

**SEASIDE GROUNDWATER BASIN WATERMASTER**  
**REGULAR BOARD MEETING AGENDA**  
**WEDNESDAY, APRIL 7, 2010 - 2:00 P.M.**  
**MEETING LOCATION**  
**MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY**  
**BOARD ROOM, 5 HARRIS COURT, BUILDING “D”**  
**“RYAN RANCH”**  
**MONTEREY, CALIFORNIA**

**WATERMASTER BOARD:**

City of Seaside – Mayor Ralph Rubio, Chair  
Coastal Subarea Landowner – Director Paul Bruno, Vice Chair  
Monterey Peninsula Water Management District – Director Judi Lehman, Secretary  
City of Del Rey Oaks – Mayor Jerry Edelen  
California American Water – Director Craig Anthony  
Laguna Seca Subarea Landowner – Director Bob Costa  
City of Monterey – Mayor Chuck Della Sala  
City of Sand City – Mayor David Pendergrass  
Monterey County/Monterey County Water Resources Agency -- Supervisor Dave Potter, District 5

**I. CALL TO ORDER**

**II. ROLL CALL**

**III. MINUTES**

The minutes of the Regular Board meeting of March 3, 2010 are attached to this agenda. The Board is requested to consider approving the minutes.

**IV. REVIEW OF AGENDA**

If there are any items that arose after the 72-hour posting deadline, a vote may be taken to add the item to the agenda pursuant to the requirements of Government Code Section 54954.2(b). (A 2/3-majority vote is required).

**V. PUBLIC COMMUNICATIONS**

Oral communications is on each meeting agenda in order to provide members of the public an opportunity to address the Watermaster on matters within its jurisdiction. Matters not appearing on the agenda will not receive action at this meeting but may be referred to the Watermaster Administrator or may be set for a future meeting. Presentations will be limited to three minutes or as otherwise established by the Watermaster. In order that the speaker may be identified in the minutes of the meeting, it is helpful if speakers would use the microphone and state their names. Oral communications are now open.

**VI. CONSENT CALENDAR**

- A.** Consider Approval of Summary for Payments made during March, 2010 totaling \$11,392.46
- B.** Consider Fiscal Year Financial Reports – Through March 31, 2010

**VII. ORAL PRESENTATION**

(None scheduled)

**VIII. OLD BUSINESS**

- A. Consider Approval of Proposed Court Order prepared by legal counsel as directed by the Court

**IX. NEW BUSINESS**

**A. COMMITTEE REPORTS**

**1. TECHNICAL ADVISORY COMMITTEE (TAC)**

- a). Consider Approval of Request for Service No. 2010-04 with HydroMetrics Water Resources, Inc. to Perform Groundwater Modeling of Selected Scenarios for a fee not to exceed \$24,775.
- B. Consider Approving Resolution Expressing Support of the Proposed Monterey Regional Water Supply Program
- C. Review Status of Seaside's In Lieu Replenishment Proposal and Consider Approval of Revised Proposal to the Court re: Seaside Replenishment Assessment Liability and In Lieu Replenishment Program

**X. INFORMATIONAL REPORTS (No Action Required)**

- A. Timeline Schedule of Milestone Dates (Critical date monitoring)
- B. Technical Advisory Committee (TAC) minutes of March 10, 2010

**XI. DIRECTOR'S REPORTS**

**XII. EXECUTIVE OFFICER COMMENTS**

**XIII. NEXT REGULAR MEETING DATE –MAY 5, 2010 (MRWPCA-Board Room) 2:00 P.M.**

**XIV. ADJOURNMENT**

This agenda was forwarded via e-mail to the City Clerks of Seaside, Monterey, Sand City and Del Rey Oaks; the Clerk of the Monterey Board of Supervisors, the Clerk to the Monterey Peninsula Water Management District; the Clerk at the Monterey County Water Resources Agency, Monterey Regional Water Pollution Control Agency and the California American Water Company for posting on April 2, 2010 per the Ralph M. Brown Act, Government Code Section 54954.2(a).

**ITEM NO. III.**

**MINUTES**

**REGULAR MEETING**  
Seaside Groundwater Basin Watermaster  
*March 3, 2010*

**DRAFT MINUTES**

**I. CALL TO ORDER**

Chairman Rubio called the meeting to order at 2:03 p.m. in the Monterey Regional Water Pollution Control Agency Boardroom at 5 Harris Court, Building D, Monterey.

**II. ROLL CALL**

City of Seaside – Mayor Ralph Rubio, Chairman  
City of Del Rey Oaks – Mayor Jerry Edelen  
California American Water (“CAW”) – Director Craig Anthony  
City of Sand City – Mayor David Pendergrass  
Monterey Peninsula Water Management District (“MPWMD”) – Director Judi Lehman, Secretary  
Laguna Seca Subarea Landowner – Director Bob Costa  
City of Monterey – Mayor Charles “Chuck” Della Sala  
Monterey County/Monterey County Water Resources Agency (“MCWRA”) – Supervisor Dave Potter (arrived at 2:24 p.m.)

Absent: Coastal Subarea Landowner – Director Paul Bruno, Vice Chair

**III. APPROVAL OF MINUTES**

**Moved by Mayor Pendergrass, seconded by Director Costa, and unanimously carried, to approve the minutes of the Watermaster Regular Meeting of February 3, 2010 with correction to two instances where Supervisor Parker was recorded as Supervisor Potter.**

**IV. REVIEW OF AGENDA**

Chairman Rubio removed item IX.A.1.c. - Consider Reclassifying the Security National Guarantee (“SNG”) Well from Active Status to Inactive Status - from the agenda per CEO and SNG request.

**V. PUBLIC PARTICIPATION/ORAL COMMUNICATIONS**

There were no questions or comments from the public.

**VI. CONSENT CALENDAR**

- A. Consider Approval of Summary for Payments made during February 2010 totaling \$21,920.00.
- B. Consider current year Financial Reports – Through February 28, 2010.

**Moved by Mayor Edelen, seconded by Director Lehman, and unanimously carried, to approve the consent calendar as presented.**

**VII. ORAL PRESENTATION – None. (2:24 p.m.)**

**VIII. OLD BUSINESS**

- A. **Information /Action regarding the February 5, 2010 response to the Court Minute Order responding to the Watermaster’s 2009 Annual Report to Court.**

1. The board received and reviewed the submitted staff report. CEO Evans stated that, per the Judge’s direction, staff was working to prepare an order reflecting the rulings made in the Minute Order.

Ray Corpuz, Seaside City Manager and Watermaster Budget / Finance Committee Chair, clarified the terms of the Memorandum Of Understanding (“MOU”) between the City of Seaside and the Watermaster noted in item 1 of the Court Minute Order, stating that the City of Seaside had very recently come to an agreement in principal with Marina Coast Water District (“MCWD”) to move forward with the in-lieu project that would alleviate the issue of the Minute Order item involving back payments owed by the City to the Watermaster for replenishment assessments for over pumping the Seaside Groundwater Basin (“Basin”). The Seaside City Council would be reviewing the MOU at its next council meeting in a week, and MCWD most likely would review the MOU at its board meeting on March 16<sup>th</sup>. Detailed work on legal documents to finalize the MOU would be continuing.

## IX. NEW BUSINESS

### A. COMMITTEE REPORTS

#### 1. TECHNICAL ADVISORY COMMITTEE (“TAC”)

##### a) Management Objectives and Initial Scenarios for Groundwater Modeling Work

The board received and reviewed the submitted staff report by Mr. Robert Jaques, Watermaster Technical Program Manager. He stated that the TAC recommended the two scenarios and the management objectives presented, and that the work outlined would most likely deplete the budget for the modeling however the budget contingency amount could cover any overage. An actual contract for scope of work and costs would be brought back to the board at its April meeting. Director Lehman requested that “Scenario 1: Model the effects of additional pumping in the Laguna Seca subarea” include California American Water production within that area along with the effect of additional pumping by Alternative Producers. Darby Fuerst, Monterey Peninsula Water Management District General Manager, stated that MPWMD supported the addition of CAW to the modeling of the Laguna Seca subarea based on its actual pumping and not its legally apportioned limit. Mr. Jaques summarized the desire of the board: Provide a baseline model of actual current production in the Laguna Seca Subarea including CAW production and review how water flows relative to other areas of the Basin; then model a 10% and a 20% increase in pumping by Alternative Producers. Mr. Fuerst suggested that, prior to initiating the modeling, that Watermaster obtain any new information available from the California Public Utilities Commission in terms of scheduling and the type of wells to be used in finalizing the Monterey Regional Water Supply Project-Phase 1. Mr. Jaques stated that the primary information from the project FEIR and/or from the CPUC process would be project timeline and the amounts of water to be provided to the basin – how it is generated by the project is not of concern in the modeling. Mr. Jaques stated that a detailed contract would be presented at the next board meeting.

**The board concurred to approve the modeling of the two scenarios with the inclusion of California American Water production in the Laguna Seca Subarea in establishing a**

**baseline scenario of actual production and resulting current effects to water flow in the Seaside Groundwater Basin.**

**b) Contract to Refine Protective Water Levels**

The board received and reviewed the submitted staff report regarding consideration of approval of Request for Service No. 2010-03 with HydroMetrics to refine protective water levels. Mr. Jaques stated that the TAC was recommending the contract work be done to develop an understanding of the amount of replenishment water needed to sufficiently protect the Basin as the CPUC process for the regional water project that would be supplying replenishment water advances. He noted that agencies such as the CPUC were looking to Watermaster technical reports to aid in the configuring of regional projects. He stated that protective water level analysis would take approximately two months to complete once commenced. The adequacy of the 90% protection to the Basin of water levels suggested in the analysis and the urgency of the contract work were discussed. Mr. Jaques stated that more options for protective water level analyses could be provided to the board at a future meeting.

**The board concurred to continue the item until more finalized regional project information was available.**

**X. INFORMATIONAL REPORTS (No Action Required)**

- A. Timeline Schedule of Milestone Dates (Critical date monitoring)
- B. Technical Advisory Committee (“TAC”) minutes of February 10, 2010.

**XI. DIRECTORS’ REPORTS**

There were no reports from directors.

**XI. EXECUTIVE OFFICER COMMENTS**

The Technical Advisory Committee regular meeting of March 10, 2010 would be held at the Seaside modular conference room at 1:30 p.m.

**XIII. NEXT MEETING DATE – By consensus of the Board, it was determined the next Regular Meeting would be held on Wednesday, April 7, 2010, at the Monterey Regional Water Pollution Control Agency (MRWPCA) Board meeting room at 5 Harris Court, Building "D" on Ryan Ranch in Monterey at 2:00 p.m.**

**XIV. There being no further business, Chairman Rubio adjourned the meeting at 3:06 p.m.**

**ITEM NO. VI.**

**CONSENT CALENDAR**

SEASIDE GROUNDWATER BASIN  
WATERMASTER

**TO:** Board of Directors  
**FROM:** Dewey D Evans, CEO  
**DATE:** April, 2010  
**SUBJECT:** Summary of Payments Authorized to be paid during the month of March, 2010.

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**PURPOSE:**

To advise the Board of payments authorized to be paid during the month of March, 2010

**RECOMMENDATIONS:**

Consider approving the payment of bills submitted and authorized to be paid during the month of March, 2010.

**COMMENTS and FISCAL IMPACT:**

**DDEvans Consulting** (Professional Services Agreement—CEO)—February 24, 2010 through March 26, 2010 worked on Watermaster business a total of 41.5 hours at \$100.00 per hour or **\$4,150.00**. Responded to a variety of telephone calls, meetings, email correspondence with a number of people regarding a wide variety of items involving the Seaside Basin. Discussions, review of documents and preparation of March 3rd Board meeting packet. Sent same to Board and all Interested Parties. Attended March 3rd Board meeting and took followed up actions where directed. Reviewed and discussed Draft Basin Storage Agreements with Bob Jaques. Reviewed TAC agenda items and commented on same with Bob Jaques. Discussions with Bob Jaques regarding various invoices received at Watermaster office. Sent out notice of April 7th Board meeting requesting items for the agenda. Various discussions with staff and others regarding the April 7th Board meeting. Processed and audited invoices and delivered to City of Seaside for payment.

**Robert “Bob” Jaques** (Technical Program Manager)—February 24, 2010 through March 26, 2010 worked a total of 46 hours at \$100.00 per hour or **\$4,600.00**. Prepared TAC meeting packet, attended and transcribed minutes for TAC meeting of March 10, 2010. Attended Database meeting at MPWMD offices on February 24, 2010. Prepared Draft Basin Storage Agreements and worked on documents as drafting comments came in. Researched SPCA well issue and e-mailed comments to CEO. Prepared Board agenda items, attended March 3, 2010 Board meeting and performed follow-up work as necessary. Prepared staff report for April 7, 2010 Board meeting agenda.

**HydroMetrics Water Resources Inc.**—One invoice was submitted dated March 5, 2010 for **\$2,642.46** that covered 15 hours of work preparing for and attending the February 10th TAC meeting.

Total payments authorized to be paid during February totaled **\$11,392.46**

**Seaside Groundwater Basin Watermaster**  
**Budget vs. Actual Administrative Fund**  
 Fiscal Year (January 1 - December 31, 2010)  
 Balance through March 31, 2010

	<u>2010 Adopted Budget</u>	<u>Contract Amount</u>	<u>Year to Date Revenue / Expenses</u>
<b>Available Balances &amp; Assessments</b>			
Dedicated Reserve	25,000.00		25,000.00
FY 2008 (Rollover)	43,000.00		47,416.90
FY 2009 Assessments	82,000.00		48,792.00
<b>Available</b>	<b><u>150,000.00</u></b>		<b><u>121,208.90</u></b>
<b>Expenses</b>			
Contract Staff	100,000.00	100,000.00	16,050.00
Legal Advisor	25,000.00	-	-
<b>Total Expenses</b>	<b><u>125,000.00</u></b>	<b><u>100,000.00</u></b>	<b><u>16,050.00</u></b>
<b>Total Available</b>	25,000.00		
<b>Dedicated Reserve</b>	<u>25,000.00</u>		
<b>Net Available</b>	<u>-</u>		
<b>Administrative Fund Assessments owed by City of Seaside</b>			
FY 2009 (including 5% penalty)	16,444		
FY 2010 (including 5% penalty)	8,618		

**Seaside Groundwater Basin Watermaster**  
**Budget vs. Actual Monitoring & Management - Operations Fund**  
 Fiscal Year (January 1 - December 31, 2010)  
 Balance through March 31, 2010

ITEM VI.B.  
4/7/2010

	<u>2010 Adopted Budget</u>	<u>Contract Encumbrance</u>	<u>Year to Date Revenue/Expenses</u>
<b>Available Balances &amp; Assessments</b>			
Monitoring & Management - Ops Fund	\$ 351,664.00	\$ -	\$ 327,047.52
FY 2009 Rollover	361,581.00	-	361,581.00
<b>Total Available</b>	<b>\$ 713,245.00</b>	<b>\$ -</b>	<b>\$ 688,628.52</b>
<b>Appropriations &amp; Expenses</b>			
<b>GENERAL</b>			
Technical Project Manager	\$ 100,000.00	\$ 100,000.00	\$ 12,950.00
Contingency @ 20% (not including TPM )	41,944.00	\$ 41,944.00	-
<b>Total General</b>	<b>\$ 141,944.00</b>	<b>\$ 141,944.00</b>	<b>\$ 12,950.00</b>
<b>CONSULTANTS (Hydrometrics)</b>			
Program Administration	\$ 8,000.00		
Production/Lvl/Qlty Monitoring	30,000.00	\$ 12,000.00	\$ 5,492.46
Basin Management (BMAP, Modeling)	50,000.00		
Seawater Intrusion (Plan, Analysis)	27,000.00	22,020.00	-
<b>Total Consultants</b>	<b>\$ 115,000.00</b>	<b>\$ 34,020.00</b>	<b>\$ 5,492.46</b>
<b>MPWMD</b>			
Production/Lvl/Qlty Monitoring	\$ 91,120.00	74,780.00	\$ -
Basin Management	-	5,000.00	-
Seawater Intrusion	3,600.00	3,600.00	-
Direct Costs	-	-	-
<b>Total MPWMD</b>	<b>\$ 94,720.00</b>	<b>\$ 83,380.00</b>	<b>\$ -</b>
<b>Transfer Out to Capital Fund</b>			
			-
<b>Total Appropriations &amp; Expenses</b>	<b>\$ 351,664.00</b>	<b>\$ 259,344.00</b>	<b>\$ 18,442.46</b>
<b>Total Available</b>	<b>361,581.00</b>		

