



# Memorandum

## MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

Reviewed by: [Signature] Date: 5/12/17  
General Manager

DATE: May 12, 2017  
TO: General Manager  
FROM: Director of Engineering & Compliance/District Engineer  
SUBJECT: Approve Easement Deed and Agreement for Grant/Purchase of (0.401 Acre Non-Colocation) Easement with the Monterey Regional Water Pollution Control Agency (for Blanco Drain Diversion Pipeline)

**RECOMMENDATION:** Approve Agreement for Easement Deed and Agreement for Grant and Purchase of (0.401 acre Non-Colocation) Easement between the District and the Monterey Regional Water Pollution Control Agency (MRWPCA) to permit the District's conveyance of an 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 and easement deed agreements presented in this Board Meeting Agenda item. The District and MCWRA consent to the co-location and compatible pipeline agreement is presented in a preceding Board Meeting Agenda item.

### 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 is being presented to the District Board for final review and approval in a preceding Agenda item at this Board Meeting.

Once the District-MCWRA amendment agreement is approved, then the next two agenda items for the Board are 1) the subject co-location easement deed and grant and purchase easement deed agreements (preceding Agenda item) and 2) the non-colocation easement deed and grant and purchase easement deed agreements for 0.401 acres of District property. Both of these items are agreements between the District and MRWPCA.

The non-colocation easement deed and grant and purchase (0.401 acres of District Property) easement agreements are the subject of this Board Meeting Agenda item. It involves 0.401 acres of District property that was not in the current easement for the MCWRA SRDF pipelines.

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 (District-MCWRA consent to the co-location presented in preceding Board Meeting Agenda item) and an additional 0.401 acres of District property outside of the easement (presented in subsequent Board Meeting Agenda item). 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. Issues of compensation for the permanent pipeline easement, and a temporary construction easement, will be settled by negotiations of staff.

#### FINANCIAL IMPACT

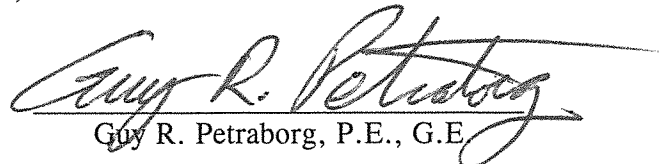
Compensation will be worked on by all three parties and incorporated into the easement conveyance agreement as agreed upon by the parties. A real estate appraiser was retained by MRWPCA to develop a fair market assessment of the value of the easement and the conditions for its placement subject to review 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 Easement Deed (0.401 acre) Agreement and (2) the Agreement for Grant and Purchase of Easement (0.401 acre) between the District and the MRWPCA.

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

Attachments

AFTER RECORDING RETURN TO:  
Monterey Regional Water Pollution Control  
Agency  
Attn: General Manager  
5 Harris Court, Building D  
Monterey, CA 93940

A.P.N. 175-061-003;  
A.P.N. 175-061-008

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**EASEMENT DEED**  
(0.401 Acre)

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Exempt from Recording Fees: Gov. Code 27383  
Documentary Transfer Tax: \$0.00; No documentary transfer tax due: (R&T Code §11922) Conveyance to government entity

**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 Agency:

(A) A permanent underground pipeline easement and right to excavate for, install, replace, maintain and use such pipeline(s) as 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 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, fixtures and appurtenances, as Agency shall from time to time deem necessary for control and communication purposes, together with adequate protection therefore.

I Grantor's lands over and on which the aforescribed easement is located are Monterey County APN 175-061-003 and 175-061-008 (See Attachment 1 hereto).

II Easement over said lands herein is described as follows:

(i) The permanent underground easement:

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

(B) 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 Agency may be a hazard to the facilities installed thereunder by reason of danger of falling thereon, or may interfere with the exercise of Agency's rights hereunder. Provided, however, that all trees which 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 Agency. 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.

(E) The right to alternate access to 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.

III 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 Agency or by any wrongful or negligent act or omission of 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 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, 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. 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.

#### IV 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 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 Agency's facilities.

