MEMORANDUM OF UNDERSTANDING BETWEEN THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT, THE MARINA COAST WATER DISTRICT, THE CITY OF SEASIDE, AND THE SEASIDE BASIN WATERMASTER REGARDING WATER USED FOR IRRIGATION OF GOLF COURSES

This Memorandum of Understanding is entered into between the Monterey Peninsula Water Management District ("MPWMD"), the Marina Coast Water District ("MCWD"), the City of Seaside ("City") and the Seaside Basin Watermaster ("Watermaster") (individually "Party," collectively "Parties") with respect to the following:

RECITALS

1. The amended decision ("Decision") entered in the lawsuit, *California American Water v. City of Seaside et al., Monterey County Superior Court* (Case No. M66343) governs the groundwater production within the Seaside Groundwater Basin ("Basin").

2. Under the Decision the City received an allocation of 540 acre feet ("AF") of Alternative Production Allocation in relation to the City-owned Blackhorse and Bayonet Golf Courses ("Golf Courses").

3. The Decision obligated the Watermaster to procure new sources of water for replenishment of the Basin to offset any cumulative over production.

4. The Decision provided that any party that exceeded its allocation of Natural Safe Yield and/or its allocation of Operating Yield was subject to a Replenishment Assessment for each acre foot of over production during each Water Year.

5. In April 2010, the City owed certain sums to the Watermaster for previously accrued Replenishment Assessments.

6. In an agreement between MCWD and the City executed effective April 1, 2010 (the "City-MCWD April 2010 Agreement") in consideration of the City's transfer to MCWD of certain land, MCWD agreed to supply water to the City to irrigate the City's two golf courses located on the former Fort Ord in lieu of the City producing Seaside Basin groundwater to irrigate the golf courses. MCWD agreed to supply 2,500 acre-feet of the water to the City in consideration of land to the City.

7. In April 2010, the City and the Watermaster entered into a Memorandum of Understanding to memorialize the terms of an in lieu replenishment program ("In Lieu Replenishment Program") in accordance with the City-MCWD April 2010 Agreement.

8. Separately, in March of 2008, the MPWMD, MCWD and the Monterey County Water Resources Agency ("MCWRA") entered into a Coordination Agreement for Aquifer Storage and Recover (ASR) Injection Testing (the "Coordination Agreement"). Pursuant to the agreement, MCWD loaned MPWMD water from MCWD's existing Salinas Groundwater Basin wells (i.e., imported water from a separate groundwater basin) to the MPWMD for aquifer storage and recovery testing done by the MPWMD at its Santa Margarita test well site. The total amount loaned for the testing was 68.8 AF, and the testing was done in January of 2009. The water used for testing was not produced from the Seaside Basin, but was produced from another groundwater basin.

9. MPWMD desires to facilitate the return of 68.8 AF of water loaned by MCWD to MPWMD.

10. Physical return of the 68.8 AF of loaned water is difficult because of infrastructure limitations.

11. However, a full and fair "return" of the 68.8 AF of loaned water can be made through credits assigned by Watermaster to the City with respect to the City's In Lieu Replenishment Program. This can occur by Watermaster treating 68.8 AF of groundwater produced by the City's Golf Course wells between October 2009 and April 2010 (before commencement of the In Lieu Replenishment Program) as imported water delivered by MCWD to the City (the 68.8 AF of loaned water is imported water stored in the Basin through the ASR injection), thereby increasing the City's in lieu replenishment credit under the In Lieu Replenishment Program by 68.8 AF and giving credit to MCWD against the 2,500 acre-feet of water to be provided to the City without cost to the City.

12. MCWD is willing to become a party to this Memorandum of Understanding as an accommodation to the City, MPWMD, and the Watermaster.

13. The Parties desire to effectuate this return of loaned water and crediting of in lieu replenishment credits, as set forth herein.

AGREEMENT

The Parties agree as follows:

1. Repayment and Assignment of Loaned Water. MCWD hereby assigns to the City MCWD's right under the Coordination Agreement to have MPWMD return the 68.8 AF of water loaned to MPWMD by MCWD for ASR injection and storage testing in January of 2009. The Watermaster will treat this assignment as delivery by MCWD to the City of 68.8 AF of water loaned to MPWMD by MCWD for ASR injection and storage testing in January 2009. The

Watermaster will treat this assignment as a delivery by MCWD to the City of 68.8 AF of imported water in accordance with the City-MCWD April 2010 Agreement for the City's Golf Course irrigation in Water Year 2010 as part of the In Lieu Replenishment Program.

2. Credit to City. This assignment shall increase the monetary credit to the City in an amount attributable to an additional 68.8 AF of in lieu replenishment in Water Year 2010 pursuant the accounting methods set forth in Section 3.2 of the MOU that the City and Watermaster entered into in April 2010.

3. Commensurate Reduction in Basin Pumping by City. The amount of native groundwater pumped by City under its Alternative Production Allocation in the first nine months of Water Year 2010 shall be deemed reduced by 68.8 AF -- from 100.6 AF to 31.8 AF.

4. Satisfaction of Water Loan. Pursuant to the provisions above, the Parties agree that MPWMD's obligation to return the water loaned to it by MCWD is hereby satisfied.

5. Credit to MCWD from City. The City shall credit MCWD 68.8 AF against MCWD's obligation under Section 3.2 of the City-MCWD April 2010 Agreement.

6. Approval of Watermaster Board. The approval of the Seaside Basin Watermaster Board shall be a condition precedent to this Memorandum of Understanding taking effect.