Operations Fund Assessments owed by City of Seaside

FY 2009 (including 5% penalty)	50,274
FY 2010 (including 5% penalty)	25,847

**Seaside Groundwater Basin Watermaster  
Budget vs. Actual Monitoring and Management - Capital Fund  
Fiscal Year (January 1 - December 31, 2010)  
Balance through March 31, 2010**

ITEM VI.B.  
4/7/2010

	<b>2009 Adopted Budget</b>	<b>Contract Encumbrance</b>	<b>Year to Date Revenue / Expense</b>
<b>Available Balances and Assessments:</b>			
Monitoring & Management Fund - Capital	\$ -		\$ -
FY 2007-2008 Rollover to 2009	5,499		5,499
Transfer in from Operations Fund	-		-
<b>Subtotal</b>	<u>5,499</u>		<u>5,499</u>
<b>Appropriations &amp; Expenses:</b>			
Professional Services			
Project Management	-	-	-
<b>Subtotal</b>	<u>-</u>	<u>-</u>	<u>-</u>
Direct Costs			
Well Drilling -	-	-	-
<b>Subtotal</b>	<u>-</u>	<u>-</u>	<u>-</u>
<b>Total Appropriations and Expenses</b>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
<b>Total Available</b>	<u><u>\$ -</u></u>		
<b>Capital Fund Assessments owed by City of Seaside</b>			
FY 2009 (including 5% penalty)	16,538		
<b>Total</b>	<u><u>\$ 16,538</u></u>		

**Seaside Groundwater Basin Watermaster  
Budget vs. Actual - Replenishment Fund  
Water Year 2010 (October 1 - September 30) / Fiscal Year (January 1 - December 31, 2010)  
Balance through March 31, 2010**

<b>Replenishment Fund</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Totals Through WY 2009</b>	<b>2010 Adopted Budget (10/7/09)</b>	<b>Projected Totals Through WY 2010</b>
Assessments:	WY 05/06	WY 06/07	WY 07/08	WY 08/09		WY 09/10	
Unit Cost:	\$1,132	\$1,132	\$2,485	\$3,040		\$2,780	
<b>California American Water</b>							
Exceeding Natural Safe Yield Considering Alternative Producers	2,108,570	2,484,533	5,164,969	3,773,464	\$ 13,531,537	5,778,119	\$ 19,309,656
Operating Yield Overproduction Replenishment	-	80,938	34,045	-	\$ 114,983	38,086	\$ 153,069
<b>Total California American</b>	2,108,570	2,565,471	5,199,014	3,773,464	\$ 13,646,520	5,816,205	\$ 19,462,725
<b>CAW Credit Against Assessment</b>	<b>(465,648)</b>		<b>(12,305,924)</b>	<b>\$ (3,741,714)</b>	<b>\$ (16,513,286)</b>	-	<b>\$ (16,513,286)</b>
<b>Balance</b>	<b>1,642,922</b>	<b>2,565,471</b>	<b>\$ (2,898,517)</b>	<b>\$ (2,866,766)</b>	-	-	<b>\$ -</b>
<b>CAW Unpaid Balance</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (2,866,766)</b>	<b>\$ 5,816,205</b>	<b>\$ 2,949,439</b>
<b>City of Seaside - Municipal</b>							
Exceeding Natural Safe Yield Considering Alternative Producers	169,200	173,739	385,642	399,211	\$ 1,127,792	431,428	\$ 1,559,220
Operating Yield Overproduction Replenishment	50,487	340	16,898	66,090	\$ 133,815	18,904	\$ 152,719
<b>Total Municipal</b>	219,687	174,079	402,540	465,300	\$ 1,261,606	450,332	\$ 1,711,939
<b>City of Seaside - Golf Courses</b>							
Exceeding Natural Safe Yield - Alternative Producer	-	-	131,705	69,701	\$ 201,406	73,670	\$ 275,076
Operating Yield Overproduction Replenishment	-	-	131,705	69,701	\$ 201,406	73,670	\$ 275,076
<b>Total Golf Courses</b>	-	-	263,410	139,402	\$ 402,812	147,340	\$ 550,152
<b>Total City of Seaside*</b>	219,687	174,079	665,950	604,702	1,664,418	597,672	2,262,091
City of Seaside Late Payment 5%	10,984	8,704	26,712	26,750			
<b>City of Seaside Paid Assessments</b>	-	-	-	-	\$ -	-	\$ -
<b>City of Seaside Unpaid Balance</b>	<b>\$ 230,671</b>	<b>\$ 182,783</b>	<b>\$ 692,662</b>	<b>\$ 631,453</b>	<b>\$ 1,737,569</b>	<b>\$ 597,672</b>	<b>\$ 2,335,241</b>
<b>Grand Total Replenishment Fund Balance</b>	<b>\$ 230,671</b>	<b>\$ 182,783</b>	<b>\$ 692,662</b>	<b>\$ 631,453</b>	<b>\$ (1,202,348)</b>	<b>\$ 6,413,877</b>	<b>\$ 5,211,529</b>
<b>Total Replenishment Assessments</b>	1,873,594	2,748,254	5,891,676	4,404,917	15,310,938	6,413,877	\$ 21,724,815
<b>Total Replenishment Paid and Credited</b>	(1,642,922)	(2,565,471)	(5,199,014)	(3,741,714)	(16,513,286)		(16,513,286)
<b>MRWPCA GWRP Payment</b>			12				(100,000)
<b>Grand Total Replenishment Fund Balance</b>	<b>230,671</b>	<b>182,783</b>	<b>692,662</b>	<b>663,203</b>	<b>\$ (1,202,348)</b>	<b>6,413,877</b>	<b>\$ 5,111,529.23</b>

**ITEM NO. VIII.**

**OLD BUSINESS**

**SEASIDE GROUNDWATER BASIN  
WATERMASTER**

**TO:** Board of Directors  
**FROM:** Dewey D Evans, CEO  
**DATE:** April 7, 2010  
**SUBJECT:** Proposed Court Order prepared by legal counsel as directed by the Court

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**PURPOSE:**

To advise the Board of the Watermaster's response to the Court directing the Watermaster's legal counsel to prepare a Order reflecting the direction of the Court in the Minute Order dated February 19, 2010.

**RECOMMENDATION:**

Consider approving the attached Court Order prepared by legal counsel from California American Water Company on behalf of the Watermaster

**DISCUSSION:**

The February 19, 2010 Minute Order clearly pointed out the decision of the Court and the Watermaster staff was directed to have legal counsel prepare an order reflecting those decisions. California American Water Company's legal counsel agreed to prepare the order for the Watermaster.

**ATTACHMENT:**

1). Proposed Order Re: 2009 Annual Report of the Watermaster

**Carrie L. Gleeson, SBN 144778**  
**Lori W. Girard SBN 188370**  
**California-American Water Company**  
511 Forest Lodge Road, Suite 100  
Pacific Grove, California 93950  
Tel: (831) 646-3240  
Fax: (831) 375-4367

Attorneys for Plaintiff, CALIFORNIA AMERICAN WATER

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF MONTEREY**

CALIFORNIA AMERICAN WATER,  Plaintiff,  vs.  CITY OF SEASIDE, et al.,  Defendants.	Case No.: M66343  <b>PROPOSED ORDER RE: 2009 ANNUAL REPORT OF THE WATERMASTER</b>  Assigned for All Purposes to the Honorable Roger D. Randall (Ret.)
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT,  Intervenor,	
MONTEREY COUNTY WATER RESOURCES AGENCY,  Intervenor,	
AND RELATED CROSS-ACTIONS.	

[Proposed] ORDER

Pursuant to the Court's continuing jurisdiction set forth in Section III.O.1.a of the final decision in this action, having read, reviewed and considered the 2009 Annual Report of the Watermaster, the Watermaster Response to the Court's January 6, 2010 Minute Order, and the City Of Seaside's Response to January 6, 2010 Minute Order Re

Annual Report of Watermaster, and good cause appearing therefore,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1) With respect to Paragraph 4 of the Memorandum of Understanding Between the Seaside Basin Watermaster and the City of Seaside, no stay of enforcement of Replenishment Assessments against the City of Seaside shall be permitted: (a) in advance of the City of Seaside securing replenishment water; or (b) to the extent that the Replenishment Assessments exceed the amount of water the City of Seaside obtains from Marina Coast Water District ("MCWD"). Replenishment water obtained by the City of Seaside from MCWD may offset, on a unit for unit basis, future Replenishment Assessments.

2) With respect to Section III.L.3.j.iii of the final decision in this action, the Operating Yield Over-Production ("OYO") Replenishment Assessment is to be assessed in addition to the Replenishment Assessment for cumulative Basin Over-Production. The OYO Replenishment Assessment is charged only against that portion of use exceeding the Operating Yield allotment.

3) With respect to Paragraph J of the 2009 Annual Report of the Watermaster, semi-annual induction logging of the four (4) Watermaster Sentinel wells is acceptable, provided that any significant change detected by the semi-annual induction logging must be immediately reported to the Court.

Dated: April \_\_\_\_\_, 2010

\_\_\_\_\_  
Honorable Roger D. Randall (Ret.)

**ITEM. IX.**

**NEW BUSINESS**

**ITEM IX.A.**

**COMMITTEE REPORTS**

**ITEM NO. IX.A.1.**

**TECHNICAL ADVISORY  
COMMITTEE  
(TAC)**

**SEASIDE GROUNDWATER BASIN  
WATERMASTER**

TO: Board of Directors

FROM: Robert S. Jaques, Technical Program Manager  
APPROVED BY: Dewey D Evans, CEO

DATE: April 7, 2010

SUBJECT: Consider Approval of Request for Service No. 2010-04 with HydroMetrics to Perform Groundwater Modeling of Selected Scenarios

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**RECOMMENDATIONS:**

It is recommended that the Board approve the attached Request for Service (RFS) No. 2010-04 with HydroMetrics in the amount of \$24,775.00 to perform groundwater modeling of selected Scenarios.

**BACKGROUND:**

In the FY 2010 Budget the Watermaster has included a \$25,000 line-item for HydroMetrics to simulate additional management Scenarios with the regional groundwater Model which they developed for the Watermaster in 2009.

At the March 3, 2010 Board meeting, a set of Scenarios recommended by the TAC was essentially approved by the Board, but with the following revisions:

- For Scenario 1 (Laguna Seca Pumping Impacts) make the following changes:
  - ◇ For the 0% pumping increase run, use current actual pumping quantities for all Producers, both Standard and Alternative
  - ◇ For the 10% and 20% pumping increase runs, increase all of the current actual Alternative Producer production rates by 10% and 20%, but leave the California American Water production rates at their current actual levels
- For Scenario 2 (Regional Water Supply Project) update the start-up date for the Regional Water Supply Project to a date later than the 2012 date cited in the Final Environmental Impact Report. The updated date will be provided by MPWMD just prior to the start of the modeling work, and will be their best estimate based on the status of discussions and negotiations currently in progress regarding implementation of the Regional Water Supply Project.

**DISCUSSION:**

Following the March 3 Board meeting, RFS No. 2010-04 to have HydroMetrics perform this work was prepared, including the revisions requested by the Board on March 3. A copy of RFS No. 2010-04 is attached. This RFS was reviewed and approved by the TAC at its March 10, 2010 meeting.

**ATTACHMENT:**

HydroMetrics RFS No. 2010-04

SEASIDE BASIN WATERMASTER  
REQUEST FOR SERVICE

DATE: 4/8/2010

RFS NO. 2010-04

(To be filled in by WATERMASTER)

TO: Derrick Williams  
HydroMetrics LLC  
PROFESSIONAL

FROM: Robert Jaques  
WATERMASTER

**Services Needed and Purpose:** Perform groundwater modeling of scenarios for the Seaside Basin. See detailed Scope of Work in Attachment 1.

**Completion Date:** All work of this RFS shall be completed not later than October 1, 2010. See Attachment 3 for planned work schedule.

**Method of Compensation:** Time and Materials (As defined in Section V of Agreement.)

**Total Price** Authorized by this RFS: \$ 24,775.00 (Cost is authorized only when evidenced by signature below.) (See Attachment 2 for Detailed Breakdown of Estimated Costs).

**Total Price** may not be exceeded without prior written authorization by WATERMASTER in accordance with Section V. COMPENSATION.

**Requested by:** \_\_\_\_\_ Date: \_\_\_\_\_  
WATERMASTER Technical Program Manager

**Authorized by:** \_\_\_\_\_ Date: \_\_\_\_\_  
WATERMASTER Chief Executive Officer

**Agreed to by:** \_\_\_\_\_ Date: \_\_\_\_\_  
PROFESSIONAL

# ATTACHMENT 1

## Scope of Work

**Task 1:** Scenario 1: Model the effects of additional pumping in the Laguna Seca subarea. The purpose of this scenario is to begin addressing questions about the impacts on other subareas of the Basin resulting from pumping by wells in the Laguna Seca subarea. In the 2009 modeling work all of the Alternative Producers were allowed to pump their full allocations, rather than using actual historical pumping production figures. The prior modeling work did not examine the movement of water to or from the Laguna Seca subarea, or the impacts of Laguna Seca pumping with regard to the other subareas within the Basin. Under Scenario 1 three new simulations will be run, with 0%, 10%, and 20% pumping increases for all years as follows:

1. For the 0% pumping increase simulation, current actual pumping quantities will be used for all Producers, both Standard and Alternative.
2. For the 10% and 20% pumping increase simulations, all of the current actual Alternative Producer production rates will be increased by 10% and 20%, but the California American Water Standard Producer production rates will be held at their current actual levels.

Each simulation will be analyzed for the following:

1. Impact on coastal groundwater levels,
2. Impact on amount of groundwater flowing into the Southern Coastal subarea,
3. Impact on amount of groundwater flowing into the Northern Inland subarea, and
4. Changes to Laguna Seca subarea groundwater levels.

**Task 2:** Scenario 2: Model the effects of implementing the “Monterey Regional Water Supply Project – Phase 1” as that project is defined in the Final EIR for the Coastal Water Project. The following parameters describe Phase 1 of this project, and were taken directly from the Final EIR:

- Conservation Programs potentially saving up to 1,000 AFY. Note, however, that this amount is not counted on in terms of reducing demands on the CAW Monterey Peninsula distribution system.
- Sand City Desalination Project providing on average 300 AFY. This amount is counted as reducing demand on the CAW Monterey Peninsula distribution system.
- Regional Urban Water Augmentation Project (RUWAP) which on average would deliver 1,000 AFY of recycled water for landscaping and golf course irrigation on lands some of which overlie the Seaside Basin. However, with the exception of the water currently being pumped from the Seaside Basin by the Seaside Golf Course wells (Bayonet and Blackhorse Golf Courses), which has an allocation of 540 AFY under the Seaside Basin Court Adjudication Decision, the RUWAP would not decrease pumping demands on the Seaside Basin, because the water supplying the demands of the remaining landscape and golf course uses is pumped by MCWD from the Salinas River Basin.
- Regional Desalination System, the principle components of which are:
  - 6 Vertical Seawater Wells located inland of the sand dunes and west of Highway 1 in an area south of the Salinas River and north of Reservation Road.
  - 10 MGD Regional Desalination Facility located just south of the MRWPCA Regional Wastewater Treatment Plant, with brine disposal to MRWPCA’s outfall. This desalination plant on average would produce 10,500 AFY of potable water and would deliver 8,800 AFY of this water to the CAW Monterey Peninsula distribution system for urban users. Of this 8,800 AFY, 2,975 AFY is to offset Cal Am's pumping from the Seaside Basin, and 272 AFY is to offset other users pumping from the Seaside Basin, for a total amount of 3,247 AFY of pumping from the Seaside Basin being reduced by delivering that quantity of water from the Regional Desalination Plant and the Carmel River ASR facilities. The other 1,700 AFY of potable water from the desalination plant would be delivered to MCWD, in order for MCWD to be able to reduce its pumping of water from the Salinas

River Groundwater Basin by this amount to offset the amount of Salinas Basin groundwater that would be extracted by the Vertical Seawater Wells that supply the desalination plant.

