

AGREEMENT NO. A-09265

MEMORANDUM OF AGREEMENT**MONTEREY REGIONAL STORM WATER
POLLUTION PREVENTION PROGRAM**

THIS AGREEMENT, is made and entered into this 26th day of November, 2002, by and between the MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY, hereinafter referred to as "AGENCY", a Joint Powers Authority (JPA) organized under the laws of the State of California, and the following entities, each of which is hereinafter referred to as "PERMITTEE" or collectively as "PERMITTEES":

CITY OF PACIFIC GROVE, a municipal corporation of the State of California;
CITY OF MONTEREY, a municipal corporation of the State of California;
CITY OF SEASIDE, a municipal corporation of the State of California;
CITY OF SAND CITY, a municipal corporation of the State of California;
CITY OF DEL REY OAKS, a municipal corporation of the State of California;
CITY OF MARINA, a municipal corporation of the State of California;
CITY OF CARMEL-BY-THE-SEA, a municipal corporation of the State of California;
COUNTY OF MONTEREY, a political subdivision of the State of California, and
PEBBLE BEACH COMPANY, a California general partnership.

The AGENCY and the above-mentioned entities may also hereinafter be collectively referred to as "PARTIES" or individually as "PARTY."

RECITALS:

- A. The Federal Clean Water Act (CWA) requires certain municipalities and industrial facilities to obtain a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of storm water to navigable water. NPDES permits are also required for any storm water discharge which the Federal Environmental Protection Agency (EPA) or a state has determined contributes to a violation of a water quality standard, or is a significant contributor of pollutants to surface waters.
- B. The CWA further required EPA to promulgate regulations for initial NPDES permit applications for storm water discharges. The EPA promulgated such regulations in November 1990
- C. The EPA has delegated authority to the California State Water Resources Control Board (SWRCB) to administer the NPDES permit process within California and, in turn, the SWRCB has delegated authority to the California Regional Quality Control Board – Central Coastal Basin (RWQCB-CCB) to administer the NPDES permit process within its region.

- D. Pursuant to the CWA and EPA regulations, the RWQCB-CCB is expected to adopt orders further defining the program that the PARTIES are to develop and implement.
- E. In and for the mutual interest of the PERMITTEES, the PERMITTEES wish to develop and implement the Program by entering into this Agreement for the purpose of cooperating to efficiently and economically comply with NPDES requirements.

NOW, THEREFORE, THE PARTIES HERETO FURTHER AGREE, AS FOLLOWS:

Section 1. Monterey Regional Storm Water Pollution Prevention Program

- 1.01. The Monterey Regional Storm Water Pollution Prevention Program ("Program") is intended to fulfill certain obligations of the PERMITTEES with regard to EPA's Phase 2 Storm Water NPDES requirements. These requirements are expected to be imposed upon the PARTIES by an NPDES permit that will be issued collectively to all of the PERMITTEES by the RWQCB-CCB at a future date
- 1.02 The Program is a collective effort and implementation of area-wide activities, designed to benefit all PERMITTEES.

Section 2. Management Committee

- 2.01 A Management Committee is hereby created to provide for overall Program coordination, review, and budget oversight, with respect to the NPDES Permit.
- 2.02 The Management Committee adopts the Bylaws contained in Exhibit "A" for its governance. The Management Committee may from time to time revise these Bylaws by formal action of the Management Committee
- 2.03 The Management Committee is the official management and oversight body of the Program. The Management Committee shall direct and guide the Program and review and approve the Program Budget. The Management Committee shall consider permit compliance, including benefit to a majority of the PERMITTEES, as a primary objective in approving Program tasks and corresponding budgets.
- 2.04 The Management Committee shall periodically re-evaluate and make recommendations to the PERMITTEES concerning reallocation of the proportion of the annual Program contribution that each PERMITTEE shall pay.

