



# Memorandum

## MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

Reviewed by: [Signature] Date: 2/10/17  
General Manager

DATE: February 10, 2017  
TO: General Manager  
FROM: Director of Engineering & Compliance/District Engineer  
SUBJECT: MRWPCA Blanco Drain Diversion Easement and Deed Agreement

**RECOMMENDATION:** Approve (as to form) 1) the Draft Agreement for Grant and Purchase of Co-location Easement; and 2) the Draft Co-Location Easement Deed between the District and the Monterey Regional Water Pollution Control Agency (MRWPCA) to permit the District's conveyance of a parallel easement to the Monterey Regional Water Pollution Control Agency for its Blanco Drain Diversion element of the Pure Water Monterey Project.

### BACKGROUND

In 2008, the District sold and conveyed to the Monterey County Water Resources Agency (MCWRA) a 20-foot wide easement along the perimeter of the District property to convey water from the MCWRA's Salinas River Diversion Facility (SRDF - the Rubber Dam) for use in its Castroville Seawater Intrusion Project. The MRWPCA now seeks to obtain from the District its own pipeline easement, to run parallel with and mostly within the SRDF easement of the MCWRA, to convey water from its Blanco Drain Diversion facility for use in its Pure Water Monterey Project. In order for this to occur, the prior easement agreement between the District and MCWRA needs to be amended to permit the second parallel easement. At the November 18, 2016 Board meeting, the District Board approved (as to form) the Co-Location Easement Agreement between the District and MCWRA that will subsequently allow the District and MRWPCA to enter into the co-location easement agreement and easement deed presented herein.

### DISCUSSION

The three parties involved (District, MCWRA, and MRWPCA) have all met and agreed upon the general process for accomplishing the revision of the 2008 District-MCWRA easement to allow for the incorporation of the MRWPCA's Blanco Drain Diversion pipeline into the existing pipeline easement. The amendment agreement has been approved by the District and MCWRA as to form and will come back to the District Board for final review and approval following the final review and agreement of all three parties.

Once the amendment agreement is approved, then the next agreements to come to the Board are the subject co-location easement conveyance agreement and easement deed between the District and the MRWPCA. Issues of compensation for the permanent pipeline easement, and a temporary construction easement, will be dealt with in the co-location easement agreement and easement deed documents. These draft documents are attached for the Board's review and consideration.

The three parties previously provided instructions to a real estate appraiser retained by the MRWPCA to prepare an appraisal report. The appraisal report has been prepared and circulated for review by the parties (summary letter attached) and was primarily developed using agricultural property sales information. Approximately 2.03 acres of District property are associated with the co-location easement agreement for incorporating the Blanco Drain Diversion pipeline in the existing easement and an additional 0.401 acres of District property outside of the easement. Thus, the total area of permanent fee parcel easement for the MRWPCA Blanco Drain Diversion pipeline is approximately 2.431 acres. MRWPCA has also requested a Temporary Construction Easement on approximately 5.654 acres of District property as presented in the co-location easement agreement.

### FINANCIAL IMPACT

Compensation will be worked on by all three parties and incorporated into the easement conveyance agreement as agreed upon by the parties. A real estate appraiser was retained by MRWPCA to develop a fair market assessment of the value of the easement and the conditions for its placement subject to review and concurrence by the District.

### STRATEGIC PLAN

The District's involvement in this matter fits under several general policy directives cited in the District's "Pillars of Sustainability" plan. Principally under the Community and Finance pillars which speak to the continued development of strategic partnerships and support of the community's interests.

### CONCLUSION

Staff therefore recommends the Board approve (1) the Draft Agreement for Grant and Purchase of Co-location Easement; and (2) Draft Co-Location Easement Deed between the District and the MRWPCA, in concept and as to form, subject to any non-substantive revisions approved by District Legal and the General Manager, and subject to any substantive revisions, upon review of same by the MRWPCA, to come back before this Board at such time.

  
Guy R. Petrabor, P.E., G.E.

Attachments



**AGREEMENT FOR GRANT AND PURCHASE OF  
CO-LOCATION EASEMENT**

This Co-Location Agreement ("Co-Location Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the Monterey Regional Waste Management District, a California Garbage and Refuse Disposal District ("District"), and the Monterey Regional Water Pollution Control Agency, a California Joint Powers Agency ("Co-Location Agency"). The District and Co-Location Agency are sometimes referred to herein individually as a "party" and collectively as "parties."

**Recitals**

A. District owns real property located in Monterey County on which it operates the Monterey Peninsula Landfill, a landfill and recycling facility ("Landfill"), consisting of a number of parcels, two being APN 175-061-003 and APN 175-061-008 ("Parcels"). In 2008, District conveyed to the Monterey County Water Resources Agency, a California flood control, water conservation, and water resources agency ("MCWRA"), a permanent underground pipeline easement ("Pipeline Easement") in the Parcels, by deed executed by District on March 13, 2008, accepted by MCWRA on March 17, 2008, and recorded in the Office of the Monterey County Recorder on May 23, 2008 as Document 2008033083, attached hereto as Exhibit A. Also attached hereto as Exhibit B is "Agreement for Purchase and Sale of Real Property," by and between MCWRA and District, whereby District agreed (among other real property conveyances) to grant the easement by deed attached as Exhibit A, said Agreement recorded in the Office of the Monterey County Recorder on \_\_\_\_\_, as Document \_\_\_\_\_.