- Approximately 56,000 LF of 36" diameter pipelines (referred to as the Product Water Pipeline and the Transmission Main South) from the Desalination Facility to a point of connection in Seaside to the existing CAW distribution system and to the Terminal Reservoirs, and through another pipeline, the Monterey Pipeline, to a point of connection to the existing CAW distribution system in Pacific Grove.
- 2 - 3 MG Terminal Reservoirs located east of General Jim Moore Boulevard in Seaside on the former Fort Ord. These reservoirs can receive water during dry weather periods from the Desalination Facility and/or the ASR Wells, and via a pipeline from the Carmel River during wet weather diversion periods.
- 2 Existing ASR Wells and 2 New ASR Wells, all located near General Jim Moore Boulevard in Seaside. On average 1,300 AFY of Carmel River water would be stored in the Seaside Basin and then pumped out of the Basin and into the CAW distribution system to potable urban users. This amount is counted as reducing demand on the CAW Monterey Peninsula distribution system.
- Interconnecting piping between certain of the components listed above, and other facilities, to comprise an operational system.
- Start-up of Phase 1 is projected in the FEIR to occur on November 30, 2012. However, for this Scenario the start-up date will be revised to a date later than 2012 to reflect delays being experienced in implementing the early work of Phase 1. The updated date will be provided to the PROFESSIONAL by the WATERMASTER just prior to the start of work on this Scenario.

Phase 2 of the Regional Water Supply Project is not included in Scenario 2, because the components of Phase 2 are not as fully developed as those for Phase 1 and thus were not fully addressed in the CWP FEIR. In addition, the time schedule for implementation of the Phase 2 components is less certain than the schedule for implementation of the Phase 1 components. Phase 2 would consist of some or all of the following components:

- Pacific Grove Stormwater Diversion Project (up to 200 AFY)
- Expanded Salinas River Diversion Facility (SRDF) delivering river water to a 14 MGD Surface Water Treatment Plant to be located adjacent to the Phase 1 Desalination Facility. This Surface Water Treatment Plant would initially deliver on average up to 2,980 AFY of potable water to urban customers. These facilities could be further expanded at a subsequent date to increase the delivery of water to urban customers to 5,800 AFY.
- Expanded Regional Desalination Facility to 13 MGD capacity and 2 additional intake wells to increase the desalination capacity by 4,400 AFY.
- Groundwater Replenishment Project using highly treated recycled water from MRWPCA for injection of up to 6,720 AFY into the Seaside Basin.
- Auxiliary components that would potentially be needed to support the other Phase 2 components could include:
  - Further expansion of the SRDF
  - Expansion of the Castroville Seawater Intrusion Project (CSIP)
  - Additional ASR wells and pumping capacity
  - Additional Terminal Reservoirs

Under Scenario 2 average rainfall, rather than historical cyclical rainfall data, will be used

Under Scenario 2, California American Water will start using its full Regional Project water supply in the Phase 1 start-up year, and 3,247 acre-feet per year from the Desalination Plant will be used to offset pumping from the Seaside Groundwater Basin by delivering this amount of water to the California American Water distribution system.

**Task 3:** Prepare charts, maps and graphs showing results of both Scenarios 1 and 2. The graphs and charts will show the predicted groundwater elevations at the coast for each scenario. Results for Scenario 1 will also involve evaluating the amount of groundwater flowing into the Southern Coastal and Northern Inland subareas,

and predicted changes to Laguna Seca subarea groundwater levels. A short memorandum will be prepared summarizing the findings and conclusions of these two simulations. Provide 7 hard copies of the completed work, suitably bound, and a CD containing these documents in MS Word or other format that can be used for cutting and pasting, i.e. not a pdf format.

**Task 4:** Attend one TAC meeting and one Board meeting to present the results of this work.

## ATTACHMENT 2

### Estimated Costs

Tasks	HydroMetrics WRI Labor				Labor Total		Other Direct Costs	TOTALS
	Derrick Williams	Cameron Tana	Georgina King	Admin				
	Program Manager	Lead Modeler	Senior Hydrogeologist	Office Support	Hours	(\$)	(\$)	(\$)
<b>Rates</b>	\$180	\$160	\$160	\$85				
Task 1. Scenario 1 - Additional pumping in the Laguna Seca Subarea	8	32	14	0	54	\$ 8,800	\$ -	\$ 8,800
Task 2. Scenario 2 – Monterey Regional Water Supply Project	4	24	10	0	38	\$ 6,160	\$ -	\$ 6,160
Task 3. Reporting - Description of model scenarios and results	4	12	20	0	36	\$ 5,840	\$ 80	\$ 5,920
Task 4. Attend one TAC meeting and one Board meeting to present results	14	0	8	0	22	\$ 3,800	\$ 95	\$ 3,895
<b>TOTALS</b>	<b>30</b>	<b>68</b>	<b>52</b>	<b>0</b>	<b>150</b>	<b>\$ 24,600</b>	<b>\$ 175</b>	<b>\$ 24,775</b>

# ATTACHMENT 3

## Planned Work Schedule

### Seaside Basin Watermaster Monitoring and Management Program 2010 Work Schedule

ID	Task Name	2010												Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec												
1	<b>I.3.a ENHANCED SEASIDE BASIN GROUNDWATER MODEL</b>																								
2	<b>I.3.a.3 Evaluate Replenishment Scenarios and Develop Answers to Basin Management Questions</b>																								
3	HydroMetrics Meets with TAC for Preliminary Discussion on Additional Scenarios to be Evaluated																								
4	HydroMetrics Meets with TAC to Complete Selection of Management Objectives and Additional Scenarios to be Evaluated																								
5	Board Approves Management Objectives and Scenarios to be Evaluated																								
6	Prepare Contract with HydroMetrics to Evaluate Additional Replenishment Scenarios																								
7	TAC Approves Contract with HydroMetrics to Evaluate Additional Replenishment Scenarios																								
8	Board Approves Contract with HydroMetrics to Evaluate Additional Replenishment Scenarios																								
9	HydroMetrics Evaluates Additional Replenishment Scenarios																								
10	HydroMetrics Makes Summary Report to TAC Regarding Evaluation of Additional Replenishment Scenarios																								
11	HydroMetrics Makes Summary Report to Board Regarding Evaluation of Replenishment Scenarios and Answers to Basin Management Questions																								

HydroMetrics RFS 2010-04 Schedule Final 3-12-10	Page 1
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**SEASIDE GROUNDWATER BASIN  
WATERMASTER**

**TO:** Board of Directors  
**FROM:** Dewey D Evans, CEO  
**DATE:** April 7, 2010  
**SUBJECT:** Resolution Expressing Support of the Proposed Monterey Regional Water Supply Program

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**PURPOSE:**

To show support for the proposed Monterey Regional Water Supply Program (Regional Project)

**RECOMMENDATION:**

Consider approving the attached Resolution "Expressing Support of the Proposed Monterey Regional Water Supply Program."

**DISCUSSION:**

The Monterey Regional Water Supply Program (Regional Project) has now been identified by the California Public Utilities Commission (CPUC) as an alternative to California American Water's (Cal-Am) proposed Coastal Water Project (CWP) to help solve the long standing water supply problem on the Monterey Peninsula. If the proposed necessary agreements are adopted and signed by the involved parties and the CPUC accepts the project, it is possible that the desalination plant and related facilities could be up and operational as early as 2014. It is expected that the project could produce as much as 10,000 acre feet of useable water each year for residents on the Monterey Peninsula and in Monterey County. This would go a long way toward enabling Cal-Am to comply with the requirements of the State Water Resources Control Board's Order Nos. WR-95-10 and 2009-0060 and the Seaside Basin Adjudication Decision (California American Water vs. City of Seaside, et al., Monterey County Superior Court Case no. M66343.

**ATTACHMENT:**

Seaside Groundwater Basin Watermaster Resolution No. 2010-01

**SEASIDE GROUNDWATER BASIN WATERMASTER**

**RESOLUTION NO. 2010-01**

**A Resolution of the Board of Directors of the  
Seaside Groundwater Basin Watermaster  
Expressing Support of the Proposed Monterey Regional Water Supply Program**

**WHEREAS**, the Monterey Regional Water Supply Program (Regional Project) has been identified by the California Public Utilities Commission as an alternative to California American Water's proposed Coastal Water Project (CWP) to benefit water users on the Monterey Peninsula and in Monterey County; and

**WHEREAS**, Phase 1 of the proposed Regional Project includes a Desalination Facility and intake wells in the North Marina area, and expansion of the Seaside Basin Aquifer Storage and Recovery program; and

**WHEREAS**, the purpose of the proposed Phase 1 Regional Project is to enable Cal-Am to fully comply with the requirements of State Water Resources Control Board Order Nos. WR 95-10 and 2009-0060 and the Seaside Basin Adjudication Decision (California American Water v. City of Seaside, et al., Monterey County Superior Court Case No. M66343); and

**WHEREAS**, the Final Environmental Impact Report (EIR) for the CWP states that the proposed Phase 1 Regional Project is the environmentally-superior alternative, provided that the mitigation measures set forth in the Final EIR are imposed and fully implemented by all pertinent approval and participant agencies; and

**WHEREAS**, the Seaside Groundwater Basin Watermaster administers and enforces the provisions of the Seaside Basin Adjudication Decision.

**NOW, THEREFORE BE IT RESOLVED** by the Board of Directors of the Seaside Groundwater Basin Watermaster that the Board supports the proposed Phase 1 Regional Water Supply Project as an important step in solving the long standing water supply problems of the Monterey Peninsula.

On a motion by Director \_\_\_\_\_ and seconded by Director \_\_\_\_\_ the forgoing resolution is duly adopted this 7<sup>th</sup> day of April 2010 by the following votes:

Ayes:

Nays:

Absent:

I, Judi Lehman, Secretary of the Board of Directors of the Seaside Groundwater Basin Watermaster, hereby certify that the forgoing is a resolution duly adopted on the 7<sup>th</sup> day of April, 2010.

\_\_\_\_\_  
Judi Lehman, Secretary of the Board

**SEASIDE GROUNDWATER BASIN  
WATERMASTER**

**TO:** Board of Directors

**FROM:** Dewey D Evans, CEO

**DATE:** April 7, 2010

**SUBJECT:** Status of City of Seaside's In Lieu Replenishment Proposal and Approval of Revised Proposal to the Court  
re: Seaside Replenishment Assessment Liability and In Lieu Replenishment Program

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**DISCUSSION:**

Material for this Board agenda item will be sent out separately as soon as the documents are received at the Watermaster office. Legal counsel for the City of Seaside is preparing documents and those documents and a staff report will be sent out later, probably on Monday, April 5<sup>th</sup>.

**ITEM X.**

**INFORMATIONAL  
REPORTS**

**(NO ACTION REQUIRED)**

SEASIDE GROUNDWATER BASIN WATERMASTER CRITICAL MILESTONE DATES

ITEM X.A. 4/7/10

ANNUAL MILESTONES	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016		
Each Producer is authorized to Produce its Production Allocation within the designated Subarea in each of the first three Water Years. Alternative Producers may change to Standard Production by March 27, 2009 by filing a declaraton with the Court and with the other parties.	27-Mar-06	30-Sep-07	APA to SPA election amended to in perpetuity 12/12/2009										
Commencing with the fourth Water Year and Triennially thereafter, the Operating Yield for both Subareas will be decreased by 10% until the Operating Yield is equivalent to the Natural Safe Yield unless by recharge or reclaimed water use results in a decrease in production of Native Water as required by the decision.					75% of the Operating Yield of 5,600 decreased 10% Jan 1, 2009	Operating yield could decrease 10% every three years on October 1st until it is the equivalent of Natural Safe Yield			1-Oct	1-Oct	1-Oct		
Each Water Year by November 15th, the Watermaster will determine and levy a Replenishment Assessment on each Standard Producer, with payment due from Producer 40 days after the levy is mailed	15-Nov		15-Nov	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov		
After the close of each Water Year, the Watermaster will determine and levy a Replenishment Assessment against all Producers that incurred Operating Yield Over Production during the Water Year, with payment due from Producer by January 15th	15-Nov		30-Nov	30-Nov	30-Nov	30-Nov	30-Nov	30-Nov	30-Nov	30-Nov	30-Nov		
California American Water to submit annually to Watermaster any augmentation to water supply for possible credit toward Replenishment Assessment	Annually	15-Nov	CAW Credit Request Granted (signed MOU) January 15, 2009		CAW Credit Req Granted 2/3/10	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov		
Water level monitoring - monthly data collection from all members for inclusion in the consolidated database.	Reported Annually	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly		
Water quality monitoring - yearly data collection from all members for inclusion in consolidated database	Reported Annually	15-Nov	28-Feb & 15-Nov	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov		
Summary report of water resources data to all members/parties Reported the 15th each quarter month:	Quarterly	Jan, Apr, Jul, Oct 15th	Jan, Apr, Jul, Oct 15th	Jan, Apr, Jul, Oct 15th	Jan, Apr, Jul, Oct 15th	Jan, Apr, Jul, Oct 15th	Jan, Apr, Jul, Oct 15th	Jan, Apr, Jul, Oct 15th	Jan, Apr, Jul, Oct 15th	Jan, Apr, Jul, Oct 15th	Jan, Apr, Jul, Oct 15th		
Annual Report to Court	15-Jan	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov		
ADMINISTRATIVE MILESTONES	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016		
Adjudication ordered by Court and filed	27-Mar-06												
Board Directors Terms	7-Nov												
Budget (Administrative) Adopted/distributed					15-Jan-10	15-Jan	15-Jan	15-Jan	15-Jan	15-Jan	15-Jan		
Budget (Operations) Adopted/distributed					15-Jan-10	15-Jan	15-Jan	15-Jan	15-Jan	15-Jan	15-Jan		
Budget (Replenishment) Adopted/distributed					15-Jan-10	15-Jan	15-Jan	15-Jan	15-Jan	15-Jan	15-Jan		
Administrative Assessments	15-Jan-06	15-Jan-07	15-Jan-08	15-Jan-09	15-Jan-10	15-Jan-11	15-Jan-12	15-Jan-13	15-Jan-14	15-Jan-15	15-Jan-16		
Operations Assessments	15-Jan-07	15-Jan-07	15-Jan-08	15-Jan-09	15-Jan-10	15-Jan-11	15-Jan-12	15-Jan-13	15-Jan-14	15-Jan-15	15-Jan-16		
Capital Assessments	15-Jan-07	15-Jan-07	NONE	15-Jan-09	NONE	15-Jan-11	15-Jan-12	15-Jan-13	15-Jan-14	15-Jan-15	15-Jan-16		
Replenishment Assessments	CAW credit	CAW credit	CAW credit	CAW credit	CAW credit	15-Jan-12	15-Jan-13	15-Jan-14	15-Jan-15	15-Jan-16	15-Jan-17		
Annual Report to Court	15-Nov-06	15-Nov-07	15-Nov-08	15-Nov-09	15-Nov-10	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov	15-Nov		
Answers to Judge's Questions re: Annual Report	30-Jan-09	28-Feb-08	1-Feb-09	5-Feb-10									
Declaration of Replenishment Water Availability	Feb-06	Dec-06	Dec-07	18 Mar	2-Dec-09	1-Dec-10	Dec-11	Dec-12	Dec-13	Dec-14	Dec-15		
MONTHLY MILESTONES	2006-09	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	Sep 10	Oct 10	Nov 10	Dec 10
Board Directors Terms													
Fiscal Year tentative budgets distribution to all parties													
Operating Yield of 5,600 decreased 10% ; Declaration of Replenishment Water Available	18-Mar-09												
Administrative Assessments	2009 & 10 Seaside Not Recvd												
Operations Assessments	2009 & 10 Seaside Not Recvd												
Capital Assessments	2009 Seaside Not Recvd												
Replenishment Assessments	2005/06 - 2008/09 Seaside Not Recvd												
Develop Repl Assessment Unit Cost													
SPECIAL ISSUES	2006-09	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	Sep 10	Oct 10	Nov 10	Dec 10
Cal-Am CWP/Alternative Projects EIR	ALJ & Commission FEIR Proceedings				Board Support								
SWRCB Cease Desist Order California American Water	Stay Issued												
City of Seaside In-lieu Replenishment Project					SS/MCWD Agmt Rpt								
<b>Watermaster Board Regular Meeting Schedule</b>	6-Jan cancel'd		3-Feb	3-Mar	7-Apr	5-May	2-Jun	7-Jul	4-Aug	1-Sep	6-Oct	3-Nov	1-Dec
<b>SUMMARY PROJECT SCHEDULE</b> (See detailed project schedule for more information)	Monitoring and Management Program 2010												
Program Administration, Database Management			1/1/10 - 12/31/10										
Coastal Wells Cross-Aquifer Contamination Potential Evaluation			2/1/10 - 7/7/10									Complete =	
Enhanced Groundwater Model: Protective Water Levels & Basin Scenarios (Hydrometrics)			1/13/10 - 8/4/10									Scheduled for Board or TAC meeting =	
Production Water Level & Water Quality Monitoring (Hydrometrics, MPWMD)			1/1/10 - 12/31/10									Imminent Critical Deadline =	
Refine/Update BMAP (Hydrometrics)			6/9/10 - 11/3/10										
Seawater Intrusion Analysis (Hydrometrics)			10/6/10 - 11/3/10										Revised March 30, 2010

