AGREEMENT FOR STORAGE AND RECOVERY OF NON-NATIVE WATER FROM THE SEASIDE GROUNDWATER BASIN

THIS AGREEMENT is made and entered into on February 5, 2020, by and between the SEASIDE BASIN WATERMASTER (the "WATERMASTER") and the City of Seaside (the "CITY") as follows:

Recitals

1. The WATERMASTER was created by the decision, as amended, entered in the case, California American Water Company v. City of Seaside, et al. Monterey County Superior Court, filed February 9, 2007, Case No. M66343 (the "Decision"). This Decision was made for the purposes of managing and protecting the Seaside Groundwater Basin ("Basin") for the benefit of the businesses, individuals, and public agencies that overlie or extract groundwater from the Basin. The CITY is a party to the Decision.

2. In February of 2010, the WATERMASTER, in accordance with Section III.L.3.j.xix and III.H.2 of the Decision, allocated 2,361 acre-feet of Storage in the Coastal and Northern Inland Subareas to the CITY. In accordance with Section III.H.3 of the Decision, the CITY may use its Storage Allocation for the benefit of its customers and for other purposes as the CITY deems appropriate.

3. Section III.H.1 of the Decision states that the Parties shall be permitted to utilize available Storage space for "bona fide Groundwater Storage Projects". Section III.H.6. provides that the City has the right to store water by "Direct Injection, Spreading, or other artificial means so long as such Storage does not cause Material Injury to any other Party."

4. On June 5, 2019, the CITY applied to the WATERMASTER for permission to store water in the Basin and to recover the stored water the Basin, through an in-lieu storage program.

5. On October 25, 2019, the Court determined that as presented the CITY'S application for in lieu water storage was consistent with the terms of the Decision and California law and policy.

6. Under the authorities granted to the WATERMASTER by the Decision, on December 5, 2019 the WATERMASTER approved the application of the CITY and hereby grants permission to the CITY to store Non-Native water in, and to recover that stored water from, the Basin, as described in and subject to the Terms and Conditions contained in this Agreement.

Terms and Conditions

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, the parties hereto agree to the following terms and conditions:

1. Definitions. Unless otherwise specifically defined herein, the defined terms shall be given the same definition and meaning set forth in the Decision, as listed in Attachment A.

2. Storage Quantity. The CITY is authorized to store up to 2,361acre-feet per year of the water in the Basin. In the event the WATERMASTER revises the Total Usable Storage Space of the Basin in accordance with Section III.H.4 of the Decision, or if one or more Alternative Producers converts entirely or in part from an Alternative Production Allocation to a Standard Production Allocation in accordance with Section III.B.3.e of the Decision, the CITY's Storage Allocation may change, and this may affect the storage quantity authorized by this Agreement; however, any reduction in storage quantity will not result in a corresponding reduction in the amount of water actually stored at the time of the change. In such instance this Agreement will be modified to reflect these changes. Further, the parties may agree by written amendment to this Agreement to revise the storage quantities authorized herein.

3. Storage Location. The CITY's storage of water in the Basin will result from substituting recycled water obtained from the Pure Water Monterey project ("Recycled Water") for irrigation of the City's Bayonet and Blackhorse Golf Courses in lieu of the current use of approximately 450 acre-feet per year of groundwater from the Seaside Basin. The result of the substitution of the Recycled Water for groundwater production to irrigate the golf courses will cause the replenishment and storage of water in the Basin. The location where the Recycled Water will be delivered to the golf courses is shown in Attachment B.

4. Recovery Location. The CITY will recover the stored water at CITY Well No. 4, located on Juarez Street in the CITY of Seaside, Assessor's Parcel Number 012-115-017-000, as shown in Attachment C or at any replacement well drilled for City Well No. 4 so long as the recovery of stored water from the replacement well does not cause any Material Injury to the Basin. CITY Well No. 4 withdraws water from the Santa Margarita aquifer and is perforated at 390 to 420 feet below ground surface (bgs), 430 to 470 feet bgs and at 490 to 550 feet bgs.

5. Recovery Quantity. The CITY is initially authorized to recover (Extract) the full amount of the water that is actually Stored in accordance with this Agreement. However, due to the hydrogeologic characteristics of the Seaside Basin, naturally occurring losses of Stored Water may result in the WATERMASTER reducing the percentage of Stored Water that may be Extracted. Should the WATERMASTER determine that this needs to be done, this Agreement will be modified to reflect the reduced quantity of water that the CITY may recover, and the technical basis for this determination will be provided to all PRODUCERs.

6. Water Quality. Because the storage pursuant to this Agreement would occur through in-lieu storage procedures rather than injection or spreading, water quality should not be of concern. However, the substitution water is Recycled Water from the Pure Water Monterey Project, which is the same water that MPWMD will inject into the Seaside Basin pursuant to the California-American Water Company storage program previously approved by Watermaster. The water quality constituents in the Recycled Water will not exceed the water quality limits contained in the Waste Discharge Requirements and Water Recycling Requirements issued for the Pure Water Monterey Project issued by the Central Coast RWQCB in Order No. R3-2017-0003.