(C) If 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, Agency shall, upon written request of Grantor, execute and deliver a quitclaim for said easements and right-of-way as a matter of record.

(D) 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.

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

(F) 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.

(G) 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:

By: \_\_\_\_\_  
Tim Flanagan, General Manager

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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF MONTEREY

On \_\_\_\_\_, 2017, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledging to me that she/he executed the same in his authorized capacity, and that by her/his signature on the instrument the person or the entity upon behalf of which person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (seal)

**CERTIFICATE OF ACCEPTANCE, GOVERNMENT CODE SECTION 27281**

This is to certify that the **MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY**, grantee herein, hereby accepts for public purposes the real property, or interest therein, described in the foregoing Easement Deed dated \_\_\_\_\_, 2017, from Monterey Regional Waste Management District, grantor therein, and consents to the recordation thereof.

In Witness Whereof, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY**

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

Name: Paul A. Sciuto

Title: General Manager

ATTEST:

\_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF MONTEREY

On \_\_\_\_\_, 2017, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledging to me that she/he executed the same in his authorized capacity, and that by her/his signature on the instrument the person or the entity upon behalf of which person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (seal)



ATTACHMENT 1

LEGAL DESCRIPTION OF ENCUMBERED PARCELS

Certain real property situate in the County of Monterey, State of California, being portions of the Rancho Las Salinas, the Rancho Bolsa Potrero Y Moro Cojo, and the unpatented lands lying between the two said ranchos, described as follows:

Parcels "A" and "C" as said parcels are shown on the map recorded in Volume 19 of Surveys, at Page 103, in the office of the County Recorder of said county.

**Excepting Therefrom** that 5.77 acre portion of said Parcel "C" designated as the "Salinas River Diversion Facility Parcel" on the map recorded in Volume 29 of Surveys, at Page 47, in the office of the County Recorder of said county.

(APN 175-061-001, 175-061-003 & 175-061-008)

END OF DESCRIPTION

PREPARED BY:  
WHITSON ENGINEERS



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RICHARD P. WEBER P.L.S.  
L.S. NO. 8002  
Job No.: 1906.31



## EXHIBIT A

### LEGAL DESCRIPTION OF A PERMANENT PIPELINE EASEMENT

That portion of Rancho Las Salinas and the unpatented lands lying northeasterly thereof in the County of Monterey, State of California, being a portion of Parcel "C" as said parcel is shown on map recorded in Volume 19 of Surveys at Page 103, official records of said county, described as follows:

**Segment A:**

A strip of land, 20.00 feet wide, lying 10.00 feet on each side of the following described centerline:

BEGINNING at a point on the southeasterly line of said Parcel "C" that bears South 44°29'16" West, 46.02 feet along said southeasterly line from a ¾ inch iron pipe at the most southerly corner of the "Salinas River Diversion Facility Parcel" as said parcel is shown on the map recorded in Volume 29 of Surveys at Page 47, official records of said county;

- 1) North 45°14'25" West, 8.58 feet; thence
- 2) South 89°45'35" West, 8.94 feet; thence
- 3) South 44°45'35" West, 362.19 feet to the beginning of a tangent curve to the right, concave northwesterly, having a radius of 1000.00 feet; thence
- 4) Southwesterly 41.20 feet along the arc of said curve through a central angle of 2°21'38"; thence
- 5) South 47°07'13" West, 61.84 feet to the POINT OF TERMINATION of said strip.

The sidelines at the beginning of said strip are to be extended or shortened so as to terminate on the southeasterly line of said Parcel 'C'

Segment A containing 0.222 acres, more or less.

TOGETHER WITH:

**Segment B:**

A strip of land, 3.00 feet wide, lying southeasterly of the following described right (northwesterly) sideline:

Commencing at a point on the southeasterly line of said Parcel "C" that bears North 44°29'16" East, 1279.17 feet along said southeasterly line from a nail and tag in a fence post at the most southerly corner of said parcel; thence North 45°30'44" West, 9.62 feet to the POINT OF BEGINNING of said right sideline, and the beginning of a non-tangent curve, concave southeasterly, to which beginning a radial bears North 38°37'39" West, a radial distance of 800.00 feet; thence

Southwesterly 182.01 feet along the arc of said curve through a central angle of 13°02'08" to the POINT OF TERMINATION of said strip.

