

**AGREEMENT BETWEEN THE SEASIDE BASIN WATERMASTER AND RBF  
CONSULTING FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is entered into this 7 day of <sup>FEBRUARY</sup> ~~MARCH~~ 2007, by and between RBF Consulting, a California corporation, 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.

**SECTION II**  
**COMPENSATION**

A. Maximum Payment

Payments to Consultant for services rendered and expenses incurred under this Agreement shall not exceed \$35,000.

**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. Use of such documents by Watermaster for project(s) not the subject of this Agreement shall be at Watermaster's sole risk without legal liability or exposure to Consultant.

**SECTION V**  
**TIME OF PERFORMANCE**

Consultant shall begin work upon the effective date of this Agreement and shall complete all tasks described herein no later than March 7, 2007. 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.
- 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  
INSURANCE

A. The Consultant shall procure, purchase at his/her expense and maintain in full force and effect such insurance as will protect it from claims, damages, losses, liability, costs, and expenses as set forth herein which may arise out of or result from or in any way connected with the Consultant's activities, work, services, and/or operations performed by the Consultant under this Agreement, whether such activities or operations be by itself or by any subcontractor or by any sub-subcontractor or by anyone directly or indirectly employed by any of them, or by anyone else for whose acts the Consultant or any of them is or may be liable. The procurement and maintenance by the Consultant of policies required under this Contract shall not relieve, limit or satisfy Consultant's obligation to indemnify, defend and save harmless Watermaster, its officers, directors, agents and employees.

B. Consultant represents that he/she will, prior to commencement of work pursuant to this Agreement, name and endorse on to his/her Comprehensive General Liability insurance policy Watermaster as "an insured" with respect to liability arising out of the activities, services, operations or work negligently performed by Consultant for Watermaster (ISO form CG 20 09 11 85 or its equivalence). Consultant shall obtain and keep in full force and effect insurance policies and in appropriate limits as specified by the Insurance Requirements (**Exhibit B**) and shall require any subcontractor or sub-subcontractor to provide evidence of similar liability insurance coverages.

C. Consultant shall add to his/her Comprehensive General Liability insurance policy a severability or interest clause or such similar wording if his/her policy does not automatically have this clause already written into it. Such language shall be similar to: "The insurance afforded applies separately to each insured against whom claim is made or suit is brought, including claims made or suits brought by any person included within the persons insured provision of this insurance against any other such person or organization."

D. All policies carried by Consultant shall contain a provision or be endorsed to state that coverage as respects to Watermaster shall not be suspended, voided, canceled or non-renewed except after the insurance company has given to Watermaster at least forty-five (45) days prior written notice to the address shown below prior to any such termination of coverage becomes effective.

E. Consultant shall, on all policies or coverages required to be carried by Consultant pursuant to this contract, give to Watermaster forty-five (45) days prior written notice by certified mail, return receipt requested, to the address shown below notification of any limitations, reductions or material change in coverage or in limits available.

F. Prior to the execution of the contract, Consultant shall file with Watermaster certificates of insurance of coverage actually in force that is required to be carried by Consultant pursuant to this Section VII and Insurance Requirements (**Exhibit B**). With respect to each renewal or replacement of any such insurance, the requirements of this paragraph must be complied with not less than forty-five (45) days prior to the expiration or cancellation of the policy being renewed or replaced.



G. All insurance policies carried by or available to Consultant shall be primary and not excess nor contributing with any insurance issued to or available to Watermaster. Any insurance or self-insurance maintained or carried by Watermaster shall be excess of the Consultant's insurance and shall not participate in nor contribute with such insurance carried by or available to Consultant. Watermaster will not be responsible for any payment of premiums due as a result of compliance with the terms and conditions of the insurance requirements. The cost of such insurance shall be borne solely by the Consultant.

H. In the event Consultant elects to utilize existing policies to meet insurance requirements specified herein for comprehensive general liability and or professional errors and omissions coverages, Consultant shall provide an accurate history of claims filed against either of those policies during the past twenty-four (24) months along with amounts paid and reserves outstanding.

I. Watermaster shall be under no duty either to ascertain the existence of or to examine such insurance policies or to advise Consultant in the event such insurance coverage does not comply with the requirements hereof. However, Watermaster may, at any time, and from time to time, inspect and copy any and all insurance policies, endorsements, certificates and correspondence required to be carried by Consultant pursuant to this Agreement.

#### SECTION IX 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. Any changes agreed to shall be documented by duly executed amendments to this Agreement.

