or more of the Recycled Water Irrigation Areas, the Trustee, and PBC, as the case may be, reasonably necessary to implement the Project and addressing all matters related to the Project as the parties deem necessary or advisable, including, without limitation, the following agreements, as amended from time to time:

- (a) Amended and Restated Construction and Operation Agreement;
- (b) Original Construction and Operation Agreement;
- (c) Fiscal Sponsorship Agreement;
- (d) Financing Implementation Agreement;
- (e) Management Agreement;
- (f) Recycled Water Sales Agreement;
- (g) Supplemental Financing Agreement;
- (h) Trust Agreement;
- (i) Water Purchase Agreement; and
- (j) Ancillary Project Cost Agreement.

1.56 Revenue Fund. "Revenue Fund" means the special fund into which MPWMD deposits all Operating Revenues as provided in the first paragraph of Section 4.02 of the Water Purchase Agreement.

1.57 Secondary Facilities. "Secondary Facilities" means the primary and secondary facilities owned and operated by CAWD and/or PBCSD for the collection, distribution, and treatment of effluent, including the existing CAWD sewage treatment plant located immediately south of the Carmel River and west of California State Highway One.

1.58 Supplemental Financial Commitment. "Supplemental Financial Commitment" means all of the following:

(a) the irrevocable written commitment by PBC to pay all Capital Costs of the Project Expansion from commencement through the time that the Project Expansion is Completed, using funds raised through the sale of such portions of its Water Entitlement pursuant to Section Three of Ordinance 109 (combined with any funds which may be independently committed by PBC, IRWUG, CAWD, PBCSD, or any other entity willing to commit funds to the Capital Costs of the Project Expansion), and to continue to pay the Net Operating Deficiencies of the Project until the Certificates of Participation (and any bonds or other obligations issued by any Public Participant to finance such costs) have been paid in full (or for any shorter periods as permitted by MPWMD), and to continue to pay all Ancillary Project Costs; and

(b) the written representation, as applicable, by each of PBC, CAWD, and PBCSD that each is prepared and intends forthwith to commence construction of the Project Expansion and to proceed diligently therewith until the Project Expansion is Completed.

1.59 Supplemental Financing Agreement. "Supplemental Financing Agreement" means the Supplemental Financing Agreement between MPWMD and PBC, dated as of the date of this Agreement, as amended from time to time.

1.60 Surplus Recycled Water. "Surplus Recycled Water" has the meaning set forth in Section 3.3 of this Agreement.

1.61 Tertiary Facility. "Tertiary Facility" has the meaning set forth in Section 1 of attached Exhibit "A."

1.62 Trust Agreement. "Trust Agreement" means the Trust Agreement by and between MPWMD and First Trust of California, National Association, as initial trustee, dated as of December 1, 1992 relating to the \$33,900,000 Variable Rate Demand Certificates of Participation (Wastewater Reclamation Project) Series 1992, as amended or supplemented in accordance with its terms from time to time.

1.63 Water Entitlement. "Water Entitlement" means an aggregate of 380 acre feet per year of potable water which has been dedicated (as evidenced by Water Use Permits issued pursuant to Ordinance 39, Resolution No. 89-21, and the Fiscal Sponsorship Agreement) to land within the jurisdiction of MPWMD for the purpose of providing for the payment of the

Capital Costs, Ancillary Project Costs, and any Net Operating Deficiency of the Original Project. Ordinance 109 and the Supplemental Financing Agreement provide authorization and a process by which a portion of the Water Entitlement held by PBC may be separately sold and conveyed and thereby be dedicated to and used by other land within the Del Monte Forest with the Proceeds to be applied to the costs of the Project Expansion and the Original Project as more specifically described therein.

1.64 Water Purchase Agreement. "Water Purchase Agreement" means the Water Purchase Agreement, dated as of December 1, 1992, by and among MPWMD, CAWD and PBCSD, as amended from time to time.

1.65 Water Use Permit. "Water Use Permit" means a writing from MPWMD which evidences the dedication of the Water Entitlement as a present vested property right inuring to the use and benefit of one or more of the Benefited Properties, as more fully described in the Supplemental Financing Agreement .

1.66 Water Year. "Water Year" means the period of one year beginning on October 1st and continuing through the following September 30th.

2. Role of Public Participants and Use of Recycled Water.

2.1 Financing of Original Project.

(a) As consideration for providing the funding to design, construct, operate, and maintain the Original Project, MPWMD received the right, and covenanted, to (i) sell the Recycled Water produced by the Original Project to the owners of the Recycled Water Irrigation Areas and other users, as further described in the Original Construction and Operation Agreement and the Recycled Water Sales Agreement, (ii) own that Recycled Water required for the purpose of selling and distributing such water, with such ownership beginning upon completion of the treatment process and ending with the payment for such water by the user thereof, (iii) cause the owners of the Recycled Water Irrigation Areas, and any others to whom Surplus Recycled Water is sold, to be billed for the purchase price of such water and such bills to be collected, (iv) cause all Operating Revenues to be applied to payment of Operation and Maintenance Expenses, Bond Carrying Costs, the Operation and Maintenance Reserve Requirement, interest and principal payments on the Certificates of Participation, and other costs related to the Project, in that order and only to the extent available, and (v) retain all of the Operating Revenues, including, without limitation, the proceeds resulting from the above-referenced sales of Recycled Water, for payment of Operation and Maintenance Expenses, the Bond Carrying Costs, the Operation and Maintenance Reserve Requirement, the interest and principal on the Certificates of Participation, and other costs related to the Project

(b) In consideration for producing the Recycled Water from the Original Project, CAWD and PBCSD (i) own the Original Project in the manner set forth in the Management Agreement; (ii) under the direction of the Management Committee, were responsible for the design and construction of, and continue to be responsible for the operation and maintenance of their respective components of, the Original Project, including, without limitation, the production of the Recycled Water produced thereby, as further described in the

Original Construction and Operation Agreement and in the Management Agreement; and (iii) own the Recycled Water, subject to the rights of MPWMD with respect to the Recycled Water set forth above and the rights of Owners of the Recycled Water Irrigation Areas to purchase, own and use such water pursuant to the Recycled Water Sales Agreements.

(c) MPWMD, and CAWD and PBCSD, executed the Water Purchase Agreement to facilitate the issuance of the Certificates of Participation for the purpose of financing the Capital Costs of the Original Project, pursuant to which MPWMD has purchased the Recycled Water produced by the Original Project from CAWD and PBCSD for the purposes described above.

2.2 Financing of Project Expansion. The Capital Costs of the Project Expansion shall be financed and paid for by and through the Supplemental Financial Commitment pursuant to Ordinance 109 and the Supplemental Financing Agreement. Construction of the Project Expansion is contingent upon the Supplemental Financial Commitment being provided. Except for (1) any funds of MPWMD or any other Public Participant provided in the sole discretion of such Public Participant for a portion of the Supplemental Financial Commitment, and (2) Operating Revenues in excess of Operation and Maintenance Expenses, Bond Carrying Costs, the Operating and Maintenance Reserve Requirement, interest and principal payments under the Certificates of Participation, and other costs related to the Project, no funds of MPWMD or any other Public Participant shall be used to pay for the Capital Costs of the Project Expansion.

3. Use of Recycled Water.

3.1 Sale of Recycled Water.

(a) MPWMD shall sell Recycled Water to each Owner of the Recycled Water Irrigation Areas in such quantities as each such Owner shall require for irrigation purposes, from time to time, on such Recycled Water Irrigation Areas for irrigation purposes, all in accordance with and as more fully described in the Recycled Water Sales Agreement between MPWMD and such Owner. In addition, each Owner shall have such further rights with respect to the purchase of Recycled Water, for use on its Recycled Water Irrigation Areas or other property owned by such Owner, as may be described in such Recycled Water Sales Agreement. All Recycled Water shall be sold at charges as provided in the Recycled Water Sales Agreement. The Recycled Water Sales Agreement provides in pertinent part that such charges shall not be in excess of the charges for Cal-Am potable water in similar quantities, for similar uses and to similar users, from time to time; except that following retirement of the Certificates of Participation, such water charges may exceed the charges for Cal-Am potable water to the extent provided in the Recycled Water Sales Agreement.

(b) During the period any of the Certificates of Participation are outstanding, MPWMD agrees to purchase the Recycled Water from CAWD and PBCSD, and CAWD and PBCSD agree to produce and sell the Recycled Water to MPWMD, to enable MPWMD to meet its obligations under the Water Purchase Agreement and each Owner's Recycled Water Sales Agreement. Notwithstanding anything to the contrary, MPWMD shall not be required to pay any moneys derived from any source other than the Net Operating

Revenues for the performance of any agreements or covenants performed by it contained or referred to herein. After the Certificates of Participation are fully paid and retired, the parties intend that MPWMD's obligation to sell Recycled Water to each Owner under the Recycled Water Sales Agreement will be assigned to CAWD and PBCSD, and that CAWD and PBCSD will assume such obligation to sell Recycled Water to each Owner under the Recycled Water Sales Agreement, provided, however, that MPWMD's regulatory rights and obligations as set forth in the Recycled Water Sales Agreement and this Agreement will remain with MPWMD. The parties agree to negotiate in good faith to implement the above expressed intent by executing an amendment to this Agreement and any necessary Related Agreements within one (1) year after the effective date of this Agreement.

