MEMORANDUM OF UNDERSTANDING BETWEEN THE SEASIDE BASIN WATERMASTER AND THE CITY OF SEASIDE EXTENDING THE GOLF COURSE IN LIEU REPLENISHMENT PROGRAM

This Memorandum of Understanding ("MOU") is entered into between the Seaside Groundwater Basin Watermaster ("Watermaster") and the City of Seaside ("City") (individually a "Party" and together the "Parties") this first day of January, 2013 ("Effective Date") with respect to the following:

RECITALS

A. On April 7, 2010, the City entered into a Memorandum of Understanding ("Original MOU") with the Watermaster pertaining to an in lieu replenishment program ("Program") involving the City-owned Blackhorse and Bayonet Golf Courses ("Golf Courses").

B. The Program operates in conformance with the amended final decision ("Decision") entered in the lawsuit, *California American Water v. City of Seaside et al.*, Monterey Superior Court, (Case No. M 66343), which governs groundwater production within the Seaside Groundwater Basin ("Basin").

C. The City is a party to the above-referenced lawsuit and receives groundwater production allocation pursuant to the Decision as follows: (1) 540 acre-feet of Alternative Production Allocation[1] in relation to the Golf Courses; and (2) Standard Production Allocation in relation to the City Municipal Water System.[2]

D. The Decision provides that any party that exceeds its allocation of Natural Safe Yield shall incur a Replenishment Assessment for each acre-foot of Over-Production during each Water Year. The Replenishment Assessment is assessed in accord with Section 6.5 of the Watermaster's Rules and Regulations. The Watermaster is obligated to use funds received from the Replenishment Assessments to obtain supplemental water to replenish the Basin.

E. The City annually incurs liability for Replenishment Assessments ("RA Liability") imposed upon a portion of the groundwater that it produces from the Basin to supply the demands of the City's Municipal Water System.

F. Pursuant to the Program, the City causes the Golf Courses to be irrigated with supplemental water to which it is entitled from the Marina Coast Water District ("MCWD Entitlement") in lieu of producing the City's Alternative Production Allocation associated with the Golf Courses, and in so doing provides a viable means for the Watermaster to obtain some of the replenishment water that it is obligated to procure pursuant to the Decision. Watermaster, in turn, provides a credit against the City's RA Liability ("RA Credit") for the MCWD Entitlement that is applied annually to irrigate the Golf Courses. The Program has operated successfully since its initiation.

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[1] All capitalized terms used in this MOU are to be given the same meaning as set forth in the Decision, unless otherwise described.

[2] The Standard Production Allocation is set forth as a percentage of Operating Yield of the Coastal Subarea. The City's Standard Production Allocation is roughly 10.47% of the Operating Yield.

G. The City presently possesses 1,389.7 acre-feet of its original MCWD Entitlement of 2,500 acre-feet.

H. Under the Program, the City has offset all of its previously accrued RA Liability and is projected to have a "surplus" of RA Credit in Water Year 2013 and beyond for so long as the City possesses remaining MCWD Entitlement from which to irrigate the Golf Courses.

I. By its terms, the Original MOU terminates three (3) months following the end of the Water Year in which the Chief Executive Officer of Watermaster anticipates that the City shall have accrued sufficient RA Credit to offset all of its then-accrued RA Liability. Watermaster projects that these criteria for termination shall be met following the end of the 2012 Water Year.

J. The Parties desire to continue the Program to use the City's remaining MCWD Entitlement for in lieu replenishment of the Basin and for the city to accrue a further RA Credit. Accrued RA Credit shall only be used to offset accrued RA Liability.

K. Under projected irrigation demands, the Parties anticipate that remaining MCWD Entitlement shall provide sufficient irrigation water to satisfy the irrigation demands of the Golf Courses through the 2018 Water Year.

L. The Parties desire to enter into this MOU to memorialize the terms upon which the Program shall continue.

AGREEMENT

The Parties agree as follows:

1. **Program Continuance.** The Program shall continue without interruption pursuant to the terms of this MOU. The City shall apply all of its remaining MCWD entitlement for use within the Program and shall not use, lease, sell, or transfer its MCWD Entitlement for any other purpose.

2. **Term.** This MOU shall commence upon the Effective Date and continue until all of the City's remaining MCWD Entitlement has been used within the Program, and all of the City's RA Credit has been used the City or by another party should the City transfer its RA Credit.