#### SECTION X 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 XI  
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 XII  
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, marital 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 because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital 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, marital 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 XIII  
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 XIV  
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 XV  
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 XVI  
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

RBF Consulting:                      \_\_\_\_\_  
   [ADDRESS]

SECTION XVII  
AMENDMENTS

This Agreement together with **Exhibits A and B** 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 XVIII  
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
- Exhibit B.** Insurance Requirements

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: 4/23/07

By:   
\_\_\_\_\_  
Dewey Evans  
Watermaster Executive Officer

**RBF CONSULTING**

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

By: Lawrence E. Alley  
\_\_\_\_\_  
[NAME]

FEDERAL TAX IDENTIFICATION NUMBER \_\_\_\_\_

## **EXHIBIT A**

### **SCOPE OF WORK TO IDENTIFY REVISED SEASIDE BASIN MANAGEMENT AND MONITORING PRIORITIES**

RBF Consulting will work with the Technical Advisory Committee (“TAC”) and TAC subcommittee to perform the following tasks:

1. Recommend revised approach to that identified in the September 29, 2006 Request for Proposals to manage and implement the Monitoring and Management Program (“MMP”), in light of direction from the Court and the Watermaster Committee.
2. Identify key program components and phased approach to achieve priorities established in the Seaside Basin Adjudication Order (“Order”) and the Court’s most recent direction.
3. Develop a schedule to implement key program components task to meet requirements for Seaside Basin monitoring and management, specifically achieving equitable and efficient management of groundwater.
4. Coordinate with Martin Feeney to incorporate coastal sentinel well construction data collection and results into overall tasks and schedule.

#### **Deliverables:**

1. Draft Revised MMP.
2. Schedule Analysis for Revised MMP.



## EXHIBIT B

### INSURANCE REQUIREMENTS

- I. Consultant shall provide evidence of valid and collectible insurance carried for those exposures indicated by an "X".
- A.  Professional Liability Errors & Omissions
  - B.  Workers Compensation and Employers Liability
  - C.  Automobile Liability – "Any Auto – Symbol 1"
  - D.  Comprehensive General Liability, including Bodily Injury, Property Damage and Personal Injury
  - E.  Owners & Contractors Protective
  - F.  Protection & Indemnity (Marine/Aviation)
- II. The minimum limit of protection provided by insurance policies for each of the coverages listed above shall be not less than \$1,000,000. The procurement and maintenance by the Consultant of the policies required to be obtained and maintained by Consultant under this contract shall not relieve or satisfy Consultant's obligation to indemnify, defend and save harmless the Seaside Basin Watermaster.
- III. Evidence of insurance carried shall be certificates of insurance for the current policies. The Seaside Basin Watermaster shall be listed as a certificate holder on the Consultant's Comprehensive General Liability insurance policy, and the policy must be endorsed to provide a forty-five (45) day prior written notice of cancellation.
- IV. The Seaside Basin Watermaster requires that all Consultants carry a commercial liability policy written on a broad comprehensive general liability form.
- A. Such protection is to include coverage for the following hazards, indicated by an "X":
    - 1.  Premises and Operations
    - 2.  Products and Completed Operations
    - 3.  Explosion Collapse and Underground
    - 4.  Broad Form Blanket Contractual
    - 5.  Broad Form Property Damage
    - 6.  Personal Injury, A, B and C
    - 7.  Employees named as Persons Insured
    - 8.  Protective and/or Contingent Liability (O&CP)
  - B. The "Persons Insured" provision on each comprehensive general liability policy shall include as an insured the "Seaside Basin Watermaster, its officers, directors, agents and employees."
  - C. This policy shall contain a severability of interest clause or similar language to the following:

## EXHIBIT B

“The insurance afforded applies separately to each insured against whom claim is made or suit is brought including claims made or suits brought by any persons included within the persons insured provision of the insurance against any other such person or organization.”

- D. All policies shall contain a provision that the insurance company shall give the Watermaster at least forty-five (45) days prior written notice mailed to the address shown below prior to any cancellation, lapse or non-renewal. The 45-day written notice must be shown on all certificates of insurance.
  - E. Certificates of insurance for the current policies shall be delivered by the Consultant to the Watermaster Executive Officer as verification that terms A, B, C and D have been met.
- V. All insurance correspondence, certificates, binders, etc., shall be mailed to:
- Seaside Basin Watermaster  
2600 Garden road, Suite 228  
Monterey, CA 93940
- VI. All policies carried by the Consultant shall be primary coverage to any and all other policies that may be in force. The Watermaster shall not be responsible for payment of premiums due as a result of compliance with the terms and conditions of the insurance requirements.
  - VII. All such policies of insurance shall be issued by domestic United States insurance companies with general policy holders' rating of not less than "B" and admitted to do business in the State of California. The policies of insurance so carried shall be carried and maintained throughout the term of this contract.