

**AGREEMENT BETWEEN THE SEASIDE BASIN WATERMASTER AND MONTEREY PENINSULA WATER MANAGEMENT DISTRICT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is entered into this 31 day of January, 2007, by and between Monterey Peninsula Water Management District, hereinafter called "Consultant," and the Seaside Basin Watermaster, hereinafter called "Watermaster" or "Seaside Basin Watermaster."

**SECTION I**  
**SCOPE OF SERVICES**

Watermaster hereby engages Consultant for the conduct and preparation of certain analyses, studies, and planning procedures as set forth in Exhibit A, Scope of Services and Fee Schedule.

**SECTION II**  
**COMPENSATION**

A. Fee Schedule

Fees payable to Consultant for services specified herein shall be in accordance with the fee schedule in Exhibit A.

B. Method of Payment

Payment of fees shall be based on work completed, as documented in quarterly billings submitted by Consultant. Payments are due and payable within thirty (30) days after receipt of each invoice subject to a finding by Watermaster that work performed has been satisfactory and that payment is for the work specified in Exhibit A, Scope of Services and Fee Schedule. Where Watermaster finds the work to be unsatisfactory, Watermaster shall describe deficiencies in writing to Consultant within ten (10) days. Twenty percent (20%) of the maximum payment shall be retained until submission of the final work product. The final invoice for work performed shall be submitted not later than sixty (60) days following completion of such work.

C. Maximum Payment

Payments to Consultant for services rendered and expenses incurred under this Agreement shall not exceed \$7,080.00.

**SECTION III**  
**INSPECTION OF WORK**

Authorized representatives of Watermaster shall have access to Consultant's offices or other work location during normal business hours for the purpose of review and inspection of

work activities undertaken pursuant to this Agreement.

SECTION IV  
OWNERSHIP OF PROJECT REPORT AND EQUIPMENT PURCHASED

All original documents, explanations of methods, maps, tables, computer programs, reports and other documents prepared under this Agreement and equipment purchased specifically for the project shall become the exclusive property of Watermaster. Consultant may retain copies for his/her own use.

SECTION V  
TIME OF PERFORMANCE

Consultant shall begin work upon the effective date of this Agreement and shall complete all tasks described herein according to the schedule shown in Exhibit A, Scope of Services and Fee Schedule. Time is of the essence to this Agreement, and failure to comply with this provision shall be a material breach of this Agreement.

SECTION VI  
DELAY BEYOND CONSULTANT'S CONTROL

Consultant shall be excused for delay caused by acts or events beyond Consultant's reasonable expectation or control. Consultant shall be entitled to extensions of time for such delay only on written application to Watermaster within ten days after commencement of the delay.

SECTION VII  
RESPONSIBILITIES

- A. Consultant represents that he/she has or will secure at his/her own expense all personnel, materials, and related services required to perform the services under this Agreement. Consultant shall act as an independent consultant and not as an agent or employee of Watermaster. Consultant shall have exclusive and complete control over his/her employees and subcontractors, and shall determine the method of performing the services hereunder.
- B. Watermaster shall provide Consultant with all relevant data and studies in its possession without charge.
- C. Consultant and Watermaster staff shall coordinate and arrange for all meetings required to be held with other agencies or persons hereunder, unless otherwise specified in Exhibit A, Scope of Services and Fee Schedule.

D. Consultant shall be responsible for the reproduction of work produced by Consultant hereunder.

E. The officers, agents, and employees of Watermaster shall cooperate with Consultant in the performance of services under this Agreement without charge to Consultant. Consultant agrees to use such services insofar as feasible in order to effectively discharge his/her obligations hereunder and further agrees to cooperate with Watermaster's officers, agents and employees.

F. The Consultant agrees to indemnify, defend and save harmless Watermaster, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all consultants, subcontractors, materialmen, laborers and any other person, firm or corporation who may be injured or damaged by the willful misconduct or negligent acts, errors, and/or omissions of the Consultant, Consultant's employees, or Consultant's subcontractors or subconsultants in the performance of this Agreement.

#### SECTION VIII CHANGES AND CHANGED CONDITIONS

If, during the course of the work herein contemplated, the need to change the Scope of Services or the time schedule should arise, for whatever reasons, whichever party first identifies such need to change shall notify the other party in writing (e-mail communication is acceptable). The representatives of the parties shall meet within seven (7) working days of the date of such notice, to discuss the need for change so identified and to set the proposed action to be taken by the parties. A change in the Scope of Services may also result in a change in the compensation amount. Compensation changes shall be based upon the Scope of Services and Fee Schedule (**Exhibit A**) attached hereto. Any changes agreed to shall be documented by duly executed amendments to this Agreement.