3.2 Standards for Recycled Water.

(a) Quantity. Subject to availability of adequate quantities of wastewater effluent from the CAWD secondary treatment plant, CAWD and PBCSD shall produce Recycled Water from the Project and shall deliver it to the Recycled Water Irrigation Areas in the quantities requested to irrigate all portions of the Recycled Water Irrigation Areas; provided, however, notwithstanding the foregoing, in no event shall CAWD or PBCSD be obligated to produce Recycled Water in amounts in excess of the then currently designed capacity of the Project.

(b) Quality. Recycled Water produced by the Project following Completion of the Project Expansion shall meet the standards set out in Exhibit "E," attached hereto and incorporated herein by this reference.

(c) Limitation on Liability. So long as they comply with the requirements of Section 5.4 of this Agreement, CAWD and/or PBCSD's liability for damage or injury to grass, landscaping, any other plant life, loss of use, loss of income, profit, financing, business, or reputation, loss of management or employee productivity, or any other indirect, special, incidental, punitive, or consequential damages, whether arising in contract, tort, warranty, indemnity or otherwise, related to the use or application of the Recycled Water shall be limited to the insurance policies and coverages, and proceeds recovered or paid therefrom, carried by or on behalf of the Project as required by Section 5.4 of this Agreement.

3.3 Surplus Recycled Water.

(a) MPWMD, CAWD, and PBCSD acknowledge and agree that the rights of PBC and any other Owner of a Recycled Water Irrigation Area to purchase and receive Recycled Water for their respective Recycled Water Irrigation Areas pursuant to their Recycled Water Sales Agreement shall be primary and superior to the rights of any other person to purchase and receive Recycled Water for any suitable use on any property other than the Recycled Water Irrigation Areas. Subject to this express acknowledgement and agreement, MPWMD, CAWD, PBCSD, and PBC acknowledge that the Project may be capable of producing more Recycled Water during certain time periods than the aggregate amount of Recycled Water required by the Recycled Water Irrigation Areas during such time periods. However, inasmuch as PBC and the other Owners of the Recycled Water Irrigation Areas have the primary and superior rights described above and are reliant on the Recycled Water produced by the Project to

satisfy all of the irrigation needs of their Recycled Water Irrigation Areas (except as otherwise provided in the Recycled Water Sales Agreement), MPWMD, CAWD, and PBCSD agree that none of them shall sell or make available Recycled Water to any person other than PBC and the other Owners of the Recycled Water Irrigation Areas during any Water Year unless and only to the extent that PBC and IRWUG each agree there exists Recycled Water which exceeds the quantity of Recycled Water necessary or desirable to assure that all of the irrigation needs of the Recycled Water Irrigation Areas will be fully satisfied during such Water Year and to further assure that sufficient quantities of Recycled Water will be stored for use during the succeeding Water Year. Recycled Water satisfying the foregoing requirement shall constitute and is defined as "Surplus Recycled Water."

(b) With respect to Surplus Recycled Water, MPWMD, CAWD, PBCSD, and PBC agree (and acknowledge that the other Owners and IRWUG have agreed) as follows:

(i) If the discharge of Recycled Water is required to comply with, or listed as an option for complying with, one or more conditions of approval imposed on PBC's Del Monte Forest Preservation and Development Plan, then during any Water Year in which rainfall (measured as required by such condition(s) of approval) between October 1 and May 31 exceeds the fifty (50) year average rainfall for this period of months by more than twenty-five percent (25%), there shall exist up to thirty (30) acre feet of Surplus Recycled Water which MPWMD shall make available, as provided in this subsection 3.3(b)(i), without further approval or agreement from PBC or IRWUG. MPWMD shall, upon the demand of PBC, make up to 30 acre feet of such Surplus Recycled Water available to CAWD without charge to CAWD or PBCSD, solely for discharge in such Water Year and October of the following Water Year as required by such condition(s) of approval. The incremental cost incurred by CAWD and PBCSD in producing and supplying such Surplus Recycled Water for discharge shall not be charged to the Project (as an Operation and Maintenance Expense or otherwise), but instead shall be paid from funds provided by PBC and/or funds arranged by PBC or CAWD to be provided from other sources.

(ii) During any Water Year, other than a Water Year as described in(b)(i) above, there shall exist an annual total of twenty (20) acre feet of Surplus Recycled Water if, and during such time periods when, the Forest Lake Reservoir contains more than two hundred ten (210) acre feet of Recycled Water. MPWMD hereby authorizes CAWD or PBCSD to sell or otherwise dispose of such twenty (20) acre feet during such time periods when the Forest Lake Reservoir contains more than two hundred ten (210) acre feet of Recycled Water, for beneficial uses approved in advance by the General Manager of MPWMD, without further approval or agreement from PBC or IRWUG, provided that no such sale or disposition will cause the Forest Lake Reservoir to contain less than two hundred ten (210) acre feet of Recycled Water. The amount of Recycled Water sold or otherwise disposed of by CAWD or PBCSD as Surplus Recycled Water pursuant to this subsection (b)(ii) shall not exceed twenty (20) acre feet on a cumulative

annual basis during the applicable Water Year. The incremental cost incurred by CAWD and PBCSD in producing and supplying such Surplus Recycled Water shall either:

(A) be recovered through revenues received by CAWD and PBCSD for such supply which are applied to Operating Revenues; or

(B) to the extent not so recovered, shall be paid from funds provided by CAWD and/or PBCSD.

(iii) With respect to any determination and sale of Recycled Water as Surplus Recycled Water over and above the quantity of Surplus Recycled Water specified in subsections (b)(i) and (b)(ii) above, CAWD and PBCSD may at any time advise MPWMD that they believe there exists a specified quantity of Recycled Water that may be determined to be Surplus Recycled Water, that there is a purchaser ready and willing to pay a specified amount for the quantity of Recycled Water, and that CAWD and PBCSD request authorization for a determination and sale as Surplus Recycled Water. MPWMD shall thereupon promptly give notice to PBC and IRWUG of the request. If and to the extent that PBC and IRWUG each agree, in their sole discretion, that the supply of Recycled Water exceeds the quantity necessary or desirable to assure that all of the irrigation needs of the Recycled Water Irrigation Areas will be fully satisfied during that Water Year and to further assure that sufficient quantities of Recycled Water will be stored for use during the succeeding Water Year, PBC and IRWUG shall promptly notify MPWMD of their determination. The quantity of Recycled Water specified in PBC's and IRWUG's notice to MPWMD shall then be classified as Surplus Recycled Water, and may be sold by MPWMD pursuant to the CAWD and PBCSD request. In making their determination under this subsection (b)(iii), PBC and IRWUG's decision must be unanimous, and they may determine that no Surplus Recycled Water exists or that a lesser amount of Surplus Recycled Water exists than that requested. Nothing herein shall prevent MPWMD, upon obtaining the consent and authorization of CAWD and PBCSD, from requesting from PBC and IRWUG a Surplus Recycled Water determination and approval for sale under the same terms, conditions and procedures set out in this subsection (b)(iii) for a CAWD and PBCSD request.

(c) With respect to Surplus Recycled Water which MPWMD may sell or otherwise dispose of pursuant to subsection (b)(iii) above:

(i) MPWMD shall use reasonable efforts to sell any such Surplus Recycled Water to purchasers, wherever located:

(A) at the highest price then available in the market, but in no event less than the cost of producing and delivering the Surplus Recycled Water; and

(B) the contract shall be on an “interruptible,” “as available” basis, as those terms are customarily used in the California water community (meaning that the delivery of Surplus Recycled Water may be suspended to permit the continued supply of Recycled Water to the Recycled Water Irrigation Areas owned by PBC and other Owners pursuant to the rights described above as “primary and superior”), with an express acknowledgement that Surplus Recycled Water can only be supplied to the proposed buyer on a daily basis to the extent the requirements of the Recycled Water Irrigation Areas have been completely satisfied.

(ii) All revenues from the sale of Surplus Recycled Water shall constitute, and be applied to, Operating Revenues of the Project.

4. Construction of Project Expansion. CAWD and PBCSD shall each have responsibility for design and construction of their respective portions of the Project Expansion that each will own and have the responsibility to operate and maintain, subject to the Management Committee’s right to approve decisions relating to the design and construction thereof, including without limitation, with respect to the matters described in this Section 4. Once PBC has given notice to MPWMD that the Supplemental Financial Commitment has been provided, CAWD and PBCSD shall proceed diligently therewith until the Project Expansion is Completed. Neither CAWD nor PBCSD shall be obligated to commence, or cause to be commenced, construction of the Project Expansion until and unless they have received the funds and/or a financial guarantee from PBC reasonably satisfactory to CAWD and PBCSD comprising the Supplemental Financial Commitment. PBC may, with the approval of CAWD and/or PBCSD, as applicable with respect to their respective portions of the Project Expansion, design and act as construction contractor or manager for that portion of the Project Expansion.