7. No Effect on Existing Water Rights. The Parties agree that no provision of this Memorandum of Understanding shall have any force or effect, directly or indirectly, on water rights of any nature held by a Party. No water right of any kind, including but not limited to prescriptive water rights, nor any claim thereto, shall arise or be created in favor of or against any Party or other person, directly or indirectly, nor shall any water right be lost as a result of this Memorandum of Understanding

8. Defense and Indemnity of MCWD. MPWMD will defend and indemnify MCWD against any and all liability, claims, damages, demands, costs and action arising from the approval, execution and performance of this Memorandum of Understanding. MPWMD shall reimburse MCWD's costs, including attorney fees, incurred in connection with the negotiation, review, approval and execution of this Memorandum of Understanding.

9. Remedies. This Agreement shall be specifically enforceable; damages are not an adequate remedy for a failure to perform pursuant to its terms and conditions.

10. Arbitration. In the case of any disagreement, difference, or controversy arising between any of the Parties with respect to any matter in relation to or arising out of or under this Memorandum of Understanding, whether as to the construction or operation thereof, or the respective rights and liabilities of the Parties, and all Parties cannot mutually agree as to the resolution thereof, then such disagreement, difference or controversy shall be determined by arbitration by and under the arbitration rules of JAMS or by such other arbitrator and under such

other rules as the Parties may agree, provided that the arbitrator shall be a former judge of the Superior Court or the Court of Appeal. Any arbitration hearing shall be noticed and open to the public. The submission to arbitration in accordance with the requirements of this section of any and all agreements, differences, or controversies that may arise hereunder is made a condition precedent to the institution of any action or appeal at law or in equity with respect to the controversy involved. The award by the arbitrators shall have the same force and effect and may be filed and entered, as a judgment of the Superior Court of the State of California, and shall be subject to appellate review upon the same terms and conditions as law permits for judgments of Superior Courts. A "Prevailing Party" shall be determined in the Arbitration, and the Prevailing Party shall be entitled to reasonable attorneys' fees and costs incurred, and accrued interest on any unpaid balance that may be due. Costs shall include the cost of any expert employed in the preparation or presentation of any evidence. All costs incurred and reasonable attorneys' fees shall be considered costs recoverable in that proceeding and be included in any award.

11. Litigation. In the event any of the Parties to this Memorandum of Understanding brings a judicial or arbitration proceeding to enforce or interpret any provision of its terms, then, and in that event, the Prevailing Party shall be entitled to recover reasonable attorneys' fees and related expenses and costs, including but not limited to court costs, expert witness fees and expenses, and accountant fees and expenses. Costs shall include the cost of any expert employed in the preparation or presentation of any evidence, whether or not any such witness or accountant shall be called to testify. Recovery of these fees and costs shall be as additional costs awarded to the Prevailing Party, and shall not require initiation of a separate legal proceeding.

12. Notices. Notices regarding this Memorandum of Understanding shall be given to the Parties at the following addresses:

Monterey Peninsula Water Management District
Attn: General Manager
P. O. Box 85
Monterey, CA 93942

Marina Coast Water District
Attn: General Manager
11 Reservation Road
Marina, CA 93933

City of Seaside
Attn: City Manager
440 Harcourt Avenue
Seaside, CA 93955

Seaside Basin Watermaster
Attn: Chief Executive Officer
2600 Garden Road - Suite 228
Monterey, CA 93940

13. Entire Agreement. This document represents the entire Memorandum of Understanding between the Parties, and supersedes any prior written or oral negotiations and representations between the Parties with regard to the matters described herein.

14. Severability. If any provision, or any portion thereof, contained in this Memorandum of Understanding is held unconstitutional, invalid, unenforceable, or contrary to

public policy, the remainder of this Memorandum of Understanding, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

15. Mutuality. This Memorandum of Understanding is the product of negotiation and preparation by and among the Parties. All sides have reviewed and have had the opportunity to revise this Memorandum of Understanding. The Parties waive the provisions of Section 1654 of the Civil Code of California and any other rule of construction to the effect that ambiguities are to be resolved against the drafting Party, and the Parties warrant and agree that the language of this Memorandum of Understanding shall neither be construed against or in favor of any Party.

16. Waiver. A Party's failure to insist on the strict performance of any provision of this Memorandum of Understanding or to exercise any right, power, or remedy upon a breach of this Memorandum of Understanding shall not constitute a waiver of any provision of this Memorandum of Understanding. Neither shall such action or inaction limit the Party's right to later enforce any provision or exercise any right to the fullest extent allowed under this Memorandum of Understanding. A waiver of any covenant, term or condition contained in this Memorandum of Understanding shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent, authorization or approval by a Party of any act shall not be deemed to waive or render unnecessary the consent, authorization or approval of any subsequent similar act.

17. Amendment. This Memorandum of Understanding shall be amended or modified only by an instrument in writing duly approved and signed by each party hereto. Any waiver of any terms or conditions must be in writing and signed by the Parties.

18. Effective Date. This Memorandum of Understanding shall take effect on _____day of _____, 2012, subject to the qualification described in paragraph 6 of this Memorandum of Understanding.

IN WITNESS WHEREOF the Parties hereto execute this Memorandum of Understanding pursuant to the terms set forth herein.

MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT

David J. Stoldt, General Manager

Date: 1-11-12

MARINA COAST WATER DISTRICT

James Heitzman, General Manager

Date: 1/10/12

CITY OF SEASIDE

Ray Corpuz, City Manager

Date: 1-12-12

SEASIDE BASIN WATERMASTER

Dewey Evans, Chief Executive Officer

Date: 2/2/12