**D-R-A-F-T**  
**MINUTES**

**Seaside Groundwater Basin Watermaster  
Technical Advisory Committee Meeting  
March 10, 2010**

**Attendees: TAC Members**

City of Seaside – Sydney Moe  
California American Water – Eric Sabolsice (arrived @ 9:50 a.m.)  
City of Monterey – Norm Green  
Laguna Seca Property Owners – No Representative  
MPWMD – Joe Oliver  
Public Member – No Representative  
MCWRA – Rob Johnson  
City of Del Rey Oaks – No Representative  
City of Sand City – No Representative  
Coastal Subarea Landowners – No Representative

**Watermaster**

Technical Program Manager - Robert Jaques

**Consultants**

HydroMetrics LLC – Derrik Williams

**Others:**

MPWMD – Jonathan Lear

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The meeting was called to order at 9:10 a.m. after waiting for a quorum to arrive. In the interest of time the meeting began without a quorum, but no action was taken during the initial part of the meeting until a quorum had arrived.

**1. Administrative Matters:**

**A. Approve Minutes from February 10, 2010 Meeting**

On a motion by Mr. Oliver, second by Mr. Johnson the minutes were unanimously approved as presented with Ms. Moe and Mr. Green abstaining because they were not present at that meeting.

**B. Appoint Alternate Public Member to the TAC**

Mr. Jaques summarized the agenda packet materials for this item.

Mr. Johnson noted that Mr. Riley had asked for reimbursement for his time spent on matters pertaining to RPOG meetings, and he was concerned about this. Mr. Jaques suggested that Mr. Riley could be informed that the position of Public Member does not receive reimbursement to insure this is clear to Mr. Riley.

Mr. Green asked how Mr. Fischer had gotten appointed to serve on the TAC. Mr. Johnson and Mr. Oliver recalled that he was asked to serve by a member of the Board.

Mr. Johnson recommended that if Mr. Riley is appointed to serve as the alternate Public Member, Mr. Riley and Mr. Fischer should coordinate and communicate between themselves as to who will be attending TAC meetings, so they would not both attend the same meeting.

Ms. Moe reported that she did not know Mr. Riley.

Mr. Johnson said that if the responses from Mr. Riley were positive, then the matter should be put on the next TAC meeting agenda for action.

## **2. Recommendations for Changes in Standard Operating Procedures for the M&MP**

Mr. Oliver summarized the agenda packet materials for this item.

Mr. Oliver said that no changes are recommended at this time in the Monitoring and Management Program data collection procedures. However, after two years of data has been collected using the low-flow purge sampling method, if results continue to show essentially no change in water quality, he will likely recommend reducing the frequency of sampling the coastal monitoring wells to semi-annually.

Mr. Johnson asked for clarification as to the interpretation of the term "semi-annual." Following discussion there was the agreement that with regard to taking water quality samples this means twice per year, approximately six months apart (spring and fall)

Mr. Jaques asked Mr. Oliver if the Seaside Basin Watermaster sentinel wells were also part of the sampling program, and Mr. Oliver responded that yes, they were sampled annually, except that the northernmost sentinel well was sampled semi-annually.

Mr. Williams asked if the BLM well is being sampled as well. Mr. Oliver responded that yes it was being sampled but only to get initial water quality characterization data. Thereafter, only water level measurements will be made unless there is a desire to get more water quality data from that well in the future.

Mr. Jaques asked if we need to have the Monitoring and Management Program reviewed by MPWMD twice per year, as is currently scheduled, or whether doing this once per year would be sufficient. There was discussion that the Monitoring and Management Program has now been carried out for several years, and it has become fairly routine. There was consensus that it would be satisfactory to have MPWMD perform a review and to make recommendations on this once per year. Mr. Lear and Mr. Oliver suggested having the recommendations made not later than the January TAC meeting in future years.

With regard to other changes that might be recommended in the future, Mr. Oliver said it might be recommended at a future time to include barium as a sampling constituent. Mr. Johnson suggested that SAR might also be considered and Mr. Williams suggested that iodide might also be considered, if there were some indicators of seawater intrusion occurring.

## **3. Request for Service (RFS) for HydroMetrics to Perform Modeling Scenarios**

Mr. Jaques summarized the agenda packet materials for this item.

Mr. Lear and Mr. Oliver said they believed the Scenario 1 revisions that had been requested by the Board were correctly presented in the agenda packet. They commented that CAW did not want any indication or appearance given that they intended to increase pumping in the Laguna Seca subarea. Mr. Oliver commented that total CAW pumping within the basin in recent years has been less than the amount they are allotted to pump.

Mr. Williams said the original model scenario used the full allocated amounts of pumping. Mr. Oliver said this is now more of a sensitivity analysis as well as examining water moving into and out of the Laguna Seca subarea. Mr. Lear said that CAW needs to keep pumping at current levels in the Laguna Seca subarea in order

to meet demands, so he did not envision them being able to reduce pumping within the Laguna Seca subarea by the triennial 10 percent amount required by the Decision. Rather, they would reduce their pumping in other subareas to achieve this.

Mr. Williams posed the question of whether or not to include the 10 percent triennial reductions. Mr. Oliver said that Scenario 1 came about as a result of a prior request from the Laguna Seca property owners for a determination as to whether Laguna Seca subarea pumping was affecting the other subareas. If not, they wondered if (1) they could not be subjected to the 10 percent triennial pumping reductions and (2) potentially be able to increase their pumping above their currently allotted amounts.

Mr. Williams said that if all Standard Producer production continued being cut back triennially by 10 percent, and all of the Alternative Producers continue to pump less than their allocated amounts, then total pumping within the basin would eventually fall below the Natural Safe Yield of 3,000 acre feet per year. Mr. Sabolsice concurred with keeping CAW's pumping levels at their current levels for Scenario 1.

There was discussion regarding progress with the Division of Ratepayer Advocates and others to address questions and issues pertaining to implementing the Regional Water Supply Project. Mr. Johnson said this private/public partnership will be a major achievement if it occurs.

Mr. Jaques asked Mr. Sabolsice if he knew how the additional 272 acre feet per year to offset pumping by "other users" would be delivered to the Seaside basin. Mr. Sabolsice said the intent of the Coastal Water Project is to bring Carmel River pumping down to levels allowed by the CDO. Also, CAW has an agreement with MPWMD to perform ASR using Carmel River water to be stored in the Seaside basin. The Laguna Seca system of CAW is not interconnected with any other systems, so desalinated water from the regional desalination plant cannot get to those systems using existing piping. Mr. Jaques asked Mr. Sabolsice to confirm Mr. Jaques understanding that all 3,247 acre feet per year of desalination water intended to go to the Seaside basin would be used to reduce CAW's pumping from the Seaside basin. Mr. Sabolsice confirmed this understanding.

Mr. Williams said that the 3,247 acre feet per year would be close to the total amount of CAW's Seaside basin pumping. Mr. Williams wondered if there was enough water in the Regional Project to also meet CAW's needs to reduce its Carmel River pumping. Mr. Jaques commented that these figures are what are contained in the Final Environmental Impact Report document. Mr. Sabolsice said the ASR capacity will be expanded and other small projects will be involved in helping CAW to comply with the CDO. Mr. Johnson recommended having Mr. Williams e-mailed the TAC with his questions/concerns about the water quantities to be used in the modeling, before asked the starting the work. These would be discussed at the April TAC meeting.

There was consensus to delete the last sentence of Task 1 (on page 13 of the agenda packet) as it could be confusing.

Ms. Moe expressed concern that all of the 3,247 acre feet per year appears to be going to CAW, and none of it to other users.

With regard to Scenario 2, Mr. Sabolsice said that a more realistic start-up date should be available by the April TAC meeting.

Mr. Williams confirmed that there would be no change in costs or schedule to incorporate the revisions recommended by the Board and discussed the today's TAC meeting. On a motion by Mr. Johnson, second by Mr. Sabolsice there was unanimous approval of the RFS with the one change described above.

#### **4. Update on Refining Protective Water Levels**

Mr. Jaques summarized the agenda packet materials on this item.

Mr. Lear said he felt the Board wanted to consider evaluating what percentage of protection would be needed to protect all of the production wells. Mr. Williams said there was no way to go directly to the answer to that question. Rather, a series of runs would be needed in order to produce enough data to be able to interpolate to that value.

Mr. Jaques asked the TAC for its direction on whether to continue to recommend having more Protective Water Level work done, or to simply wait for Board direction on when to proceed. There was consensus to wait for Board direction, but also to include performing such work in next year's budget, so the Board could weigh-in on this matter at budget approval time.

#### **5. Approve Enhancements to be Made to the Database**

Mr. Jaques introduced this topic and Mr. Oliver briefly summarized the proposed items of work to be done to enhance the Database, as listed on pages 20 through 22 of the agenda packet. There were questions-and-answers on several of these items.

There was brief discussion of the potential benefit of Item 10, interactive mapping, as a potential future activity.

There was consensus to proceed with these enhancements and to get a scope and cost proposal from MPWMD to do the work, so that a draft RFS could be brought to the TAC for approval at its April meeting.

#### **6. SPCA Well Production and Related Issues**

Mr. Jaques summarized the agenda packet materials for this item

Mr. Lear said that the substantial reductions in reported pumping quantities in recent years would cause one to question the accuracy of the meter.

Mr. Sabolsice asked if MPWMD had any jurisdiction over the metering accuracy issue. Mr. Oliver said that they could do a flow meter inspection, and went on to say that MPWMD only gets annual production data for the SPCA well. Mr. Oliver said he would follow up with a well inspection and report back to the TAC at a future meeting once this has been done.

#### **7. Schedule**

There were no comments or questions on this item.

#### **8. Other Business**

Mr. Williams briefly reported on several informational items:

- He is tracking the salt/nutrient management plan process and noted that there was a meeting this afternoon by the RWQCB at the MRWPCA regional treatment plant.
- He is tracking Senate Bill SBX 7-6 (passed in November 2009). Mr. Williams reported that he is a member of an ACWA committee which is dealing with this. It would require seasonal water level reporting to DWR. Not all water levels just "seasonal" water levels a term which is still being defined. They May ACWA meeting will be held in Monterey and at that time more information is expected to be released. He reported that you must sign up by December 31, 2010 if you are one of the parties that are required to submit data. DWR can withhold funding to a County if any basin in the County fails to report data. Basins are defined in DWR Bulletin No. 118.
- He is tracking Senate Bill SBX 7-7 which pertains to conservation laws that need to be addressed through Urban Water Management Plans. The deadline on this has been deferred to June 2010. If an

agency is already conserving to some level (yet to be established) it may not be required to do any additional conservation.

Mr. Johnson said that the State's data tracking system has had significant problems.

Mr. Williams reported to Mr. Jaques that the Watermaster may be the appropriate party to provide data to DWR, but that the Watermaster is not required to do so. Any party can take on this responsibility. Mr. Sabolsice said it made sense to him for MPWMD to take on the reporting responsibility for the Seaside basin.

**9. Set next meeting date:**

The next regular meeting was set for Wednesday, April 14, 2010 at 1:30 p.m. at the City of Seaside City Hall – Portable Buildings Conference Room

The meeting adjourned at 11:15 a.m.

**ITEM NO. XI.**

**DIRECTOR'S  
REPORTS**

**ITEM NO. XII.**

**EXECUTIVE OFFICER  
COMMENTS**

## Memorandum

**Russell McGlothlin**  
805.882.1418 tel  
805.965.4333 fax  
rmcglathlin@bhfs.com

**DATE:** April 7, 2010  
**TO:** Seaside Basin Watermaster  
**FROM:** Russell McGlothlin  
**RE:** Proposal for In Lieu Replenishment Program/Credit Offset of the City of Seaside's Accrued Replenishment Assessments

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### I. Purpose of Proposal/Watermaster Action Item

The City of Seaside ("Seaside") requests that the Watermaster approve a revised Memorandum of Understanding ("MOU") respective of the City's Golf Course In Lieu Replenishment Program ("In Lieu Program") to address the Court's recent ruling respecting Paragraph 4 of the MOU approved by Watermaster on November 4, 2010. The City further requests that Watermaster support the City in its motion to the Court to request consent to a revised proposal to use the In Lieu Program to offset the City's accrued Replenishment Assessment ("RA") liability within approximately three years (approximately by the end of WY 2012), as discussed below.

### II. Background Information

Watermaster unanimously approved the MOU at its November 4, 2009 Board meeting which generally provided for the City to receive a credit against its present and future RA liability in the amount of the then-current RA for each acre-foot of water delivered for irrigation of the Blackhorse and Bayonet Golf Course in lieu of production of groundwater from the Seaside Groundwater Basin ("Basin") pursuant to the City's Alternative Production Allocation groundwater rights. Paragraph 4 of the MOU also afforded the City a "stay" of collection enforcement of the City's accrued and unpaid RA liability so long as the In Lieu Program commenced within one year and at least 200 acre-feet of in lieu replenishment occurred during the term of the MOU. By Minute Order, dated February 19, 2010, the Court stated that it "will not allow a stay of enforcement of replenishment assessments in advance of the securing of replenishment water, per paragraph 4 of the MOU between the City and SGBW." The Court did, however, condone the broader In Lieu Program as a means of offsetting the City's future RA liability.

Since the Court's February 19th Minute Order, the City and MCWD have each approved a final agreement that provides that MCWD will immediately commence deliveries of in lieu replenishment water to the golf courses. (See Exhibit A, attached hereto.) This agreement removes uncertainty as to the commencement of the In Lieu Replenishment Program. We are therefore confident that the City can commence the program by May 1, 2010 and that it will be able to provide at least 400 acre-feet of in lieu replenishment during the 2010 Water Year.