- 2.05 The voting membership of the Management Committee shall consist of one designated voting representative from each PERMITTEE. An alternative voting representative may be appointed by each PERMITTEE.
- 2.06 A quorum of the Management Committee shall be achieved when voting representatives from at least fifty percent (50%) of the PERMITTEES are present at any Management Committee meeting.
- 2.07 Unless otherwise advised by the Program Attorney, meetings of the Management Committee, including any closed sessions with the Program Attorney, shall be conducted in accordance with the "Brown Act" (Government Code Section 54950 et seq.). .
- 2.08 The affirmative vote of at least that number of the voting members of the Management Committee which collectively contribute at least fifty percent (50%) of the area-wide Program costs (a "Majority Vote"), is necessary to approve any financial measure brought before the Management Committee. Voting rights and weights of each PERMITTEE are defined in the Bylaws contained in Exhibit "A".
- 2.09 The Management Committee shall be responsible for selecting any consultant(s) or contractor(s) who are to be paid from Program funds ("Outside Contractors"), and for reviewing and approving any contracts with Outside Contractors, including the scope(s) of work, schedules of performance, use of subcontractors, and compensation for such Outside Contractors.
- 2.10 The Management Committee may select an attorney or firm (Program Attorney) that is experienced with the Clean Water Act and Municipal Storm Water NPDES Permits to provide legal advice to the Management Committee on all matters involving administration of the Program's NPDES Permit and such other matters upon which the Management Committee may seek legal advice or request legal representation. The Program Attorney shall not be responsible for providing legal advice related to permit compliance to individual PARTIES. The Program Attorney may provide such services under separate contract with any PARTY or PARTIES, but shall provide advance notification to all PARTIES before providing such services to identify and resolve possible issues of conflict of interest. The Program Manager may assist in coordination of activities with the Program Attorney, but shall not give direction to the Program Attorney without prior authorization from the Management Committee.
- 2.11 The Management Committee shall establish timelines and budgets for completion of Program tasks.

- 2.12 The Management Committee, through its Bylaws, may establish procedures for tracking, accounting for, and auditing the Program funds.

Section 3. Program Budget

- 3.01 A budget shall be adopted for each fiscal year. The fiscal year shall run from July 1 through June 30. The Budget shall be prepared and administered as described in Exhibit "B".
- 3.02 Not later than 60 days after the start of each fiscal year's budget cycle, the PERMITTEES shall each pay a yearly assessment into a fund established for Program operations for their assigned portion of the Program Budget. The proportionate share of the Program Budget that each PERMITTEE shall pay shall be shown and specified in the adopted fiscal year budget. Cost-sharing between PERMITTEES shall be based on the populations within the areas of each participating entity that are covered by the permit, unless otherwise agreed to by the PERMITTEES when the budget for each year is adopted, as described in Exhibit "B".
- 3.03 Except as provided in Section 6.03, the ending fund balance at the close of each fiscal year shall be disbursed annually to the PERMITTEES, or credited to the PERMITTEES' shares of the next fiscal year's costs, in accordance with the PERMITTEES' defined participation rates, as requested by each PERMITTEE.

Section 4. Program Manager

- 4.01 The Management Committee shall select a PARTY or Outside Contractor to act as the Program Manager for the Program.
- 4.02 The Program Manager shall be responsible for Program management and administration, Permit management, technical program management, and related duties as described in Exhibit "C". The Program Manager shall be paid, from Program funds in accordance with the adopted Program budget, for providing the services described hereunder. Work assignments shall be made to the Program Manager by the Management Committee and not by individual PERMITTEES. The Program Manager shall not be responsible for providing program management services related to individual PERMITTEE'S permit programs. However, the Program Manager may provide such services under separate contract with any PARTY or PARTIES, but shall provide advance notification to all PARTIES before providing such services to identify and resolve possible issues of conflict of interest.
- 4.03 The Program Manager shall be the treasurer of the Program funds. The Program Manager, in accordance with generally-accepted accounting procedures, shall keep the Program funds segregated from any other funds administered by the Program Manager; shall credit the Program with

appropriate interest income earned on Program funds in each fiscal year; and shall not expend any funds except in accordance with the annual budget approved by the Management Committee, or as otherwise directed by the Management Committee. The Program Manager shall act in a reasonable amount of time to execute contracts with Outside Contractors, which have been requested and approved by the Management Committee. The Program Manager shall provide a copy of any contract executed on behalf of the Program to any PERMITTEE or person designated by any PERMITTEE or the Management Committee upon request. The governing body of the Program Manager, at its discretion, may delegate authority to execute agreements and contracts approved by the Management Committee, to a designated employee. Notice of any such delegation of authority shall be provided to the Management Committee.

