

EXHIBIT 3-E

GROUND LEASE

This ground lease (Lease) is entered into on _____ by and between the CITY OF SEASIDE, a municipal corporation (“City” or “Landlord”) and the MONTEREY PENINSULA WATER MANAGEMENT DISTRICT, a California special district (“District” or “Tenant”), collectively “Parties.”

Recitals

A. City has rights to acquire the land described in Exhibit “A,” attached hereto and incorporated herein by this reference, and referred to in this Lease as “the Property.”

B. The District currently owns and operates equipment and systems used in the process of aquifer storage and recovery on the Property.

C. On the terms and conditions set forth in this Lease, Landlord desires to lease the Property to Tenant, and Tenant desires to lease the Property from Landlord, and to continue certain water-related activities and construct certain water-related improvements thereon and thereafter maintain and operate such improvements.

NOW THEREFORE, in consideration of the mutual promises contained herein, Landlord and Tenant agree as follows:

1. LEASE OF PREMISES; TERM OF LEASE

1.1. Agreement to Lease. In and for consideration of the rents to be paid and covenants to be performed by Tenant under this Lease, Landlord agrees to lease the Property to Tenant, and Tenant agrees to lease the Premises from Landlord, on the terms and conditions set forth in this Lease upon Landlord's acquisition of the Property. This Lease shall have no force or effect until Landlord acquires the Property.

1.2. Term of Lease. The term of this Lease (Term) shall commence on the date the City acquires title to the Property and shall continue until a date that is forty (40) years from commencement of this Lease.

2. RENT

2.1. Base Rent. – OPTION A. Tenant shall pay to Landlord, without prior notice or demand and without abatement, deduction, offset or credit, as rent for the Property in lawful money of the United States, the sum of Sixteen Thousand Three Hundred Eighty and no/100 Dollars (\$16,380.00) per calendar year (prorated for any partial calendar year during the Term).

2.1 Base Rent - OPTION B. Tenant shall pay to Landlord, without prior notice or demand and without abatement, deduction, offset or credit, as rent for the Property in lawful money of the United States, the sum of One Dollar (\$1.00) per calendar year.

2.2. Place for Payment. Rent shall be paid to Landlord at Landlord's offices located at 440 Harcourt Avenue, Seaside, California 93955, Attention: City Manager, or at any other place or places that Landlord may designate by written notice to Tenant.

3. USE OF PREMISES

3.1. Permitted Use. Tenant shall use the Property solely for the development, construction, operation and maintenance of the improvements described in Exhibit "B," attached to this Lease and incorporated by this reference.

3.2. Compliance with Laws. Tenant shall comply with all statutes, ordinances, regulations, and requirements of all governmental entities, federal, state and local. Tenant shall be responsible for obtaining any license, permit, or other governmental authorization required for lawful use of the Property. Tenant shall not maintain, commit or permit maintenance or commission of any fire or health hazards, or any nuisance on the Property.

3.3. Hazardous Materials Prohibited. Tenant shall not use or permit Hazardous Materials on the Property or any portion of the Property. "Hazardous Materials" shall mean any substance that now or in the future requires investigation or remediation under, or is regulated or defined as a hazardous waste or hazardous substance, by any governmental authority or instrumentality or any law, regulation, rule or order, or any amendment thereto, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq. and the Resource Conservation and Recovery Act, 42 U.S.C. § 9601 et seq., or that is otherwise toxic, explosive, corrosive, flammable, infectious, mutagenic, radioactive, carcinogenic, a pollutant or a contaminant, including gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation.

4. TAXES

4.1. Notice to Tenant. Landlord hereby gives Tenant notice, and Tenant acknowledges receipt of such notice, pursuant to California revenue and taxation code section 107.6, that the leasehold interest created by this Lease may result in a possessory interest tax being levied against the property and/or Tenant's leasehold interest, and in such event tenant shall be obligated to pay such tax. (Tenant may be exempt from this tax if tenant qualifies for an applicable exemption.).

5. UTILITIES

5.1. Tenant to Pay Utilities. Tenant shall pay all charges for its exclusive use of gas, water, electricity, telephone service, or other public utilities upon the Property during the term of this Lease.

6. OWNERSHIP OF IMPROVEMENTS

6.1. Title. Title to all improvements described in Exhibit "B," as well as those constructed during the term of this Lease, shall be owned by Tenant both during the term of this Lease and at the termination of this Lease. Landlord agrees to execute, acknowledge, and deliver to Tenant any instrument as may be requested by Tenant for removal or sale of Improvements.

7. REPAIRS; RESTORATION

7.1. Maintenance by Tenant. During the term of this Lease Tenant shall, at Tenant's own cost and expense, keep and maintain the Property and Improvements now or hereafter on the Property in good order and repair, and in clean condition.

