

SHORT-TERM POND 3 INDUSTRIAL WASTEWATER EFFLUENT UTILIZATION AGREEMENT

This **SHORT-TERM POND 3 INDUSTRIAL WASTEWATER EFFLUENT UTILIZATION AGREEMENT** (hereinafter referred to as “Short-term Utilization Agreement”) is made this ____ day of **August 2021**, by and among Monterey One Water (hereinafter referred to as “M1W”), a California Joint Powers Authority; the Monterey County Water Resources Agency (hereinafter referred to as “MCWRA”), a special district formed per California Water Code App. § 52-1, *et seq*; and the City of Salinas (hereinafter referred to as “City”), a California charter city and municipal corporation, sometimes collectively referred to herein as “the Parties.”

RECITALS

WHEREAS, the City owns and operates an industrial wastewater collection and conveyance system (“IWCCS”) that receives and conveys industrial wastewater (“IWW”) from approximately 25 processing and related businesses operating in the southeast area of the City. The City transports the IWW to its Industrial Wastewater Treatment Facility (“IWTF”) located at South Davis Road south of the City and immediately north of the Salinas River, where the City treats it by aeration and disposes of the effluent by evaporation and percolation in ponds, including in Pond 3. M1W also collects stormwater for conveyance to the IWTF;

WHEREAS, Monterey One Water (“M1W”) owns and operates the Regional Treatment Plant (“RTP”) at which M1W expects to treat approximately 17 and as much as 20 million gallons per day of wastewater at the RTP. For over 20 years, M1W, in partnership with MCWRA, has also maintained and operated the Monterey County Water Recycling Projects, which include the Salinas Valley Reclamation Plant (“SVRP”), owned by M1W, and the Castroville Seawater Intrusion Project (“CSIP”) and the Salinas River Diversion Facility (“SRDF”) owned by MCWRA. These facilities provide recycled water for approximately 12,000 acres of agricultural land in Northern Monterey County, providing over 85 billion gallons of recycled water since 1998 by using wastewater from throughout northern Monterey County. MCWRA and M1W’s partnership is memorialized in the November 3, 2015 Amended and Restated Water Recycling Agreement between the two entities (“2015 ARWRA”), as amended through June 30, 2022;

WHEREAS, M1W can divert IWW to the M1W municipal wastewater collection system (“M1W system”) directly via a shunt located at Treatment Plant 1 (“TP1”) and divert treated IWW effluent to the M1W system via the Pond 3 pump station located at the northeast portion of the IWTF;

WHEREAS, MCWRA owns and operates the Nacimiento and San Antonio reservoirs which are tributary to the Salinas River. The Conservation Program recharges the groundwater basin and delivers water from the reservoirs to the SRDF for use in the CSIP system;

WHEREAS, in early 2020, the Pure Water Monterey Groundwater Replenishment Project (“PWM”) including its Advanced Water Purification Facility (“AWPF”) began to

operate, in partnership with the Monterey Peninsula Water Management District and Marina Coast Water District. The PWM Project's Final Environmental Impact Report was certified by M1W on October 8, 2015, and includes diverting new source water to augment RTP influent wastewater volumes as needed, including Salinas IWW. M1W's ability to recycle wastewater for beneficial reuse is achieved by using its SVRP and AWPf, and associated conveyance facilities;

WHEREAS, as water supplies in Monterey County become less reliable, including impacts from climate change, drought and unsustainable groundwater use resulting in seawater intrusion into coastal aquifers, the Parties are committed to providing cooperative water solutions for their citizens, businesses and ecosystems;

WHEREAS, due to these water resource challenges, the Parties are continuing to seek new water sources for recycling for augmenting agricultural irrigation supply for CSIP through the production of additional tertiary-treated recycled water from the SVRP to reduce use of groundwater in the region and for replacing and augmenting potable water supplies in northern Monterey County;

WHEREAS, as of August 1, 2021, CSIP utilized 15,549 acre-feet of water, of which 6,609 acre-feet was supplied from the SVRP, 4,775 acre-feet was obtained from the SRDF, and 4,165 acre-feet was obtained from groundwater wells;

WHEREAS, due to an extended drought period, resulting in diminished water supplies available in reservoir storage, MCWRA curtailed water deliveries to the SRDF, and M1W stopped utilizing SRDF water as of August 1, 2021;

WHEREAS, additional water is needed to meet CSIP's current peak irrigation demand for water between August and October 2021;

WHEREAS, the City has rights and access to approximately 3,000 acre-feet/year of industrial wastewater that it receives and treats at its IWTF;

WHEREAS, the Parties desire to enter into this Short-Term Utilization Agreement for the City to supply additional industrial wastewater from Pond 3 ("Pond 3") to MCWRA and M1W for use in CSIP to curtail groundwater pumping and help slow seawater intrusion;

WHEREAS, the Parties have agreed that the incremental cost of treatment of the City's industrial wastewater during the term of this Short-term Utilization Agreement will be \$426/acre-foot plus M1W's actual costs for treatment, operations, maintenance, and capital reserve for the Pond 3 pump station as listed in the table below;

Amount diverted (AF)	Cost (\$ per AF)
500	\$345
400	\$371
300	\$415
200	\$502

WHEREAS, the Parties understand and acknowledge the need to work cooperatively and collaboratively among themselves and with other regional stakeholders and interested parties to develop a long-term comprehensive strategy and agreement that makes the best use of all the water resources in Monterey County to address the multiple water needs of Monterey County; and

WHEREAS, the City is willing to negotiate the future use of industrial wastewater from Pond 3 by MCWRA and M1W beyond the term of this Short-term Utilization Agreement, with the understanding that the Parties will work to accomplish the goals set forth in the above recitals in a new and long-term agreement to potentially include the utilization of future IWW flows for CSIP and the PWM projects.