7. Carryover and Stored Water Credits. In accordance with Section III.F of the Decision, if during a particular Water Year the CITY does not Extract from the Basin a total quantity equal to the CITY's Standard Production Allocation plus any stored water for the particular Water Year, the CITY may establish Carryover Credits, up to the total amount of the CITY's Storage Allocation.

However, in accordance with the Decision in no circumstance may the sum of the CITY's Stored Water Credits and Carryover Credits exceed the CITY's available Storage Allocation. Further, in accordance with Section III.H.5 of the Decision, unused (not Extracted) Stored Water Credits may be carried over from year to year, but due to the hydrogeologic characteristics of the Seaside Basin, naturally occurring losses of Stored Water may require Watermaster to discount the percentage of Stored Water for all SPA Producers that may be Extracted.

8. Measurement and Reporting of Extractions and Storage. In accordance with Section III.J of the Decision, the CITY shall ensure that adequate measuring devices are installed, maintained, and used on all facilities that deliver Recycled Water to the CITY's golf courses, and the CITY shall ensure that adequate measuring devices are installed, maintained, and used on all of the CITY's Extraction facilities, as required by the WATERMASTER's Rules and Regulations and this Agreement.

Beginning on the initial delivery of Recycled Water to the CITY in accordance with this Agreement, the CITY shall provide to the WATERMASTER a monthly Recycled Water report which contains the following information:

- The quantity of Recycled Water that was delivered to and used by the CITY to irrigate the CITY's golf courses. This quantity will represent the amount of water Stored by the CITY for subsequent extraction under this Agreement.
- The quantity of Stored Water that was recovered (Extracted)
- The location(s) where the Stored Water was recovered (Extracted)

9. Indemnification. The CITY shall assume the defense of, indemnify and hold harmless, the WATERMASTER, its officers, agents and employees from all claims, liability, loss, damage or injury of any kind, nature or description arising directly or indirectly from actions or omissions by the CITY or any of its officers, agents, employees, or independent contractors relating to this Agreement, excepting claims, liability, loss, damage or injury which arise from the willful or negligent acts, omissions, or activities of an officer, agent or employee of the WATERMASTER.

10. Successors and Assigns. This Agreement, and all the terms and conditions hereof, shall apply to and bind the successors and assigns of the respective parties hereto; provided that the CITY shall not assign this Agreement without prior written consent of the WATERMASTER.

11. Further Cooperation. Each of the parties agree to reasonably cooperate with each other, and to execute and deliver to the other all such documents and instruments, and to take such further actions, as may reasonably be required to give effect to the terms and conditions of this Agreement.

12. Interpretation. It is agreed and understood by the parties hereto that this Agreement has been arrived at through negotiation and that no party is to be deemed the party which prepared this Agreement within the meaning of Civil Code §1654. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Agreement.

13. Disputes. If any dispute under this Agreement arises the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. Each party shall make all reasonable efforts to provide to the other parties all the information that the party has in its possession that is relevant to the dispute, so that all parties will have ample information with which to reach a decision. If the dispute is not resolved by meeting and conferring, the matter shall be submitted to the Court for resolution pursuant to the Court's reserved jurisdiction as set forth in the Decision.

14. Modification. This Agreement may be amended, altered or modified only by a writing, specifying such amendment, alteration or modification, executed by authorized representatives of each of the parties hereto.

15. Attorney's Fees and Costs. In the event it should become necessary for any party to enforce any of the terms and conditions of this Agreement by means of court action or administrative enforcement, the prevailing party/parties, in addition to any other remedy at law or in equity available to such party, shall be awarded from the non-prevailing party/parties all reasonable costs and reasonable attorney's fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing party/parties.

16. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall be deemed to constitute one and the same instrument.

17. Written Notice. Written notice shall be deemed to have been duly served if delivered in person or by mail to the individuals and at the addresses listed below:

WATERMASTER	CITY
Administrative Officer Seaside Basin Watermaster P.O. Box 51502 Pacific Grove, CA 93950	Craig Malin City Manager City of Seaside 440 Harcourt Avenue Seaside, CA 93955 w/E-mail Copy to: Cityattorney@ci.seaside.ca.us

18. Conflicts with the Decision. The Parties believe this Agreement to be consistent with the terms of the Decision and agree that the CITY'S rights under this Agreement are subject to the Decision and in the event of any conflict between the provisions of this Agreement and the Decision, the Decision shall control.

19. Entire Agreement. This Agreement constitutes the entire and complete agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous negotiations, understandings or agreements of the parties, whether written or oral, with respect to such subject matter.

20. Term. This Agreement shall be effective on the date it has been executed by all Parties and continue in perpetuity unless and until ordered terminated by the Court maintaining continuing jurisdiction over the Decision.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement consisting of five (5) pages and three (3) attachments in triplicate on the date hereinabove written.