B. Co-Location Agency is involved in a number of water reclamation projects, one being the Blanco Drain Diversion ("BDD") Facility, comprised in part of facilities for pipeline conveyance of water from the Blanco Drain to Co-Location Agency's Regional Treatment Plant adjacent to the Landfill. Co-Location Agency has determined that the most suitable routing for the pipeline includes co-use of a certain length of the MCWRA Pipeline Easement. District is prepared to grant an easement ("Co-Location Easement") to Co-Location Agency to enable such co-use, subject to consent of MCWRA.

C. District and MCWRA have agreed to enter into "Agreement for and Consent to Co-Location and Compatible Use Pipeline Easement," form of such agreement attached hereto as Exhibit C, whereby MCWRA consents, subject to terms and conditions, to District's granting a Co-Location Easement to Co-Location Agency as generally described in Recital B and more particularly described below.

D. Co-Location Agency and District desire to enter into this Co-Location Agreement to allow co-use of the Pipeline Easement, by approving an easement deed providing that Co-Location Agency shall have the right to construct and install in [2.03 acres] of the Pipeline Easement for underground pipes carrying BDD water across Parcels to Co-Location Agency's property for treatment ("Co-Location Project").

Now, therefore, in consideration of the foregoing and the mutual covenants, agreements, representations and warranties contained in this Co-Location Agreement, the parties hereto agree as follows:

## **1. AGREEMENT TO PURCHASE AND SELL**

1.01 The recitals set forth in the foregoing are hereby incorporated into this Co-Location Agreement.

1.02. District hereby agrees to grant to Co-Location Agency and Co-Location Agency hereby agrees to purchase from District, a co-location easement, located in Monterey County, California, as set forth in the Co-Location Easement Deed ("Co-Location Easement Deed"), substantially in the form and content as set forth in Exhibit D, attached hereto, providing for (A) a permanent utilities and pipeline easement across the Parcels; (B) temporary use of the District's property in connection with construction of the Co-Location Project; and (C) access and maintenance of the access to the Co-Location Project site.

## **2. DELIVERY OF DOCUMENT**

2.01 The Co-Location Easement Deed will be executed and delivered by the District at Closing, as defined at Section \_\_\_\_\_ hereof, to \_\_\_\_\_ Title Company, \_\_\_\_\_, California, Escrow Holder for the parties for the purpose of granting the Co-Location Easement to the Co-Location Agency.

## **3. PURCHASE PRICE**

3.01 The full purchase price for items (A), (B), and (C), described above at subsection 1.02, to be paid by the Co-Location Agency is \$\_\_\_\_\_, the "Purchase Price." The Purchase Price will be paid by the Co-Location Agency to District, at the District's option, by cashier's or certified check or by wire transfer of immediately available funds at the time of Closing.



#### **4. TITLE**

4.01 At Closing, District will deliver title to the Co-Location Easement to Co-Location Agency, and said title shall be subject only to those restrictions and reservations set forth in the Co-Location Easement Deed, the agreement described at Recital C hereof, this Co-Location Agreement, and the exceptions shown in the preliminary title report for the Co-Location Easement property dated as of \_\_\_\_\_, as provided by \_\_\_\_\_ Title Company ("Title Company"), or disclosed in any visual inspection of said property by the Title Company.

4.02 At Closing, Co-Location Agency shall pay the following Closing costs: all escrow fees; the cost of obtaining a title insurance policy, and extended coverage and any additional title coverage or endorsements which Co-Location Agency may desire; the cost of any documentary transfer tax; the cost of any document preparation; the amount required to reimburse the District for District's cost to obtain or review the appraisal; the amount required to reimburse the District for District's cost to obtain or review a preliminary title report; and the cost of a title policy.

4.03 No recording fees will be payable with respect to the recording of the Co-Location Easement Deed, pursuant to Government Code Section 6103.

4.04 At or before Closing, Co-Location Agency will reimburse the District for services of District's real estate consultant for review of the appraisal.

4.05 The parties acknowledge that because the parties are public entities, the easement interest granted will not be subject to real property taxation.

#### **5. REPRESENTATIONS AND WARRANTIES**

5.01 District is granting the Co-Location Easement "AS IS," with all faults, but represents and warrants to Co-Location Agency as follows:

(a) District has full power and authority to grant the Co-Location Easement as provided in this Co-Location Agreement, and this Co-Location Agreement is binding the enforceable against District.