(a) With respect to design and construction of the Project Expansion, each voting member of the Management Committee shall be given advance written notice, in reasonable detail, and a reasonable period of time after its receipt of such notice to comment on, and make suggestions with respect to, each of the following actions prior to such action becoming effective or complete: (i) initial design plans; (ii) a preliminary construction cost estimate for the Project Expansion, including a contingency for change orders in the amount of 5% of such cost estimate; (iii) final design plans for the Project Expansion; (iv) the criteria to be used to award design and/or construction contracts and subcontracts for the Project Expansion; (v) the preparation of all design and construction contracts for the Project Expansion; (vi) the approval and letting of all such contracts and the related subcontracts; (vii) the establishment of the construction schedule; (viii) the adequacy of all payment and performance bonds and insurance requirements; and (ix) all construction disbursements. With respect to items (i) through (viii) above, CAWD and PBC also shall each have the right to approve such items with respect to the Advanced Treatment Component, and PBCSD and PBC also shall each have the right to approve such items with respect to the Forest Lake Component, such approvals not to be unreasonably withheld or delayed. The right to comment on, and make suggestions with respect to, the construction disbursements shall be provided, in part, by a designated representative of

each voting member of the Management Committee being given the opportunity to participate in the periodic (but at least monthly) meetings, between the contractor(s) for the Project Expansion and/or the engineer(s) retained by CAWD and PBCSD to accomplish the construction of the Project Expansion, with respect to the status of construction of the Project Expansion and the approval of the payment of each construction disbursement. CAWD and PBCSD shall give MPWMD and IRWUG notice of such meetings, and one representative of MPWMD and one representative of IRWUG may attend each such meeting. A final construction cost estimate including a contingency for change orders in the amount of 5% of such cost estimate (the "Final Cost Estimate") shall be determined after the approval and letting of all of the contracts and subcontracts described above, and shall be subject to review and approval by PBC, which shall not be unreasonably withheld or delayed. The Management Committee shall engage in reasonable efforts to complete such approval and letting process within 12 months after the Supplemental Financial Commitment has been provided.

(b) After the Management Committee has approved the design and scope of, the construction schedule for, and the Final Cost Estimate for the Project Expansion, (i) no material change to such design, scope or construction schedule shall be made by the Management Committee, without the written approval of PBC, which shall not be unreasonably withheld or delayed, and (ii) if the net effect of all change orders when aggregated together will exceed the Final Cost Estimate, including the contingency reserve, for the Project Expansion, as a whole, no additional change order in excess of \$5,000 individually, and \$50,000 in the aggregate, may be approved by the Management Committee without the written approval of PBC, which approval shall not be unreasonably withheld or delayed. Each entity with voting representation on the Management Committee and MPWMD shall be designated a third party beneficiary of all construction contracts, and all payment and performance bonds, with respect to the construction of the Project Expansion.

(c) All Capital Costs of the Project Expansion incurred and approved, in the manner described in subsections (a) and (b) above, with respect to design and construction of the Project Expansion, as applicable, shall be paid by CAWD and PBCSD from the Proceeds in the Escrow Account as and when due according to the approved design, engineering, construction and other contracts for the Project Expansion. To the extent the Proceeds in the Escrow Account are insufficient to pay such Capital Costs of the Project Expansion as and when due, CAWD and PBCSD shall notify PBC in writing of the amount of any shortfall, and PBC shall deposit additional funds into the Escrow Account to cover such Capital Costs within 10 Business Days of receipt of such written notice. On or before the 15th day of each calendar month, or portion thereof, during the period beginning with the design, permitting, and construction of the Project and ending with the last payment of a construction disbursement, CAWD and PBCSD shall submit to MPWMD and PBC an accounting, in such format and with such detail as shall be acceptable to MPWMD and PBC, of the disbursements from the Escrow Account made during the prior calendar month as to their respective portions of the Project Expansion. Unless otherwise approved by PBC, all disbursements from the Escrow Account by CAWD and PBCSD for Capital Costs of the Project Expansion shall be consistent with the Final Cost Estimate and with all design, engineering, construction, and other contracts previously approved by PBC.

(d) CAWD and PBCSD shall (i) timely file and diligently prosecute all applications for all applicable permits and governmental approvals and authorizations necessary to construct their respective portions of the Project Expansion, and to operate the Project, in the manner contemplated or required by this Agreement, (ii) timely satisfy and comply with all terms and conditions of all such permits, approvals and authorizations, and (iii) at all times maintain such permits, approvals and authorizations in full force and effect. CAWD and PBCSD shall also timely obtain, comply with all of the terms and conditions of, and maintain in full force and effect all private rights and consents necessary to construct and operate the Project in the manner contemplated or required by this Agreement.

(e) Upon the provision of the Supplemental Financial Commitment, the Costs of Sale shall be reimbursed from the Escrow Account to the parties entitled to such reimbursement, provided that MPWMD shall have the right to review and approve such reimbursement, including any proposed Costs of Sale, such approval not to be unreasonably withheld or delayed.

(f) Upon the provision of the Supplemental Financial Commitment, PBC, MPWMD, IRWUG, CAWD, and PBCSD may request, at any time, and from time to time, to be reimbursed from the Proceeds in the Escrow Account for all or any portion of any Capital Costs of the Project Expansion that each has previously advanced (unless reimbursed to others by PBC). Upon approval by MPWMD, such approval not to be unreasonably withheld or delayed, the party making the request shall be reimbursed from the Proceeds in the Escrow Account for such Capital Costs of the Project Expansion within 30 days after the receipt by MPWMD of written evidence, in reasonable detail, that the party seeking such reimbursement actually incurred such Capital Costs. All Capital Costs of the Project Expansion reviewed and approved by MPWMD as provided above shall be paid from the Proceeds in the Escrow Account.

5. Operation of Project.

5.1 Management of Project. CAWD and PBCSD shall have responsibility for management, operation and maintenance of the Project, subject to the rights of each member of the Management Committee to receive financial data (both projected and historical) concerning the Project, and to review, and comment upon and approve (to the extent provided in this Agreement), decisions related to such financial data and the management, operation and maintenance of the Project, including the matters described in this Section 5.

5.2 Budgeting and Financial Accounting for Project.

(a) The Management Committee shall cause to be developed, and shall approve, an annual budget for the Project for each Fiscal Year, whether partial or full, after the date first set forth herein, at least 30 days prior to the commencement of such Fiscal Year. The annual budget for the Project shall be prepared based upon projections of Operating Revenues to be received and Operation and Maintenance Expenses to be incurred by MPWMD, CAWD, and PBCSD. MPWMD shall cooperate with the Management Committee in its budgeting efforts by expeditiously providing to the Management Committee, at its request, a projection of Operating

Revenues that MPWMD expects to receive, and Operation and Maintenance Expenses that MPWMD expects to incur, during the applicable Fiscal Year.

(b) In calculating the projected and actual Operation and Maintenance Expenses for any Fiscal Year: (i) no item of administrative or other overhead expense of any of the Public Participants, other than such reasonable expenses which directly relate to the Project and the Certificates of Participation, shall be included in the calculation of Operation and Maintenance Expenses without the prior written consent of each of the members of the Management Committee who are not a representative of such Public Participant; (ii) Operation and Maintenance Expenses shall include an annual contribution to a capital reserve fund to be used to finance the acquisition, replacement, renovation, and/or improvement of long term capital and other fixed assets, including but not limited to buildings, machinery and equipment, tanks, pipelines, fixtures, and other items presented as assets in the balance sheet of the Project (the "Capital Reserve Fund"), provided, however, that during the period that any of the Certificates of Participation are outstanding, the annual contribution to the Capital Reserve Fund shall be set at an amount intended to produce a balance in the Capital Reserve Fund as of July 1, 2022, which shall be no less than \$1,000,000 and no more than \$2,000,000, the precise amount of which shall be reasonably determined by the Management Committee considering all relevant factors, including each Fiscal Year's balance in the Capital Reserve Fund and the estimated future earnings on that balance; the estimated future timing and costs of acquisition, replacement, renovation, and/or improvement of long term capital and other fixed assets; and other methods of financing such future costs. Any limitation set on the annual contribution to the Capital Reserve Fund in this subsection (ii) shall be removed after the Certificates of Participation are paid in full, and thereafter the annual contribution to the Capital Reserve Fund shall be reasonably determined by the Management Committee considering all relevant factors; (iii) no Bond Carrying Costs or principal or interest payments on the Certificates of Participation shall be included in the Operation and Maintenance Expenses; and (iv) Operation and Maintenance Expenses shall include an amount equal to any reduction in real property taxes allocated to MPWMD caused by a change in California state law which results in a reduction of such tax allocation based on the collection of the Operating Revenues from the sale of the Recycled Water, as more specifically set forth in the Financing Implementation Agreement.

(c) Each of the members of the Management Committee shall have the right to participate in the development of the annual budget for the Project, but only the voting members shall have the right to approve the annual budget. Only expenses provided in the approved annual budget for the Project, or approved in writing by each voting member of the Management Committee, shall be deemed to constitute Operation and Maintenance Expenses. After the Certificates of Participation are paid in full, Operation and Maintenance Expenses for any Fiscal Year shall normally require approval of a simple majority of the voting members of the Management Committee, however the approval of five of the voting members of the Management Committee shall be required in the event that the sale price for Recycled Water for the Owners of the Recycled Water Irrigation Areas would cause such Owners to pay more than the Annual Charge such Owners would have paid for irrigation water during the period the Certificates of Participation were outstanding, all as more specifically provided in the Recycled Water Sales Agreement. CAWD shall submit to each member of the Management Committee with respect to each Fiscal Year for the Project (i) unaudited quarterly financial statements of the

Project, accompanied by an unqualified certificate of the chief financial officer of CAWD, on or before the 30th day after each such quarter, or as soon as information is available, (ii) audited annual financial statements of the Project, accompanied by an unqualified certificate of the auditing firm approved by the Management Committee, on or before the 120th day after the end of each Fiscal Year, or as soon as information is available, and (iii) such other written information with respect to the Project as may be reasonably requested by each member of the Management Committee, including, without limitation, such information as may be necessary to make a proper accounting to PBC with respect to its obligations in connection with the Financial Commitment and the Supplemental Financial Commitment, within a reasonable period of time after it is requested. Each of such financial statements shall consist of a balance sheet, as of the end of the applicable period, and an income statement and statement of changes in financial position, for such applicable period, and shall be prepared in accordance with generally accepted accounting principles consistently applied.