NOW, THEREFORE and in consideration of the foregoing recitals, the Parties hereby agree as follows:

1. **TERM.** The effective date of this Short-term Utilization Agreement shall be the date first written hereinabove (“Effective Date”). This Agreement shall terminate at 12:00 a.m. on November 1, 2021.
2. **CONDITIONS.** The following conditions are applicable to the diversion of IWTF effluent in Pond 3 to the RTP during the term of this Short-term Utilization Agreement:
 - a. Throughout the term of this Short-term Utilization Agreement, the City shall continue to allow M1W to operate its Pond 3 Pump Station to divert the treated industrial wastewater effluent in Pond 3 at the IWTF to M1W’s RTP for treatment and recycling using its RTP and SVRP to supplement existing influent to the RTP.
 - b. Point of transfer shall be the M1W’s Pond 3 pump station that collects and conveys effluent from the City’s IWTF.
 - c. Real-time flows and water quality will be monitored by M1W SCADA and reviewed by M1W Operations Department. Flow reports will be submitted to MCWRA on a daily basis.
 - d. Contract source control monitoring of the processing facilities will continue as contracted by City.
 - e. For CSIP, MCWRA shall pay all incremental treatment costs associated with the City, plus M1W’s actual costs for treatment, operations, maintenance, and capital

reserve for the Pond 3 pump station through the payment terms in Section VII of the ARWRA.

3. The City shall notify M1W immediately should the City become aware of any noncompliant wastewater discharge from any of the industrial facilities. M1W retains the authority to cease diverting effluent from Pond 3 IWTF based on water quality of other conditions found by M1W to constitute a potential adverse health, safety, or environmental condition to the RTP, SVRP, and AWPF. M1W will then notify the City and MCWRA within 24 hours of a diversion cessation.
4. Miscellaneous:
 - a. In entering into this Short-term Utilization Agreement, the City, MCWRA, and M1W each represent that it has read all of the terms of this Short-term Utilization Agreement and the terms of this Short-term Utilization Agreement are fully understood and voluntarily accepted by each.
 - b. The Parties acknowledge that each Party has reviewed this Short-term Utilization Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Short-term Utilization Agreement.
 - c. This Short-term Utilization Agreement sets forth the entire understanding of the Parties in connection with the subject matter herein. None of the Parties have made any statement or inducement for the other to enter into this Agreement except as is expressly set forth in this Short-term Utilization Agreement. It is expressly understood and agreed that this Short-term Utilization Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by writing duly executed by authorized representatives of the Parties hereto. The Parties agree that they will make no claim at any time or place that this Short-term Utilization Agreement has been orally altered or modified or otherwise changed by oral communication or any kind or character.
 - d. This Short-term Utilization Agreement shall be governed by the laws of the State of California. Venue shall be in the County of Monterey.
 - e. In the event any portion of this Short-term Utilization Agreement is deemed to not be enforceable, or is in conflict with applicable law, the remainder of this Short-term Utilization Agreement shall be enforced and shall remain in full force and effect unless the portion unenforceable is a material consideration to a Party of this Short-term Utilization Agreement.
 - f. All Parties agree to cooperate fully and to execute any and all documents, and to take all additional actions that may be necessary or reasonably appropriate to give full force and effect to the basic terms and intent of this Short-term Utilization Agreement, and which are not inconsistent with its terms.

- g. The individuals whose signatures appear here in below represent, warrant and guarantee that they have the authority to execute this Short-term Utilization Agreement on behalf of those entities on whose behalf they purport to execute this document.
- 5. Indemnification and Hold Harmless. Each Party to this Short-term Utilization Agreement hereby agrees that it shall indemnify, defend, and hold harmless the other parties (including the other parties, respective officers, agents, and employees) from and against any and all claims, liabilities, and losses whatsoever occurring or resulting to any person, firm, corporation or entity for foreseeable consequential damage, property damage, injury, or death arising out of or connected with that party's negligence or non-performance of its obligations under this Short-term Utilization Agreement. The provisions of this Section 5 shall survive the expiration of the term or termination of this Short-term Utilization Agreement.

IN WITNESS WHEREOF, the undersigned, as authorized representatives of MCWRA, the City and M1W have entered into this Agreement as of the date first entered above.

CITY OF SALINAS

Kimbley Craig, Mayor

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney

ATTEST:

Patricia M. Barajas, City Clerk

MONTEREY ONE WATER

Mary Ann Carbone, Board Chair

APPROVED AS TO FORM:

Robert R. Wellington, Legal Counsel

ATTEST:

Chayito Ibarra, Board Clerk

MONTEREY COUNTY WATER RESOURCES AGENCY

Brent Buche, General Manager

APPROVED AS TO FORM:

Kelly L. Donlon, Legal Counsel

ATTEST:

NAME, Board Clerk