

PROPERTY TRANSFER AND HYDRANT MAINTENANCE AGREEMENT
BETWEEN
MARINA COUNTY WATER DISTRICT
AND
CITY OF MARINA
AND
MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY

The parties to this Agreement agree as follows:

1. DESIGNATIONS AND DEFINITIONS. The following designations and definitions shall apply in this Agreement and all Exhibits and Schedules to this Agreement:

a. Parties:

"City" means the City of Marina.

"MCWD" means the Marina County Water District, a political subdivision of the State of California.

"Agency" means the Monterey Regional Water Pollution Control Agency, a joint powers agency organized under the laws of the State of California.

b. "WTP" means MCWD's existing wastewater treatment plant.

c. "Regional System" means the Agency's wastewater collection and treatment system.

d. "Connection" means works and facilities to connect the WTP to the Regional System.

e. "EIR" means the Supplemental Environmental Impact Report for the Connection.

f. "Pump Station" means the Regional System Reservation Road Pump Station.

g. "Property" means the real property which is the site of the Pump Station, described on Exhibit A hereto.

h. "Lift Station" means MCWD's Lift Station No. 1, which presently pumps untreated wastewater to the WTP.

i. "Fire Hydrants" means all publicly-owned fire hydrants within the City of Marina.

j. "Annexation Agreement" means the Annexation Agreement dated April 25, 1989, between MCWD and Agency.

2. PURPOSE. This Agreement provides mutually beneficial terms and adequate consideration for conveyance of the Property by the City to the Agency and maintenance of the Fire Hydrants.

3. CONDITION PRECEDENT. The transfer of the Property to Agency by City is a condition precedent to the construction of the Connection. Time is of the essence in the transfer of the Property.

4. PROPERTY TRANSFER. Within ten (10) days after the execution of this Agreement, City will transfer the Property to Agency in fee simple absolute, at no cost to Agency; provided, however, that the City shall not be liable for any costs and expenses relative to other related costs, which shall be paid in full by the Agency. The City agrees to sign any and all subsequent documents necessary to effect the transfer of title to the Agency.

5. FIRE HYDRANT MAINTENANCE AND SERVICE. MCWD will maintain and provide water service for City's needs and uses to all public Fire Hydrants in the City without cost to City, from July 1, 1992 through June 30, 2000, in accordance with MCWD's ordinances, rules, procedures and policies, including the policy in MCWD's Resolution 92-2 regarding limitation of the MCWD's liability to the customers for failure to provide a specified quantity or quality of water. Upon expiration of said term the Agreement previously in effect between the City and MCWD will be automatically reinstated or, as an alternative, the parties will be free to renegotiate a new agreement relating to the Fire Hydrants.

6. NEW DRAINAGE SYSTEM. The Property to be conveyed to the Agency now contained a City percolation pond, and in order to assure its continued use for drainage purposes until an alternative drainage system is in place, the Agency agrees that its construction contractor for the Pump Station and Connection facilities project will first complete construction of a new drainage system diverting flows to the pond at Locke Paddon Park prior to commencing any other construction on the Property. The MCWD will maintain the new drainage system and shall indemnify and hold the City harmless from any claims, actions or costs arising from the diversion of flows or of the system; provided, however, that the City shall not be relieved hereby from any responsibility or liability it otherwise may have had prior to this Agreement for the hazardous or other content of any flows into the drainage system. Agency will provide access, as necessary, to MCWD to allow MCWD to maintain the new drainage system.

7. OPERATION OF PUMP STATION. Agency agrees not to maintain or operate the Pump Station facility as a nuisance and will indemnify and hold the City harmless from any claims, actions or costs resulting from the construction, maintenance or operation of the facility on the Property. MCWD and Agency further agree to expeditiously respond to any and all complaints from the City of Marina, its citizens and other concerning the construction, operation and maintenance of the Pump Station, by either referring complaints to the appropriate individual or entity or by taking action to resolve said complaints in a manner consistent with the obligations of the parties as set forth herein.

8. ENVIRONMENTAL COMPLIANCE AND PERMITS. MCWD will perform necessary environmental review and compliance for the execution and performance of this Agreement.

9. INDEMNIFICATION. Subject to any limitations elsewhere in this Agreement, MCWD shall indemnify, defend, and hold harmless the City from and against any and all damages, liabilities, losses, and costs or expenses suffered or incurred by City, arising out of, or resulting from, any breach of MCWD's agreements set forth in this Agreement to the extent of MCWD's memorandum of insurance with the ACWA Joint Powers Insurance Authority for several insurance matters and the MCWD's existing workers' compensation insurance for workers' compensation matters.