Segment B containing 0.013 acres, more or less.

TOGETHER WITH:

**Segment C:**

A strip of land, 20.00 feet wide, lying 10.00 feet on each side of the following described centerline

Commencing at a point on the southeasterly line of said Parcel "C" that bears North 44°29'16" East, 173.96 feet along said southeasterly line from a nail and tag in a fence post at the most southerly corner of said parcel; thence North 45°30'44" West, 31.25 feet to the POINT OF BEGINNING of said centerline; thence

6) South 45°52'55" West, 68.77 feet to the beginning of a tangent curve to the left, concave southeasterly, having a radius of 800.00 feet; thence

7) Southwesterly 54.58 feet along the arc of said curve through a central angle of 3°54'33"; thence

8) South 41°58'22" West, 7.76 feet; thence;

9) South 30°43'22" West, 31.91 feet; thence

10) South 53°13'22" West, 13.03 feet; thence

11) North 81°46'38" West, 35.67 feet; thence

12) North 70°31'38" West, 120.18 feet to the POINT OF TERMINATION of said strip

Segment C containing 0.152 acres, more or less.

TOGETHER WITH:

**Segment D:**

A strip of land, 10.00 feet wide, lying southerly of the following described right (northerly) sideline:

Commencing at a point on the southerly line of said Parcel "C" that bears North 81°46'26" West, 807.95 feet along said southerly line from a nail and tag in a fence post at the most southerly corner of said parcel; thence North 8°15'34" East, 38.24 feet to the POINT OF BEGINNING of said right sideline; thence

13) South 86°58'22" West, 20.50 feet; thence

14) North 81°46'38", 20.00 feet; thence

15) North 70°31'38" West, 20.50 feet to the POINT OF TERMINATION of said strip.

Segment D containing 0.014 acres, more or less.


Combined, segments A, B, C and D contain a total of 0.401 acres, more or less.

As shown on the plat attached hereto and made a part hereof.

Bearings listed herein are grid bearings per the California Coordinate System, NAD83 Zone IV (1991.31 epoch). Distances listed herein are grid distances. Ground distances can be obtained by applying the average combined scale factor of 0.999945.

Dated: December 13, 2016

Bestor Engineers, Inc.

  
Michael V. Hink

California PLS #8158

W.O. 7080.00

L:\7080\Docs\Legal Desc\MRWMD Permanent Easement.docx



SEE SHEET 2

COURSE TABLE: SEGMENT A CENTERLINE

#	BEARING/Delta	RADIUS	LENGTH	TANGENT
1	N 45°14'25" W		8.58	
2	S 89°45'35" W		8.94	
3	S 44°45'35" W		362.19	
4	$\Delta=2^{\circ}21'38''$	1000.00'	41.20'	20.60'
5	S 47°7'12" W		61.84	



SCALE: 1" = 200'

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT  
VOL. 19 SUR PG. 103  
PARCEL C

EXISTING MCWRA  
PIPELINE EASEMENT  
(WIDTH VARIES)