#### SECTION IX TERMINATION

Watermaster may terminate Consultant's services at any time by written notice to Consultant at least thirty (30) days prior to such termination. Upon receipt of written notice from Watermaster that this Agreement is terminated, Consultant shall submit an invoice for an amount which represents the value of services actually performed to the date of said notice for which he/she has not previously been compensated. Upon approval of this invoice by Watermaster, Consultant shall be paid from the sum found due after having applied the provisions of Section II, Paragraph D of this Agreement, "Late Performance Penalty," where applicable, and MPWMD shall have no further obligation to Consultant, monetarily or otherwise.

SECTION X  
SUB-CONTRACTING AND ASSIGNABILITY

Consultant shall not sub-contract any portion of the work required by this Agreement nor otherwise assign or transfer any interest in it without prior written approval of Watermaster.

SECTION XI  
DISCRIMINATION AND FAIR EMPLOYMENT

Attention is directed to Section 1735 of the California Labor Code, which reads as follows:

“No discrimination shall be made in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, martial status, or sex of such persons, except as provided in Section 12940 of the government code and every Consultant for public works violating this section is subject to all penalties imposed by a violation of this chapter.”

The Consultant shall not willfully discriminate against any employee or applicant for employment for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, martial status, or sex of such persons. The Consultant shall ensure that applicants and employees are treated without regard to their race, religious creed, color, national origin, physical disability, mental disability, medical condition, martial status or sex. Such action shall include, but not be limited to, the following: upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SECTION XII  
INTEREST OF CONSULTANT

Consultant covenants that he/she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. For breach or violation of this warranty, Watermaster shall have the right to annul this Agreement without liability.

SECTION XIII  
CONTINGENT FEES

Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company, or person, other than a

bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gifts, or other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Watermaster shall have the right to annul this Agreement without liability, or at its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage, gift or contingent fee.

#### SECTION XIV DISPUTES

In the event of a dispute arising out of the performance of this Agreement either party shall, as soon as a conflict is identified, submit a written statement of the conflict to the other party. Within fifteen (15) working days of receipt of such a statement of conflict, the second party will respond and a meeting will be arranged not more than fifteen (15) working days thereafter to arrive at a negotiated settlement or procedure for settlement. If, within forty (40) working days from the initial filing of a statement of conflict an agreement cannot be reached, it is agreed that the dispute may be resolved in a court of law competent to hear this matter. This Agreement shall be construed in accord with California law and it is agreed that venue shall be in the County of Monterey. The prevailing party shall be awarded costs of suit, and attorneys' fees.

#### SECTION XV NOTICES

All communications to either party by the other shall be deemed given when made in writing and delivered or mailed to such party at its respective address, as follows:

Watermaster:                      Seaside Basin Watermaster  
   2600 Garden Road, Suite 228  
   Monterey, CA 93940

Consultant:                         Monterey Peninsula Water Management District  
   PO Box 85  
   Monterey, CA 93942-0085

#### SECTION XVI AMENDMENTS

This Agreement together with **Exhibits A** sets forth the entire understanding of the parties with respect to the subject matter herein. There are no other agreements expressed or

implied, oral or written, except as set forth herein. This Agreement may not be amended except upon written amendment, executed by both parties hereto.

SECTION XVII  
ATTACHMENTS

The following exhibits attached hereto and referred to in the preceding sections are, by reference, incorporated herein and made an integral part of this Agreement:

**Exhibit A. Scope of Services and Fee Schedule**

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the day and year first above written.

**SEASIDE BASIN WATERMASTER**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Dewey Evans  
Watermaster Executive Officer

**[CONSULTANT]**

Dated: 4-13-07

By:  GENERAL MANAGER  
Monterey Peninsula Water Management District

FEDERAL TAX IDENTIFICATION NUMBER 94-2535586

**EXHIBIT A**

Monterey Peninsula  
Water Management District

SBW-WQ-07-01

**SCOPE OF SERVICES AND FEE SCHEDULE**

The following scope of services is to be performed pursuant to Seaside Groundwater Basin Watermaster Board authorization at its January 31, 2007 meeting:

- 1) Collect, analyze, and report results of groundwater quality samples from existing MPWMD key coastal monitor wells for the first two quarters of 2007 (i.e., Winter, Spring 2007).

Labor

Field data and sample collection.....\$69/hour  
Data preparation and reporting .....\$84/hour

Outside Services

Equipment rental (air compressor)..... \$300/day  
WQ Lab analyses .....\$180/sample  
Miscellaneous materials costs .....at cost  
Outside services admin cost .....6%

- 2) MPWMD will deliver to the Watermaster a report of groundwater quality data from its network of existing coastal monitor wells for Winter and Spring quarter 2007.

The above scope of work is to be performed at a not-to-exceed amount of \$7,080.