(d) After the Certificates of Participation are fully paid and retired, if at any time CAWD or PBCSD reasonably determines that the approved annual budget for any Fiscal Year is insufficient to enable the Project to be operated, maintained, repaired, replaced, renovated or improved so as to enable CAWD and PBCSD to comply with their respective covenants and obligations under this Agreement, then CAWD or PBCSD may request in writing that the Management Committee revise the annual budget for such Fiscal Year to meet the reasonable concern(s) or issue(s) identified in the request. If the Management Committee fails to act within 30 days to respond to the request to the satisfaction of CAWD or PBCSD, then CAWD or PBCSD may notify the Management Committee in writing that it wishes to have its request for a revision to the annual budget referred to and determined by an independent engineering and operations audit process. Within 30 days of such written notice, the Management Committee shall then appoint an independent wastewater engineering firm or wastewater engineer to conduct the requested audit, by the same vote as required in subsection 5.2(c) to approve the annual Operation and Management Expenses. If the Management Committee fails to so appoint, then the matter shall be referred by CAWD or PBCSD to the Presiding Judge of the Monterey County Superior Court to make the appointment of the auditor from a list of four names, two names provided by CAWD and/or PBCSD (the entity making the budget revision request) and two names provided (one each) by the PBC and IRWUG representatives on the Management Committee, all names to be submitted within 15 days after the expiration of the Management Committee's initial 30 day appointment period, set out hereinabove. No later than 15 days following his or her receiving the four names, the Presiding Judge of the Superior Court shall appoint one of the four as the auditor. The engineering and operations auditor shall be independent of and shall not have worked in any capacity for any member of the Management Committee within the previous two years. The appointed auditor shall proceed in a timely manner to conduct an engineering and operations audit pertaining to the request for an annual budget revision by CAWD or PBCSD, based upon such information as the auditor deems appropriate and is provided to the auditor by any member of the Management Committee, and shall then file a report and decision with the Management Committee. The decision of the appointed auditor as to any annual budget adjustments shall be final and binding on all members of the Management Committee.

(e) Each of the members of the Management Committee shall have the right to (i) receive initial drafts of each annual budget with respect to the Project at the same time such draft is first made available to the General Manager or Board of Directors of CAWD or PBCSD, (ii) receive the proposed final draft of each such annual budget at least 30 days before it is submitted to the Management Committee for its approval, (iii) make comments to such General Manager and the Management Committee with respect to each such draft of the annual budget and each of the financial statements for the Project which it has the right to receive, and (iv) review and audit, or cause its designated representatives to review and audit, the books and records with respect to the Project, at its own expense, during the business hours of CAWD, and/or PBCSD upon reasonable advance notice of its intention to do so having been given to the General Manager of CAWD and/or PBCSD.

(f) Any voting member of the Management Committee may request, from time to time, the General Manager to prepare projections of the operating results of the Project through the end of the then Fiscal Year of the Project. Upon receiving such request, the General Manager shall engage in best efforts to prepare and deliver such projections to each member of the Management Committee within 30 days of receiving such request. In the event that any such projections reveal that it is likely that the results of operations of the Project for such year will involve a Net Operating Deficiency, at the request of any voting member of the Management Committee, the Management Committee shall retain a consulting engineer to review the operation and maintenance of the Project and to make recommendations with respect thereto. If requested by PBC, the Management Committee shall cause the Project to promptly comply with all such recommendations which are reasonable. The charges of such consulting engineer(s) and the costs incurred to comply with such recommendations shall be deemed to be Operation and Maintenance Expenses.

(g) In addition to the preparation of the annual budget for the Project described above, CAWD, PBCSD, and MPWMD shall each continue to maintain separate accounts and budgets with respect to the Operating Revenues each receives and the Operation and Maintenance Expenses each incurs.

(h) The budgeting process described in this Section 5.2 shall be utilized as the basis for determining the projected and actual Net Operating Deficiency for purposes of the Fiscal Sponsorship Agreement and the Supplemental Financing Agreement.

5.3 Standards of Operation.

(a) The Project shall be owned, operated, maintained and serviced by CAWD and PBCSD in accordance with applicable regulations, good engineering practice, and prudent business practices, so as to produce Recycled Water as required by Section 3.2 above.

(b) At PBC's request, the General Manager of CAWD and/or PBCSD shall cause an annual inspection of the Project to be performed, during the last month of each Fiscal Year of the Project, by a consulting engineer acceptable to the Management Committee, and a report of such engineer to be delivered to each member of the Management Committee, on or before the 45th day of the ensuing Fiscal Year. In the event that operating or other deficiencies are disclosed in any such report, at the request of PBC, CAWD and PBCSD shall

promptly cause measures necessary to correct such deficiencies to be implemented. The charges of such consulting engineer and the costs incurred to correct any such deficiencies shall be deemed Operation and Maintenance Expenses.

5.4 Insurance.

(a) Upon the Completion of the Project Expansion, CAWD and PBCSD shall at all times maintain in effect insurance policies with respect to the Project and the operation of the Project, with such coverages (including with respect to risks, amounts, and deductibles) as may be available in the marketplace, and placed through such brokers and with such insurance companies, as PBC and IRWUG shall together reasonably require, from time to time, be obtained and maintained, including, without limitation, business interruption, pollution, or other insurance or coverage. PBC and IRWUG shall make a reasonable determination of the required coverage after giving due consideration of any relevant commercial insurance factors, including, without limitation, the nature and extent of the risk to be insured, the operating history of the Project, and the cost of such insurance. In the event PBC and IRWUG cannot agree on the reasonable insurance requirements for the Project, then the more extensive coverage required by either one of them shall be deemed the required coverage, provided, however, that if IRWUG requires more extensive coverage than PBC requires during the period the Certificates of Participation are outstanding, then PBC's required coverage shall prevail unless each of the Owners who comprise IRWUG agree to pay its respective pro rata share of the cost of such more extensive coverage (such pro rata share being set forth in Exhibit "C"). In recognition that the Project is dependent upon the continued operation of the Secondary Facilities, each of CAWD and PBCSD shall (i) make all reasonable efforts to maintain in place insurance coverages (including with respect to risks, amounts and deductibles) for the Secondary Facilities as CAWD and PBCSD shall determine is reasonable for such Secondary Facilities based on generally accepted wastewater utility practices; (ii) promptly provide to all members of the Management Committee and MPWMD such information concerning the insurance in place with respect to the Secondary Facilities, including, without limitation, a copy of each policy evidencing such insurance, and the risks of operating the Secondary Facilities, as may be reasonably requested, from time to time, by any member of the Management Committee or MPWMD, and (iii) purchase such additional insurance with respect to the Secondary Facilities and the operation of the Project, including, without limitation, business interruption or similar insurance, as may be available in the marketplace, and is placed through such brokers and with such insurance companies, as is requested by PBC and IRWUG, from time to time, with the incremental additional cost for such additional insurance to be reimbursed to CAWD and PBCSD from the revenues generated by the Project and deemed to be Operation and Maintenance Expenses. Each insurance policy in place with respect to the Project or the Secondary Facilities, or the construction or operation of either, shall (i) name each of MPWMD, PBC, and the Owners who comprise IRWUG as an additional insured thereunder and (ii) shall provide that it may not be terminated or amended or otherwise modified, in any material respect, without each additional insured thereunder being given at least 30 days prior written notice of such termination, amendment or modification. Upon the initial placement and the renewal of each such insurance policy, the Public Participant which has obtained such policy shall provide each member of the Management Committee and MPWMD with a copy of such policy. Upon the request, from time to time, of any member of the Management Committee or MPWMD, the Public Participant

which has obtained any such insurance policy shall provide to such person or entity a certificate of insurance with respect to such policy.

(b) In the event that a casualty should occur to any improvement constituting all or a portion of the Project or the Secondary Facilities, CAWD or PBCSD, as the case may be, shall use the proceeds of any of the insurance described in Section 5.4(a) above, which is available as a result of such casualty, to expeditiously repair or rebuild such improvement.

