

EXHIBIT 2-A

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

and

DEEPWATER DESAL, LLC

CENTRAL COAST REGIONAL WATER PROJECT

COST SHARING AGREEMENT

This Cost Sharing Agreement (**Agreement**) is entered into as of August __, 2013 (**Effective Date**), by and between the Monterey Peninsula Water Management District, a California special act district (**MPWMD**), and DeepWater Desal LLC, a California Limited Liability Company located at 7532 Sandholdt Rd, #6, Moss Landing, CA 95039 (**Company**), collectively the “Parties”, based upon the following facts, intentions and understandings of the Parties.

BACKGROUND

A. The Company is developing the Central Coast Regional Water Project (**CCRWP**) at Moss Landing, California. The CCRWP will consist of a number of coastal-dependent industrial uses, including without limitation a digital data storage facility and desalination facility that will utilize seawater taken from an open ocean intake located near the Monterey submarine canyon at Moss Landing to benefit the regional community. The Company plans to develop the desalination plant component of the CCRWP (**Desalination Plant**) in phases to accommodate both immediate needs of the Monterey Peninsula and near-term demand for high purity water in the vicinity of the Desalination Plant. Phase 1 of the Desalination Plant is intended to produce up to 10,000 acre feet of potable water per year (AF/Y). Later phases of the Desalination Plant are intended to provide an additional 15,000 AF/Y of potable water capacity from the Desalination Plant for delivery to both Santa Cruz and Monterey counties.

B. The Company’s Statement of Qualifications submitted to MPWMD on February 15, 2013, included a budget that indicated the Company expects, in addition to Environmental and Permitting Costs, that it shall expend \$1.5 million for technical studies and preliminary design of the CCRWP, as well as \$2.2 million for rent, insurance, compensation, and consultants.

C. MPWMD was created by the California Legislature in 1977. It was created for various purposes, including “conserving and augmenting the supplies by integrated management of ground and surface water supplies, for control and conservation of storm and wastewater, and for the promotion of the reuse and reclamation of water.” MPWMD is authorized to issue bonds, assess charges for groundwater enhancement facilities, levy assessments on real property and improvements, and “fix, revise, and collect rates and charges for the services, facilities, or water furnished by it.”

D. California American Water Company (**Cal-Am**) proposes to develop the Monterey Peninsula Water Supply Project (**MPWSP**) to consist of slant intake wells, brackish

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water pipelines, a desalination plant, product water pipelines, brine disposal facilities, and related appurtenant facilities to meet consumer water needs of the Monterey Peninsula. Cal-Am proposes to solely own and operate the MPWSP. MPWMD considers risk of litigation over Salinas Valley Groundwater rights to be very high.

E. MPWMD is a Party to a California Public Utilities Commission (CPUC) proceeding filed by Cal-Am on April 23, 2012, that is examining Cal-Am's application for a Certificate of Public Convenience and Necessity (CPCN) related to its proposed MPWSP. That CPUC proceeding is A. 12-04-019. MPWMD may choose, in its sole discretion, to join one or more settlement agreements related to the MPWSP, and by so doing, may express its support for development, construction, and operation of the MPWSP. MPWMD retains discretion to state that the MPWSP shall serve the public convenience and necessity consistent with the criteria set forth in Public Utilities Code Section 1002(a), and that it supports the CPUC granting a CPCN for the MPWSP pursuant to findings required under Public Resources Code Section 21081.

F. MPWMD is also a joint sponsor with the Monterey Regional Water Pollution Control Agency (MRWPCA) of the Ground Water Replenishment (GWR) Project. The GWR Project is intended to create a source of supply by filtering source water through a new advanced water treatment facility, and injecting the highly treated product replenishment water into the Seaside Basin Aquifer, where it would be diluted and stored. California American Water has entered into a Memorandum of Understanding with MRWPCA and MPWMD to collaborate on developing the GWR Project. MPWMD, Cal-Am and MRWPCA have agreed upon a process for determining whether the GWR Project will meet milestones necessary to reduce the size of the proposed MPWSP desalination plant.

G. On December 10, 2012 the MPWMD Board determined that it is in the Monterey Peninsula community's interest to develop a parallel contingency process to advance or qualify an alternative desalination project. MPWMD continues to support advancement of the Cal-Am application at the CPUC for the MPWSP, but at the same time desires to advance environmental review and permitting of a contingency alternative desalination project.