(b) To District's actual knowledge District has not caused any Hazardous Materials to be placed or disposed of on or at the Co-Location Easement property or any part thereof in any manner or quantity which would constitute a violation of any Environmental Law, nor has



District received any written notice or any information of any nature which imparted notice that such property is in violation of any Environmental Law. As noted herein:

(i) The term "Hazardous Materials means any hazardous, toxic or dangerous substance material, waste, gas or particulate matter which is defined as such for the purposes or regulation by any local government authority, the State of California, or the United States Government, including but not limited to any material or substance which is defined as a "hazardous waste," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California law; petroleum; asbestos; polychlorinated biphenyl; radioactive material; designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Sec. 1251 *et seq.* (33 U.S.C. Sec 1317); defined as a "hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 *et seq.* (42 U.S.C. Sec. 6903; or defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601 *et seq.* (42 U.S.C. Sec. 9601; and

(ii) the term "Environmental Laws" shall mean all statutes specifically described in the definition of "Hazardous Materials" and all other federal, state or local laws, regulations or orders relating to or imposing liability or standards of conduct concerning any Hazardous Material.

5.02 Except as expressly set forth in this Co-Location Agreement, Co-Location Agency is relying upon no warranties, express or implied, oral or written, from District regarding the Co-Location Easement property and, upon Close of Escrow, Co-Location Agency will have accepted said property as-is, with all faults. Co-Location Agency represents and warrants to District as follows:

(a) Neither the execution and delivery of this Co-Location Agreement by Co-Location Agency nor the consummation of the transaction contemplated hereby will result in any breach or violation or of default under any judgment, decree, order, mortgage, lease, agreement, indenture or other instrument to which Co-Location Agency is a party.

(b) Co-Location Agency has made investigations and is aware of conditions created by the operation of a landfill that may affect property adjacent to or in proximity to a landfill site including, but not necessarily limited to, odors, birds, windblown litter and migrating landfill gas and other inconveniences normally considered when purchasing property next to a landfill operation and the Co-Location Agency agrees to hold District



harmless for all such conditions that may affect the Co-Location Easement property due to proximity to the Landfill.

(c) Co-Location Agency has full power and authority to execute this Co-Location Agreement and purchase the easement as provided for in this Co-Location Agreement, and this Co-Location Agreement is binding and enforceable against Co-Location Agency.

5.03 Co-Location Agency acknowledges and agrees that, except as otherwise specifically provided herein, District has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever, where express or implied, oral or written, past, present or future, of, as to, concerning or with respect to any of the following:

(i) Value

(ii) Income to be derived from the Co-Location Easement property.

(iii) The nature, quality or condition of said property, including without limitation, the water, soil and geology.

(iv) Compliance with or by said property or its operations with any laws, rules, ordinances or regulations of any applicable governmental authority or body.

(v) Compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including but not limited to, California Health and Safety Code, the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act, The U.S. Environmental Protection Agency regulations at 40 C.F.R., part 261; the Comprehensive Environmental Response Conservation and Recovery Act of 1976, the Clean Water Act, the Safe Drinking Water Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, and regulations promulgated under any of the forgoing.

(vi) The presence or absence of hazardous materials at, on, under, or adjacent to said property.

(vii) The content, completeness or accuracy of any due diligence materials delivered by District to Co-Location Agency or preliminary report regarding title.

(viii) Deficiency of any under shoring or support.



(ix) The fact that all or a portion of said property may be located on or near an earthquake fault line or a flood zone.

(x) With respect to any other matter.

5.04 Co-Location Agency further acknowledges and agrees that it has or will have been given the opportunity to inspect the Co-Location Easement property and review information and documentation affecting said property, and that, except for District's express representations and warranties contained herein, Co-Location Agency is relying solely on its own investigation of said property and review of such information and documentation, and not on any information provided or to be provided by District. Co-Location Agency further acknowledges and agrees that any information made available by Co-Location Agency or provided or to be provided by or on behalf of District with respect to said property was obtained from a variety of sources and that District has not made any independent investigation or verification of such information and makes to representations as to the accuracy or completeness of such information. Co-Location Agency agrees to fully and irrevocably release all such sources of information and the preparers of information and documentation affecting said property which were retained by District from any and all claims that they may now have or hereafter acquire against such sources and preparers of information for any costs, loss, liability, damage, expense, demand, action or cause of action arising from such information or documentation. Except for District's express representations and warranties contained in subsection 5.01 above, District is not liable or bound in any manner by any oral or written statements, representations or information pertaining to said property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. Co-Location Agency further acknowledges and agrees that to the maximum extent permitted by law, except for District's express representations and warranties contained in subsection 5.01 above, the grant and purchase of the Co-Location Easement property as provided for herein is made on an "AS IS" condition and basis with all faults, and that District has no obligations to make repairs, replacements or improvements except as may otherwise be expressly stated herein. Agency represents, warrants and covenants to District that, except for District's express representations and warranties specified in this Co-Location Agreement, Co-Location Agency is relying solely upon Agency's own investigation of said property.