POINT OF TERMINATION  
EASEMENT SEGMENT A

PARCEL A  
VOL. 7 SUR. PG. 102  
DOC # 2003143086

DESCRIBED CENTERLINE  
OF 20' WIDE PIPELINE  
EASEMENT SEGMENT A

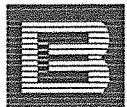
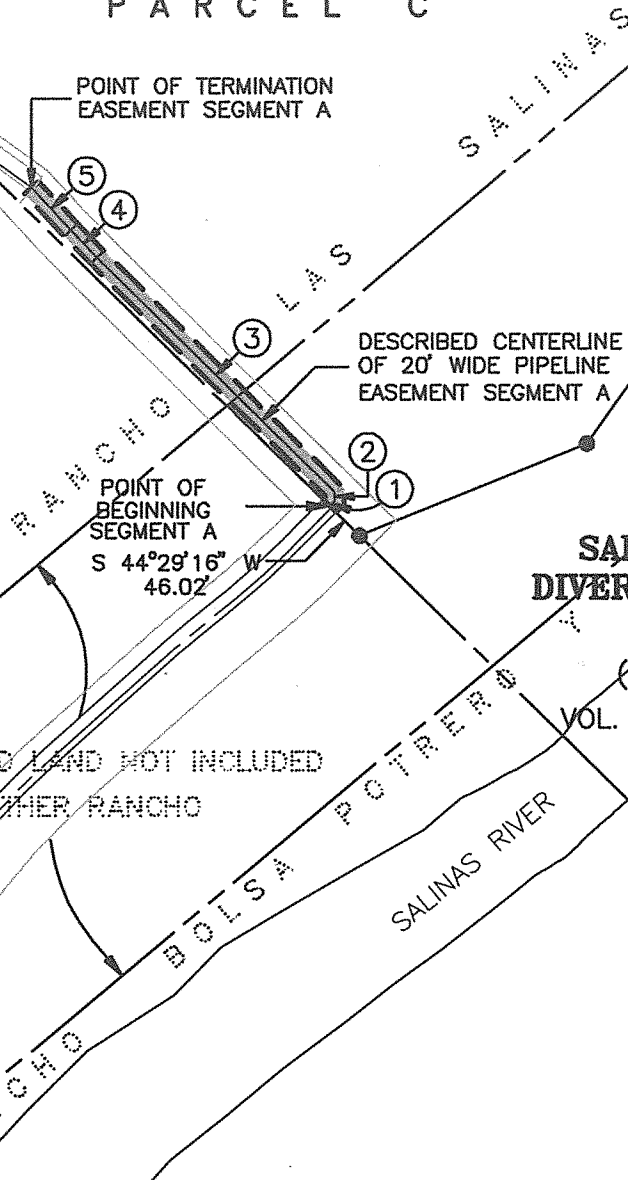
POINT OF  
BEGINNING  
SEGMENT A  
S 44°29'16" W  
46.02'

SALINAS RIVER  
DIVERSION FACILITY  
PARCEL  
(5.77 ACRES)  
VOL. 29 SUR PG. 47

UNPATENTED LAND NOT INCLUDED  
IN EITHER RANCHO

L:\7080\Drawings\Plats\16\16030 PERMANENT EASEMENT.DWG - hnhlm - NOV 30, 2016 - 16:08:09

RANCHO LAS SALINAS



**BESTOR ENGINEERS, INC.**  
CIVIL ENGINEERING - SURVEYING - LAND PLANNING  
8701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940  
831.373.2941 831.649.4118F WWW.BESTOR.COM