- 4.04 The Program Manager may request, as part of the annual Program Budget, reimbursement for reasonable and customary costs incurred in providing the services described hereunder. Reimbursement to the Program Manager shall be subject to Management Committee review and approval as part of the Program Budget.
- 4.05 AGENCY shall serve as the initial Program Manager for the Program.
- 4.06 AGENCY may withdraw as the Program Manager upon the provision of ninety days' (90) days written notice to the Management Committee. The Management Committee may select a new Program Manager upon the provision of ninety days (90) written notice to AGENCY. In either event the Management Committee will act within the ninety-day period to determine the disposition of funds remaining in the Program Budget fund.
- 4.07 In the event that the Program Manager withdraws from the Program or from providing Program Manager services to the Program, or in the event that the Management Committee wishes to select a new Program Manager, another PERMITTEE may serve as a successor Program Manager. Any PERMITTEE willing to serve as successor Program Manager may be nominated by another PERMITTEE. Selection of a Program Manager must be by majority vote of the Management Committee.

Section 5. Additional Rights and Duties of the PARTIES

- 5.01 In addition to the participation in the Management Committee, the PERMITTEES accept and agree to perform the following duties:
 - 1. Each will comply with the NPDES Permit conditions that apply within its jurisdictional boundaries;

2. Each will participate in Management Committee meetings and other required meetings of the PERMITTEES ;
 3. Each will implement its Community-Specific Program;
 4. Each will provide certain agreed upon reports to the Program for purposes of reporting, on a joint basis, compliance with applicable provisions of the NPDES Permit and the status of Program implementation; and,
 5. Each will individually address inter-agency issues, agreements or other cooperative efforts.
 6. Each will only be responsible for performing the duties listed above for and on behalf of its own jurisdiction.
- 5.02 This Agreement does not restrict the PERMITTEES from the ability to individually (or collectively) request NPDES Permit modifications and/or initiate NPDES Permit appeals for permit provisions to the extent that a provision affects an individual party (or group of PERMITTEES); however, any such PERMITTEE (or PERMITTEES) shall provide a minimum of 30-days written advance notice of their action to the other PARTIES and allow them to comment upon or join in their action before proceeding.

Section 6. Term of Agreement

- 6.01 The term of this Agreement shall commence on the date the last duly authorized representative of the PARTIES executes it.
- 6.02 This Agreement shall terminate upon the expiration of the first NPDES Phase 2 storm water permit that is issued to the PERMITTEES, unless this term is extended by the PARTIES.
- 6.03 Any PARTY may terminate its participation in this Agreement by giving the Management Committee at least a thirty (30) day written notice. If a PERMITTEE terminates its participation, the terminating PERMITTEE will bear the full responsibility for its compliance with the NPDES Permit commencing on the date it terminates its participation, including its compliance with both Community-Specific and Program-wide responsibilities. Unless the termination is scheduled to be effective at the close of the fiscal year in which the notice is given, termination shall constitute forfeiture of all of the terminating PERMITTEE'S share of the Program Budget, for the fiscal year in which the termination occurred (both paid and obligated, but unpaid, amounts). In addition, unless notice of termination is provided at least ninety (90) days prior to the date

established by the Management Committee for approval of the budget for the succeeding fiscal year, termination shall constitute forfeiture of all of the terminating PERMITTEE'S share of any unexpended, unencumbered funds remaining from all previous fiscal years. The cost allocations for the remaining PERMITTEES may be recalculated for the following fiscal year by the PARTIES without the withdrawing PERMITTEE'S participation.