5.05 With respect to the waivers and releases set forth in subsection 5.04 above, Co-Location Agency expressly waives any of its rights granted under California Civil Code Section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."



## **6. UTILITIES**

6.01 The District shall make available to Co-Location Agency maps in its possession showing the location of sewer, water, electrical, gas and telephone and any other utility lines located adjacent or near to the Co-Location Easement property. Co-Location Agency shall be responsible for arranging for the delivery and paying for all utilities required on said property. Co-Location Agency shall be responsible to provide and pay for utility connection equipment, meters and any fees required. The District cannot and does not guarantee that there will be no interruption of service to utility services delivered over District lands and Co-Location Agency hereby waives any rights or claims it may have resulting from temporary interruptions of service. To the extent it has knowledge, the District will provide notice of any work scheduled which may interrupt the utility service to said property.

6.02 It shall be the responsibility of the Co-Location Agency to contact, consult and comply with any regulation applicable to Co-Location Agency's activities on the Co-Location Easement property which are now or may be promulgated by a local public agency or private utility provider or regulator having jurisdiction over activities or utility services, including, but not limited to the Monterey Bay Unified Air Pollution Control District, Pacific Gas & Electric Company, and the Marina Coast Water District.

## **7. OTHER USE OF PROPERTY BY CO-LOCATION AGENCY**

7.01 Co-Location Agency shall not use or knowingly allow others to use the Co-Location Easement property in a manner inconsistent with the description of use and activity in this Co-Location Agreement and the Co-Location Easement Deed. Any other use or activity is prohibited. This Co-Location Agreement authorizes District to enforce these covenants in the manner described herein. However, unless otherwise specified, nothing in this Co-Location Agreement shall require the Co-Location Agency to take any action to restore the condition of said property after any Act of God or other event over which it has no control. Co-Location Agency understands that nothing in this Co-Location Agreement relieves it of any obligation or restriction on the use of said property imposed by law.

7.02 Where Co-Location Agency is required to obtain District's permission or approval for a proposed action hereunder, said permission or approval (i) shall not be unreasonably delayed or withheld by District, (ii) shall be sought and given in writing, and (iii) shall in all cases be obtained by Co-Location Agency prior to Co-Location Agency's taking the proposed action. District shall grant permission or approval to Co-Location Agency only where District, acting in District's sole reasonable discretion and in good faith, determines that the proposed action will not significantly diminish or impair the District's operation at the Landfill.



7.03 District may take all actions that it deems necessary to ensure compliance with the terms, conditions, covenants and purposes of this Co-Location Agreement. If the District finds what it believes is a violation, it shall give the Co-Location Agency written notice of the violation and 30 days to correct it. Thereafter, the District may at its discretion take appropriate legal action to ensure compliance with the terms, conditions, covenants and purposes of this Co-Location Agreement. If a court with jurisdiction determines that a violation may exist or has occurred, the District may obtain an injunction, specific performance, or any other appropriate equitable or legal remedy. A court may also issue an injunction requiring the Co-Location Agency to restore the Co-Location Easement property to its condition prior to the violation. In any case where a court finds that a violation has occurred, the Co-Location Agency shall reimburse the District for all its expenses incurred in stopping and correcting the violation. The prevailing party shall be entitled to attorney's fees as provided in Section \_\_\_\_\_. The failure to District to discover a violation or to take immediate legal action shall not bar it from doing so at a later time. District's remedies under this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

## 8. CLOSING

8.01 Closing Date. The consummation of the grant and purchase of Co-Location Easement will be held at the offices of the Title Company, on or before 30 days after the date of this Co-Location Agreement, or later if agreed to in writing by the parties. The performance by parties of their respective obligations under this Co-Location Agreement directly or through the completion of escrow deposits required of them to be made, delivery of the Purchase Price to District by Escrow Holder after recording of the Co-Location Easement Deed upon title insurers commitment to issue title policy to Co-Location Agency and delivery of possession of the Co-Location Easement property to Co-Location Agency shall constitute the closing of the grant and purchase ("Closing Day").

8.02 District's Deposits into Escrow. Prior to Closing, District must deposit all the following documents and items into escrow:

- (i) Duly executed Co-Location Easement Deed in the form attached as Exhibit \_\_\_\_.
- (ii) An affidavit substantially in the form attached as Exhibit \_\_\_\_\_ (Non-Foreign Certificate) stating that District is not a "foreign person under IRC Section 1445(f)(3).
- (iii) Such other documents as may reasonably be required to complete the Closing, including a document certifying to escrow holder that all acts or legal conditions



precedent necessary to be taken or performed by District to authorize execution of the documents have been taken or performed.

8.03 Co-Location Agency's Deposits into Escrow. Prior to Closing, Co-Location Agency must deposit all the following into escrow:

(i) A bank cashier's or certified check, or wire transfer, to District in an amount equal to the Purchase Price.

(ii) Co-Location Agency's obligation for closing costs as described in subsection 4.02.

(iii) Duly executed Co-Location Easement Deed which shall also be signed by District as provided in subsection 8.02(i) above.