### III. In Lieu Replenishment/RA Liability Projections

Watermaster reports that the City's existing Replenishment Assessment liability is \$1,737,569 and projects that its Replenishment Assessment liability will grow to \$2,335,241 through Water Year 2010. The amount Watermaster presently charges for RA is \$2,780 per acre-foot. Consistent with the prior MOU, the City is afforded a credit against its RA liability in the amount of the then-current RA multiplied by the amount of in-lieu replenishment undertaken each year. The City projects that through the end of WY 2010 it will deliver at least 400 acre-feet of in lieu replenishment water. Next year and each year thereafter it should be able to deliver at least 500 acre-feet of in lieu replenishment water.

At the current RA rate, the City would need to deliver approximately 840 acre-feet of in lieu replenishment water to offset the projected accrued replenishment assessment liability through WY 2010 ( $\$2,335,241/\$2,780 = 840$ ), and at least 215 acre-feet each year thereafter to offset Watermaster's projected annual RA liability for the City ( $\$597,672/\$2,780 = 215$ ).<sup>1</sup> Under these assumptions, the City will have delivered at least 1,400 acre-feet of in lieu replenishment by the end of WY 2012 (400 [WY 2010] + 500 [WY 2011] + 500 [WY 2012] = 1,400). Through WY 2012, the City will need to provide approximately 1,270 acre-feet of in lieu replenishment to offset its projected then-accrued total RA liability (840 [Total through WY 2010] + 215 [WY 2011] + 215 [WY 2012] = 1,270). These projections would render a surplus of 130 acre-feet of in lieu replenishment by the end of WY 2012 (1,400 – 1,270 = 130).

### IV. Revised Proposal

Based upon these projections the City believes that it will likely offset all of its RA liability by the end of 2012. We have an even higher confidence in the ability to fully offset by the end of WY 2013 - the additional year affording flexibility to accommodate future uncertainties. Because an agreement has been reached with MCWD, we believe the Watermaster and the Court can now act with additional assurances that the In Lieu Replenishment Program will operate as projected. We therefore propose that the MOU be revised to modify Paragraph 4 as follows:

To accommodate the City's efforts to offset its accrued Replenishment Assessments through the Program, enforcement against the City for unpaid Replenishment Assessments shall be stayed through the end of Water Year 2010. At the end of Water Year 2010, Watermaster shall make a recommendation to the Court in its Annual Report as to whether the stay of enforcement should be continued beyond this initial period. Watermaster's recommendation shall be based upon its determination of the relative success of the Program, the likelihood of the City continuing to make meaningful progression toward full offset of its accrued Replenishment Assessments, and whether

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<sup>1</sup> Seaside acknowledges that as further reductions in the Operating Yield occur, its annual RA liability may be higher than projected. However, Seaside has undertaken aggressive conservation efforts and may undertake further efforts to preclude its annual RA liability from increasing (e.g., additional purchases of Carryover Credits). Therefore, for the sake of this planning effort, we assume that Seaside's annual RA liability will remain at approximately \$597,672, as projected by Watermaster for WY 2010. Should Seaside's actual annual RA liability be higher, the time period for the In Lieu Program to offset all accrued RA liability will be extended to some degree.

Watermaster believes there is any other source of replenishment water available that could be purchased on an acre-foot basis in an amount at or below its Replenishment Assessment rate. If the stay is continued, Watermaster shall make such recommendations in each Annual Report thereafter until the stay is terminated, the City offsets all of its prior Replenishment Assessments pursuant to this MOU, or this MOU terminates. Should Watermaster recommend against continuation of the stay, the stay shall terminate unless otherwise ordered by the Court, and any continuation of the stay recommended by Watermaster shall be contingent upon consent by the Court. (See Revised MOU, attached hereto as Exhibit B.)

We recommend this approach because it affords the Watermaster and the Court the opportunity to review the relative success of the In Lieu Program each year, and to determine whether the stay should be continued based upon that assessment. This approach is further warranted because there is presently no other source of replenishment water available for purchase. Thus, payment of the City's accrued RA liability would only remain in a Watermaster account to reimburse the City as the In Lieu Program proceeds. Given the hardship that this advance payment would cause to the City and the lack of any material benefit in terms of Basin replenishment, we urge Watermaster to support this approach and to join the City in encouraging the Court to condone the approach as well.

Of course, should another source of cost-competitive replenishment water become available, this would be a material change of circumstances that may justify cessation of the stay to collect outstanding RA liability from the City to fund the purchase of replenishment water from that source. However, at this time, we have no knowledge of any other source of replenishment water becoming available before all of the City's RA liability will likely be offset through the In Lieu Program. Thus we believe this approach to be in the best interest of the City, Watermaster, and the Basin.

SB xxxxxx v:000000.0000

**MEMORANDUM OF UNDERSTANDING BETWEEN THE SEASIDE BASIN  
WATERMASTER AND THE CITY OF SEASIDE**

This Memorandum of Understanding (“MOU”) is entered into between the Seaside Basin Watermaster (“Watermaster”) and the City of Seaside (“City”) (individually a “Party” and together the “Parties”) this \_\_\_ day of April, 2010 (“Effective Date”) with respect to the following:

**RECITALS**

A. 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) governs groundwater production within the Seaside Groundwater Basin (the “Basin”).

B. The City is a party to the lawsuit and received groundwater production allocation pursuant to the Decision as follows: (1) 540 acre-feet of Alternative Production Allocation<sup>1</sup> in relation to the City-owned Blackhorse and Bayonet Golf Courses (“Golf Courses”); and (2) Standard Production Allocation in relation to the City Municipal Water System.<sup>2</sup>

C. The Decision provides that any party that exceeds its allocation of Natural Safe Yield is subject to a Replenishment Assessment for each acre-foot of Over-Production during each Water Year.

D. The City presently owes certain sums to Watermaster for previously accrued Replenishment Assessments.

E. The City projects that it will continue to engage in Over-Production to supply its Municipal Water System, and therefore anticipates that it will continue to incur additional Replenishment Assessment liability.

F. The Decision obligates the Watermaster to procure new sources of water for replenishment of the Basin to offset cumulative Over-Production.

G. The Parties have identified an in lieu replenishment program (“Program”) involving the Golf Courses and the City’s Alternative Production Allocation associated with the Golf Courses, which is a viable means to obtain some of the replenishment water that Watermaster is obligated to procure.

H. To implement the Program, the City has entered into an agreement with the Marina Coast Water District (“MCWD”) to supply water to irrigate the Golf Courses in lieu of

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

<sup>2</sup> The Standard Production Allocation is set forth as a percentage of Operating Yield. The City’s Standard Production Allocation is roughly 10.47% of the Operating Yield.

production of Basin groundwater for irrigation pursuant to the City's Alternative Production Allocation, thereby causing an in lieu replenishment of the Basin.<sup>3</sup>

I. The City desires to engage in the Program in exchange for a monetary credit against its Replenishment Assessment liability.

J. The Parties desire to enter into this MOU to memorialize the terms upon which the City shall engage in the Program, and the Watermaster shall provide the City with a monetary credit against its Replenishment Assessment liability.

## AGREEMENT

The Parties agree as follows:

1. Term. This MOU shall commence upon the Effective Date and continue until the earlier of five (5) years from the Effective Date, or three (3) months following the end of the Water Year in which the Executive Director of Watermaster anticipates that the City shall have provided sufficient in lieu replenishment water pursuant to the Program to offset all of its then-accrued Replenishment Assessment liability.

2. Commencement and Scope of Program. The Program shall commence, if at all, only once the City deems it appropriate to commence the Program, in its sole discretion. The amount of in lieu replenishment that shall occur in any particular year pursuant to the Program, if at all, shall also be determined by the City in its sole discretion.

3. Accounting and Replenishment Assessment Credit.

3.1 Annual Accounting. Within one (1) month of the end of each Water Year during the term of this MOU, the City shall deliver to the Watermaster an accounting of the amount of water received from MCWD to be used in lieu of groundwater production from the Basin during the preceding Water Year. The City shall record and report the MCWD deliveries based upon accurate meter readings. All meters used for such reporting shall be regularly calibrated and maintained to ensure accuracy. If the Watermaster disputes the reported quantity of MCWD deliveries, it shall inform the City of the basis 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 Credit Against City's Replenishment Assessment Liability. At the end of each Water Year, the Watermaster shall determine the cumulative gross Replenishment Assessment liability owed by the City in accord with Section 6.5 of the Watermaster's Rules and Regulations. The Watermaster shall then apply a credit against the City's gross Replenishment Assessment liability, which shall equal the amount of all MCWD deliveries to the Golf Courses for irrigation during the proceeding Water Year, not to exceed the

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<sup>3</sup> The water supply from Marina Coast Water District will initially be derived from Salinas Basin groundwater production and later reclaimed water, once available.

City's 540 acre-feet of Alternative Production Allocation, multiplied by the amount of the effective Replenishment Assessment for that Water Year. Watermaster shall then promptly report the cumulative net Replenishment Assessment liability owed by the City.

4. Temporary and Contingent Stay of Enforcement Proceedings for Unpaid Replenishment Assessments. To accommodate the City's efforts to offset its accrued Replenishment Assessments through the Program, enforcement against the City for unpaid Replenishment Assessments shall be stayed through the end of Water Year 2010. At the end of WY 2010, Watermaster shall make a recommendation to the Court in its Annual Report as to whether the stay of enforcement should be continued beyond this initial period. Watermaster's recommendation shall be based upon its determination of the relative success of the Program, the likelihood of the City continuing to make meaningful progression toward full offset of its accrued Replenishment Assessments, and whether Watermaster believes there is any other source of replenishment water available that could be purchased on an acre-foot basis in an amount at or below its Replenishment Assessment rate. If the stay is continued, Watermaster shall make such recommendations in each Annual Report thereafter until the stay is terminated, the City offsets all of its prior Replenishment Assessments pursuant to this MOU, or this MOU terminates. Should Watermaster recommend against continuation of the stay, the stay shall terminate unless otherwise ordered by the Court, and any continuation of the stay recommended by Watermaster shall be contingent upon consent by the Court.

5. Good Faith Renegotiation of Program Extension. Upon termination of the initial term of this MOU, as set forth in Section 1 above, the Parties shall engage in good faith negotiations to determine whether the Program may be extended pursuant to mutual agreeable terms. One likely matter of negotiation for any Program extension is the method and amount of payment by Watermaster to the City for the in lieu replenished water after sufficient in lieu replenishment water has been provided to offset all of the City's prior Replenishment Assessment liability. No Party shall be obligated to commit to a Program extension or any particular term of a subsequent MOU for a Program extension.

6. Miscellaneous Terms. This Agreement 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 County of Monterey, California. If any actions are required to interpret or enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision hereof. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement, supersedes the earlier version of this Agreement, 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 Agreement may be altered, amended or modified only by an instrument in writing, executed by the Parties to this Agreement and by no other means. Each Party waives its future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by oral agreement, course of conduct, waiver or estoppel.

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

SEASIDE BASIN WATERMASTER

CITY OF SEASIDE

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Dewey Evans, Executive Director

Date: April 7, 2010

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Ray Corpuz, City Manager

Date: Date: April 7, 2010

# LAND TRANSFER AND WATER SERVICE AGREEMENT

THIS LAND TRANSFER AND WATER SERVICE AGREEMENT (“Agreement”) is made effective as of the date of the last signature between the CITY OF SEASIDE, CALIFORNIA (“Seaside”); and MARINA COAST WATER DISTRICT (“MCWD”). Seaside and MCWD are at times collectively referred to hereinafter as the “Parties” or individually as the “Party.”

## 1. AGREED FACTS.

1.1 Seaside is a municipal corporation and general law city organized and existing under Sections 34450 et seq. of the California Government Code, with jurisdiction including a portion of the former Fort Ord Military Reservation.

1.2 MCWD is a County Water District organized and existing under the County Water District Law, Sections 30000 et seq. of the California Water Code, with a service area that includes the former Fort Ord Military Reservation (“Fort Ord”).

1.3 The Parties each have received assets through conveyances from the United States of America as part of the Fort Ord base closure and reuse process which did not require payment to the United States for the assets received, conditioned on use of the assets for purposes consistent with the base reuse process. The environmental impacts of base reuse, including utility uses, have been analyzed in the Base Reuse Plan EIR certified by the Fort Ord Reuse Authority (“FORA”) on June 13, 1997.

1.4 Seaside expects to receive certain land in accordance with the Base Reuse Plan, the “MOA” and the “MOA Amendment No. 1”, dated the 23<sup>rd</sup> day of October 2001, between FORA and the United States of America (USA) which sets forth the specific terms and conditions of the sale of portions of the former Fort Ord located in Monterey County, California, and further in accordance with the “Implementation Agreement” dated May 31, 2001, between Seaside and FORA.

1.5 Seaside intends to convey and assign to MCWD pursuant to this Agreement, the Base Reuse Plan, the MOA and the MOA Amendment No. 1 and the Implementation Agreement all of the interest of Seaside in approximately 21.15 acres of land within the former Fort Ord, a portion of which Seaside currently owns in fee, subject to easements in favor of MCWD as described in section 1.7 below, and another portion that Seaside expects to receive from FORA as part of the Fort Ord Base Reuse Plan. The land that Seaside intends to convey to MCWD is collectively shown in **Exhibit A** as five parcels, on **Exhibit B** as a parcel of 2.33 acres, and on **Exhibit C** as pipeline and access easements, and is hereafter sometimes referred to as the “Property.” The five parcels and easements that comprise the Property include the following:

1.5.1 2.33 acres, more or less, shown on Exhibit A and described specifically in **Exhibit B** as Parcel E20C.2.2, and commonly referred to as the “D/E Tank Site,” which is presently owned by Seaside, subject to easements in favor of MCWD as described in section 1.7 below.

1.5.2 4.88 acres, more or less, described in Exhibit A as a portion of a larger Parcel E20C.2.1, which is presently owned by Seaside.

1.5.3 5.53 acres, more or less, described in Exhibit A as a portion of a larger Parcel E18.1.1, which is not presently owned by Seaside, but which Seaside anticipates to obtain through conveyance from FORA.

1.5.4 6.43 acres, more or less, described in Exhibit A as a portion of a larger Parcel E20C.1, which is not presently owned by Seaside, but which Seaside anticipates to obtain through conveyance from FORA.

1.5.5 1.98 acres, more or less, described in Exhibit A as a portion of a larger Parcel E20C.2, which is not presently owned by Seaside, but which Seaside anticipates to obtain through conveyance from FORA.

1.5.6 Easements as described on Exhibit C, on and across Parcel E20C.2.1.

1.6 Seaside presently holds fee title ownership to Parcel E20C.2.1 and the land shown and described on **Exhibit B**. Seaside also owns through purchase the Bayonet and Blackhorse golf courses (the “golf courses”), located on the former Fort Ord.

1.7 In 2001, MCWD received facilities, including interest in land, to provide water and sewer service to the former Fort Ord, in conveyances from the U.S. Army through FORA. MCWD holds an exclusive easement on a portion of the D/E Tank Site for water storage tanks, pipelines and appurtenances. The 2001 conveyance to MCWD included an exclusive easement of 2.33 acres and a non-exclusive easement of 1.08 acres for the “‘D’ & ‘E’ Water Tanks,” listed as Facility Number 4371 on Exhibit C to the Assignment of Easements and Quitclaim Deed recorded on November 7, 2001 as Document Number 2001094583, which are located on the D/E Tank Site land currently owned in fee by Seaside. The Parties anticipated that the D/E Tank Site would be conveyed in fee to MCWD, and the Parties intend to achieve that end through the proposed land transfer under this Agreement.

1.8 MCWD was also received conveyance of a portion of the Army’s right to extract a specified amount of potable groundwater from wells within the Salinas Groundwater Basin for service on the former Fort Ord under an agreement dated September 21, 1993, between the United States and the Monterey County Water Resources Agency (the “1993 Agreement”).