PREPARED FOR: MRWPCA

**PLAT TO ACCOMPANY DESCRIPTION  
OF A PERMANENT PIPELINE EASEMENT**

COUNTY OF MONTEREY

CALIFORNIA

SCALE:	1" = 200'
DATE:	11/30/16
SHEET:	1 OF 2
WD:	7080.00

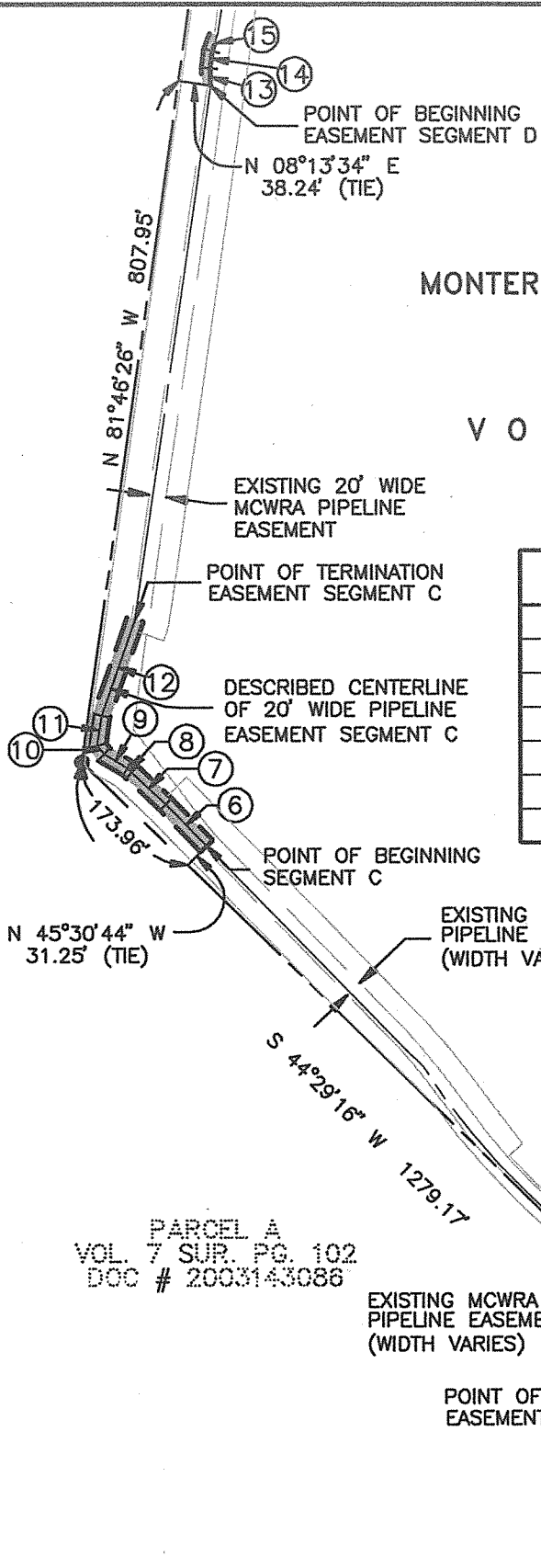
COURSE TABLE: SEGMENT D SIDELINE

#	BEARING	LENGTH
13	S 86°58'22" W	20.50'
14	N 81°46'38" W	20.00'
15	N 70°31'38" W	20.50'

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT  
 P A R C E L C  
 V O L . 1 9 S U R P G . 1 0 3

COURSE TABLE: SEGMENT C CENTERLINE

#	BEARING/Delta	RADIUS	LENGTH	TANGENT
6	S 45°52'55" W		68.77'	
7	$\Delta=3°54'33"$	800.00'	54.58'	27.30'
8	S 41°58'22" W		7.76'	
9	S 30°43'22" W		31.91'	
10	S 53°13'22" W		13.03'	
11	N 81°46'38" W		35.67'	
12	N 70°31'38" W		120.18'	



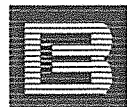
SCALE: 1" = 200'

PARCEL A  
 VOL. 7 SUR. PG. 102  
 DOC # 2003143086

$\Delta=13°02'08"$   
 $R=800.00'$   
 $L=182.01'$

SEE SHEET 1

L:\7080\Drawings\Plinshis\LEGAL PLAT - MRWMD PERMANENT EASEMENT.DWG - hinkm - NOV 30, 2016 - 18:08:34



**BESTOR ENGINEERS, INC.**  
 CIVIL ENGINEERING - SURVEYING - LAND PLANNING  
 9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940  
 831.373.2941 831.849.4118F WWW.BESTOR.COM

PREPARED FOR: MRWPCA

PLAT TO ACCOMPANY DESCRIPTION  
 OF A PERMANENT PIPELINE EASEMENT

COUNTY OF MONTEREY

CALIFORNIA

SCALE:	1" = 200'
DATE:	11/30/16
SHEET:	2 OF 2
WD:	7080.00



AFTER RECORDING MAIL TO:  
Monterey Regional Water Pollution  
Control Agency  
Attn: General Manager  
5 Harris Court, Building D  
Monterey, CA 93940

(SPACE ABOVE FOR RECORDER'S USE ONLY)

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**AGREEMENT FOR GRANT AND PURCHASE OF  
EASEMENT  
(0.401 acre)**

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This Agreement for Grant and Purchase of Easement ("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 Authority ("Agency"). The District and 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").