7.2. Requirements of Governmental Agencies. During the Term, Tenant shall, at Tenant's own cost and expense make all alterations, additions, or repairs to the Property (including the Improvements and facilities on the Property) required by any law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, or local governmental agency or entity.

7.3. Tenant's Duty to Restore Property. During the Term should any Improvements now or hereafter on the Property be destroyed in whole or in part by fire, theft, the elements, or any other cause not the fault of Landlord, Tenant, at Tenant's own cost and expense, shall timely repair and restore the damaged or destroyed Improvements according to the original final plans and specifications therefore or according to any modified plans and specifications that provide for improvements consistent in terms of size, design and quality with the original buildings and improvements. No deprivation, impairment or limitation of use resulting from any event or work contemplated by this section shall entitle Tenant to any offset, abatement or reduction in rent or to any termination or extension of the Term.

7.4. Tenant's Right to Terminate. Notwithstanding the above, Tenant shall have the right to terminate this Lease: 1) if during the last five (5) years of this Lease's Term the Improvements on the Property are destroyed in whole or in part by fire, theft, the elements, or any other cause not the fault of Tenant, or 2) any time the cost to repair or restore the damaged or destroyed Improvements exceeds 50 percent of the fair market value of the Improvements immediately before the damage or destruction.

7.5. Application of Insurance Proceeds. Any and all insurance proceeds payable at any time during the Term of this Lease due to damage to or destruction of Improvements on the Property shall be paid to Tenant and applied by Tenant toward the cost of repairing and restoring the damaged or destroyed Improvements in the manner required by Section 7.3.

8. MUTUAL INDEMNITY; INSURANCE

8.1. Indemnity of Landlord. Tenant shall defend, indemnify and hold Landlord and its officers, directors, employees, agents and affiliates and their respective assets, free and harmless against and from any and all liabilities, claims, losses, damages, and expenses (including attorneys' fees and court costs) resulting from or arising out of Tenant's occupation or use of the Property, except as liabilities, claims, losses, damages, or expenses arising from Landlord's negligence or willful misconduct.

8.2. Indemnity of Tenant. Landlord shall defend, indemnify and hold Tenant and its officers, directors, employees, agents and affiliates and their respective assets, free and harmless against and from any and all liabilities, claims, losses, damages, and expenses (including attorneys' fees and court costs) resulting from or arising out of Landlord's occupation or use of the Property, except as to

liabilities, claims, losses, damages, or expenses arising from Tenant's negligence or willful misconduct.

8.3. Liability Insurance. Tenant shall, at Tenant's own cost and expense, secure promptly after execution of this Lease and maintain during the entire Term a broad form comprehensive coverage policy of public liability insurance whether provided by an insurance company or insurance pool acceptable to Landlord, whose consent shall be unreasonably withheld, insuring Tenant and Landlord against loss or liability caused by or connected with Tenant's occupation, use, disuse, or condition of the Property under this Lease in amounts not less than:

(a) \$2,000,000 for injury to or death of one person and, subject to such limitation for the injury or death of one person, of not less than \$5,000,000 for injury or death to two or more persons as a result of any one accident or incident; and

(b) \$2,000,000 for damage to or destruction of any property of others. All public liability insurance and property damage insurance shall insure performance by Tenant of the indemnity provisions of this Lease. Landlord shall be named as additional insured on each insurance policy required by this Section, and such policies shall contain cross liability endorsements.

(c) Landlord shall be named as additional insured on each insurance policy required by this Section, and such policies shall contain cross liability endorsements.

8.4. Fire and Casualty Insurance. Tenant shall, at Tenant's own cost and expense, at all times during the Term, keep all buildings, improvements, Tenant's personal property and other structures on the Property, as well as any and all additions thereto, insured for their actual cash, full replacement value (as defined below), insured by an insurance company or insurance pool acceptable to Landlord, whose consent shall be unreasonably withheld, insuring Tenant and Landlord. Each insurance policy shall be issued in the names of Landlord and Tenant.

8.5. Evidence of Insurance. Upon commencement of this Lease, Tenant shall deliver to Landlord insurance certificates showing Tenant has obtained and maintains required insurance. Upon written request of Landlord, Tenant shall deliver to Landlord a complete and correct copy of each required insurance policy.

8.6. Option to Self Insure. Tenant shall have the option to self insure for any insurance required herein. Tenant shall provide evidence of such election to Landlord.

8.7. Notice of Cancellation of Insurance. Each required insurance policy shall contain a provision that it cannot be cancelled or materially changed for any reason unless 30 days' prior written notice of such cancellation or change is given to Landlord in the manner required by this Lease for service of notices on Landlord by Tenant.