(iv) Such other documents as may reasonably be required to complete the Closing, including a document certifying to the escrow holder that all acts or legal conditions precedent necessary to be taken or performed by the Co-Location Agency to authorize execution of the documents have been taken or performed.

8.04 Pro-ration of Taxes. All real and personal property *ad valorem* taxes and special assessments, if any, will be prorated to the Closing Date, based on the latest available tax rate and assessed valuation.

8.05 Closing Costs. Co-Location Agency shall pay costs incurred in this transaction as provided in subsection 4.02 hereof.

8.06 Closing. Pursuant to Section 4 hereof, Title Company shall close the escrow by doing all of the following:

(i) Recording the Co-Location Easement Deed in the Official Records of the Monterey County Recorder.

(ii) Delivering to District the amount due District as shown on the closing statement for the escrow consistent with this Co-Location Agreement and satisfactory to District and Co-Location Agency ("Closing Statement") and a signed original of District's Closing Statement.

(iii) Delivering to Co-Location Agency a signed original of Co-Location Agency's Closing Statement and any refund due to Co-Location Agency.

8.07 Possession. District shall provide and deliver access and possession of the Co-Location Easement property to Co-Location Agency on the Closing Date.

## **9. REPRESENTATIONS AND WARRANTIES**

9.01 Representations and Warranties of District. District represents and warrants to Co-Location Agency as of the date of this Co-Location Agreement and the Closing Date, as follows:

(i) Organization, Qualification and Corporate Power. District is a political subdivision of the State of California. District has the full power and authority to enter into and perform this Co-Location Agreement and the execution, delivery and performance of this Co-Location Agreement by District has or will be duly and validly authorized by all necessary action on the part of District. This Co-Location Agreement is a legal, valid and binding obligation of District enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, reorganization, reorganization, insolvency or similar laws and subject to general principles of equity.

9.02 Representations and Warranties of Co-Location Agency. Co-Location Agency represents and warrants to District as of the date of this Co-Location Agreement and the Closing date, as follows:

(i) Authority. This Co-Location Agreement and all documents executed by Co-Location Agency which are to be delivered to District at the Closing are, or at the time of Closing will be, duly authorized, executed and delivered by the Co-Location Agency, and are, or at the Closing will be, legal, valid, and binding obligations of the Co-Location Agency, and do not, and at the time of Closing will not, violate any provisions of any agreement to which the co-Location Agency is a party or to which it is subject of any law, judgment or order applicable to Co-Location Agency.

## **10. ATTORNEY'S FEES**

10.01 In the event of any dispute between the parties in any way related to this Co-Location Agreement, the prevailing party shall be entitled to, in addition to all expenses, costs or damages, reasonable attorney's fees whether or not the dispute is litigated or prosecuted to final judgment. The prevailing party will be that party who is awarded judgment, including specific performance or injunctive relief, as a result of trial or arbitration, or who receives a payment of money from the other party in settlement of claims asserted by the party.



## 11. GOVERNING LAW

11.01 This Co-Location Agreement is entered into and shall be governed and construed in accordance with the laws of the State of California (without giving effect to its choice of law principles).

## 12. WAIVER OF DEFAULT

12.01 Any waiver by either party of a default of this Co-Location Agreement arising out of the breach of any of the covenants, conditions, or restrictions of this Co-Location Agreement shall not be construed or held to be a waiver of any succeeding or preceding default arising out of a breach of the same or any other covenant, condition, or restriction of this Co-Location Agreement.

## 13. COUNTERPARTS

13.01 This Co-Location Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and is intended to be binding when each party has delivered signatures to the other party. Signatures may be delivered by facsimile transmission. All counterparts shall be deemed an original of this Co-Location Agreement.

## 14. NOTICE

14.01 All notices, demands, requests, or other communications that may be or are required to be given, served, or sent by one party to the other party pursuant to this Co-Location Agreement shall be in writing and shall be delivered in person, mailed by registered or certified mail, return receipt requested, or delivered by a commercial courier guaranteeing overnight delivery, addressed as follows:

If to District: Monterey Regional Waste Management District  
Attn: General Manager  
14201 Del Monte Blvd. (P.O. Box 1670)  
Monterey County, CA (Marina, CA 93933-1670)

If to Co-Location  
Agency: Monterey Regional Water Pollution Control  
Agency  
Attn: \_\_\_\_\_

\_\_\_\_\_  
Monterey, CA \_\_\_\_\_

## **15. SUCCESSORS AND ASSIGNS**

15.01 This Co-Location Agreement and the rights, interests, and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

## **16. AMENDMENT OR MODIFICATION**

16.01 This Co-Location Agreement may be amended, altered or modified only by a writing specifying such amendment, alteration or modification, executed by authorized representatives of the parties hereto.

## **17. COVENANT AND CONDITION**

17.01 Each term and condition of this Co-Location Agreement performable by a party shall be construed to be both a covenant and condition.