B. 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 Agency's Regional Treatment Plant adjacent to the Landfill. Agency has determined that the most suitable alignment for a portions of the BDD Pipeline ("Pipeline") lie along the south and southeast boundaries of the Parcels. District is prepared to grant an easement ("Easement"), comprised of four non-contiguous areas of land within the Parcels, totaling 0.401 acres, more or less, to Agency for the purpose of constructing, operating, and maintaining the Pipeline.

D. Agency and District desire to enter into this Agreement and approve an easement deed providing that the Agency shall have the right to construct, install, operate, and maintain underground pipes carrying BDD water across Parcels to Agency's property for treatment ("Project") within the 0.401 acres of the Easement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, agreements, representations and warranties contained in this 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 Agreement.

1.02. District hereby agrees to grant to Agency and Agency hereby agrees to purchase from District, an Easement, located in Monterey County, California, as set forth in the Easement Deed ("Easement Deed"), substantially in the form and content as set forth in Exhibit A hereto, providing for a permanent utilities and pipeline easement across the Parcels, and temporary use of the District's property in connection with construction of the Project.

## **2. DELIVERY OF DOCUMENT**

2.01 The Easement Deed will be executed and delivered by the District at Closing, as defined at Section 8 hereof, to Chicago Title Company, Monterey, California, Escrow Holder for the parties for the purpose of granting the Easement to the Agency.

## **3. PURCHASE PRICE**

3.01 As of the date of execution of this Agreement, the parties have not reached completed negotiations regarding the purchase price for items described at subsection 1.02, above. Parties agree that, following execution of this Agreement, they shall continue good faith negotiations regarding purchase price. If, within 30 days following execution, negotiations have not resulted in agreement on purchase price, the parties shall at once endeavor to settle the matter using mandatory non-binding mediation under the rules of the Judicial Arbitration and Mediation Service ("JAMS"). Expenses of a witness for either side in mediation shall be paid by the party producing the witness; all other expenses shall be borne equally, unless otherwise agreed. Mediation shall be completed within 30 days after engagement of a JAMS mediator.

Should mediation fail to resolve the matter of purchase price, the parties shall submit the matter to arbitration. Before commencement of arbitration, the parties may elect, by mutual agreement, to proceed on an informal basis; however, if the parties do not so agree, then the arbitration shall be conducted under the rules of JAMS. The parties agree that the decision of the arbitrator regarding purchase price shall be final



and binding on the parties, and the decision shall become and be a term and condition of this Agreement.

#### **4. TITLE**

4.01 At Closing, District will deliver title to the Easement to Agency, and said title shall be subject only to those restrictions and reservations set forth in the Easement Deed, this Agreement, and the exceptions shown in the preliminary title report for the Easement property dated as of January 20, 2017, as provided by Chicago Title Company ("Title Company"), or disclosed in any visual inspection of said property by the Title Company.

4.02 At Closing, 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 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 Easement Deed, pursuant to Government Code Section 27383.

4.04 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 Easement "AS IS," with all faults, but represents and warrants to Agency as follows:

(a) District has full power and authority to grant the Easement as provided in this Agreement, and this Agreement is binding and 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 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 Agreement, Agency is relying upon no warranties, express or implied, oral or written, from District regarding the Easement property and, upon Close of Escrow, Agency will have accepted said property AS-IS, with all faults. Agency represents and warrants to District as follows:

(a) Neither the execution and delivery of this Agreement by 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 (including Exhibit A) to which Agency is a party.

(b) 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 Agency agrees to hold District harmless for all such conditions that may affect the Easement property due to proximity to the Landfill.