H. MPWMD and the Company desire to set enter into an agreement regarding cost sharing for environmental studies, permitting and similar activities reasonable and necessary to obtain approval for construction and operation of the CCRWP, including the Desalination Plant.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing facts recited and the mutual goals and objectives contained herein, the Parties agree that each statement set forth in the Background section above is true and correct and is integrated into this Agreement as if each was set forth fully herein. The Parties further agree as follows:

1. Environmental and Permitting Costs

1.1 Cost Definition. The Company has and will continue to incur pre-development and permit application costs for the CCRWP. Those costs (collectively, **Environmental and**

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Permitting Costs) generally include scientific and engineering studies necessary for environmental analyses to meet California Environmental Quality Act (**CEQA**) and National Environmental Policy Act (**NEPA**) requirements, review and preparation of documents under CEQA and NEPA, legal costs, costs for public outreach, and permit fees charged by governmental agencies (collectively, **Environmental and Permitting Activities**).

1.2 Reimbursement. Subject to the terms and conditions of this Agreement, MPWMD shall reimburse the Company an amount not to exceed fifty percent (50%) of reasonable and necessary Environmental and Permitting Costs actually incurred and paid by the Company between the period beginning May 1, 2013 and ending April 30, 2015 that relate to the Desalination Plant. MPWMD's total reimbursement obligation set by this agreement, however, shall not exceed eight hundred thousand (\$800,000) dollars.

1.3 MPWMD Internal Costs. Amounts paid by MPWMD for internal management, legal and/or accounting costs incurred in relation to the CCRWP shall be credited as payments made in fulfillment of its reimbursement obligation set by this Section 1, and shall cause a reduction in the not-to-exceed amounts available for transfer to the Company. To the extent the Company seeks reimbursement of legal costs related to the Desalination Plant, it shall forward invoices supporting those payments to MPWMD and waive any attorney-client privilege that may attach to those invoices.

1.4 Water Supply Charge. The Parties recognize and agree that MPWMD intends to fund any reimbursement obligation under this Agreement exclusively from proceeds derived from the MPWMD Water Supply Charge. The Parties acknowledge that on-going litigation has challenged the legality of the MPWMD Water Supply Charge, and that future court order(s) may limit availability and use of those proceeds for the purposes intended by this Agreement. In the event proceeds from the MPWMD Water Supply Charge are limited and not available for use by MPWMD to fund reimbursement obligations under this Agreement, the Parties agree MPWMD shall no longer have any reimbursement obligation.

1.5 Discretion Retained. The Parties agree that MPWMD's partial reimbursement contributions for Company Environmental and Permitting Costs for the Desalination Plant pursuant to this Agreement may, in the sole and absolute discretion of MPWMD, be reimbursed, in the future, from proceeds of the permanent financing for the CCRWP.

2. Grants and Loans

The Company or MPWMD may each pursue and receive grants, state revolving fund loans, or other forms of reimbursement for Environmental and Permitting Costs from local, state, or federal sources. To the extent allowable under the terms of each grant or loan, the Parties intend and agree that all receipts will be credited against Environmental and Permitting Costs incurred or to be incurred by MPWMD and the Company on a proportional basis.

3. Reimbursement

The Company shall invoice MPWMD for its share of reasonable and necessary Environmental

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and Permitting Costs for the Desalination Plant based on the Company's actual payment of those costs. Subject to the limits set forth in Paragraphs 1 and 8, MPWMD shall pay such invoices in accord with the terms of this Agreement.

4. MPWMD Option to Own and Operate Phase I of Desalination Plant

4.1 Exclusive Option. Company grants to MPWMD the sole and exclusive option (**Option**) to own and operate Phase I of the Desalination Plant. MPWMD may exercise this Option at any time within sixty (60) days following issuance of a Coastal Development Permit for the CCRWP by the California Coastal Commission. At the time of exercising the Option, MPWMD must not be in breach of any provision of this Agreement and must have fulfilled its obligation to reimburse Company for Environmental and Permitting Activities under sections 1.1, 1.2, 1.3 and 1.5, notwithstanding the provisions of section 1.4 or any other provision of this Agreement which obviates or excuses MPWMD's obligation to make such reimbursements. The MPWMD Option shall be a priori to the rights of any other potential owner or operator of Phase I of the Desalination Plant. In the event Company receives a bona fide offer to purchase Phase I of the Desalination Plant, MPWMD shall have ninety (90) days after receipt of notice of such bona fide offer to exercise the Option. In the event MPWMD does not exercise the Option within such ninety (90) day period, the Option shall thereupon terminate and be of no further force or effect. If the Option is terminated pursuant to the provisions of this section 4.1 prior to issuance of a Coastal Development Permit for the CCRWP by the California Coastal Commission, MPWMD shall thereupon have the sole and exclusive right to enter an agreement with the owner of Phase I of the CCRWP to purchase up to all of the potable water produced by Phase I of the CCRWP (**Water Purchase Agreement**) on commercially reasonable terms. MPWMD may exercise its right to enter the Water Purchase Agreement at any time beginning on the date the Option is terminated under this section 4.1 and until sixty (60) days following issuance of a Coastal Development Permit for the CCRWP. The design and operation of the CCRWP shall accommodate Phase I of the Desalination Plant and facilitate exercise of the MPWMD Option and the MPWMD right to enter the Water Purchase Agreement.