1.9 MCWD has contracts with FORA and the U.S. Army to provide water and sewer services to the former Fort Ord. MCWD’s contract with FORA gives FORA the responsibility to administer MCWD’s extraction rights under the 1993 Agreement. FORA allocates to land use jurisdictions within FORA’s jurisdiction specified quantities of the water which may be extracted by MCWD for service to FORA’s jurisdictional area under the 1993 Agreement.

1.10 Seaside has water allocations from FORA of 1,012.5 acre-feet per year (“afy”) of the potable groundwater which may be extracted under the 1993 Agreement and the Fort

Ord Reuse Plan has also assigned an additional 230 afy for Seaside golf course (see Base Reuse Plan EIR certified by the Fort Ord Reuse Authority, Table 3.11-2 page 198). Seaside anticipates that this amount of water will not be required to serve proposed hotel development within the immediate future.

1.11 Seaside presently irrigates the golf courses with water extracted from the Seaside Groundwater Basin, but has been ordered by the Seaside Basin Watermaster to reduce Seaside's water use from the Seaside Groundwater Basin. Seaside has also studied and analyzed the environmental impacts of suspending its pumping from the Seaside Groundwater Basin to irrigate the golf courses and to substitute water provided by MCWD pursuant to the 1993 Agreement for irrigation of the golf courses, thereby causing an "in-lieu" replenishment of the Seaside Basin by virtue of suspending the production from the Seaside Basin for golf course irrigation ("In-Lieu Replenishment Program"). Seaside has determined that the proposed In-Lieu Replenishment Program would produce net positive environmental effects, including a lessening of the present overdraft of the Seaside Basin in the vicinity of the coast that is susceptible to seawater intrusion. Seaside certified a Negative Declaration for the In-Lieu Replenishment Program on December 4, 2008. MCWD has the ability to provide water service to facilitate the In-Lieu Replenishment Program with minor modifications to existing facilities.

1.12 MCWD has also studied and analyzed the environmental impacts of supplying recycled water to the golf courses in the Environmental Impact Report for MCWD's proposed Regional Urban Water Augmentation Project ("RUWAP EIR"), prepared by Denise Duffy & Associates, Inc., with State Clearing House # 2003081142, certified by the MCWD Board in October 2004, with Addenda in October 2006 and February 2007. Once available, the recycled water from this project could supply the In-Lieu Replenishment Program.

1.13 MCWD presently needs to obtain fee title to the D/E Tank Site, on which MCWD currently has an exclusive easement, and MCWD expects to need the rest of the Property for future uses consistent with the conveyance of the Property to Seaside from the United States and consistent with Seaside's General Plan and FORA's Base Reuse Plan.

1.14 The Parties acknowledge that any changed or new use of the Property by MCWD will require analysis of environmental impacts and compliance with the California Environmental Quality Act ("CEQA").

1.15 MCWD and Seaside have determined that the interests of the public served by MCWD and Seaside will be served by Seaside conveying the Property to MCWD in exchange for, and in consideration of, MCWD providing, without cost to Seaside, water extracted under the 1993 Agreement or recycled water to irrigate the golf courses so that Seaside can undertake the In-Lieu Replenishment Program.

## 2. LAND CONVEYANCE.

2.1 Seaside will convey the Property to MCWD, for all lawful purposes and uses consistent with the conveyance of the Property from FORA to Seaside.

2.2 Seaside will convey the Property to MCWD in three phases.

2.2.1 First, Seaside will take all actions and execute all documents necessary to convey in fee, on or before June 1, 2010, the land shown as Parcel E20C.2.2 on **Exhibit A** and described on **Exhibit B** (the D/E Tank Site) and the easements described on **Exhibit C**.

2.2.2 Second, Seaside will take all actions and execute all documents necessary to convey to MCWD, on or before December 31, 2010, fee title to the parcel shown in **Exhibit A** as a portion of Parcel E20C.2.1, which is roughly 4.88 acres and is currently owned by Seaside. The issuance of a letter from FORA concurring in the conveyance to MCWD shall be a condition precedent to the performance by MCWD of MCWD's obligations under Part 3 of this Agreement. FORA has concurred in the conveyance described herein by the letter attached hereto as **Exhibit C**.

2.2.3 Third, Seaside hereby irrevocably assigns to MCWD all of Seaside's right to receive conveyance, title, and interest to the remaining portion of the land shown on Exhibit A to which Seaside does not presently possess fee title but has a right to receive pursuant to the Implementation Agreement, MOA, MOA Amendment No. 1, and Base Reuse Plan (specifically the portions of Parcels E18.1.1, E20C.1, and E20C.2, which are designated as part of the roughly 21.15 acres comprising the Property as shown on **Exhibit B**). Seaside will take all actions and execute all documents necessary to facilitate the conveyance of said balance of the Property on **Exhibit A** from FORA to MCWD, and to obtain public street access and other rights of access sufficient to develop and use the Property in accordance with the Implementation Agreement, MOA, MOA Amendment No. 1, Base Reuse Plan, and applicable laws, ordinances and regulations. FORA has concurred in the assignment described herein by the letter attached hereto as **Exhibit C**.

2.2.4 2.2.5 Pending conveyance of fee title from the U.S. Army and FORA of the land described in section 2.2.3, Seaside shall irrevocably assign to MCWD all of Seaside's right to receive conveyance of said land from the U.S. Army, in accordance with the MOA, MOA Amendment No. 1 and the Implementation Agreement. FORA has concurred in the assignment described herein by the letter attached hereto as **Exhibit D**.

2.3 The actions and documents necessary to convey fee title include, without limitation, surveying, creating legal descriptions, removing any exceptions to title shown on a condition of title report issued by Title Company and reasonably objected to by MCWD, performing any actions required by the ordinances, rules and regulations of Seaside and any other agency having jurisdiction over the conveyance.

2.4 Each conveyance by Seaside as set forth in Sections 2.2.1. and 2.2.2 will be by an instrument substantially in the form of **Exhibit E** hereto through an escrow with Chicago Title Company.

2.5 MCWD will pay all escrow costs, including title insurance if desired by MCWD.

2.6 Seaside, as the land use jurisdiction, confirms that there are no public policy considerations requiring a parcel map and that the Property may be conveyed by Seaside to MCWD by legal instrument in accordance with Government Code section 66428(a)(2).

2.7 Upon recordation of each instrument pursuant to sections 2.2.1 and 2.2.2 of this Agreement, Seaside will process diligently and issue to MCWD an unconditional certificate of compliance pursuant to Government Code section 66499.35 for the land described in the recorded instrument, without cost to MCWD. This covenant shall survive close of escrow for the Property.

### 3. WATER SERVICE TO GOLF COURSES FOR THE IN-LIEU REPLENISHMENT PROGRAM.

3.1 Beginning April 1, 2010, MCWD shall provide to Seaside for Seaside's use to irrigate the golf courses and thereby undertake the In-Lieu Replenishment Program water from FORA's allocation to Seaside of water extracted by MCWD under the 1993 Agreement, or from recycled water suitable for golf course irrigation if recycled water becomes available.

3.2 In exchange for Seaside's conveyance and assignment of all of the Property to MCWD pursuant to Part 2, MCWD will provide two thousand five hundred (2,500) acre-feet of the water provided pursuant to section 3.1 of this Agreement without cost to Seaside.

3.3 After the two thousand five hundred (2,500) acre-feet provided for in Section 3.2 has been fully delivered, MCWD shall continue to provide water to irrigate the golf courses and thereby facilitate the In-Lieu Replenishment Program at MCWD's then-current potable water rate if the water provided is potable water from groundwater supplied pursuant to the 1993 Agreement, or MCWD's then-current recycled water rate if the water provided is recycled water.

3.4 MCWD shall install, at MCWD's sole cost, any facilities necessary to connect MCWD's water service facilities with the facilities used by Seaside to irrigate the golf courses. Seaside will install any facilities needed to irrigate the golf courses with recycled water when recycled water becomes available. Seaside may take the water at such times and in such amounts as are consistent with the Negative Declaration certified by Seaside on December 4, 2008, and the RUWAP EIR. The covenants of this section 3 shall survive close of escrow for the Property.

4. GOVERNMENTAL APPROVALS. For any proposed use other than water and sewer facilities, MCWD shall obtain and shall require third parties using the Property with MCWD's permission to obtain all of the certificates, permits and other approvals (collectively the "Governmental Approvals"). MCWD will give Seaside the opportunity to review the design and make recommendations concerning the design of any water and sewer facilities to be constructed on the Property. Seaside shall cooperate with MCWD in its effort to obtain such approvals and review and shall take no action, which would adversely affect the status of the Property with respect to any proposed lawful use by MCWD or any of MCWD's permittees, licensees, or tenants.

5. TITLE. Seaside covenants that Seaside is seized of good and sufficient title and interest to the Property (except that portion of the Property shown in Exhibit A which has not yet been conveyed to Seaside by FORA) and has full authority to enter into and execute this

Agreement. Seaside further covenants that there are no undisclosed liens, judgments or impediments of title on the Property or affecting Seaside's title to the same and that there are no covenants, easements or restrictions which prevent the use of the Property by the MCWD as set forth above.

6. ESCROW. Seaside and MCWD will establish an escrow ("Escrow") with Chicago Title Insurance Company, Monterey Office ("Escrow Agent" or "Title Company"), subject to the provisions of the standard conditions for acceptance of escrow and the terms and conditions in this Agreement, with a signed counterpart of this document to be delivered as escrow instructions to Escrow Agent. If this Agreement conflicts with the conditions for acceptance of escrow, this Agreement controls.

6.1 Closing. The consummation of the conveyances contemplated hereby ("Closing" or "Close of Escrow") shall take place through the escrow on or before the dates set forth in sections 2.2.1, 2.2.2 and 2.2.3 and as expeditiously as reasonably possible given good faith efforts by both parties, and in any case no later than December 31, 2014 for the conveyance under section 2.2.3. At each Closing, Seaside shall deposit an executed instrument in the form of Exhibit D hereto (the "Conveyance Instrument") and MCWD and Seaside shall execute escrow instructions reasonably acceptable to the Escrow Agent which Seaside shall provide to Escrow Agent, at least one (1) business day before the date of Closing. Funds as may be necessary to pay any expenses hereunder, subject to closing adjustments, shall be deposited with the Escrow Agent no later than 3:00 p.m. Marina, California time on the last business day prior to the date of Closing so that the Escrow Agent has confirmed receipt of good funds in sufficient time to allow the Closing to occur pursuant to a "regular" recording (i.e. delivery of the Conveyance Instrument to the County Recorder in the county where the property is located before the close of business on the business day immediately preceding the date of Closing for recordation) in the Official Records as of 8:00 a.m., Marina, California time, on the date of Closing.

6.2 Status of Title. At Closing, title to the Property shall be conveyed and transferred to MCWD as will enable the Title Company to issue to MCWD a CLTA Owner's Policy of title insurance (the "Title Policy") covering the land conveyed and any improvements to and on the said land. Nothing herein is intended to prohibit MCWD from obtaining endorsements to the Title Policy or extended title insurance coverage, however, receipt of such endorsements and/or extended coverage are not conditions to MCWD's obligations under this Agreement.

## 7. REPRESENTATIONS AND WARRANTIES.

7.1 Representations and Warranties of Seaside. Seaside hereby represents and warrants to MCWD that:

7.1.1 Seaside has the full right and authority to enter into this Agreement and to perform the obligations of Seaside under this Agreement.

7.1.2 As of the date of each Closing, there will be no outstanding taxes, or utilities charges with respect to the land conveyed.

7.1.3 The person or persons executing this Agreement on behalf of Seaside has the legal power, right and actual authority to bind Seaside to the terms and conditions of this Agreement and the instruments referenced herein.

7.1.4 To the best of Seaside's present knowledge, there are no proceedings pending or threatened, which may detrimentally affect MCWD's title to the Property or the value of the Property or Seaside's ability to perform this Agreement.

7.1.5 To the best of Seaside's knowledge, there is no pending or threatened condemnation or similar proceeding affecting any part of the Property.

7.1.6 To the best of Seaside's knowledge, there is no default, nor has any event occurred which, with the passage of time or the giving of notice or both, would constitute a default in any contract, mortgage, deed of trust, lease, or other instrument which relates to the Property or which affects the Property in any manner whatsoever.

7.1.7 Seaside shall not at any time prior to Close of Escrow grant to any person other than MCWD an interest in the Property.

7.1.8 Seaside has received no notice of any current litigation pending against the Property or the use or operation of the Property as it is being used as of the Effective Date. From the date hereof through the Close of Escrow on all of the Property, Seaside shall notify MCWD promptly of any such litigation of which Seaside become aware.

7.1.9 To the best of Seaside's knowledge, Seaside has obtained all necessary approvals and has complied with the California Environmental Quality Act in determining to enter into and perform under this Agreement.

7.1.10 To the best of Seaside's knowledge, Seaside has disclosed to MCWD all information concerning the Property to which Seaside has access, and all information concerning the Property which Seaside has provided to MCWD is complete and correct in all respects.

7.2 Survival of Seaside's Representations and Warranties. The representations and warranties of Seaside set forth herein hereof shall survive Closing.

7.3 Representations and Warranties of MCWD. MCWD hereby represents and warrants to Seaside as of the Effective Date:

7.3.1 MCWD is a public agency organized and operating under the County Water District Law, Sections 30000 and following, of the State of California.

7.3.2 MCWD has the authority to enter into this Agreement.

7.3.3 All requisite action has been taken by MCWD in connection with this Agreement.

7.3.4 The persons executing this Agreement on behalf of MCWD have authority to bind MCWD.

7.3.5 There is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against MCWD which, if adversely determined, could individually or in the aggregate materially interfere with the consummation of the transaction contemplated by this Agreement by MCWD.

7.4 Survival of MCWD's Representations, Warranties and Covenants. The representations, warranties and covenants of MCWD shall survive Closing.

## 8. DEFAULT.

8.1 Default by MCWD. If MCWD defaults under or breaches this Agreement Seaside shall give MCWD written notice of such default. After receipt of such written notice, MCWD shall have thirty (30) days in which to cure any default, provided MCWD shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and MCWD commences the cure within the 30-day period and thereafter continuously and diligently pursues the cure to completion. Seaside may not maintain any action or effect any remedies for default against MCWD unless and until MCWD has failed to cure the same within the time periods provided in this paragraph. After the expiration of such time periods, Seaside shall have the right either (a) to terminate this Agreement by giving written notice to Seaside or (b) to enforce specific performance of MCWD's obligation to deliver water in accordance with section 3 of this Agreement and to obtain damages from MCWD's default or breach. This provision shall survive close of escrow on the Property.

8.2 Default by Seaside. If Seaside defaults under or breaches this Agreement or fails to convey the Property in accordance with this Agreement, MCWD shall give Seaside written notice of such default. After receipt of such written notice, Seaside shall have thirty (30) days in which to cure any default, provided Seaside shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Seaside commences the cure within the 30-day period and thereafter continuously and diligently pursues the cure to completion. MCWD may not maintain any action or effect any remedies for default against Seaside unless and until Seaside has failed to cure the same within the time periods provided in this paragraph. After the expiration of such time periods, MCWD shall have the right, either (a) to terminate this Agreement by giving written notice to Seaside or (b) to enforce specific performance of Seaside's obligation to convey the Property to MCWD in accordance with this Agreement, together with damages incurred from Seaside's failure to perform as agreed. MCWD shall retain title to any land conveyed to MCWD by Seaside before termination of this Agreement under this paragraph.

## 9. MISCELLANEOUS.

9.1 Brokers. Neither party has had any contact or dealings regarding the D/E Tank Site Land, through any real estate broker or other person who can claim a right to a commission or finder's fee in connection with the conveyance contemplated herein. Each party shall indemnify, defend, and hold the other harmless from and against any claim by any other party

for a commission or fee in connection with this transaction where such claim is based on acts of the indemnifying party. The provisions of this Section shall survive the Close of Escrow.