10. PROCEDURE FOR INDEMNIFICATION.

a. If any legal proceedings are instituted, or any claim or demand is asserted, by any third party which may give rise to any damage, liability, loss, or cost or expense with respect to which MCWD of Agency has indemnified the City in this Agreement, then City shall give MCWD or Agency, as applicable, written notice of the institution of such proceedings, or the assertion of such claim or demand, promptly after the City first becomes aware thereof. However, any failure by the City to give such notice on such prompt basis shall not affect any of its rights to indemnification hereunder unless such failure materially and adversely affects the ability of the MCWD or Agency to defend such proceeding.

b. The indemnifying party shall have the right, at its option and at its own expense, to utilize counsel of its choice in connection with such proceeding, claim or demand, subject to the approval of the indemnified party, which approval shall not be unreasonably withheld or delayed. The indemnifying party shall also have the right to defend against, negotiate with respect to, settle or otherwise deal with such proceeding, claim or demand. However, no settlement of such proceeding, claim or demand shall be made without the prior written consent of the indemnified party, which consent shall not be unreasonably withheld or delayed, unless, pursuant to the terms and conditions of such settlement, the indemnified party is released from any liability or other

exposure with respect to such proceeding, claim or demand. The indemnified party may participate in any such proceeding with counsel of its choice at its own expense.

c. In the event, or to the extent, the indemnifying party elects not to, or falls to, defend such proceeding, claim or demand and the indemnified party defends against, settles or otherwise deals with any such proceeding, claim or demand, any settlement thereof may be made without the consent of the indemnifying party if it is given written notice of the material terms and conditions of such settlement at least ten (10) days before a binding agreement with respect to such settlement is reached.

d. Each of the parties agrees to cooperate fully with each other in connection with the defense, negotiation or settlement of any such proceeding, claim or demand.

11. PAYMENT OF INDEMNIFIED CLAIMS. The indemnifying party shall forthwith pay all of the sums owing to the indemnified party, upon the happening of any of the following events:

a. Upon the rendition of a final judgment or award with respect to any proceeding of the nature described in Paragraph 13, above, by a court, arbitration board or administrative agency of competent jurisdiction and upon the expiration of the time in which an appeal therefrom may be made; or

b. Upon the making of a settlement of such proceeding, claim or demand; or

c. Upon the parties' making of a mutually binding agreement with respect to each separate matter indemnified hereunder.

12. CONTRIBUTION IN THE EVENT OF JOINT LIABILITY. In the event any such proceeding is brought, in which allegations of fault are made against both of the parties, the extent of any indemnification shall be determined in accordance with the findings of the court as to the relative contribution by each of the parties to the damage suffered by the party seeking indemnity with respect to such proceeding.

13. GENERAL INSURANCE REQUIREMENTS. Without limiting a party's duty to indemnify, MCWD shall maintain in effect throughout the term of this Agreement, a policy or policies of insurance at least equivalent to its current insurance with the ACWA JPIA. The MCWD will apply to have the City named as an additional insured on the MCWD's ACWA JPIA memorandum of insurance.

14. WORKERS' COMPENSATION INSURANCE. MCWD shall maintain workers' compensation plans covering all of their respective employees as required by Labor Code section 3700. MCWD's existing

workers' compensation program shall satisfy the requirements of this paragraph.

15. CERTIFICATE OF INSURANCE. The MCWD shall deliver certificates of insurance to the City that there is in effect the insurance required by this contract. The insuring party shall deliver to the other party a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.

16. SELF-INSURANCE. The MCWD's insurance with the ACWA JPIA satisfies the general insurance requirement hereunder.

17. AMENDMENTS. This Agreement may be amended only by a writing signed by authorized representatives of the parties.

18. EFFECTIVE DATE. This Agreement shall be effective upon execution by both parties.

19. INTERPRETATION. This Agreement has been negotiated by and between persons knowledgeable in the subject matter of this Agreement and each party has had the opportunity to have this Agreement and all exhibits to it reviewed by legal counsel. Accordingly, any rule of law (including 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 and the exhibits to this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Agreement.

20. COUNTERPARTS. This Agreement may be executed in counterparts, and each fully executed counterpart shall be deemed an original document, constituting one agreement, binding on the parties.