9. CONDEMNATION

9.1. Total Condemnation. If, during the term of this Lease, fee title to all of the Property or to all of the Improvements, or the entire leasehold estate of Tenant is taken by power of eminent

domain by any public or quasi-public agency or entity (“Total Taking”), this Lease shall terminate as of 12:01 A.M. on whichever of the following occurs first: (1) the date legal title becomes vested in the agency or entity exercising the power of eminent domain, or (2) the date actual physical possession is taken by the agency or entity exercising the power of eminent domain. Thereafter, both Landlord and Tenant shall be released from all obligations under this Lease, except those specified in Section 8.1 and 8.2.

9.2. Partial Taking. If at any time during the term of this Lease a taking occurs that is less than a Total Taking and affects a portion of the Improvements on the Property, all compensation and damages payable for that taking shall be made available to and used, to the extent reasonably needed, by Tenant to repair any portion of the remaining rentable portion of the Improvements damaged by the taking and to replace the rentable portion of the Improvements taken with other new rentable space on the portion of the Property not taken. Tenant shall have sole discretion to determine whether replacement of Improvements is feasible, economically or technically, on an alternate site on the Property.

9.3. Termination for Partial Taking. Notwithstanding anything to the contrary herein, if the portion of the Property taken by eminent domain results in a net loss of 10 percent or more of the area of the total Property area Tenant may terminate this Lease in the manner prescribed by this Lease.

9.4. Condemnation Award. Any compensation or damages awarded or payable because of the taking of all or any portion of the Premises by eminent domain shall be allocated between Landlord and Tenant as follows:

(a) All compensation or damages awarded or payable for the taking by eminent domain of any land that is part of the Property shall be paid to and be the sole property of Landlord, free and clear of any claim of Tenant or any person claiming rights to the Premises through or under Tenant.

(b) All compensation or damages awarded or payable because of any Improvements constructed or located on the Property taken by eminent domain shall be paid to and be the sole property of Tenant, free and clear of any claim of Landlord or any person claiming rights to the Premises.

10. ASSIGNMENT; SUBLEASING

10.1. Assignment Requires Landlord Consent. Tenant may assign this Lease or any interest in this Lease, subject to the prior written consent of Landlord. Landlord shall not unreasonably withhold or delay its consent, and shall grant consent if the proposed assignee is financially qualified and has sufficient experience in the operation the same or similar Improvements.

10.2. Leasehold Encumbrances; Subsequent Transfer. Notwithstanding the provisions of Section 10.1, Tenant may without the prior written consent of Landlord transfer and assign all Tenant's interest under this Lease and Tenant's leasehold estate created under this Lease to a lender under a leasehold encumbrance. Any transfer, conveyance, or assignment resulting from a foreclosure or acceptance of a deed in lieu of foreclosure by any lender, or any transfer, conveyance,

or assignment by any Lender following its acquisition of this Lease and the leasehold estate of Tenant created by this Lease as a result of foreclosure or acceptance of a deed in lieu of foreclosure shall not require the prior consent of Landlord.

10.3. Tenant's Right to Sublease. Tenant shall have the right to sublease all or any portion of the Property and/or Improvements from time to time, and at all times during the term of this Lease, without Landlord's consent; provided, however, that the following conditions are met:

- (a) The term of any sublease shall not extend beyond the term of this Lease; and
- (b) Each sublease shall be expressly made subject to all of the terms, covenants, and conditions of this Lease; and
- (c) Each subtenant shall be required to attorn to Landlord in the event of Tenant's default under this Lease.

10.4. Transfers Other Organizations. Notwithstanding Section 10.1 of this Lease, Tenant may, without the prior consent of Landlord, transfer and assign all of Tenant's interest under the Lease and the leasehold estate created under this Lease to a corporation, Joint Powers Agency, or other organization now or hereafter organized.

11. DEFAULT; REMEDIES

11.1. Continuation of Lease. Should Tenant breach this Lease and abandon the Property before the natural expiration of the Lease's term, Landlord may continue this Lease in effect by not terminating Tenant's right to possession of the Premises, in which event Landlord shall be entitled to enforce all Landlord's rights and remedies under this Lease, including the right to recover the rent specified in this Lease as it becomes due under this Lease.

11.2. Breach and Default by Tenant. All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the term hereby leased to Tenant. Should Tenant fail to perform any covenant, condition, or agreement contained in this Lease and the default is not be cured within sixty (60) days after written notice of the default is served on Tenant by Landlord, then Tenant shall be in default under this Lease.

11.3. Waiver of Breach. The waiver by Landlord of any breach by Tenant of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Tenant of either the same or a different provision of this Lease.

11.4. Surrender of Premises. On expiration or earlier termination of this Lease, Tenant shall surrender the Property and all Improvements in or on the Property to Landlord in as good, safe, and clean condition as practicable, reasonable wear and tear excepted. Tenant shall not, however, be required to remove any below-ground improvements including, without limit, well casings or any equipment used for cathodic protection. Tenant shall be responsible for capping any well on the property so as to prevent injury to animals or humans.