9.2 Notices. All notices under this Agreement shall be properly given only if made in writing and mailed by certified mail, return receipt requested, postage prepaid, or delivered by hand (including messenger or recognized delivery, courier or air express service) to the party at the address set forth in this Section or such other address or facsimile number as such party may designate by notice to the other party. Such notices and other communications shall be effective on the date of receipt (evidenced by the certified mail receipt) if mailed or received by facsimile or on the date of such hand delivery if hand delivered. If any such notice is not received or cannot be delivered due to a change in the address or facsimile number of the receiving party of which notice was not previously given to the sending party or due to a refusal to accept by the receiving party, such notice shall be effective on the date delivery is attempted. Any notice under this Agreement may be given on behalf of a party by the attorney for such party. Unless changed in accordance with this Agreement, the addresses for notices given pursuant to this Agreement shall be as follows:

For Seaside:           Ray Corpuz  
                                  City Manager  
                                  City of Seaside  
                                  440 Harcourt Avenue  
                                  Seaside, CA 93955  
                                  Telephone: (831) 899-6700 – Main Number  
                                  Facsimile: (831) 899-6227

For MCWD:            Jim Heitzman, General Manager  
                                  Marina Coast Water District  
                                  11 Reservation Road  
                                  Marina, CA 93933-2099  
                                  Telephone: (831) 384-6131  
                                  Facsimile: (831) 883-5995

With copies to:       Don Freeman, Esq.  
                                  Post Office Box 805  
                                  Carmel, CA 93921-0805  
                                  Telephone: (831) 624-5339 x11  
                                  Facsimile: (831); 624-5839

and

Lloyd W. Lowrey, Jr., Esq.  
Noland, Hamerly, Etienne & Hoss  
333 Salinas Street, P.O. Box 2510  
Salinas, CA 93902  
Telephone: (831) 424-1414  
Facsimile: (831) 424-1975

9.3 Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

9.4 Successors and Assigns. The terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the parties hereto.

9.5 Entire Agreement. This Agreement, including the Exhibits, contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

9.6 Further Assurances. Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, MCWD shall, if requested by Seaside, execute acknowledgments of receipt with respect to any materials delivered by Seaside to MCWD with respect to the Property. The provisions of this Section shall survive Closing.

9.7 Counterparts. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement

9.8 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

9.9 Attorneys Fees. In the event of any litigation or other legal action or proceeding between Seaside and MCWD arising out of this Agreement, including, without limitation, any proceeding in or related to bankruptcy, the prevailing party shall be entitled to recover from the other party all costs and expenses of the action or suit, including reasonable attorney fees incurred in connection with such action or proceeding and on any appeal.

9.10 Applicable Law. This Agreement is performable in the state of California and shall in all respects be governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of such state. The courts of Monterey County shall have jurisdiction over actions arising under this Agreement.

9.11 Captions. The Section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any Section or any subsection hereof.

9.12 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

9.13 Survival. Notwithstanding any other provision of this Agreement to the contrary, if this Agreement terminates, such termination shall not release Seaside and MCWD from any obligations under this Agreement that are specifically stated herein to survive the termination of this Agreement.

9.14 Exhibits. All exhibits to this Agreement are attached hereto and incorporated herein by reference.

9.15 Time of Essence. Time is of the essence for the performance of every obligation under this Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

**SEASIDE**  
**CITY OF SEASIDE**

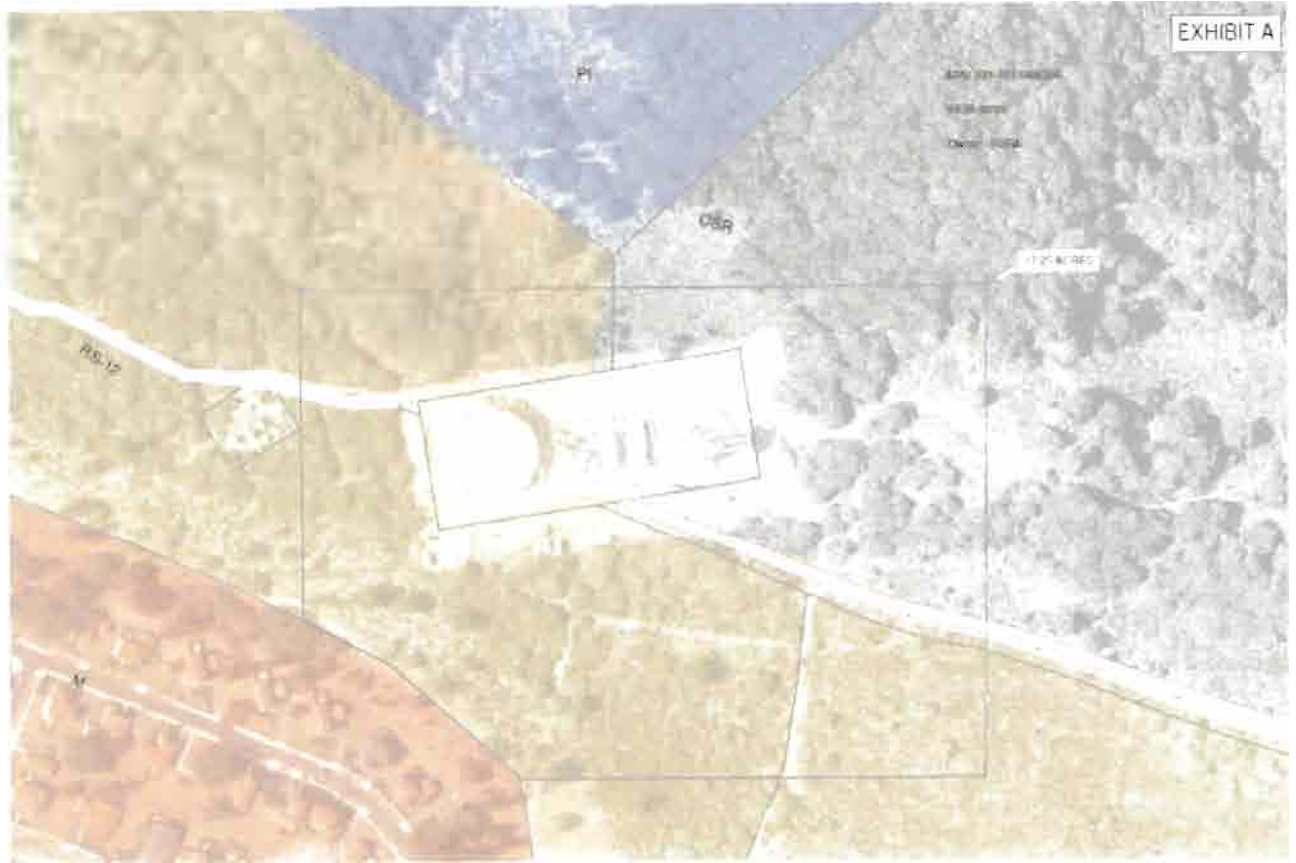
**MCWD**  
**MARINA COAST WATER DISTRICT**

By \_\_\_\_\_  
Ralph Rubio, Mayor

By \_\_\_\_\_  
Kenneth K. Nishi, President

By \_\_\_\_\_  
Jim Heitzman, Secretary

**EXHIBIT A**  
**DIAGRAM OF D/E TANK SITE AND SURROUNDING LAND**  
(“The Property”)



**EXHIBIT B**  
**DESCRIPTION OF D/E TANK SITE**

**EXHIBIT C**  
**DESCRIPTION OF EASEMENTS**

**EXHIBIT D  
FORA LETTER**

**EXHIBIT E**  
**FORM OF CONVEYANCE**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

MARINA COAST WATER DISTRICT  
11 RESERVATION ROAD  
MARINA, CA 93933-2099

**MAIL TAX STATEMENTS TO:**

MARINA COAST WATER DISTRICT  
11 RESERVATION ROAD  
MARINA, CA 93933-2099

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GRANT DEED FOR PROPERTY  
FORMER FORT ORD, MONTEREY, CALIFORNIA  
(City of Seaside to the Marina Coast Water District)**

The grantor declares that the Documentary Transfer Tax is not shown pursuant to Revenue and Taxation Code section 11932, as amended.

THIS GRANT DEED ("Deed") is made as of the \_\_\_ day of \_\_\_\_\_ 2009, among the **CITY OF SEASIDE ("Grantor")**, and the **MARINA COAST WATER DISTRICT ("Grantee")**, a County Water District and political subdivision of the State of California, organized under Division 12, sections 30000 and following, of the California Water Code, in accordance with a no-cost economic development conveyance from the **UNITED STATES OF AMERICA**, acting by and through the **SECRETARY OF THE ARMY ("United States")** and the **FORT ORD REUSE AUTHORITY ("FORA")** to Grantor, under and pursuant to the power and authority contained in the Defense Base Closure and Realignment Act of 1990, as amended (Public Law No. 101-510, hereinafter "DBCRA"), and further in accordance with that certain *Water/Wastewater Facilities Agreement* dated March 13, 1998, between FORA and Grantee, as amended ("Water/Wastewater Facilities Agreement").

**WHEREAS**, The United States of America ("Government") was the owner of certain real property, improvements and other rights appurtenant thereto together with all personal property thereon, located on the former Fort Ord, Monterey County, California, which was utilized as a military installation;

**WHEREAS**, The military installation at Fort Ord was closed pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510; 10 U.S.C. § 2687 note);

**WHEREAS**, section 2859 of the National Defense Authorization Act for Fiscal Year 1996, (Public Law 104-106), authorized the Government to sell portions of the former Fort Ord to the **Grantor** as surplus property;

**WHEREAS**, the **Grantor** and the Government entered into the MOA and MOA Amendment No. 1, dated the 23<sup>rd</sup> day of October 2001, which sets forth the specific terms and conditions of the sale of portions of the former Fort Ord located in Monterey County, California;

**WHEREAS**, FORA and **Grantee** did enter into that certain Water/Wastewater Facilities Agreement dated March 13, 1998, as amended, whereby FORA and Grantee agreed that the water and wastewater facilities for the former Fort Ord should be conveyed to **Grantee**, including the tank site designated herein as Parcel 4371;

**WHEREAS**, the United States and FORA conveyed certain facilities, together with title to certain real property and related easements, to **Grantee** in November 2001, such conveyance including and exclusive easement and nonexclusive access easement to Parcel 4371;

**WHEREAS**, the United States and FORA conveyed fee title to land on which Parcel 4371, also designated "E20c.2.2", is situated to **Grantor** on December 28, 2006;

**WHEREAS**, **Grantor** and **Grantee**, with the concurrence of FORA, have determined that it is in the public interest for **Grantor** to grant fee title to Parcel 4371 and surrounding land to **Grantee** by this Deed **Grantor** desires to convey, and **Grantee** desires to acquire Parcel L35.5 (E20c.2.2) and the described surrounding land.

WITNESSETH

The **Grantor**, for and in consideration of the sum of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, grants to the **Grantee**, its successors and assigns forever, all such interest, right, title, and claim as the **Grantor** has in and to the land more particularly described in Exhibit "A," attached hereto and made a part hereof ("Property"), and including the following:

A. Facilities, roadways, and other improvements, including the storm drainage systems and the telephone system infrastructure, and any other improvements thereon,

B. All appurtenant easements and other rights appurtenant thereto, permits, licenses, and privileges not otherwise excluded herein, and

C. All hereditaments and tenements therein and reversions, remainders, issues, profits, privileges and other rights belonging or related thereto.

**Grantee** covenants for itself, its successors and assigns and every successor in interest to the Property, or any part thereof, that **Grantee** and such successors and assigns shall comply with all provisions of the following sections of the Implementation Agreement between the Fort Ord Reuse Authority and the City of Seaside, dated May 31, 2001, ("Implementation Agreement"), as if the **Grantee** were the referenced Jurisdiction under the Implementation Agreement, particularly Section 2, Section 5, and the Deed Restrictions and Covenants set forth in Exhibit F, as if such Deed Restrictions and Covenants were separately recorded prior to the recordation of this Deed.

The Deed conveying the Property to the **Grantor** was recorded prior to the recordation of this Deed. That conveyance included certain information regarding the environmental condition of the Property. The **Grantor** has no knowledge regarding the accuracy or adequacy of such information.

The italicized information below is copied verbatim (except as discussed below) from the Government deed conveying the Property to FORA. The **Grantee** hereby acknowledges and assumes all responsibilities with regard to the Property placed upon FORA and the **Grantor** under the terms of the aforesaid Government deed to FORA and FORA's deed to **Grantor**, and **Grantor** grants to **Grantee** all benefits with regard to the Property under the terms of the aforesaid deed to **Grantor**. Within the italicized information only, the term "Grantor" shall mean the United States, and the term "Grantee" shall mean FORA; to avoid confusion, the words "the United States" have been added in parenthesis after the word "Grantor", and "FORA" has been added in parenthesis after the word "Grantee".

## **II. EXCLUSIONS AND RESERVATIONS**

*This conveyance is made subject to the following **EXCLUSIONS** and **RESERVATIONS**:*

*A. The Property is taken by the Grantee ("FORA") subject to any and all valid and existing recorded outstanding liens, licenses, leases, easements, and any other encumbrances made for the purpose of roads, streets, utility systems, rights-of-way, pipelines, and/or covenants, exceptions, interests, liens, reservations, and agreements of record, and any unrecorded licenses, leases, easements and any other encumbrances made for the purpose of roads, streets, utility systems, rights-of-way, pipelines, and/or covenants, exceptions, interests, reservations and agreements of record between Grantor ("the United States") and other government entities.*

*B. The Grantor ("the United States") reserves a perpetual unassignable right to enter the Property for the specific purpose of treating or removing any unexploded shells, mines, bombs, or other such devices deposited or caused by the Grantor ("the United States").*

*C. Access to USA Media Group, LLC, or its successor in interest, to TV cable lines is reserved until expiration of its existing franchise agreement, November 19, 2005.*

*D. The reserved rights and easements set forth in this section are subject to the following terms and conditions:*

*(1) to comply with all applicable federal law and lawful existing regulations;*

*(2) to allow the occupancy and use by the Grantee ("FORA"), its successors, assigns, permittees, or lessees of any part of the easement areas not actually occupied or required for the purpose of the full and safe utilization thereof by the Grantor ("the United States"), so long as such occupancy and use does not*

*compromise the ability of the Grantor ("the United States") to use the easements for their intended purposes, as set forth herein;*

*(3) that the easements granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the easements unless approved in writing by the fee holder of the land subject to the easement;*

*(4) that any transfer of the easements by assignment, lease, operating agreement, or otherwise must include language that the transferee agrees to comply with and be bound by the terms and conditions of the original grant;*

*(5) that, unless otherwise provided, no interest granted shall give the Grantor ("the United States") any right to remove any material, earth, or stone for consideration or other purpose except as necessary in exercising its rights hereunder; and*

*(6) to restore any easement area so far as it is reasonably possible to do so upon abandonment or release of any easement as provided herein, unless this requirement is waived in writing by the then owner of the Property.*

*E. Grantor ("the United States") reserves mineral rights that Grantor ("the United States") owns with the right of surface entry in a manner that does not unreasonably interfere with Grantee's ("FORA's") development and quiet enjoyment of the Property.*

**TO HAVE AND TO HOLD** the Property unto the Grantee ("FORA") and its successors and assigns forever, provided that this Deed is made and accepted upon each of the following notices, covenants, restrictions, and conditions which shall be binding upon and enforceable against the Grantee ("FORA"), its successors and assigns, in perpetuity, as follows:

### **III. CERCLA COVENANT**

*Pursuant to Section 120(h)(4)(D)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(4)(D)(i)), the Grantor ("the United States") has identified the Property as real property on which no hazardous substances and no petroleum products or their derivatives were stored for one year or more, or known to have been released or disposed of. Grantor ("the United States") warrants that any response action or corrective action found to be necessary after the date of this Deed attributable to Grantor ("the United States") activities on the Property and/or hazardous substances or petroleum products contamination existing on the Property prior to the date of this Deed shall be conducted by Grantor ("the United States") using all reasonable means to the extent practicable to avoid and/or minimize interference with the use of the Property. Grantee ("FORA"), its successors and assigns, as consideration for the conveyance*