21. COMPLIANCE WITH LAWS. This Agreement and the performance of each term of this Agreement are subject to compliance with applicable laws, ordinances, rules, regulations and orders.

22. FURTHER ACTIONS. The parties agree to execute such other documents and take such actions as may be necessary to give effect to the provisions of this Agreement.

23. APPROVAL; COOPERATION. Whenever consent or approval or cooperation of a party is required to give effect to any of the provisions of this Agreement, that party shall not unreasonably withhold such consent or approval or cooperation.

24. WAIVER. The waiver by either party of any breach or breaches hereof shall not be deemed, nor shall the same constitute, a waiver of any subsequent breach or breaches.

25. EXHIBITS; SCHEDULES. All exhibits and schedules referred to in this Agreement and attached to this Agreement are incorporated in this Agreement by reference.

26. EFFECT; AMENDMENT. This Agreement shall bind and benefit the parties and their successors. This Agreement constitutes the full and complete agreement of the parties regarding its subject matter, and any prior agreements or arrangements are hereby superseded. This Agreement may be amended or modified only by a writing signed by the parties.

27. CAPTIONS. Titles or captions of articles, sections and paragraphs 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.

28. SEVERABILITY. 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 provision would frustrate a material purpose of any party in entering into this Agreement.

29. DISPUTE RESOLUTION PROCEDURE. If any dispute arises between the parties as to the proper interpretation or application of this contract, the parties shall first seek to resolve the dispute in accordance with this contract, and, except where the dispute involves the payment of money by one party to another, the parties, at their discretion, may proceed through arbitration under this contract before filing any court action.

30. DUTY TO MEET AND CONFER. If any dispute under this contract arises, the parties shall first meet and confer, in an attempt to resolve the matter between themselves. Each party shall make all reasonable efforts to provide to the other party all the information that the party has in its possession that is relevant to the dispute, so that both parties will have ample information with which to reach a decision.

31. ARBITRATION. If the dispute is not resolved by meeting and conferring, the matter may be submitted to binding arbitration if both parties agree to same. The parties may jointly select a single arbitrator, or, if the parties are unable to agree, they shall each select an arbitrator, and the matter shall be handled by two arbitrators. The two arbitrators may, if they deem it appropriate and warranted by the nature and significance of the dispute and after consultation with the parties, themselves select a third arbitrator. Any person selected as an arbitrator shall be a qualified professional with expertise in the area that is the subject of the dispute. Before commencement of the arbitration, the parties may elect to have the arbitration proceed on an

informal basis; however, if the parties are unable to so agree, then the arbitration shall be conducted in accordance with CCP section 1280 et seq., and to the extent that procedural issues are not there resolved, in accordance with the rules of the American Arbitration Association. The decision of the arbitrator or arbitrators shall be binding.

32. EXPENSES, ATTORNEYS' FEES AND COSTS. Each party hereto agrees to pay all expenses and costs incurred by such party in connection with this Agreement. In the event it should become necessary for either party to enforce any of the terms and conditions of this Agreement by means of arbitration, court action or administrative enforcement, the prevailing party, in addition to any other remedy at law or in equity available to such party, shall be awarded all costs and reasonable attorneys' fees in connection therewith, including fees and costs of experts reasonably consulted by the attorneys for the prevailing party.

WHEREFORE, the parties have caused this Connection Agreement to be executed by persons authorized to execute this Agreement on behalf of the parties, effective on the date of the last signature.

Dated: July 14, 1992 CITY OF MARINA

By Edith Johnsen
Mayor Edith Johnsen

ATTEST:

By Joy P. Junsay
Joy P. Junsay, City Clerk

Dated: 14 July, 1992 MARINA COUNTY WATER DISTRICT

By Royce Moore
Royce Moore, President

By Kevin D. Walsh
Kevin D. Walsh, Secretary

The undersigned Agency, for the purpose of being bound to the agreements of the Agency as set forth in paragraphs 6 and 7 hereinabove, hereby execute the above Agreement.