4.2 Transfers to Facilitate Exercise of Option. In the event MPWMD exercises its Option to own Phase I of the Desalination Plant, Company shall transfer sufficient title and interest to MPWMD for all improvements and appurtenances, site leases, agreements and/or contracts for source water, easements, and all other assets necessary for the location and operation of Phase I of the Desalination Plant.

4.3 Consideration for Exercise of Option. Upon exercise of the Option, the parties will negotiate in good faith for forty-five (45) days to establish the price and material terms for the acquisition of Phase I including, without limitation, the terms and conditions of agreements for services to be shared with other elements of the CCRWP and other agreements relating to access to feed water and discharge facilities. In the event the parties cannot reach an agreement on price and terms after such good faith negotiations, each party would retain (at that party's own expense), a qualified valuation expert ("**Appraiser**") to establish a then current commercial fair value of the Phase I and the Appraisers so selected would appoint a third independent appraiser to review the analysis of each Appraiser. The opinion of such third Appraiser would be binding on the parties. The parties further agree that the determination of commercial fair value will take

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into consideration usual and customary methodologies used for purposes of such valuations, including without limitation the estimated future discounted cash flows to the equity owner of the CCRWP assuming ownership by a private commercial owner, reasonable assumptions on water off-take contracts terms and conditions, capital expenditures, operations and maintenance, capital costs and cost of debt, duration and returns.

4.4 Diligent Pursuit of Construction. In the event MPWMD exercises its Option to own Phase I of the Desalination Plant, MPWMD shall make all reasonable efforts to commence construction of Phase I of the Desalination Plant within six (6) months following the Coastal Commission's approval of the CCRWP. MPWMD shall diligently pursue completion of construction in a timely manner.

5. Environmental and Permitting Budgets

Company shall provide MPWMD with a current copy of its budget for Environmental and Permitting Costs and activities related to the CCRWP on a quarterly basis, together with proof of payment on all Desalination Plant invoices subject to reimbursement.

6. Company Obligations.

6.1 Day-to-Day Management. The Company shall provide day-to-day management of all work necessary to complete Environmental and Permitting activities, and to obtain permits and other approvals to allow construction and operation of the CCRWP, including but not limited to Phase I of the Desalination Plant.

6.2 Payment. The Company shall pay for consultants, contractors, and other Environmental and Permitting Costs reasonable and necessary to obtain approvals for the construction and operation of the CCRWP. To the extent required by law, the Company shall comply with public bid requirements related to the performance of these tasks.

6.3 Records. The Company shall submit monthly invoices related to Environmental and Permitting Activities to MPWMD for proportionate reimbursement in accord with Paragraph 3, above, and timely provide documentation substantiating costs incurred and amounts paid by the Company as requested by MPWMD. The Company shall also provide to MPWMD copies of any technical study and/or preliminary or final design report it may receive related to the CCRWP. The Company shall also provide to MPWMD copies of all contracts related to CCRWP to which it is a party, including but not limited to contracts to pay or receive rent, provide insurance, engage employees, agents, contractors, lobbyists, attorneys or consultants.

6.4 Definitive Agreements. On or before February 28, 2014, the Company shall use its best efforts to enter into the following agreements to facilitate construction and operation of the CCRWP, including the Desalination Plant

- an option agreement for the Company to purchase the "Tank Farm" parcel adjacent to the Dynegy Moss Landing Power Plant from Dynegy Moss Landing, LLC,

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together with easements necessary to construct intake and/or outfall pipelines necessary to operate the CCRWP and the Desalination Plant; and

- an agreement for the Company to purchase from the City of Salinas sufficient electricity needed to operate the CCRWP and the Desalination Plant; and
- an agreement in a form reasonably acceptable to MPWMD for development of intake and outfall pipeline facilities, and data center components for the CCRWP.