5.5 Payment of Operation and Maintenance Expenses.

(a) MPWMD shall be responsible for paying all of the Operation and Maintenance Expenses of the Project and shall pay such expenses of CAWD and PBCSD in the manner provided in the Water Purchase Agreement. Within 5 Business Days of MPWMD's receipt of the annual budget (as approved pursuant to this Agreement) for any Fiscal Year of the Project but in no event earlier than the 20th day of such Fiscal Year, MPWMD shall pay CAWD and PBCSD all amounts requested under that budget but only to the extent available from the Revenue Fund, as set forth in the Water Purchase Agreement. If the actual expenses over the course of the Fiscal Year exceed budgeted Operation and Maintenance Expenses, CAWD and PBCSD will prepare appropriate budget adjustments for the approval of the Management Committee. Upon approval of the budget adjustments, CAWD and PBCSD will either use the Operation and Maintenance Reserve Fund for additional expenses or MPWMD will provide additional money from the Revenue Fund to the extent available. At the end of the Fiscal Year, if necessary, a budget-to-actual adjustment will be made and MPWMD will forward any amount necessary to make up for any deficit for that Fiscal Year. Each payment made to CAWD and PBCSD by MPWMD shall be deemed to constitute an advance of Operation and Maintenance Expenses for the Fiscal Year and shall be deposited by CAWD and PBCSD in a separate account from which only such expenses are to be paid. All interest earned on the sums deposited in such account shall be deemed, for the purposes of this subsection, to constitute a payment by MPWMD to CAWD and PBCSD pursuant to this subsection. In the event any of the Fiscal Years of the Project is a partial Fiscal Year, the parties hereto shall negotiate in good faith the percentage of the Operation and Maintenance Expenses projected to be incurred by CAWD and PBCSD during such Fiscal Year, as shown in the approved budget for such Fiscal Year, to be paid by MPWMD. Within 30 days after the termination of this Agreement, (i) if CAWD and PBCSD discontinue participating in the Project upon termination of this Agreement, (A) CAWD and PBCSD shall repay to MPWMD the balance in such account, in the Operation and Maintenance Reserve Fund, and in the Capital Reserve Fund, after deducting any amount necessary to pay any Operation and Maintenance Expenses, Capital Expenses, or other extraordinary repairs and replacements which CAWD and PBCSD have actually and properly incurred pursuant to this Agreement prior to such termination and (B) MPWMD shall pay to CAWD or PBCSD any amount necessary to pay any obligation which CAWD or PBCSD has actually and properly incurred pursuant to the Water Purchase Agreement, but which obligation arose following such termination; or (ii) if MPWMD discontinues participating in the Project upon termination of this Agreement, (A) MPWMD shall pay to CAWD and PBCSD the balance in the Revenue Fund, after deducting any amount necessary to pay any Operation and Maintenance Expenses which MPWMD has actually and properly incurred pursuant to this

Agreement prior to such termination, plus the balance of any other revenues related to the Project held by MPWMD pursuant to the Water Purchase Agreement, after deducting any amount necessary to pay any obligations which MPWMD has actually and properly incurred pursuant to the Water Purchase Agreement prior to such termination and (B) CAWD/PBCSD shall pay to MPWMD any amount necessary to pay any obligation which MPWMD has actually and properly incurred pursuant to the Water Purchase Agreement, but which obligation arose following such termination.

(b) Upon execution of this Agreement, the Operation and Maintenance Reserve Fund shall be transferred by MPWMD to and remain under the control of CAWD/PBCSD. During each Fiscal Year, the Operation and Maintenance Reserve Fund shall be used to pay for Operation and Maintenance Expenses as they become due and payable during a Fiscal Year to the extent the timing or amount of Operating Revenues for such Fiscal Year are insufficient to provide for such payments. The Operation and Maintenance Reserve Fund will not be used for payment of principal or interest of the Certificates of Participation or Bond Carrying Costs. CAWD and PBCSD shall select appropriate investment vehicles which will allow immediate use of the Operation and Maintenance Reserve Fund in case a need arises. If necessary, the Operation and Maintenance Reserve Fund shall be replenished by MPWMD from Operating Revenues at the beginning of each Fiscal Year in accordance with that Fiscal Year's approved budget and during such Fiscal Year as requested by the Management Committee. If necessary, the Operation and Maintenance Reserve Fund shall be adjusted when the Certificates of Participation are retired to reflect the availability of the Capital Reserve Fund to pay for future Capital Costs of the Project, as provided in Section 5.5(c) below.

(c) Upon execution of this Agreement, the Capital Reserve Fund shall be transferred by MPWMD to and remain under the control of CAWD/PBCSD. Following retirement of all Certificates of Participation, CAWD/PBCSD shall use the Capital Reserve Fund as the first source of payment for future Capital Costs of the Project, unless the Management Committee otherwise unanimously agrees to another source of payment. CAWD and PBCSD shall select appropriate investment vehicles for the Capital Reserve Fund for the periods prior to and after the retirement of the Certificates of Participation.

6. Management of Project.

6.1 Role of Management Committee. In addition to its other duties specified in this Agreement, the Management Committee, acting through its voting members, shall:

(a) make all decisions as prescribed in this Agreement with respect to the design, construction, management, operation, maintenance, repair, replacement, renovation, and improvement of the Project on behalf of the Board of Directors of each of CAWD and PBCSD, except for those matters requiring legally binding action by such Boards, including, without limitation, the execution of any agreement, the adoption of any budget, and the initiation of any legal action;

(b) approve such rules with respect to the governance of its actions and the performance of its duties hereunder as are not inconsistent with this Agreement, the

Fiscal Sponsorship Agreement, the Supplemental Financing Agreement, any of the Related Agreements, or applicable law;

(c) direct the General Managers in the implementation of the duties of CAWD and PBCSD with respect to the Project;

(d) at its election, make recommendations to the Board of Directors of each of CAWD and PBCSD with respect to any matters concerning the Project requiring the approval, or ratification, of such Boards;

(e) permit the General Managers of both CAWD and PBCSD to attend its meetings, including any closed sessions, and participate in its deliberations;

(f) permit a representative of IRWUG to attend its meetings, including, without limitation, any closed session, when appropriate, and ensure that the IRWUG representative is given written notice of each of the meetings and all written materials relating to such meetings at the same time and in the same manner as the notice of such meeting is given the voting members of the Management Committee (provided, however, it shall not be deemed appropriate for a representative of IRWUG to attend any such closed session to the extent such session is intended to involve a discussion of any personnel matter or threatened or pending litigation in which IRWUG is or may be a party adverse to CAWD or PBCSD); and

(g) ensure that all meetings of the Management Committee shall be open to the public and shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, being Sections 54950, et seq., of the California Government Code.

6.2 General Manager and Staff. The General Managers of CAWD and PBCSD shall be responsible, subject to the direction and control of the Management Committee, for the day-to-day implementation of the respective responsibilities and duties of CAWD and PBCSD relating to the Project. In connection with performing such services, the General Managers shall receive such staff assistance as may be required, from time to time, from the staff members of CAWD and PBCSD. The General Managers, in addition to the other duties specified in this Agreement, shall report regularly to the Management Committee with respect to the construction and operation of their respective portions of the Project and present to the Management Committee for its review and action all matters ultimately requiring the approval, or ratification, of the Board of Directors of each of CAWD and PBCSD, payment requests with respect to Capital Costs or Operation and Maintenance Expenses, policy matters, and any other category of matters which the Management Committee determines to be appropriate for its consideration. The General Managers shall be responsible, as well, for preparing payment requests for Capital Costs and Operation and Maintenance Expenses for their respective portions of the Project.

6.3 Management Agreement. So long as any of the Certificates of Participation, or any bonds or certificates of participation issued to refinance the Certificates of Participation, are outstanding, CAWD and PBCSD shall make no amendments to the Management Agreement which could, at the time or in the future, impair the ability of CAWD or

PBCSD to perform any of their respective obligations hereunder or under any of the Related Agreements or adversely affect any of the rights of PBC or MPWMD hereunder, under the Fiscal Sponsorship Agreement, the Supplemental Financing Agreement, or any of the other Related Agreements.

7. Investment of Operating Revenues. All Operating Revenues of the Project, including, without limitation, those held by CAWD and PBCSD pursuant to Section 5.5(a) hereof as an advance against Operation and Maintenance Expenses of CAWD/PBCSD, shall be invested in a manner designed to maximize the investment return on such funds (under the circumstances, given the amount of the funds involved, and the time by which such funds are required to be expended), subject to applicable legal investment and/or tax law limitations and the investment criteria agreed upon by PBC and MPWMD pursuant to Section 3.10 of the Fiscal Sponsorship Agreement.

8. Certain Rights to Reimbursement. PBC has advanced, and other parties to this Agreement may have advanced, funds for expenditures with respect to design, engineering and other matters incident and preparatory to the Project Expansion, including, without limitation, legal and consulting fees and costs associated with the Project Expansion and its implementation and this Agreement, and each Related Agreement, and each shall have the right, but not the obligation, to continue to advance funds for such expenditures. To the extent not reimbursed as Costs of Sale pursuant to Section 4(e) above, such expenditures incurred by PBC and the other parties to this Agreement shall be deemed to constitute Capital Costs of the Project Expansion and shall be reimbursed to PBC and such other parties as provided in Section 4(f) above.

9. Representations and Warranties and Covenants.

9.1 Mutual Representations and Warranties. PBC, PBCSD, CAWD and MPWMD each hereby represents and warrants to the other that:

(a) the execution and delivery of this Agreement, and the performance of its obligations under this Agreement, have been duly authorized by all necessary action on its part, and it has full power, right and authority to enter into this Agreement and to perform its obligations hereunder;

(b) neither the execution and delivery of this Agreement by it, nor the performance by it of any of its obligations under this Agreement, violates any applicable federal, state or local law, whether statutory or common, or regulation or, with respect to PBC, partnership agreement, or constitutes a violation of, or a breach or default under, any agreement or instrument, or judgment or order of any court or governmental authority, to which it is a party or to which it or any of its property is subject;

(c) this Agreement is a valid and binding obligation of it, enforceable against it in accordance with its terms, except as such enforceability may be limited by equitable principles or by bankruptcy or other laws affecting creditors' rights generally; and

(d) except as may be required to construct and operate the Project, no consent, approval, order or authorization of any person, entity, court or governmental authority is

required on its part in connection with the execution and delivery of this Agreement or the performance by it of any of its obligations hereunder.