Dated: 7/14, 1992

MONTEREY COUNTY REGIONAL WATER
POLLUTION CONTROL AGENCY, a joint
powers agency

BY Charles W. Benson
Charles W. Benson, Chairman

BY Keith Israel
Keith Israel, Board Secretary

EXHIBIT A

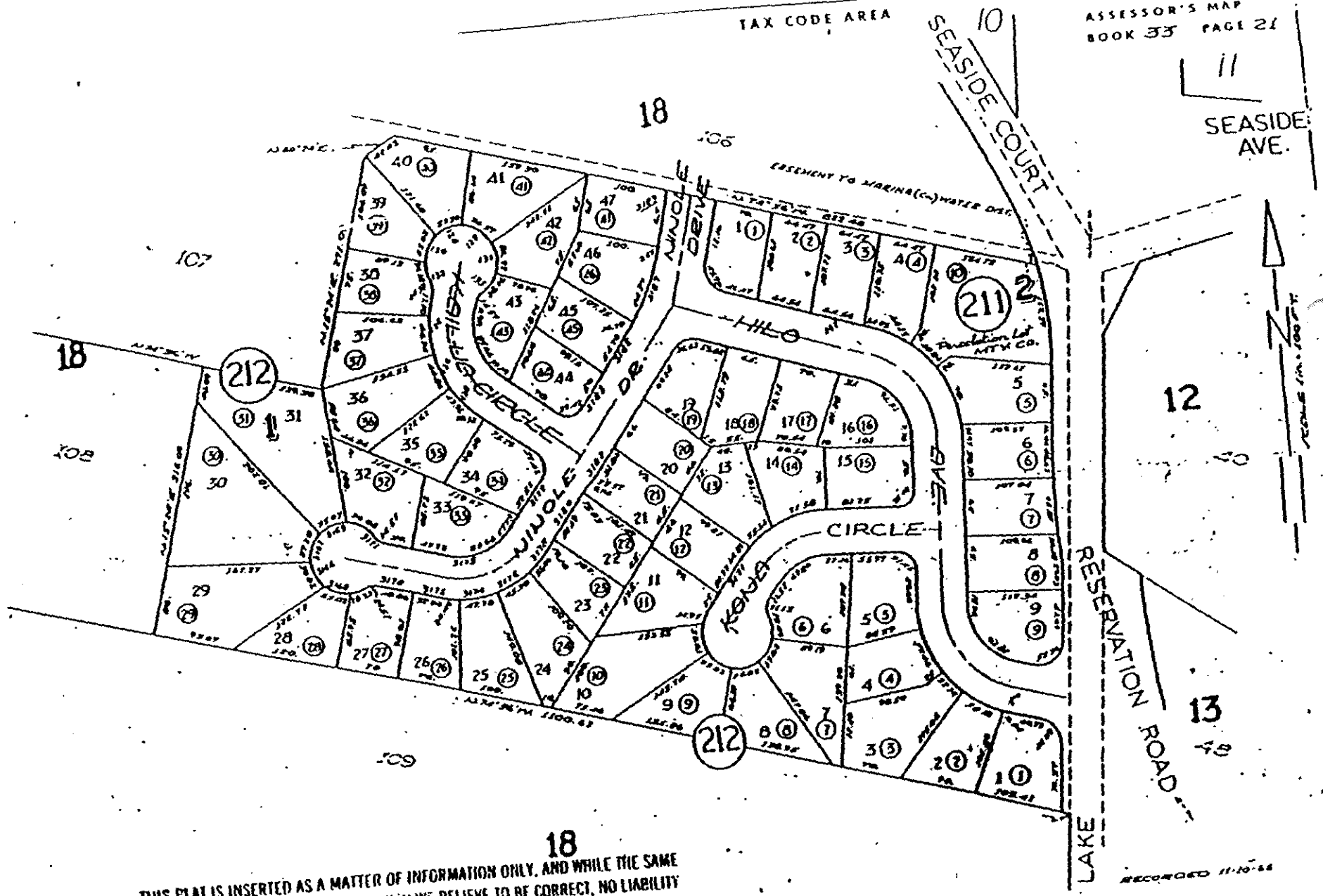
The land situated in the County of Monterey, State of California and is described as follows:

Percolation Lot, in Block 2, as said Lots and Block are shown in that certain map entitled, "Tract No. 527, Map of Marina Beach," filed for record November 10, 1966, in the Office of the County Recorder of the County of Monterey, State of California, in Volume 8 of Maps, "Cities and Towns," at Page 100.

APN: 033-211-10

TAX CODE AREA

SEASIDE
AVE.



18
THIS PLAT IS INSERTED AS A MATTER OF INFORMATION ONLY, AND WHILE THE SAME IS COMPILED FROM INFORMATION WHICH WE BELIEVE TO BE CORRECT, NO LIABILITY IS ASSUMED BY THIS COMPANY AS TO THE CORRECTNESS OF SAID INFORMATION

RECORDED 11-10-68