In the event the MPWMD Option is still in effect at the time the agreements referenced in this Paragraph are made, such agreements shall expressly recognize and accommodate exercise of the MPWMD Option.

7. MPWMD Obligations

7.1 Payment of Invoices. MPWMD shall review and confirm that invoices submitted by the Company conform to the terms of this Agreement, and are supported by adequate documentation. Payments shall be made by MPWMD within sixty (60) days of MPWMD's receipt of documented invoices. This date shall be extended as may be necessary should MPWMD request documentation to support the invoice, or to resolve questions as to whether the MPWMD payment may exceed fifty percent (50%) of reasonable and necessary Environmental and Permitting Costs actually incurred and paid by the Company. If MPWMD disputes any payments during its review of the documented invoice, MPWMD shall notify the Company within the 30 days. The Parties shall make reasonable efforts to resolve any disputes.

8. Suspension or Termination of MPWMD Payment Obligation

In addition to enforcing other rights set forth in this Agreement, MPWMD may, in its sole and absolute discretion suspend or cease payments under this Agreement if any of the following issues arise:

- Progress and/or expenditures made by the Company do not meet MPWMD expectations with respect to Environmental and Permitting Activities, completion of technical studies, development of preliminary design for the CCRWP or Desalination Plant, or the Company has failed to enter into or maintain adequate contracts for rent, insurance, or consultants; or,
- There has been a failure to identify either a CEQA Lead Agency and a federal NEPA lead agency within sixty (60) days of Company's filing a complete application with a state permitting agency; Identification of federal or state lead agencies shall be evidenced by publication by that lead agency of a Notice of Intent or a Notice of Preparation in compliance with CEQA and NEPA, as may be applicable; or,
- MPWMD, in its sole discretion, finds and declares that its Water Supply Charge is limited and not available to fund reimbursement obligations under this Agreement; or,

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- MPWMD, in its sole discretion, within one hundred sixty (160) days of the Effective Date of this Agreement, determines the Company lacks sufficient funds, taking into account funds contributed by MPWMD under this Agreement, to pay Environmental and Permitting Costs and to meet the additional costs anticipated above in the Background, Paragraph B, of this Agreement; or,
- MPWMD, in its sole discretion determines the Company will not have sufficient funds available for its expenditure on additional technical studies and/or preliminary design related to the CCRWP and Desalination Plant; or,
- The Company, on or before February 28, 2014, fails to enter into or maintain, in full effect, the Definitive Agreements described above in section 6.4.

9. Term

This Agreement shall remain in force and effect until the earlier of (i) the date MPWMD or a court of competent jurisdiction declares that MPWMD's Water Supply Charge is not available to fund reimbursement obligations under this Agreement and MPWMD does not elect to fund such reimbursement from another source; (ii) MPWMD exercises its Option and purchases Phase I of the Desalination Plant; or (iii) the date MPWMD's Option is terminated under the provisions of section 4.1 (*provided, that*, MPWMD right to enter a Water Purchase Agreement shall continue as provided in section 4.1) Any obligation to indemnify shall survive termination of this Agreement.

9.1.Extension or Modification. No later than thirty (30) days after the first anniversary of the Effective Date of this Agreement, the Parties shall meet to decide whether to extend or modify this Agreement. Any extension or modification of this Agreement shall be in writing and on mutually acceptable terms and conditions. Unless or until the Parties have met in accord with this paragraph, neither the Company nor MPWMD shall proceed with final design or construction of the CCRWP or the Desalination Plant.

10. Events of Default; Dispute Resolution

10.1 Event of Default. The failure of a Party to comply with any provision of this Agreement that may have a material and adverse effect on the other Party, except to the extent caused by a breach of this Agreement by the other Party, shall constitute an Event of Default under this Agreement; provided, however, that the defaulting Party shall first have a period of thirty (30) days following receipt of notice from the other Party of such failure to comply to cure such failure, or if such cure cannot be effected within such thirty (30) day period, such period shall extend for a total of one hundred eighty (180) days, so long as the defaulting Party is diligently trying to cure such failure throughout such period. Notwithstanding the foregoing, in the event MPWMD is unable to fund payment of an invoice under this Agreement as a result of limitations upon MPWMD's ability to use Water Supply Charge proceeds for this purpose, this Agreement shall thereupon automatically become null and void, and of no further force or effect.