## **18. TIME**

18.01. Time is and shall be of the essence of each term and provision of this Co-Location Agreement.

## **19. FURTHER ACTIONS**

19.01 Each of the parties agrees to execute and deliver to the other all such documents and instrument, and to take such actions, as may reasonably be required to give effect to the terms and conditions of this Co-Location Agreement.

## **20. INTERPRETATION**

20.01 This Co-Location Agreement has been negotiated by and between the representatives of both parties. Accordingly, any rule of law (including California Civil Code, Section 1654) or legal decision that would require interpretation of any ambiguities in this Co-Location Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Co-Location Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties hereto.



## **21. CAPTIONS**

21.01 Titles or captions of sections and subsections contained in this Co-Location Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Co-Location Agreement or the intent of any provision of it.

## **22. SEVERABILITY**

22.01 If any of the provisions of this Co-Location Agreement are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Co-Location Agreement and shall not cause the invalidity or unenforceability of the remainder of this Co-Location Agreement, unless this Co-Location Agreement without the severed provisions would frustrate a material purpose of either party in entering into it.

## **23. BUSINESS DAYS**

23.01 Except as may otherwise be provided in this Co-Location Agreement, if any date specified herein for commencement or expiration of time periods occurs on a day other than a Business Day (defined as any day other than a Saturday, Sunday or holiday observed by national banks), then such date shall be postponed to the following Business Day.

## **24. ASSIGNMENT**

24.01 Co-Location Agency may not assign any of its rights under this Co-Location Agreement.

## **25. ENTIRE AGREEMENT**

25.01 This Co-Location Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof except as may be set forth in writing executed by both parties contemporaneously with or subsequent to this Co-Location Agreement. The performance of this Co-Location Agreement constitutes the entire consideration for the easement interest described herein and shall constitute entire payment for all claims including interest and damages including severance.

In witness whereof, the parties have executed this Co-Location Agreement as of the date and year first above written.

CO-LOCATION AGENCY:

Monterey Regional Water Pollution  
Control Agency

By: \_\_\_\_\_  
XXXXXXXXXXXXXXXXXX

DISTRICT:

Monterey Regional Waste  
Management District

By: \_\_\_\_\_  
XXXXXXXXXXXXXXXXXXXXXX

Approved as to Form:

\_\_\_\_\_  
Counsel

Approved as to Form:

\_\_\_\_\_  
Counsel

DRAFT



## CO-LOCATION EASEMENT DEED

**MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT**, a California Garbage and Refuse Disposal District, which acquired title as Monterey Peninsula Garbage and Refuse District, hereinafter called Grantor, hereby grants to the **MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY**, a California Joint Powers Authority, hereinafter called Co-Location Agency:

(A) (1) A permanent underground pipeline easement and right to excavate for, install, replace, maintain and use such pipeline(s) as Co-Location Agency shall from time to time elect for conveying water or related substances which can be transported through the underground pipeline(s), for the purpose of delivery of the conveyed water to Co-Location Agency's property, with necessary and proper valves and other appliances and fittings, and devices for controlling corrosion for use in connection with said pipeline(s), and such wires, cables, conduits, and other electrical conductors, appliances, radio antennas, fixtures and appurtenances, as Co-Location Agency shall from time to time deem necessary for control and communication purposes, together with adequate protection therefore.

(2) The permanent underground pipeline easement granted hereby is coterminous with certain length(s) of a pipeline easement granted by Grantor to the Monterey County Water Resources Agency ("Water Resources Agency"), by Easement Deed recorded in the Office of the Monterey County Recorder, Document : 2008033083. Co-Location Agency's use and occupancy of the permanent underground easement granted hereby is subject to (a) provisions of an agreement dated \_\_\_\_\_, by and between Water Resources Agency and Grantor, entitled "Agreement for and Consent to Co-Location and Compatible Use Pipeline Easement," attached hereto as Exhibit A; and (b) provisions, as applicable, of an agreement between Water Resources Agency and Grantor, entitled "Agreement for Purchase and Sale of Real Property," dated \_\_\_\_\_, recorded in the Office of the Monterey County Recorder, Document : \_\_\_\_\_, attached hereto as Exhibit B.

(B) A temporary construction easement, for a period of not to exceed twenty-four (24) months from and after the date upon which Co-Location Agency notifies the Grantor (and any tenants of Grantor's property affected by the easement) in writing of Co-Location Agency's intention to commence excavation and construction. That period may be extended by written agreement between the parties. Co-Location Agency shall coordinate all construction activities with Grantor (and any tenants of its property affected by the easement).

(C) The right of ingress to and egress from, over, and across ("right-of-way") the Grantor's lands to access Co-Location Agency's lands and the pipeline and temporary construction easements.

I Grantor's lands are described as follows:

Assessor's Parcel Numbers 175-061-003\_ and 175-061-008. (See Attachment 1)

II Easements and right-of-way granted herein are described as follows:

(i) The permanent underground easement is described as follows:

As described in Exhibit A attached hereto and made a part hereof.