Section 7. General Provisions

- 7.01 This Agreement supersedes any prior agreement among the PARTIES regarding the Program, but does not supersede any other agreements between any of the PARTIES.
- 7.02 This Agreement may be amended only by unanimous written agreement of the PARTIES. All PARTIES agree to bring any proposed amendment to this Agreement to their Council or Board, as applicable, within two (2) months following acceptance of the proposed amendment by the Management Committee.
- 7.03 This Agreement may be executed and delivered in any number of copies ("counterpart") by the PARTIES, including by means of facsimile. When each PARTY has signed and delivered at least one (1) counterpart to the Program Manager, each counterpart shall be deemed an original and, taken together, shall constitute one and the same Agreement, which shall be binding and effective as to the PARTIES hereto.
- 7.04 No PARTY shall, by entering into this Agreement, participating in the Management Committee, or agreeing to serve as Program Manager, and/or Program Attorney, assume or be deemed to assume responsibility for any other PARTY in complying with the requirements of the NPDES Permit. This Agreement is intended solely for the convenience and benefit of the PARTIES hereto and shall not be deemed to be for the benefit of any third party and may not be enforced by any third party, including, but not limited to, the EPA, the SWRCB, and the RWQCB-CCB, or any person acting on their behalf or in their stead.
- 7.05 In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the PARTIES pursuant to Government Code Section 895.6, the PARTIES agree that all losses or liabilities incurred by a PARTY shall not be shared pro rata, but instead, the PARTIES agree that pursuant to the Government Code Section 895.4, each of the PARTIES hereto shall fully defend, indemnify and hold harmless each of the other PARTIES from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying PARTY, its officers, agents, or

employees, under or in connection with or arising from any work, authority, or action taken under this Agreement, including but not limited to any non-compliance by a PARTY with its obligations under the Program NPDES Permit. No PARTY, nor any officer, Councilmember, Board member, employee or agent thereof shall be responsible for any damage or liability incurred by reason of the negligent acts or omissions or willful misconduct of the other PARTIES hereto, their officers, Councilmembers, Board members, employees or agents under or in connection with or arising from any work, authority or actions taken under this Agreement, including but not limited to any non-compliance by a PARTY with its obligations under the Program NPDES Permit.

7.06 In the event that suit shall be brought by any party to this contract, the PARTIES agree that venue shall be exclusively vested in the state courts of the County of Monterey, or, if brought in federal court, in the United States District Court handling matters arising in Monterey County. Further, the prevailing PARTY or PARTIES shall be entitled to reasonable attorney fees and costs.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the dates shown below

COUNTY OF MONTEREY, a political subdivision of the State of California

Date: **November 26, 2002**

By: *Dave Potter*
Chair, Monterey County Board of Supervisors

Dave Potter

APPROVED AS TO FORM:

By: _____
County Counsel

ATTEST:

Date: **November 26, 2002**

By: *Nancy Dukerbill*
Clerk of the Board of Supervisors

MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY, a Joint Powers Authority and public agency of the State of California

Date: 12/9/02

By: Peggy Sherie P.D.
Chair, Board of Directors

By: Keith Saul
General Manager

APPROVED AS TO FORM:

By: Robert R. Welling
Legal Counsel

ATTEST:

Date: 1/8/03

By: Wendyborah Fortune

CITY OF _____, a public entity of the State of California

Date: _____

By: _____
Name, Mayor

By: _____
Name, City Manager

APPROVED AS TO FORM:

By: _____
Legal Counsel

ATTEST:

Date: _____

By: _____

EXHIBIT "A"

BYLAWS

Bylaws

1. **Representation:** Representation from each PERMITTEE will be their Public Works Director, or his/her designee, and if that person is unable to attend, he or she will notify the PARTIES in advance by email naming their designated alternate representative for that meeting.

2. **Voting:** Each PERMITTEE shall have one vote, provided that any PERMITTEE can call for a weighted vote on any issue. Weighting will be on a population basis, using the populations and numbers of votes shown in the attached Table. This Table may be periodically updated by formal action of the Management Committee. Updating will normally be done when updated population figures are published by the U.S. Census Bureau, or when other updated population figures are published and formally accepted by each of the PERMITTEES. Weighted voting would be conducted as follows: If a weighted vote is called, each PERMITTEE will have the number of votes shown in the table below .

Table of Populations and Votes for Use in Weighted Voting

ENTITY	APPROXIMATE POPULATION WITHIN AREA TO BE COVERED BY STORMWATER PERMIT	NUMBER OF VOTES
Pacific Grove	15,522	7.8
Monterey	29,674	14.8
Seaside	31,696	15.8
Sand City	261	1.0
Marina	21,014	10.5
Carmel	4,081	2.0
Del Rey Oaks	1,650	1.0
County of Monterey	17,213	8.6
Pebble Beach Company	4,531	2.3
TOTAL	125,642	63.8

Note: One vote shall be provided for each 2,000 person increment of population, except that each entity shall have a minimum of one vote, even if its population is less than 2,000.