10.2 Dispute Resolution. Parties shall meet upon request and use their best efforts to settle any

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dispute, claim, question or disagreement (**Dispute**) arising from or relating to this Agreement. To that end, each Party shall consult and negotiate with the other Party in good faith and, recognizing the Parties' mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If the Parties do not reach such a solution within a period of thirty (30) days after the first meeting regarding a Dispute, then the Parties shall pursue non-binding mediation to be completed within sixty (60) days after the first meeting of the Parties regarding the Dispute. If the Parties do not settle the Dispute within the sixty (60) day period, either Party may pursue any and all available legal and equitable remedies.

11. Miscellaneous

11.1 Force Majeure. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations (other than payment obligations) under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, actions of legislative, judicial, executive or regulatory government bodies or other cause, without fault and beyond the reasonable control of such Party. If any such events shall occur, the time for performance by either Party of any of its obligations hereunder shall be extended by the Parties for the period of time that such events prevented such performance. Upon the occurrence of an event of Force Majeure, the affected Party shall: (i) promptly notify the other Party of such Force Majeure event, (ii) provide reasonable details relating to such Force Majeure event and (iii) implement mitigation measures to the extent commercially reasonable.

11.2 Indemnities.

a. **MPWMD.** MPWMD shall fully indemnify, defend and hold harmless the Company and its respective directors, employees and agents against, and hold completely free and harmless from, any loss or liability that may arise from (i) any grossly negligent act or omission of MPWMD related to the Environmental and Permitting Activities, except for costs, expenses, claims, demands, judgments, losses, injuries and/or liability arising from any grossly negligent act or omission of the Company related to the Environmental and Permitting Activities or (ii) any claim made by a MPWMD employee specifically retained to provide services with respect to the Environmental and Permitting Activities.

b. **Company.** The Company shall fully indemnify, defend and hold harmless MPWMD and its respective directors, employees and agents against, and hold completely free and harmless from, any loss or liability that may arise from (i) any grossly negligent act or omission of the Company related to the Environmental and Permitting Activities, except for costs, expenses, claims, demands, judgments, losses, injuries and/or liability arising from any grossly negligent act or omission of MPWMD related to the Environmental and Permitting Activities, or (ii) any claim made by a Company employee or contractor specifically retained to provide services with respect to the Environmental and Permitting Activities, or (iii) any claim arising from activities to obtain permits or other approvals to allow construction and operation of the CCRWP, including but not limited to Phase I of the Desalination Plant.

11.3 Insurance.

a. **Insurance Required.** Without limiting the Company's duty to indemnify, the Company shall maintain in effect throughout the term of this Agreement commercial general liability insurance,

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including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

b. **Notice of Cancellation.** Each liability policy shall provide that MPWMD shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for MPWMD and additional insureds with respect to claims arising from each subcontractor, if any, performing work subject to cost contribution by MPWMD under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

c. **Additional Insured.** The commercial general liability policy shall provide an endorsement naming MPWMD, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the Company's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by MPWMD and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Company's insurance.

d. **Certificates.** Prior to the execution of this Agreement by MPWMD, the Company shall file certificates of insurance with MPWMD to demonstrate the Company has in effect the insurance required by this Agreement. The Company shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

11.4 Notices.

a. **MPWMD.** All notices to MPWMD required or permitted under this Agreement shall be in writing and shall be deemed delivered (i) when delivered in person, (ii) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (iii) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery; or (iv) via electronic mail provided the sender's system is capable of creating a written record of such notice and its receipt in each case to the parties at the following addresses or to other such addresses as may be furnished in writing by one party to the other:

Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 93940
Attention: General Manager
dstoldt@mpwmd.net

With a copy to:
David C. Laredo, General Counsel
De Lay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950
dave@laredolaw.net

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b. **Company.** All notices to the Company required or permitted under this Agreement shall be in writing and shall be deemed delivered (i) when delivered in person, (ii) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (iii) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery; (iv) upon receipt of a confirmed transmission, if sent by telex, telecopy or facsimile transmission; or (v) via electronic mail provided the sender's system is capable of creating a written record of such notice and its receipt in each case to the parties at the following addresses or to other such addresses as may be furnished in writing by one party to the other:

DeepWater Desal LLC
7532 Sandholdt Rd, #6
Moss Landing, CA 95039
Attention: Brent Constantz
brent@dwdesal.com

11.5 Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, representatives, successors and permitted assigns.