*of the Property, to the extent authorized by law, agree to release Grantor ("the United States") from any liability or responsibility arising solely out of the release of any hazardous substance or petroleum product on the Property occurring after the date of the delivery and acceptance of this Deed and not attributable to the activities of Grantor ("the United States"), where such substance or product was placed on the Property by the Grantee ("FORA"), or its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This paragraph shall not affect the Grantor's ("the Government") responsibilities to conduct response actions or corrective actions required by applicable laws, rules and regulations, or the Grantor's ("the United States") indemnification obligations under applicable laws.*

#### **IV. RIGHT OF ACCESS**

*A. The Grantor ("the United States"), EPA, and DTSC, and their officers, agents, employees, contractors, and subcontractors will have the right, upon reasonable notice to the Grantee ("FORA"), to enter upon the Property in any case in which a response or corrective action is found to be necessary, after the date of transfer of the Property, or such access is necessary to carry out a response action or corrective action on adjoining property at no cost to the Grantor ("the United States"), including, without limitation, the following activities:*

*(1) To conduct investigations and surveys, including where necessary, drilling, soil and water sampling, test-pitting, and other activities related to the Fort Ord Installation Restoration Program ("IRP"), Military Munitions Response Program ("MMRP"), or FFA;*

*(2) To inspect field activities of the Army and its contractors and subcontractors with regards to implementing the Fort Ord IRP, MMRP, or FFA;*

*(3) To conduct any test or survey related to the implementation of the IRP by the EPA or the DTSC relating to the implementation of the FFA or environmental conditions at Fort Ord or to verify any data submitted to the EPA or the DTSC by the Government relating to such conditions;*

*(4) To construct, operate, maintain or undertake any other investigation, corrective measure, response, or remedial action as required or necessary under any Fort Ord FFA, Record of Decision ("ROD"), IRP or MMRP requirement, including, but not limited to monitoring wells, pumping wells, and treatment facilities.*

*Such right of access shall be binding on the Grantee ("FORA"), its successors and assigns, and shall run with the land.*

*B. In exercising this access easement, except in case of imminent endangerment to human health or the environment, the Grantor ("the Government") shall give the Grantee ("FORA"). or the then record owner, reasonable prior notice.*

Grantee ("FORA") agrees that, notwithstanding any other provisions of this Deed, the Grantor ("the United States") assumes no liability to the Grantee ("FORA"), its successors or assigns, or any other person, should remediation of the Property interfere with the use of the Property. The Grantee ("FORA") shall not, through construction or operation/maintenance activities, interfere with any remediation or response action conducted by the Grantor ("the United States") under this paragraph. The Grantee ("FORA"), the then record owner, and any other person shall have no claim against the Grantor ("the United States") or any of its officers, agents, employees or contractors solely on account of any such interference resulting from such remediation.

C. Without the express written consent of the Grantor ("the United States") in each case first obtained, neither the Grantee ("FORA"), its successors or assigns, nor any other person or entity acting for or on behalf of the Grantee ("FORA"), its successors or assigns, shall interfere with any response action being taken on the Property by or on behalf of the Grantor ("the United States"), or interrupt, relocate, or otherwise interfere with any remediation system now or in the future located, over, through, or across any portion of the Property.

#### **V. "AS IS, WHERE IS"**

The Property is conveyed in an "As Is, Where Is" condition without any representation, warranty or guarantee, except as otherwise stated herein, by the Grantor ("the United States") as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for allowance or deduction upon such grounds will be considered. There is no obligation on the part of the Grantor ("the United States") to make any alterations, repairs, or additions, and said Grantor ("the United States") shall not be liable for any latent or patent defects in the Property. This section shall not affect the Grantor's ("the United States") responsibility under **CERCLA COVENANTS, INDEMNITY, and ENVIRONMENTAL PROTECTION PROVISIONS.**

#### **VI. ENVIRONMENTAL PROTECTION PROVISIONS**

The Grantee ("FORA") shall neither transfer the Property, lease the Property, nor grant any interest, privilege, or license whatsoever in connection with the Property without the inclusion of the following Environmental Protection Provisions, and shall require the inclusion of the following Environmental Protection Provisions in all further deeds, easements, transfers, leases, or grant of any interest, privilege, or license.

##### **A. FEDERAL FACILITIES AGREEMENT ("FFA")**

The Grantor ("the United States") acknowledges that former Fort Ord has been identified as a National Priority List ("NPL") Site under CERCLA. The Grantee

("FORA") acknowledges that the Grantor ("the Government") has provided it with a copy of the FFA entered into by the EPA Region IX, the State of California, and the United States Department of the Army, effective on February 1990, and will provide the Grantee ("FORA") with a copy of any amendments thereto. The Grantee ("FORA") agrees that should any conflict arise between the terms of the FFA as they presently exist or may be amended, and the provisions of this Property transfer, the terms of the FFA will take precedence. The Grantee ("FORA") further agrees that notwithstanding any other provisions of the Property transfer, the Grantor ("the United States") assumes no liability to the Grantee ("FORA"), should implementation of the FFA interfere with their use of the Property. Grantor ("the United States") shall give Grantee ("FORA") reasonable notice of its action required by the FFA and use all reasonable means to the extent practicable to avoid and/or minimize interference with Grantee's ("FORA"), its successors or assigns' use of the Property. The Grantee ("FORA"), or any subsequent transferee, shall have no claim on account of any such interference against the Grantor ("the United States") or any officer, agent, employee or contractor thereof. Grantor ("the United States") agrees to use its best efforts to the extent practicable to avoid and/or minimize interference with Grantee's ("FORA"), its successors or assigns' use of the Property, and to provide Grantee ("FORA") with a copy of any amendments to the FFA.

#### B. NO LIABILITY FOR NON-ARMY CONTAMINATION

The Army shall not incur liability for additional response action or corrective action found to be necessary after the date of transfer in any case in which the person or entity to whom the Property is transferred, or other non-Army entities, is identified as the party responsible for contamination of the property.

#### C. UNRESTRICTED USE

The Parties acknowledge that the Army has undertaken environmental study of the Property and concluded in a Finding of Suitability to Transfer ("FOST") that the Property is suitable for unrestricted use.

#### D. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)

(1) Military Munitions Response Program (MMRP) investigations indicate that it is not likely that munitions and explosives of concern (MEC) are located on the Property; however, there is a potential for MEC to be present because military munitions were used throughout the history of Fort Ord. In the event the Grantee ("FORA"), its successors, or assigns, should discover any MEC on the Property, they shall immediately stop any intrusive or ground disturbing work in the area or in any adjacent areas and shall not attempt to disturb, remove or destroy it, but shall immediately contact the local law enforcement agency having jurisdiction on the Property. The local law enforcement agency will contact the Army for

appropriate response. Competent Grantor ("the United States") or Grantor ("the United States")-designated unexploded ordnance (UXO) personnel will promptly be dispatched to dispose of such MEC properly at no expense to the Grantee ("FORA"). The Grantee ("FORA") hereby acknowledges receipt of the "Ordnance and Explosives Safety Alert" pamphlet.

(2) Because the Grantor ("the United States") cannot guarantee that all MEC has been removed, the Grantor ("the United States") recommends reasonable and prudent precautions be taken when conducting intrusive operations on the Property and will, at its expense, provide construction worker MEC recognition training.

(3) The Army reserves the right to conduct any munitions response actions for which the Army is responsible, as required or necessary as a result of the ongoing Munitions Response Remedial Investigation/Feasibility Study.

(4) The use and/or occupancy of the Property may be limited or restricted, as necessary, under the following scenarios: (a) to provide the required minimum separation distance employed during intrusive munitions response actions that may occur on or adjacent to the Property; and (b) if Army-implemented prescribed burns are necessary for the purpose of a munitions response action (removal) in adjacent areas.

#### E. RARE, THREATENED AND ENDANGERED SPECIES MANAGEMENT

The Grantee ("FORA"), or its successors or assignees, or contractor, acknowledges and agrees to implement the following provisions, as applicable, relative to listed species:

(1) The Property is within a Habitat Management Plan (HMP) Development Area. No resource conservation requirements are associated with the HMP for these parcels. However, small pockets of habitat may be preserved within and around the Property.

(2) The Biological Opinions (March 30, 1999, October 22, 2002, and March 14, 2005) identified sensitive biological resources that may be salvaged for use in restoration activities within reserve areas, and allows for development of the Property.

(3) The HMP does not exempt the Grantee ("FORA") from complying with environmental regulations enforced by Federal, State, or local agencies. These regulations could include obtaining the Endangered Species Act (ESA) (16 U.S.C. §§ 1531 – 1544 et seq.) Section 7 or Section 10(a) permits from the U.S. Fish and Wildlife Service (USFWS); complying with prohibitions against the removal of listed plants occurring on federal land or the destruction of listed plants in violation of any state laws; complying with measures for conservation of state-

*listed threatened and endangered species and other special-status species recognized by California ESA, or California Environmental Quality Act (CEQA); and, complying with local land use regulations and restrictions.*

*(4) The HMP serves as a management plan for both listed and candidate species, and is a prelisting agreement between the USFWS and the local jurisdiction for candidate species that may need to be listed because of circumstances occurring outside the area covered by the HMP.*

*(5) Implementation of the HMP would be considered suitable mitigation for impacts to HMP species within HMP prevalent areas and would facilitate the USFWS procedures to authorize incidental take of these species by participating entities as required under ESA Section 10. No further mitigation will be required to allow development on the Property unless species other than HMP target species are proposed for listing or are listed.*

*(6) The HMP does not authorize incidental take of any species listed as threatened or endangered under the ESA by entities acquiring or leasing land at the former Fort Ord. The USFWS has recommended that all nonfederal entities acquiring or leasing land at former Fort Ord apply for ESA Section 10(a)(1)(B) incidental take permits for the species covered in the HMP. The definition of "take" under the ESA includes to harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Although the USFWS will not require further mitigation from these entities that are in conformation with the HMP, those entities without incidental take authorization would be in violation of the ESA if any of their actions resulted in the take of a listed animal species. To apply for a Section 10 (a)(1)(B) incidental take permit, an entity must submit an application form (Form 3-200), a complete description of the activity sought to be covered by the permit, and a conservation plan (50 CFR 17.22[b]).*

## **VII. AIR NAVIGATION RESERVATION AND RESTRICTIONS**

*The Monterey Airport and the former Fritzsche Airfield, now known as the Marina Municipal Airport, are in close proximity to the Property. Accordingly, in coordination with the Federal Aviation Administration, the Grantee ("FORA") covenants and agrees, on behalf of it, its successors and assigns and every successor in interest to the Property herein described, or any part thereof, that, when applicable, there will be no construction or alteration unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, Part 77, entitled, Objects Affecting Navigable Airspace, or under the authority of the Federal Aviation Act of 1968, as amended.*

## **VIII. ENFORCEMENT AND NOTICE REQUIREMENT**

A. *The provisions of this Deed benefit the governments of the United States of America, the State of California, acting on behalf of the public in general, and the lands retained by the Grantor ("the United States") and, therefore, are enforceable, by the United States, the State of California, and by the Grantee ("FORA"), and its successors and assigns. Enforcement of this Deed shall be at the discretion of the parties entitled to enforcement hereof, and any forbearance, delay or omission to exercise their rights under this Deed in the event of a breach of any term of this Deed, shall not be deemed to be a waiver by any such party of such term or of any subsequent breach of the same or any other terms, or of any of the rights of said parties under this Deed. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. The enforcement rights set forth in this Deed against the Grantee ("FORA"), or its successors and assigns, shall only apply with respect to the Property conveyed herein and held by such Grantee ("FORA"), its successors or assigns, and only with respect to matters occurring during the period of time such Grantee ("FORA"), its successors or assigns, owned or occupied such Property or any portion thereof.*

B. *The obligations imposed in this section upon the successors or assigns of Grantee ("FORA") shall only extend to the Property conveyed to any such successor or assign.*

## **IX. OTHER CONDITIONS**

*Should the subject property be considered for the proposed acquisition and construction of school properties utilizing State funding, at any time in the future, a separate environmental review process in compliance with the California Education Code Section 17210 et seq., will need to be conducted and approved by DTSC.*

## **X. NOTICE OF NON-DISCRIMINATION**

*With respect to activities related to the Property, the Grantee ("FORA") covenants for itself, its successors and assigns, that the Grantee ("FORA"), and such successors and assigns, shall not discriminate upon the basis of race, color, religion, sex, age, handicap, or national origin in the use, occupancy, sale or lease of the Property, or in their employment practices conducted thereon in violation of the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); and the Rehabilitation Act of 1973, as amended, (29 U.S.C. § 794). The Grantor ("the United States") shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the vicinity of the Property hereby conveyed, and shall have the sole right to enforce this covenant in any court of competent jurisdiction.*

The responsibilities and obligations placed upon, and the benefits provided to, the **Grantor** by the Government shall run with the land and be binding on and inure to the benefit of all subsequent owners of the Property unless or until such responsibilities, obligations, or benefits are

released pursuant to the provisions set forth in the MOA and the Government deed. **Grantee** and its successors and assigns, respectively, shall not be liable for any breach of such responsibilities and obligations with regard to the Property arising from any matters or events occurring after transfer of ownership of the Property by **Grantee** or its successors and assigns, respectively; provided, however, that each such party shall, notwithstanding such transfer, remain liable for any breach of such responsibilities and obligations to the extent caused by the fault or negligence of such party.

**General Provisions:**

A. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed to effectuate the purpose of this Deed and the policy and purpose of CERCLA. If any provision of this Deed is found to be ambiguous, an interpretation consistent with the purpose of this Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.

B. **Severability.** If any provision of this Deed, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.

C. **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of title in any respect.

D. **Captions.** The captions in this Deed have been inserted solely for convenience of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.

E. **Right to Perform.** Any right which is exercisable by the **Grantee**, and its successors and assigns, to perform under this Deed may also be performed, in the event of non-performance by the **Grantee**, or its successors and assigns, by a lender of the **Grantee** and its successors and assigns.

The conditions, restrictions, and covenants set forth in this Deed are a binding servitude on the herein conveyed Property and will be deemed to run with the land in perpetuity. Restrictions, stipulations and covenants contained herein will be inserted by the **Grantee** verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the Property or any portion thereof. All rights and powers reserved to the **Grantor**, and all references in this Deed to **Grantor** shall include its successors in interest. The **Grantor** may agree to waive, eliminate, or reduce the obligations contained in the covenants, PROVIDED, HOWEVER, that the failure of the **Grantor** or its successors to insist in any one or more instances upon complete performance of any of the said conditions shall not be construed as a waiver or a relinquishment of the future performance of any such conditions, but the obligations of the **Grantee**, its successors and assigns, with respect to such future performance shall be continued in full force and effect.

**[Signature Pages Follow]**



**EXHIBIT A**  
**Legal Description**

CERTIFICATE OF ACCEPTANCE  
GOVERNMENT CODE SECTION 27281

This is to certify that the interest in real property conveyed by the foregoing Deed from the City of Seaside, a municipal corporation, to Marina Coast Water District, a public agency ("MCWD"), is hereby accepted by the undersigned officers on behalf of MCWD, pursuant to authority conferred by resolution of the MCWD Board of Directors adopted on \_\_\_\_\_, 2010, and the grantee consents to recordation thereof by its duly authorized officers.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2010, at Marina, California.

MARINA COAST WATER DISTRICT, a public  
agency

BY \_\_\_\_\_  
Kenneth K. Nishi, President

BY \_\_\_\_\_  
Jim Heitzman, Secretary

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared Kenneth K. Nishi, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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)

**STATE OF CALIFORNIA  
COUNTY OF MONTEREY**

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared Jim Heitzman, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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)