WATERMASTER

By: _____

Paul Bruno
Chairperson

CITY

By: _____

Craig Malin
City Manager

Approved as to Form

_____

City Attorney

ATTACHMENT A

DEFINITIONS
(Excerpted from the Decision)

"Artificial Replenishment" means the act of the WATERMASTER, directly or indirectly, engaging in or contracting for Non-Native Water to be added to the Groundwater supply of the Seaside Basin through Spreading or Direct Injection to offset the cumulative Over-Production from the Seaside Basin in any particular Water Year pursuant to Section III.L.3.j.iii. It shall also include programs in which Producers agree to refrain, in whole or in part, from exercising their right to produce their full Production Allocation where the intent is to cause the replenishment of the Seaside Basin through forbearance in lieu of the injection or spreading of Non-Native Water.

"Carryover" means that portion of a Party's Production Allocation that is not Extracted from the Basin during a particular Water Year. Each acre-foot of Carryover establishes an acre-foot of Carryover Credit.

"Carryover Credit(s)" means the quantity of Water established through Carryover, that a Party is entitled to Produce from the Basin pursuant to Section III.F.

"Extraction," "Extractions," "Extracting," "Extracted," and other variations of the same noun or verb, mean pumping, taking, diverting or withdrawing Groundwater by any manner or means whatsoever from the Seaside Basin.

"Groundwater" means all Water beneath the ground surface in the Seaside Basin, including Water from Natural Replenishment, Artificial Replenishment, Carryover, and Stored Water.

“Material Injury” means a substantial adverse physical impact to the Seaside Basin or any particular Producer(s) including but not limited to: seawater intrusion, land subsidence, excessive pump lifts and water quality degradation.

"Natural Replenishment" means all processes by which Water may become a part of the Groundwater supply of the Seaside Basin without the benefit of the Physical Solution and the coordinated management it provides. Groundwater that occurs in the Seaside Basin as a result of the Physical Solution, which is not Natural Replenishment, includes, but is not limited to Storage, Carryover, and Artificial Replenishment.

"Non-Native Water" means all Water that would not otherwise add to the Groundwater supply through natural means or from return flows from surface applications other than intentional Spreading.

"Physical Solution" means the efficient and equitable management of Groundwater resources within the Seaside Basin, as prescribed by this Decision, to maximize the reasonable and beneficial use of Water resources in a manner that is consistent with Article X, Section 2 of the California Constitution, the public interest, and the basin rights of the Parties, while working to bring the Production of Native Water to Natural Safe Yield.

“Producer” means a Party possessing a Base Water Right.

"Standard Production Allocation" is the amount of Groundwater that a Producer participating in this allocation method may Produce from a Subarea of the Seaside Basin as provided in Section

III.B.2, which is determined by multiplying the Base Water Right by the Operating Yield. "Storage" means the existence of Stored Water in the Seaside Basin.

"Storage Allocation" means that quantity of Stored Water in acre feet that a Party is allowed to Store in the Coastal Subarea or the Laguna Seca Subarea at any particular time.

"Storage Allocation Percentage" means the percentage of Total Usable Storage Space allocated to each Producer proceeding under the Standard Production Allocation. Producers proceeding under the Alternative Production Allocation are not allocated Storage rights and, consequently, their share of the Total Usable Storage Space is apportioned to the Producers proceeding under the Standard Production Allocation. Pursuant to the terms of Section III.B.3, Parties proceeding under the Alternative Production Allocation enjoy a one-time right to change to the Standard Production Allocation. Due to the recalculation of the Storage Allocation Percentage necessitated when a Party changes to the Standard Production Allocation, the WATERMASTER will maintain the up-to-date Seaside Basin Storage Allocation Percentages.

"Storage and Recovery Agreement" means an agreement between WATERMASTER and a Party for Storage pursuant to Section III.L.3.j.xx.

"Store" and other variations of the same verb refer to the activities establishing Stored Water in the Seaside Basin.

"Stored Water" means (1) Non-Native Water introduced into the Seaside Basin by a Party or any predecessors-in-interest by Spreading or Directly Injecting that Water into the Seaside Basin for Storage and subsequent Extraction by and for the benefit of that Party or their successors-in- interest; (2) Groundwater within the Seaside Basin that is accounted for as a Producer's Carryover; or (3) Non-Native water introduced into the Basin through purchases by the WATERMASTER, and used to reduce and ultimately reverse Over-Production.

"Stored Water Credit" means the quantity of Stored Water augmenting the Basin's Retrievable Groundwater Supply, which is attributable to a Party's Storage and further governed by this Decision and a Storage and Recovery Agreement.

"Total Useable Storage Space" means the maximum amount of space available in the Seaside Basin that can prudently be used for Storage as shall be determined and modified by WATERMASTER pursuant to Section III.L.3.j.xix, less Storage space which may be reserved by the WATERMASTER for its use in recharging the Basin.

ATTACHMENT B

Storage Location

ATTACHMENT C

Recovery Location

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