(ii) The temporary construction easement is described as follows:

As described in Exhibit B attached hereto and made a part hereof.

(iii) The right-of-way is described as follows:

As described in Exhibit C attached hereto and made a part hereof.

III Grantor further grants to Co-Location Agency:

(A) The right of ingress to and egress from the easements and right-of-way over and across the Grantor's lands by means of existing paved roads and lanes thereon, as shown on Attachment C.1, otherwise by such route or routes as shall occasion the least practicable damage and inconvenience to Grantor.

Grantor shall be responsible for all normal maintenance and repair incident to Co-Location Agency's use of Grantor's existing paved roads and lanes.

(B) Subject to written consent of Water Resources Agency: the right from time to time to trim and to cut down and clear away or otherwise destroy any and all trees and brush now or hereafter on the permanent underground pipeline easement and to trim and to cut down and clear away any trees on either side of said easement which now or hereafter in the opinion of Co-Location agency may be a hazard to the facilities installed thereunder by reason of danger of falling thereon, or may interfere with the exercise of Co-Location Agency's rights hereunder. Provided, however, that all trees which Co-Location Agency is hereby authorized to cut and remove, if valuable for timber or wood, shall continue to be the property of Grantor, but all branches, brush, and refuse wood shall be removed, or chipped and scattered by Co-Location Agency. Co-Location Agency shall conform, to the extent practicable, its use of the permanent underground pipeline easement in accordance with Grantor's intent to create a buffer using trees against possible future development on its borders.



(C) The right to install, maintain and use gates in all fences which now cross or shall hereafter cross said easements or right-of-way.

(D) The right to mark the area or location of said easements by suitable markers set in the ground; provided that said markers shall be placed in fences, roads, or other locations, which will not interfere with any reasonable use Grantor shall make of said easement areas, and which will not interfere with or conflict with markers placed by Water Resources Agency pursuant to its right to so place.

(E) The right to alternate access to Co-Location Agency's easements and right-of-way herein conveyed if Grantor, in the normal course of management of Grantor's lands, finds it necessary to reconfigure, divert or redirect access.

IV Co-Location Agency hereby covenants and agrees:

(A) Not to fence the area of the permanent underground pipeline easement.

(B) To promptly and properly backfill any excavations made by it on the easements and repair any damage it shall do to Grantor's private roads or lanes or otherwise on said lands; and

(C) To indemnify and hold harmless Grantor, its board, officers, employees, agents and contractors or Grantor's tenants on Grantor's lands described herein against any and all claims, liability, loss and damage caused by the exercise of the rights herein granted to Co-Location Agency or by any wrongful or negligent act or omission of Co-Location Agency or of its contractors, agents or employees in the course of their employment in connection with the exercise of the rights herein granted to Co-Location Agency; provided, however, that this indemnity shall not extend to that portion of such liability, loss or damage caused by Grantor's comparative negligence or willful misconduct or by the comparative negligence or willful misconduct of Grantor's tenants, contractors, agents, officers or employees. Before beginning any construction work pursuant hereto, Co-Location Agency's construction contractor(s) shall agree in writing to indemnify and hold Grantor harmless to the same extent as provided hereinabove, and at all times during the period of any work activity pursuant hereto. Co-Location Agency and/or its construction contractor(s) shall keep in full force and effect, at their sole expense, liability insurance in such form and amount as is consistent with Grantor's insurance requirements for the work being done. Grantor shall be named as an additional insured on each such insurance policy. Such insurance shall be primary to any insurance which may be carried by Grantor, and no insurance carried by Grantor shall be called upon to contribute to any loss covered by such policy. Agency shall deliver a certificate of insurance to Grantor, showing proof of the required insurance, before beginning any construction work on the easement pursuant hereto.



V Additional Reservations, Limitations, Other Provisions

(A) Grantor reserves the right to use the easement areas and the right-of-way for any and all purposes which will not interfere with Co-Location Agency's full enjoyment of the rights hereby granted; provided, that Grantor shall not erect or construct any building or other structure, or drill or operate any well, or construct any reservoir or other obstruction within the underground pipeline easement or diminish to within a minimum of five feet (5') of ground cover over the pipeline, or add to for a total of more than ten feet (10') of ground cover over pipeline, or construct any fences that will interfere with the maintenance and operation of Co-Location Agency's facilities.

(B) If Co-Location Agency fails to commence construction of underground water pipelines within the permanent underground pipeline easement before five (5) years after the date of the recording of this document, such failure shall be conclusive evidence of abandonment of the easement and all rights hereunder shall terminate with respect to all easements and the right-of-way; provided however, that in the event of such termination, Co-Location Agency shall, upon written request of Grantor, execute and deliver a quitclaim for said easements and right-of-way as a matter of record.

(C) Non-use of the underground pipeline easement or any portion thereof for a continuous period of three (3) years after initial installation of pipeline facilities shall be conclusive evidence of the abandonment of the easement and facilities. Agency shall upon written demand therefore execute and deliver to Grantor good and sufficient quitclaim of said easement and right-of-way or such portion thereof as may be abandoned.