11.6 Further Acts, Assurances and Cooperation. The Parties agree to execute, acknowledge and deliver any and all additional papers, documents and other assurances, and shall perform any and all acts and things reasonably necessary, in connection with the performance of the obligations hereunder and to carry out the intent of the Parties. All Parties shall cooperate and timely respond to any request for information or records. The Company shall timely provide MPWMD with all relevant data and studies in its possession without charge. All Parties commit to cooperate in any investigation to determine if the CCRWP, or the Desalination Plant Project is viable.

11.7 Captions. The captions in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of this Agreement, nor in any way affects this Agreement. Words of any gender in this Agreement shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense so requires.

11.8 Severability. Should it be found that any part of this Agreement is illegal, unenforceable, or contrary to public policy, such part or parts of this Agreement shall be of no force nor effect and the remainder of this Agreement shall be treated as if such part or parts had not been inserted, shall not be affected and shall remain in full force and effect.

11.9 Entire Agreement. All previous negotiations had between the Parties hereto and/or their agents or representatives with respect to this Agreement are merged herein and this Agreement alone fully and completely expresses the Parties' rights and obligations.

11.10 Modifications In Writing. This Agreement shall not be modified in any manner except

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by an instrument in writing executed by the Parties or their respective successors in interest.

11.11 Interpretation. This Agreement is the product of negotiation and preparation by and between the Parties, who have been represented by counsel. All sides and their counsel have reviewed and have had the opportunity to revise this Agreement. Both Parties waive the provisions of Section 1654 of the California Civil Code and any other rule of construction to the effect that ambiguities are to be resolved against the drafting Party, and the Parties warrant and agree that the language of this Agreement shall neither be construed against or in favor of any Party.

11.12 Governing Law and Venue. This Contract shall be governed by and construed according to the laws of the State of California. Venue for any disputes and/or claims between the Parties under this Agreement shall be in Monterey County, California. Each Party shall abide by all laws, ordinances, and regulations of the United States, State of California, MPWMD, and of any other public entity.

11.13 No Third-Party Beneficiaries. Nothing in this Agreement is intended to create any third-party beneficiaries to the Agreement, and no person or entity other than the Parties, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Agreement.

11.14 Assignment. Neither Party may assign its interest in this Agreement without the prior written consent of the other Party.

11.15 Representation and Warranties. No representations or warranties are made or have been relied upon by either Party other than those expressly set forth herein, if any.

11.16 Date of Execution. The Effective Date of this instrument is upon this Agreement being duly executed, dated, and signed by the Parties. Upon execution, the first paragraph of this Agreement shall be conformed to reflect the accurate Effective Date.

11.17 Waiver. Party's failure to insist on the strict performance of any provision of this Agreement or to exercise any right, power, or remedy upon a breach of this Agreement shall not constitute a waiver of any provision of this Agreement. Neither shall such action or inaction limit the Party's right to later enforce any provision or exercise any right to the fullest extent allowed under this Agreement. A waiver of any covenant, term or condition contained in this Agreement shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent, authorization or approval by a Party of any act shall not be deemed to waive or render unnecessary the consent, authorization or approval of any subsequent similar act. Any waiver of any terms or conditions must be in writing and signed by the Parties.

12. Discretion Retained

12.1 Alternatives. MPWMD expressly retains discretion as to whether it will, or will not, participate in CCRWP, including but not limited to Phase I of the Desalination Plant, or any other project. Nothing in this Agreement shall be construed to limit MPWMD's obligation to consider any and all alternatives, including the "no project" alternative, and any and all

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mitigation measures, and to make the requisite findings, that may relate to CEQA.

12.2 MPWSP. The Parties agree that this Agreement shall not impair the ability of MPWMD to request or support Commission approval, through CPUC proceeding A. 12-04-019, or otherwise, of the proposed Cal-Am MPWSP.

12.3 GWR Project. The Parties agree that this Agreement shall not impair the ability of MPWMD to support or approve joint efforts with MRWPCA related to the GWR Project.

WHEREFORE, this Cost Sharing Agreement was executed by the parties on the date first above written.

COMPANY

DEEPWATER DESAL, LLC
a California Limited Liability Company

Dated:

By: _____
Brent R. Constantz, Managing Member

MPWMD

MONTEREY PENINSULA WATER MANAGEMENT
DISTRICT,

Dated:

By: _____
David Pendergrass, Chair
MPWMD Board of Directors