9.2 Covenants of CAWD and PBCSD Concerning Construction of Project Expansion and Operation of Project.

Each of CAWD and PBCSD hereby covenant and agree with each of PBC and MPWMD as follows:

(a) CAWD and PBCSD shall ensure that the Project Expansion is constructed in compliance with (i) all applicable provisions of federal, state and local laws and regulations, including, without limitation, building codes, and insurance policies in place with respect thereto, (ii) the terms and conditions of all construction contracts and subcontracts therefor, (iii) all performance bonds obtained in connection therewith, and (iv) the construction schedule therefor.

(b) CAWD and PBCSD have implemented and shall continue to implement and maintain a safety and loss prevention program for the Project. CAWD and PBCSD shall ensure that (i) all reasonable precautions for the safety of CAWD and PBCSD employees, independent contractors, and visitors in connection with the Project have been taken, and (ii) the Project is operated and maintained in compliance with (A) all applicable provisions of federal, state and local laws and regulations, including, without limitation, building codes, and (B) insurance policies in place with respect to the Project.

(c) In accordance with each Fiscal Year's approved budget, CAWD and PBCSD shall procure inventory and maintain replacement spare parts, specialized tools, consumables and working supplies reasonably necessary to maximize the continuous operation of the Project.

(d) CAWD and PBCSD shall, to the maximum extent achievable under the law, as required, and subject to the terms of this Agreement, including, without limitation, Sections 3.2 and 5.3, use reasonable efforts to maintain the Project in full operation, producing Recycled Water at its full rated capacity, 24 hours per day, seven days per week, throughout the entire year, including legal and other holidays, as necessary to meet all of the irrigation requirements of the Recycled Water Irrigation Areas. Neither CAWD nor PBCSD shall be required, however, to operate their facilities in a manner that would cause material damage to such facilities.

9.3 Covenants of CAWD and PBCSD Concerning Personnel. CAWD and PBCSD hereby further covenant and agree with the other parties as follows:

(a) CAWD and PBCSD shall provide and employ, as applicable, qualified plant management, operations and maintenance personnel for the Project in sufficient numbers, and at such times, as is necessary to accomplish CAWD and PBCSD's respective obligations hereunder and to comply with statutory and regulatory practices and requirements for the operation and maintenance of the Project.

(b) All such personnel shall meet those qualifications required of their positions, as determined by CAWD and PBCSD to meet statutory and regulatory requirements, and to provide the level of skill necessary to meet their obligations hereunder.

9.4 Effect of Agreement and Project on Secondary Facilities. Nothing in this Agreement shall permit any party to this Agreement, or any other person or entity, other than CAWD, pursuant to such agreements as exist between CAWD and PBCSD, to operate or manage the operation of the Secondary Facilities.

10. Term. This Agreement shall commence and become effective upon its execution and delivery by each party and shall continue and remain in effect until terminated by mutual agreement of all of the parties, provided that in no event shall this Agreement terminate prior to the date the Certificates of Participation are fully paid, and in no event may this Agreement be terminated by any party because of the breach of any other party.

11. Remedies for Breach.

11.1 Damages. This Agreement cannot be terminated by any party because of the breach of any other party. In the event any party to this Agreement breaches, in any material respect, any of its representations and warranties or covenants in this Agreement, either of the other parties hereto shall have the right to bring an action against the breaching party for damages arising out of, or resulting from, such breach, 30 days or more after the breaching party receives written notice of the other party's intention to bring such action, specifying such breach in reasonable detail, if such breach is not cured by the breaching party during such 30-day period. Notwithstanding the foregoing, if a cure of any such breach by any party hereto cannot practicably be effected within such 30-day period, and the breaching party, upon receiving such written notice, promptly initiates efforts to cure such failure and diligently pursues such cure, the other party shall not have the right to exercise its rights under this Section 11.1 unless such cure is not effected within 90 days after the breaching party receives such written notice. Any such damages shall be determined in an action brought and prosecuted in accordance with Section 13.18(b).

11.2 Equitable Remedies. Notwithstanding any implication in Section 11.1 above to the contrary, each of the parties hereby acknowledges that the other parties may have no adequate remedy at law if such party breaches any of its obligations hereunder, and, accordingly, each of the parties shall have the right, in addition to any other rights it may have hereunder or at law, to obtain, in any court of competent jurisdiction, injunctive relief to restrain a breach or threatened breach hereof by any other party or otherwise to specifically enforce any of the provisions hereof involved in any such breach or threatened breach, provided, however, that this Agreement cannot be terminated by any party because of the breach of any other party. Any such relief shall be determined in an action brought and prosecuted in accordance with Section 13.18(b).

11.3 Limitation on MPWMD's Liability. The parties acknowledge that MPWMD is not responsible for the quantity and quality of Recycled Water delivered by the Project to the Recycled Irrigation Areas, or for the design, construction, management, operation, maintenance, repair, replacement, renovation, or improvement of the Project. In entering into

this Agreement, MPWMD is dependant on the ability of CAWD and PBCSD to produce, deliver, and supply Recycled Water as provided in this Agreement. The parties shall not seek any redress against MPWMD for the failure of the Project to deliver the quantity or quality of water meeting the standards of Recycled Water, except and to the extent such failure is caused a breach by MPWMD of this Agreement or any of the Related Agreements to which MPWMD is a party. Further, MPWMD shall have no liability for (i) decisions made with respect to the existence of Surplus Recycled Water or the periods for which Surplus Water may be sold, or (ii) any decisions of the Management Committee, including without limitation those made with respect to Operation and Maintenance Expenses or Capital Costs of the Project. No director, officer, or employee of MPWMD, CAWD, or PBCSD shall be individually or personally liable for any obligations of MPWMD, CAWD, or PBCSD, respectively, contained or referred to herein.

11.4 Rights of IRWUG.

(a) IRWUG, and the Owners of the Recycled Water Irrigation Areas, shall each be intended third party beneficiaries of the following sections of this Agreement as they relate specifically to the obligations of CAWD and/or PBCSD, but only until such time as they become parties to this Agreement pursuant to Section 11.4(b) below: 3.2, 5.2, 5.3, 5.4, 6.1, 6.2, 9.2, 9.3, 10, 11.1, 11.2, 11.3, and 11.4.

(b) After the Certificates of Participation are fully paid, the Owners of the Recycled Water Irrigation Areas that together comprise IRWUG shall each have the right and the obligation to execute this Agreement as a condition precedent to IRWUG's obtaining voting rights on the Management Committee, whereupon IRWUG and each such Owner shall be entitled to participate as fully in this Agreement as if it was an original signatory, provided, however, that IRWUG shall continue to have only one member with one vote on the Management Committee, such member to be appointed by the members of IRWUG as they shall determine.

12. Indemnification.

12.1 Protection of Parties. Subject to the limitations in this Section 12, each party shall defend and indemnify, and hold harmless, each of the other parties from and against any and all damages, liabilities, losses, and costs or expenses suffered or incurred by such other party, arising out of, or resulting from, any breach of its representations, warranties or agreements set forth in this Agreement.

12.2 Procedure For Indemnification. In the event that any legal proceedings are instituted, or any claim or demand is asserted, by any third party which may give rise to any damage, liability, loss, or cost or expense in respect of which any party has indemnified any of the other parties under Section 12.1 hereof, the indemnified party shall give the indemnifying party written notice of the institution of such proceedings, or the assertion of such claim or demand, promptly after the indemnified party first becomes aware thereof, and in accordance with Section 13.3 below; provided, however, any failure by the indemnified party to give such notice on such prompt basis shall not affect any of its rights to indemnification hereunder unless such failure materially and adversely affects the ability of the indemnifying party to defend such proceeding. The indemnifying party shall have the right, at its option and at its own expense, to

utilize counsel of its choice in connection with such proceeding, claim or demand, subject to the approval of the indemnified party, which approval shall not be unreasonably withheld or delayed, and to defend against, negotiate with respect to, settle or otherwise deal with such proceeding, claim or demand; provided, however, that no settlement of such proceeding, claim or demand shall be made without the prior written consent of the indemnified party, which consent shall not be unreasonably withheld or delayed, unless, pursuant to the terms and conditions of such settlement, the indemnified party shall be released from any liability or other exposure with respect to such proceeding, claim or demand; and provided, further, that the indemnified party may participate in any such proceeding with counsel of its choice at its own expense, in the event, or to the extent, the indemnifying party elects not to, or fails to, defend such proceeding, claim or demand and the indemnified party defends against, settles or otherwise deals with any such proceeding, claim or demand, any settlement thereof may be made without the consent of the indemnifying party if it is given written notice of the material terms and conditions of such settlement at least ten days prior to a binding agreement with respect to such settlement being reached. Each of the parties agrees to cooperate fully with each other in connection with the defense, negotiation or settlement of any such proceeding, claim or demand.

12.3 Payment of Indemnified Claims. Upon a final judgment or award with respect to any proceeding of the nature described in Section 12.2 hereof having been rendered by a court, arbitration board or administrative agency of competent jurisdiction and the expiration of the time in which an appeal therefrom may be made (a "Final Judgment"), or a settlement of such proceeding, claim or demand having been consummated, or the parties having arrived at a mutually binding agreement with respect to each separate matter indemnified hereunder, the indemnifying party shall forthwith pay all of the sums so owing to the indemnified party. In the event any such proceeding is brought, in which allegations of fault are made against both of the parties, the extent of any indemnification shall be determined in accordance with the findings of the court as to the relative contribution by each of the parties to the damage suffered by the party seeking indemnity with respect to such proceeding.