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

5.03 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 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 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 Agency further acknowledges and agrees that it has or will have been given the opportunity to inspect the Easement property and review information and documentation affecting said property, and that, except for District's express representations and warranties contained herein, 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. Agency further acknowledges and agrees that any information made available by 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. 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. 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 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 Agreement, 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, 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 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 Easement property. Agency shall be responsible for arranging for the delivery and paying for all utilities required on said property. 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 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 Agency to contact, consult and comply with any regulation applicable to Agency's activities on the 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 AGENCY**

7.01 Agency shall not use or knowingly allow others to use the Easement property in a manner inconsistent with the description of use and activity in this Agreement and the Easement Deed. Any other use or activity is prohibited. This Agreement authorizes District to enforce these covenants in the manner described herein. However, unless otherwise specified, nothing in this Agreement shall require the 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. Agency understands that nothing in this Agreement relieves it of any obligation or restriction on the use of said property imposed by law.

7.02 Where 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 Agency prior to Agency's taking the proposed action. District shall grant permission or approval to 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 Agreement. If the District finds what it believes is a violation, it shall give the 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 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 Agency to restore the Easement property to its condition prior to the violation. In any case where a court finds that a violation has occurred, the 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 10. 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 Easement will be held at the offices of the Title Company, on or before 30 days after the date of this Agreement, or later if agreed to in writing by the parties. The performance by parties of their respective obligations under this 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 Easement Deed upon title insurers commitment to issue title policy to Agency and delivery of possession of the Easement property to 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 Easement Deed in the form attached hereto as Exhibit A.
- (ii) An affidavit substantially in the form attached as Exhibit B (Non-Foreign Certificate) hereto 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 Agency's Deposits into Escrow. Prior to Closing, 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) Agency's obligation for closing costs as described in subsection 4.02.

(iii) Duly executed 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 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. 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 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 Agreement and satisfactory to District and Agency ("Closing Statement") and a signed original of District's Closing Statement.

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

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

## **9. REPRESENTATIONS AND WARRANTIES**

9.01 Representations and Warranties of District. District represents and warrants to Agency as of the date of this 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 Agreement and the execution, delivery and performance of this Agreement by District has or will be duly and validly authorized by all necessary action on the part of District. This 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 Agency. Agency represents and warrants to District as of the date of this Agreement and the Closing date, as follows:

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

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

10.01 In the event of any dispute between the parties in any way related to this 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 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 Agreement arising out of the breach of any of the covenants, conditions, or restrictions of this 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 Agreement.

### **13. COUNTERPARTS**

13.01 This 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 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 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 Agency:

Monterey Regional Water  
Pollution Control Agency  
Attn: General Manager  
5 Harris Court, Building D  
Monterey, CA 93940

### **15. SUCCESSORS AND ASSIGNS**

15.01 This 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 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 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 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 Agreement.

## **20. INTERPRETATION**

20.01 This 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 Agreement against the party that has drafted it is not applicable and is waived. The provisions of this 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 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 Agreement or the intent of any provision of it.

## **22. SEVERABILITY**

22.01 If any of the provisions of this Agreement are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement, unless this 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 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 Agency may not assign any of its rights under this Agreement.

**25. ENTIRE AGREEMENT**

25.01 This 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 Agreement. The performance of this 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 Agreement as of the date and year first above written.

AGENCY:

Monterey Regional Water Pollution  
Control Agency

By: \_\_\_\_\_  
Paul A. Sciuto, General Manager

DISTRICT:

Monterey Regional Waste  
Management District

By: \_\_\_\_\_  
Tim Flanagan, General Manager

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Agency Counsel

\_\_\_\_\_  
District Counsel

EXHIBIT B

AFFIDAVIT OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a grantee of a United States real property interest must withhold tax if the grantor is a foreign person. To inform Monterey Regional Water Pollution Control Agency (the "Grantee") that withholding of tax is not required upon the disposition of a United States real property interest owned by Monterey Regional Waste Management District (the "Grantor"), the undersigned hereby certifies the following on behalf of the Grantor:

1. The Grantor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. The United States employer identification number of the Grantor is \_\_\_\_\_.
3. The home office address of the Grantor is 14201 Del Monte Boulevard, Marina, CA 93933.

It is understood that this certification may be disclosed to the Internal Revenue Service by the Grantee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Grantor.

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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