

**AGREEMENT BETWEEN THE CITY OF
SALINAS AND DEEPWATER DESAL LLC WITH REGARD TO A WHOLESALE POWER
PURCHASE AGREEMENT**

This Agreement with regard to a Wholesale Power Purchase Agreement is entered into this ___ day of _____ 2019, by and between the **City of Salinas**, a California charter city and municipal corporation hereinafter referred to as "the City" and **DeepWater Desal, LLC**, a California limited liability company hereinafter referred to as "DWD," which may sometimes collectively be referred to herein as "the Parties" or individually as "a Party".

RECITALS

WHEREAS, DWD is proposing to build the Monterey Bay Regional Water Project (the "MBRWP") including, inter alia, a desalination facility at Moss Landing to supply potable water to water agencies and water utilities operating in Monterey and Santa Cruz counties and datacenters; and

WHEREAS, in the event DWD or some other entity or organization builds a desalination facility ("Desal Facility") and is able to produce potable drinking water, or purer water of the quality needed to attract high technology industry to the City, such new source of water may become available to the City for conveyance to and use by water customers, including those residing within the City of Salinas; and

WHEREAS, on December 18, 2012, the City and DWD entered into an Agreement to Explore the Purchase of Water and a Wholesale Power Purchase Agreement and pursuant to said agreement have explored the establishment of a wholesale power purchase agreement; and

WHEREAS, on February 26, 2013, the City, DWD, and CWS first entered into an Agreement With Regard to a Wholesale Power Purchase Agreement which expired on February 26, 2018; and

WHEREAS, the City and DWD desire to restate their intent to establish a wholesale power purchase agreement and do so with their approval of this agreement.

NOW, THEREFORE, the City and DWD agree as follows:

TERMS

1. **Purpose.** It is the intent and the purpose of this Agreement (Agreement) to set forth the intention of the Parties to establish a wholesale power purchase agreement with a wholesale power generator from which the City would purchase power and would resell such power to DWD, its affiliates and selected other coastal dependent businesses operating within

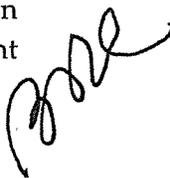


Monterey County proximate to the Desal Facility but outside the City, hereinafter collectively referred to as MBRWP Power Customers”.

2. Further Considerations as to Power Purchase. Subject to the preconditions of this Agreement, including without limitation thereto, sections 2, 3 and 4 hereof, the Parties intend to establish a wholesale power purchase agreement as follows:

- City and DWD desire to cooperate in City’s acquisition of electric power, transmission services, ancillary services and distribution services or facilities suitable to the MBRWP and MBRWP Power Customers, hereinafter referred to as MBRWP Power.
- City would purchase electric power and would resell the MBRWP Power to the MBRWP for further distribution and resale to MBRWP Power Customers.
- The MBRWP would purchase MBRWP Power from City.
- The MBRWP would pay City an amount equal to all of the City’s costs of procuring and delivering MBRWP Power plus a reasonable fee.
- Approvals of any power purchase agreement by any and all appropriate federal, state, and local authorities to the extent required by law, shall be obtained.
- All provisions shall comply with all laws and regulations applicable to City and/or DWD.
- The MBRWP would include guarantees as to the quantities purchased, the price paid, and the term.
- The City will be protected from cheaper or subsidized competition.

3. Limitation of Effect of Agreement. This Agreement shall not obligate the City or DWD to enter into any particular project agreement or power purchase agreement, or to enter into a project agreement or a power purchase agreement on any particular terms or conditions. By executing this Agreement, neither the City nor DWD are committing themselves to or agreeing to participate in aspect of the MBRWP or to purchase or to supply any power to any MBRWP Power Customer. Execution of this Agreement by the City and by DWD is merely an agreement to collaboratively consider in good faith the objectives described in this Agreement and to conduct a period of further review and consideration of the objectives described in this Agreement, reserving for subsequent action the final discretion and approval regarding any project agreement or approval and all proceedings and decisions in connection therewith. Any agreement or approval resulting from negotiations pursuant to this Agreement

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shall become effective only if and after such agreement has been considered and approved by the City and by DWD in their sole discretion.

It is also the intent of the Parties that this Agreement not constitute a "project" for purposes of the California Environmental Quality Act ("CEQA"), and that any future actions or agreements between the Parties as may be described herein be subject to all requirements of law, including CEQA.

4. **Term.** This Agreement shall commence as of the date first written above and shall continue in full force and effect for a period of five (5) years unless terminated earlier by either Party or by the mutual determination of the Parties or unless extended by mutual written agreement of the Parties. Either Party may terminate this Agreement for any reason or for no reason whatsoever and without further obligation to the other Parties with respect to the subject matter of this Agreement by providing written notice of such termination to the other Parties. Such termination shall take effect immediately upon the date of termination set forth in such notice. This Agreement may only be renewed upon the mutual written consent of the Parties.

5. **Defense and Indemnification.** DWD shall defend and indemnify the City and its officers, employees and agents from and against any and all claims, liabilities, damages or costs of any type, including attorney's fees and court costs, arising out of the execution of this Agreement, but not arising out of the independent actions of the City implementing this Agreement (such as the fees paid to consultants hired by the City to assist the City in its analysis of the objectives of this Agreement or the staff costs incurred by the City with respect to the objectives of this Agreement).

6. **Amendments.** This Agreement may only be amended by the mutual written agreement of the Parties.

7. **Waivers.** No waiver of any provision of this Agreement will be valid unless it is in writing and signed by the Parties. Waiver by any Party at any time of any breach of this Agreement cannot be deemed a waiver of or consent to a breach of the same or any other provision of this Agreement. If a Party's action requires the consent or approval of the other Party, the consent or the approval on any one occasion cannot be deemed a consent or approval of that action on any later occasion or consent or approval of any other action.

8. **Governing Law; Jurisdiction.** This Agreement will be governed by the laws of the State of California and jurisdiction of any disputes hereunder shall be had in Monterey County, or in the appropriate federal court or state or federal agency with jurisdiction over the matter. In the event of any litigation brought with respect to this Agreement, the prevailing party in such action shall be entitled to attorney fees and costs as may be awarded by the court. The City's attorney fees, if awarded, shall be calculated at the market rate.

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9. **Notices.** Any notices or other communications to be sent by one Party to the other under this Agreement shall be in writing and shall be given by personal delivery to the persons designated below, with copies delivered as indicated, or by U.S. Mail, return receipt requested, with copies mailed as indicated:

If to City:

City Manager, City of Salinas
200 Lincoln Avenue
Salinas, California 93901

With a copy to:

City Attorney, City of Salinas
200 Lincoln Avenue
Salinas, California 93901

If to DWD:

DeepWater Desal LLC
Brent R. Constantz, Managing Member
7532 Sandholt Road, Suite 6
Moss Landing, California 95039

IN WITNESS WHEREOF, the undersigned as authorized representatives of the City of Salinas and of Deep Water Desal LLC have entered into this Agreement as of the date first written above.

CITY OF SALINAS

Ray E. Corpuz Jr., City Manager

APPROVED AS TO FORM:

Christopher A Callihan, City Attorney

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ATTEST:

Patricia M. Barajas, City Clerk

DeepWater Desal LLC

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Brent R. Constantz, Managing Member and Chief Executive Officer