12.4 Securities Law Indemnification. Subject to the limitations in this Section 12, each party shall defend and indemnify, and hold harmless, each of the other parties from and against any and all expenses suffered or incurred by such other party as a result of any written information provided by the indemnifying party for inclusion in any of the COP Documents, or any COP Document prepared by the indemnifying party (except with respect to the portion thereof prepared based on written information provided by other than the indemnifying party for inclusion in such COP Document), containing any untrue statement of a material fact or omitting to state a material fact necessary to make such written information or COP Document not misleading.

13. Miscellaneous.

13.1 Further Assurances. Each of the parties agrees to execute, and deliver to the other parties, such documents and instruments, and take such actions, as may reasonably be required to effectuate the terms and conditions of this Agreement; provided, however, such covenant shall not have the effect of increasing the obligations of any party pursuant to this

Agreement or require any representations and warranties by any party in addition to those of such party set forth herein.

13.2 Relationship of the Parties. Nothing in this Agreement shall create a joint venture, partnership or principal-agent relationship between, or among any of the parties.

13.3 Notices. Whenever any matter herein provides for notice or other communication to be given to any of the parties, such notice shall be in writing and given to the persons, and at the addresses, designated below for such party, or to such other person or other address as such party shall provide, in writing, to the other party. All notices may be given by personal delivery, by postage prepaid, first-class United States mail, or by overnight delivery service. Each such notice shall be deemed to be effective (a) for personal delivery or overnight delivery service, upon receipt, or (b) for first-class mail, 5 days after being mailed.

If to PBC:

Pebble Beach Company
4005 Sunridge Road
P.O. Box 1767
Pebble Beach, CA 93953
Attn: General Counsel

If to MPWMD:

Monterey Peninsula Water
Management District
5 Harris Court, Bldg. G
Monterey, CA 93940
P.O. Box 85
Monterey, CA 93942-0085
Attn: General Manager

and

Fenton & Keller
2801 Monterey Salinas Highway
P.O. Box 791
Monterey, CA 93940
Attn: Thomas H. Jamison

and

David C. Laredo
De Lay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950

If to PBCSD:

Pebble Beach Community
Services District
3101 Forest Lake Road
Pebble Beach, California 93953
Attn: General Manager

and

Wellington Law Offices
Attn: Robert R. Wellington
857 Cass Street, Suite D
Monterey, California 93940

If to CAWD:

Carmel Area Wastewater
District
3945 Rio Road
P.O. Box 221428
Carmel, California 93922
Attn: General Manager

and

Wellington Law Offices
Attn: Robert R. Wellington
857 Cass Street, Suite D
Monterey, California 93940

13.4 Exhibits. All exhibits referred to in this Agreement and attached hereto are hereby incorporated herein and made a part of this Agreement, for all purposes, by this reference.

13.5 Assignment. This Agreement shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties. Notwithstanding the foregoing, (a) MPWMD, PBCSD and CAWD may each assign any of their rights or obligations hereunder only to any successor agency, and (b) PBC and any successor assignee may at any time assign any of its rights hereunder and/or may assign any of its obligations hereunder to any person or entity which assumes such obligations in writing. In the event any permitted assignment occurs, the assignor shall thereafter have no further responsibility with respect to such obligations. Except as expressly stated to the contrary herein, nothing herein shall be construed to give any rights or benefits to anyone other than the parties to this Agreement, or to their respective successors and permitted assigns.

13.6 Cumulative Remedies. Except as specifically provided to the contrary in Section 11.1 hereof, no remedy or election hereunder shall be deemed exclusive, but shall be cumulative with all other remedies at law or in equity.

13.7 Severability. Should any provision of this Agreement be declared invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, then such portion or provision shall be deemed to be severable to the extent invalid or unenforceable, from this Agreement as to such jurisdiction (but, to the extent permitted by law, not elsewhere) and shall not affect the remainder hereof. Notwithstanding the foregoing, (a) such provision of this Agreement shall be interpreted by the parties and by any such court, to the extent possible, in such a manner that such provision shall be deemed to be valid and enforceable, and (b) such court shall have the right to make such modifications to any provision of this Agreement as do not materially affect the rights or obligations under this Agreement of the parties hereto and thereto and as may be necessary in order for such provision to be valid and enforceable.

13.8 Waiver. No waiver of any right or obligation of any of the parties shall be effective unless in a 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.

13.9 Headings and Titles. The designation of a title, or a caption or a heading, for each section of this Agreement is for the purpose of convenience only and shall not be used to limit or construe the contents of this Agreement.

13.10 Presumptions. Because all of the parties have participated in preparing this Agreement, there shall be no presumption against any party on the ground that such party was responsible for preparing this Agreement or any part hereof.

13.11 Amendment or Modification. This Agreement may be amended, altered, or modified only by a writing, specifying such amendment, alteration or modification, executed by all of the parties hereto.

13.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

13.13 Entire Agreement. This Agreement together with the Related Agreements constitute the entire agreement between the parties regarding the subject matter hereof and thereof, and supersede all prior or contemporaneous negotiations, understandings or agreements of the parties, whether written or oral, with respect to such subject matter, including, without limitation, any memoranda of understanding to which the parties or MPWMD, CAWD and PBCSD are parties.

13.14 Limitation on Liability of Partners. No recourse shall be had against any partner of PBC or any partner or subpartner of a partner of PBC, or any legal representative, heir, successor or assign of any thereof, on account of any covenant, agreement or indemnification contained herein or in any of the Related Agreements, or for any claim arising out of or with respect to this Agreement or any of the Related Agreements, or the performance hereof or thereof. Recourse therefor shall be limited solely to PBC and the assets of PBC (a deficit capital account of any partner of PBC or other funding obligation of a partner under the partnership agreement of PBC shall not be deemed an asset or property of PBC), and no action or proceeding on account of any such covenant, agreement or indemnification shall be sought, obtained or enforced against any partner of PBC or any partner or subpartner of PBC, or heir, successor or assign, or against their respective individuals assets.

13.15 No Third-party Beneficiary Rights. CAWD and PBCSD each hereby acknowledge that all of its rights with respect to the Project are set forth in this Agreement, the Related Agreements to which it is a party, and the Management Agreement, and it is not a third-party beneficiary of the Fiscal Sponsorship Agreement or the Supplemental Financing Agreement. Nothing in the preceding sentence shall in any way affect the third party beneficiary

rights created in the Owners of Recycled Water Irrigation Areas as expressly set forth in this Agreement.

13.16 Security Interest. MPWMD hereby grants to CAWD and PBCSD a security interest in all of its right, title and interest to the payments which the Owners of the Recycled Water Irrigation Areas will be obligated to make to it pursuant to the Recycled Water Sales Agreement, and all proceeds thereof, (the "Collateral") as security for the performance by MPWMD of its obligations to make payments to CAWD and PBCSD pursuant to Section 5.5(a) hereof. CAWD and PBCSD shall have all of the rights and remedies of a secured party under the California Commercial Code with respect to the Collateral.

13.17 Expanded or Additional Facilities. Notwithstanding any implication to the contrary herein, subject to the specific obligations of CAWD and PBCSD in this Agreement, including, without limitation, Sections 3.2, 5.3, and 9.2, nothing in this Agreement shall prevent CAWD or PBCSD from expanding the capacity of the Project, or constructing and operating additional wastewater facilities, for the purpose of producing Recycled Water in excess of the capacity, from time to time, of the Project to produce Recycled Water, so long as such expansion or addition does not (a) adversely affect the operation or then existing capacity of the Project or the rights of the holders of any then outstanding Certificates of Participation with respect to the Project, (b) increase the Capital Costs or Operation and Maintenance Expenses of the Project or any of PBC's obligations with respect to the Project or the Certificates of Participation, (c) diminish the Operating Revenues of the Project, or (d) diminish, or otherwise affect, the obligations of CAWD or PBCSD under this Agreement or the ability of CAWD or PBCSD to perform such obligations. In the event CAWD and PBCSD proposes any such expansion or additional facilities, the parties hereto shall amend this Agreement, or enter into such other agreements, as may be necessary to properly and fully evidence the rights and obligations of the parties hereto and the rights of the holders of such Certificates of Participation with respect to the construction and operation of the Project and such expansion or additional facilities, including, without limitation, with respect to the accounting for, and an allocation between the Project and such expansion or additional facilities of, the capital costs and operating expenses of each that equitably assigns such costs and expenses between the Project and such expansion or additional facilities. Such amendment or other agreement(s) shall include, at a minimum, a provision that all water produced in excess of the capacity of the Project shall be subject to the sole control of CAWD and PBCSD with regard to sale and use of proceeds.

13.18 Governing Law and Dispute Resolution.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(b) The parties shall make good faith efforts to resolve all claims and disputes related to this Agreement at the lowest possible cost. Unless the parties agree upon an alternative forum of dispute resolution, any litigation concerning claims and disputes related to this Agreement shall be filed in and timely prosecuted to conclusion in the Superior Court in and for Monterey County, and each party hereby waives its right to move to change venue.

IN WITNESS WHEREOF, this Amended and Restated Construction and Operation Agreement has been executed by the officers of each of the parties effective the date first shown above.