(D) Notice of date of entry for construction purposes shall be given to Grantor and Water Resources Agency not less than twenty-one (21) days prior to date of entry.

(E) In any action to compel performance of or to recover for, breach of any provision herein, the prevailing party shall be entitled to recover reasonable attorney's fees in addition to amount of judgment and costs.

(F) The provisions hereof shall be binding upon and shall inure to the benefit of successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land.

GRANTOR:

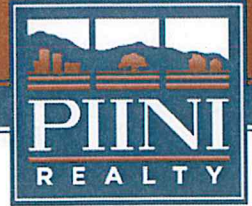
Date: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:





January 18, 2017

Tom Kouretas, P.E.  
Monterey Regional Water Pollution Control Agency  
5 Harris Court, Bldg. D  
Monterey, CA 93940-5756

Re: Appraisal Report – Blanco Drain Project  
Marina, Monterey County, California

Dear Mr. Kouretas:

Upon your authorization, we conducted the investigations and analyses necessary to form an opinion as to the market value of a proposed permanent pipeline easement and temporary construction easement for the Blanco Drain project. The easements affect portions of the Monterey Regional Waste Management District's (MRWMD) Marina Landfill and portions of the Armstrong Ranch, both of which are located to the east of Marina, Monterey County, California.

The MRWMD property is a 457± acre property that is partially developed as a Class III landfill on 383± acres. The remaining acreage consists of 27± acres of irrigated farmland on a lower bench adjacent to the Salinas River, and 47± acres within the Salinas River. The easement area is located along the perimeter of the MRWMD property and does not affect the landfill operation, improvements or the acreage within the Salinas River which have, therefore, been omitted in the valuation of the underlying land of the larger property.

The Armstrong Ranch is a 1,772± acre ranch that is situated on a lower and upper bench with a mixture of irrigated farmland and cattle pasture. The easement area is located on the lower bench and affects areas of irrigated farmland and undeveloped land adjacent to the Salinas River. The easement does not affect any lands on the upper bench and, therefore, the larger parcel is confined to the lower bench, which is estimated to consist of 157.2± acres. The lower bench acreage includes 67.3± acres of irrigated farmland, 67.4± acres of potential farmland adjacent to the Salinas River, and 22.5± acres within the Salinas River.

The easement areas are summarized as follows:

<b>Blanco Drain Easement Summary</b>			
<i>Item No.</i>	<i>Fee Owner</i>	<i>Easement Description</i>	<i>Easement Area (acres)</i>
1	MRWMD	Permanent pipeline easement	
		Within unencumbered lands	0.401
		Within existing MCWRA permanent pipeline easement	<u>2.030</u>
		Total permanent pipeline easement	2.431
2	MRWMD	Temporary construction easement	5.654
3	MRWMD	Access right-of-way	
		Over existing 30-foot wide paved road	3.964
		Over existing 12-foot wide dirt/gravel farm road	<u>0.674</u>
		Total access right-of-way	4.638
4	Armstrong Ranch	Permanent pipeline easement	0.491
5	Armstrong Ranch	Temporary construction easement	3.115

Based on the inspection of the properties and the investigation and analyses undertaken, we have formed the opinion that as of January 3, 2017, and subject to the assumptions and limiting conditions set forth in this report, including one hypothetical condition and two extraordinary assumptions, just compensation for the above easements is summarized as follows:

<b>Summary of Compensation</b>				
<i>Item No.</i>	<i>MRWMD Property</i>			
1	Permanent pipeline easement			\$8,600
		Allocation to MCWRA	\$3,591	
		Allocation to MRWMD	\$5,009	
2	Temporary construction easement			\$6,600
3	Right-of-way easement			\$27,100
	<i>Armstrong Ranch</i>	<i>Within Las Salinas Rancho</i>	<i>Within Unpatented Area</i>	<i>Total</i>
4	Permanent pipeline easement	\$0	\$3,000	\$3,000
5	Temporary construction easement	\$1,418	\$5,183	\$6,600

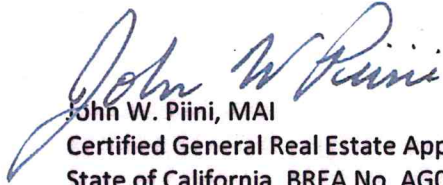


Re: Appraisal Report – Blanco Drain Project

Page iii

The appraisal report that follows consists of 58 pages and sets forth the identification of the larger properties, the areas of the proposed easements, the assumptions and limiting conditions, pertinent facts about the area and subject properties, comparable data, the results of the investigations and analyses, and the reasoning leading to the conclusions set forth.

Respectfully submitted,

  
John W. Piini, MAI  
Certified General Real Estate Appraiser  
State of California, BRE No. AG005214

  
Greg Piini, MAI  
Certified General Real Estate Appraiser  
State of California, BRE No. AG044270