12. DISPUTES.

12.1. Statement of Dispute; Process. In the event of a dispute arising out of this Lease either Party shall, as soon as a conflict is identified, submit a written statement of the conflict to the other Party. Within five working days of receipt of such a statement of conflict, the second Party will respond and a meeting will be arranged not more than five working days thereafter to arrive at a negotiated settlement or procedure for settlement. If, within 20 working days from the initial filing of a statement of conflict a settlement cannot be reached, the Parties agree to mediate any disagreements in good faith. Should either Party determine the dispute cannot be resolved in mediation, the Parties agree to participate in non-binding arbitration. Should these alternative dispute resolutions procedures fail to resolve a dispute between the parties, it is agreed that the dispute may be resolved in a court of law competent to hear the matter.

13. OTHER PROVISIONS

13.1. Force Majeure. Except as expressly provided in this Lease, if the performance of any act required by this Lease to be performed by either Landlord or Tenant is prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused. However, nothing contained in this section shall excuse the prompt payment of rent by Tenant as required by this Lease or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

13.2. Quiet Enjoyment. Subject to Tenant's compliance with the terms of this Lease, Tenant shall and may peacefully and quietly have, hold and enjoy the Property, for the Term, on the terms and subject to the conditions contained in this Lease.

13.3. Notices. All notices required or permitted by this Lease shall be in writing and may be delivered by overnight courier or may be sent by certified mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this Section. Until changed by a notice given in accordance with the provisions of this Section, the respective addresses of Landlord and Tenant for the purpose of receiving notices required or permitted by this Lease are as follows:

<u>Landlord:</u>	Monterey Peninsula Water
City of Seaside:	Management District
440 Harcourt Avenue	5 Harris Court, Building G
Seaside, CA 93955	Monterey, CA 93942-0085
Attn: City Manager	Attn: General Manager

Tenant:

13.4. Governing Law; Venue. This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision or holding concerning this Lease arises. Venue shall be in the County of Monterey.

13.5. Binding on Heirs and Successors. This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this section shall be construed as consent by Landlord to any assignment of this Lease or any interest in the Lease by Tenant except as provided in Article 10 of this Lease.

13.6. Partial Invalidity. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

13.7. Entire Agreement. This instrument constitutes the sole and only agreement between Landlord and Tenant respecting the Property. Any agreements or representations respecting the Property or any other matter discussed in this Lease not expressly set forth in this instrument are null and void.

13.8. Time of Essence. Time is expressly declared to be of the essence of this Lease.

13.9. No Joint Venture or Partnership. Nothing in this Lease shall be construed to render Landlord in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of Landlord and Tenant, nor shall this Lease be construed to authorize either to act as agent for the other.

13.10. Recording of Lease. This Lease shall be recorded in the official records of the County of Monterey Recorder's Office.

13.11. Effective Date. The effective date of this Lease shall be upon Landlord obtaining title to the Property, provided this Lease is duly executed at such time.

13.12. Counterparts. This Lease may be executed in counterparts, all of which together shall constitute one and the same document.

CITY OF SEASIDE,

MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT,

Date: _____

Date: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

[Signature]

[Signature]

U:\GENERAL (NEW)\MPWMD - Main\ASR\MPWMD ASR Ground Lease w City of Seaside (rev).docx

EXHIBIT "A"

DESCRIPTION OF LAND

The portion of Parcel 1, as shown on the map filed for record on September 7, 1994 on Sheet 4 in Volume 19, "Record of Surveys", Page 1, Records of Monterey County, described as follows:

Beginning at a point, from which Corner #1, whose state plane coordinates are North 2121541.64 feet, East 5734939.34 feet (NAD 83 CA Zone IV), as shown on said Record of Survey, bears North 8°24'58" East, 650.64 feet; thence, from said Point of Beginning,

- 1) North 30°46'34" East, 42.00 feet; thence,
- 2) North 22°59'46" West, 41.18 feet; thence,
- 3) North 26°21'19" East, 139.15 feet; thence,
- 4) South 67°34'40" East, 209.16 feet; thence,
- 5) North 47°21'20" East, 158.12 feet; thence,
- 6) South 24°28'06" East, 124.07 feet; thence,
- 7) South 41°12'42" West, 177.06 feet; thence,
- 8) South 54°39'09" West, 128.63 feet; thence,
- 9) West, 149.81 feet; thence,
- 10) North, 66.56 feet; thence,
- 11) North 63°48'00" West, 63.34 feet to the Point of Beginning.

Containing an area of 1.90 Acres, more or less. (Bearings refer to Grid Meridian NAD 83 CA Zone IV)

EXHIBIT "B"

DESCRIPTION OF IMPROVEMENTS