3. **Accounting of Replenishment Assessment Credit**

3.1 Annual Accounting of In Lieu Replenishment. During the term of this MOU, the City shall report to the Watermaster the amount of MCWD Entitlement delivered to irrigate the Golf Courses in lieu of groundwater production from the Basin for the preceding calendar quarter, in writing, on or before January 15, April 15, July 15, and October 15 of each Water Year. The City shall record and report the deliveries of MCWD Entitlement to the Golf Courses based upon accurate meter readings. All meters used for such reporting shall be regularly calibrated and maintained by the City, or the City's representative, and at the City's expense, to ensure accuracy. When and if requested by the Watermaster, the City shall perform additional calibrations to verify meter accuracy. Such requests by the Watermaster will not be made more often than once every two years, unless metering data indicate a metering inaccuracy. If the

Watermaster disputes the reported quantity of MCWD Entitlement delivered for use on the Golf Courses, it shall inform the City of the basis of its objection within one (1) month of receipt of the City's accounting, and the Parties shall thereafter engage in good faith negotiations to attempt to resolve the dispute. Any dispute that cannot thereby be settled shall be referred to the Court for resolution.

3.2 Calculating RA Credit. At the end of each Water Year, the Watermaster shall grant an RA Credit to the City, which shall equal the amount of all MCWD Entitlement used to irrigate the Golf Courses during the proceeding Water Year, not to exceed the City's 540 acre-feet of Alternative Production Allocation, multiplied by the amount of the effective Replenishment Assessment Unit Cost for that Water Year.

3.3 City Use and/or Transfer of RA Credit. The RA Credit shall first be used to offset all RA Liability owed by the City for the preceding Water Year. All RA Credit earned by the City that is not required to offset the City's RA Liability shall carryover and build as a bank of accrued RA Credit. The City's accrued RA Credit may be used by the City to offset future RA Liability incurred by the City, or upon thirty (30) days advanced written notice to Watermaster, may be transferred to any other party possessing Standard Production Allocation under the Decision to be used to offset liability for replenishment assessments accrued by that party. In the event the RA Credit is transferred to another party, Watermaster shall afford that party a credit against its replenishment assessment in the same manner and amount as had the RA Credit been used to offset the City's RA Liability. Accrued RA Credit shall only be used to offset accrued RA Liability.

3.4 Watermaster Accounting of RA Credit. Watermaster shall maintain a detailed accounting of the quantity of RA Credit accrued by the City and the amount used by City. Deductions against the RA Credit shall be made when RA Credit is applied to offset the City's Replenishment Liability or when the City transfers RA Credit to another party. Watermaster shall report its accounting to the City annually and also upon written request by the City for a present accounting. If the City disputes the reported quantity of RA Credit, it shall inform the Watermaster of the basis of its objection within one (1) month of receipt of the Watermaster's accounting, and the Parties shall thereafter engage in good faith negotiations to attempt to resolve the dispute. Any dispute that cannot thereby be settled shall be referred to the Court for resolution.

4. **Miscellaneous Terms.** This MOU shall be governed by and construed in accordance with the laws of California, without regard to conflicts of law principles, with venue for all purposes to be proper only in the Court possessing jurisdiction over the Decision. If any actions are required to interpret or enforce the provisions of this MOU, the prevailing party shall be entitled to reasonable attorneys' fees and costs. Any failure to enforce any provision of this MOU shall not constitute a waiver thereof or of any other provision hereof. This MOU constitutes the entire understanding and agreement of the Parties with respect to the subject matter of this MOU, supersedes the Original MOU, and there have been no promises, representations, agreements, warranties or undertakings by any of the Parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This MOU may be altered, amended or modified only by an instrument in writing, executed by the Parties to this MOU and by no other means. Each Party waives its future right to claim, contest or assert that this MOU was modified, canceled, superseded, or changed by oral agreement, course of conduct, waiver or

estoppel. All notices sent pursuant to this MOU shall be addressed to the contact information following each Party's signature below.

5. **Severability.** If any of the provisions contained in the Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. If a part of this Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

IN WITNESS WHEREOF the Parties hereby agree to perform pursuant to the terms set forth herein.

SEASIDE BASIN WATERMASTER

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CITY OF SEASIDE

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