Pebble Beach Company

By: Mark Stowell
Its: Executive VP & General Counsel

Monterey Peninsula Water Management District

By: [Signature]
Its: General Manager

Pebble Beach Community Services District

By: _____
Its: General Manager

Carmel Area Wastewater District

By: _____
Its: General Manager

IN WITNESS WHEREOF, this Amended and Restated Construction and Operation Agreement has been executed by the officers of each of the parties effective the date first shown above.

Pebble Beach Company

Monterey Peninsula Water Management District

By: _____

By: *L.A. Buzg*

Its: _____

Its: General Manager

Pebble Beach Community Services District

Carmel Area Wastewater District

By: *D. Hobbie*

By: _____

Its: ~~General Manager~~ *Board President*

Its: General Manager

By: *Renee Andrews*

Its: *General Manager / Secretary*

IN WITNESS WHEREOF, this Amended and Restated Construction and Operation Agreement has been executed by the officers of each of the parties effective the date first shown above.

Pebble Beach Company

Monterey Peninsula Water Management District

By: _____

By:  _____

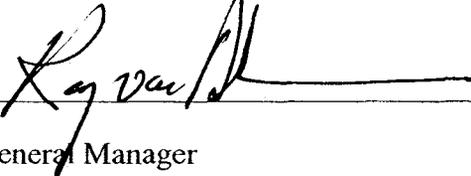
Its: _____

Its: General Manager

Pebble Beach Community Services District

Carmel Area Wastewater District

By: _____

By:  _____

Its: General Manager

Its: General Manager

EXHIBIT "A"
DESCRIPTION OF ORIGINAL PROJECT

The Original Project consists of the following components:

1. The Tertiary Facility

(a) The tertiary treatment plant located at the CAWD wastewater treatment plant immediately south of the Carmel River and west of California State Highway One, capable of producing 1.8 million gallons per day (MGD) of tertiary treated recycled water. The existing tertiary treatment facility diverts and treats secondary level effluent from the Secondary Facilities for reuse as irrigation water using a treatment process consisting of: secondary effluent flow equalization; influent pumping; polymer and alum addition with rapid mixing for coagulation; low energy mixing for flocculation; filtration; chlorination; dechlorination; and pumping.

(b) The improvements within the Secondary Facilities to assure a consistent supply of secondary effluent from the Secondary Facilities diverted to the tertiary treatment plant. These improvements include a secondary clarifier flow split control and replacement of the existing mechanical aeration diffusers.

2. The Distribution System

(a) The recycled water distribution system consisting of approximately 38,000 feet of distribution pipeline and a steel water storage tank (described in item (b) below) in Del Monte Forest beginning at the tertiary treatment plant and terminating at the southern portion of the Spanish Bay Golf Course and Resort in Del Monte Forest. The pipeline is located primarily within existing roads and road rights-of-way extending through the City of Carmel-by-the-Sea and unincorporated areas of Monterey County, including areas of Del Monte Forest. The distribution system also includes a connection adjacent to the storage tank (described in item (b) below) for furnishing an emergency potable water supply in the event of failure of the tertiary treatment plant or distribution pump station.

(b) The 2.5 million gallon recycled water storage tank located adjacent to the Poppy Hills Golf Course maintenance yard north of Viscaino Road in Del Monte Forest.

EXHIBIT "B"
DESCRIPTION OF PROJECT EXPANSION

The Project Expansion consists of the following components:

1. The Advanced Treatment Component

The Advanced Treatment Component consists of the addition of microfiltration and reverse osmosis facilities ("MF/RO Facilities") to the Tertiary Facility designed to treat and deliver Recycled Water meeting the quality requirements set forth in attached Exhibit "E." This work will include all related mechanical, electrical, and structural work necessary to integrate the MF/RO facilities into the Tertiary Facility and Secondary Facilities.

2. Forest Lake Reservoir Component

The Forest Lake Reservoir Component consists of the retrofitting of the existing Forest Lake Reservoir owned by PBCSD to hold up to 420 acre feet of Recycled Water in a manner that meets the requirements of the Division of Safety of Dams, California Department of Water Resources. Additionally, this Component includes the construction of a filtration, pH control, and pumping facility and necessary distribution lines designed to treat and deliver Recycled Water meeting the quality requirements set forth in attached Exhibit "E."

EXHIBIT "C"
RECYCLED WATER IRRIGATION AREAS

<u>Golf Courses</u>	<u>Percentage Share</u>
Monterey Peninsula Country Club Dunes Course	11.75%
Monterey Peninsula Country Club Shore Course	11.75%
Cypress Point Golf Course	11.75%
Spyglass Hill Golf Course	11.75%
Pebble Beach Golf Course	11.75%
Spanish Bay Golf Course	11.75%
Pebble Beach Forest Course (new)	11.75%
Poppy Hills Golf Course	11.75%
<u>Other Recycled Water Irrigation Areas</u>	
Peter Hay Par 3 Golf Course	1.5%
Pebble Beach Range	1.0%
Equestrian Center/Field (existing or new)	1.0%
Stevenson School athletic fields	1.5%
Spanish Bay Range (new)	1.0%
TOTALS	100%

EXHIBIT "D"
DEL MONTE FOREST

All real property within the boundaries of the unincorporated portions of Monterey County known as the Del Monte Forest and shown on the attached map.

D-1

EXHIBIT D DEL MONTE FOREST

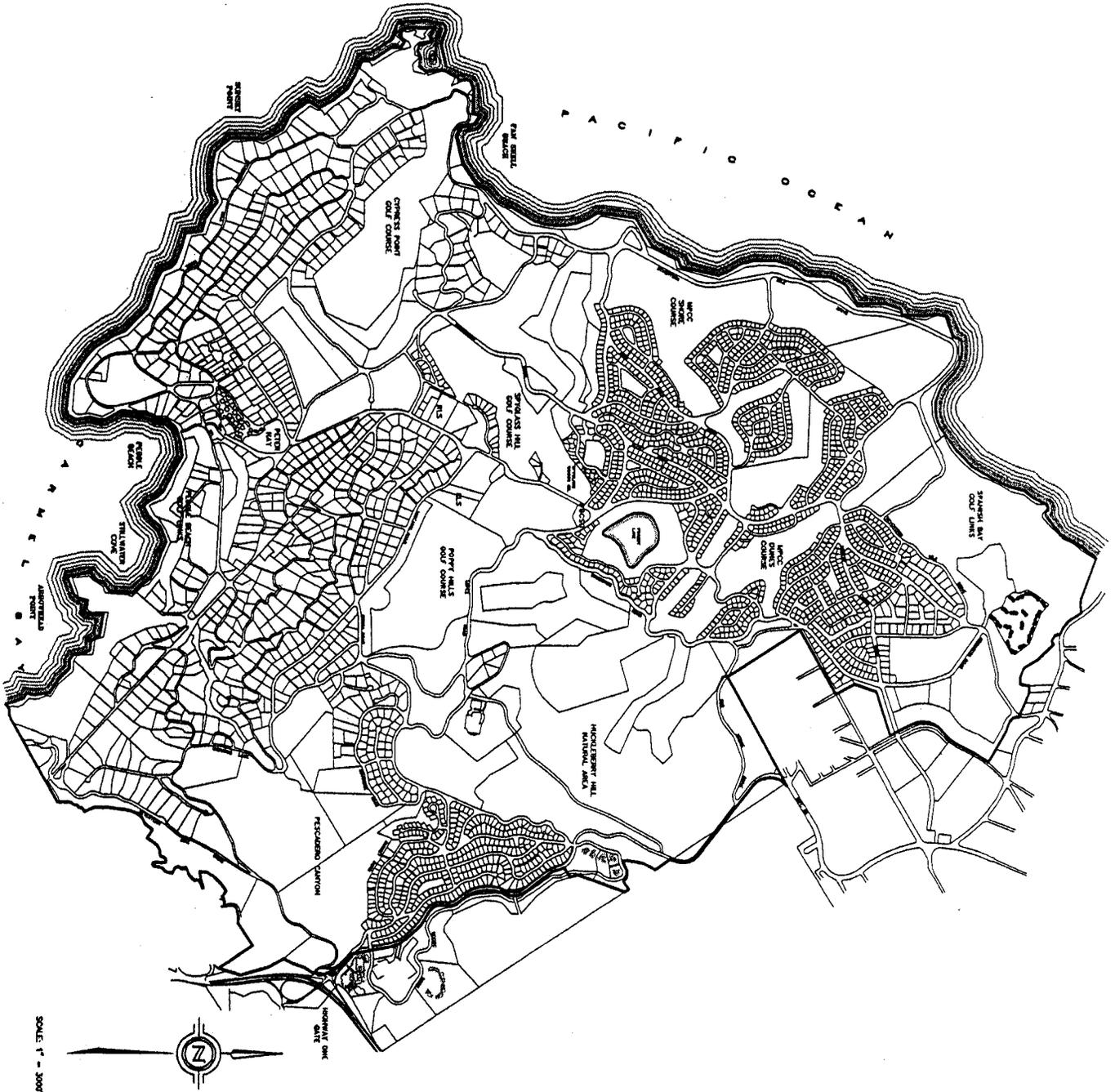


EXHIBIT "E"
WATER QUALITY STANDARDS

The Recycled Water produced by the Project shall meet all applicable regulatory and health standards, including CAWD's NPDES permit requirements, and the following additional quality criteria:

Sodium Adsorption Ratio:	3.00 or less
Adjusted Sodium Adsorption Ratio:	4.00 or less
Sodium Level:	55 mg/L or less, 95% of the time
Electrical Conductivity:	350-450 micro-mhos/cm
pH:	6.3-7.3

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