3. **Meeting Schedule:** Meetings will normally be at 2:00 p.m. at the Program Manager's offices on the fourth Wednesday of each month, unless changed by the Management Committee.
4. **Starting Time:** Meetings will start promptly at the designated starting time. Any PARTY representative that knows he/she will be unable to attend, or will be late, will notify the Chairperson, so as not to delay starting the meeting.
5. **Future Members:** If additional entities wish to join with the other PARTIES by entering into this Agreement and participating in the Program, the PARTIES will determine an appropriate method of calculating a "buy-in" cost to be paid by the new entity wishing to become a member. This buy-in cost shall at a minimum include:
 - a. The full amount the new entity would have paid, if it had entered into the "Interim Memorandum of Agreement Regarding Development of a Regional Storm Water NPDES Permit" as of July 1, 2001, and,
 - b. An amount to account for the delay in making payment, calculated using the Consumer Price Index or some other method deemed appropriate by the Participants Group.

EXHIBIT "B"

BUDGET AND COST-SHARING

Budget and Cost-Sharing

Prior to the start of each fiscal year, the Program Manager will prepare a Draft Budget and submit it to the Management Committee for its review. The Draft Budget will include a proposed approach for allocation of costs(cost-sharing) to each PERMITTEE. The Program Manager will revise the Draft Budget to address concerns and comments from the Management Committee, and the Management Committee will then approve and adopt a Final Budget for the fiscal year.

The Program Manager and the PERMITTEES recognize that the budget will be based on estimated costs , and that actual costs may differ from the budgeted amounts. If it appears that costs will exceed the budgeted amounts, the Program Manager will notify the Management Committee before incurring costs in excess of the budgeted amounts. If the Management Committee determines that it is appropriate to have the Program Manager incur additional costs above the budgeted amounts, the Program Manager will prepare a budget revision request and send it to the Management Committee to obtain the Committee's approval to increase the budget. Only after receiving the Management Committee's written approval to increase the budget will the Program Manager incur costs in excess of the budgeted amounts. If there are unspent funds left at the end of the fiscal year, the Program Manager will return to each PARTY the unspent portion of that PARTY'S payment , as described in Section 3 "Program Budget."

The Program Manager will establish a separate job-cost code in its accounting system, to which hours spent, and out-of-pocket costs directly related to, performing work as the Program Manager will be charged. The Program Manager will send quarterly reports to the Management Committee summarizing the work the Program Manager has performed during that quarter, the total costs of that work, and the portion of the cost allocated to each PERMITTEE . The portion of the cost allocated to the PERMITTEE will be calculated in accordance with the cost-sharing approach specified in the adopted Final Budget.

The costs for AGENCY's services as the Program Manager will consist of both direct and indirect costs. Direct costs are costs which can be tracked through time cards, invoices, record keeping systems, and other records that specifically allocate a cost to these services. Indirect costs are all other costs incurred by AGENCY in order to perform its duties as the Program Manager. Examples of the types of indirect costs that AGENCY is likely to incur are described below.

Indirect Costs

Indirect costs are defined as a cost item that cannot be identified specifically with a single cost objective in an economically feasible manner.

For the costs covered by this Agreement, indirect costs will be charged at 10% of all other direct costs.

The following are the types of indirect costs expected to be incurred in carrying out Program activities:

- Use of AGENCY financial and data processing system including network (hardware and software), and specific financial hardware (printers/modems) and software. Costs include depreciation as well as internal and external maintenance, service agreements, software support, and payroll processing.
- The use of supplies and/or services that are not feasible or not cost-effective to segregate, such as disposables, shared office supplies, forms, paper, and postage.
- Purchasing services including purchasing staff time seeking bids, communicating with vendors, preparing requisitions, and purchase orders.
- Use of existing office equipment (copiers, fax machines, calculators, typewriters, computers) and their related repair, supplies, and maintenance.
- Centralized telephone system and use of AGENCY cellular phones.
- AGENCY Administration building costs (use, utilities, insurance).
- Administrative services including agency-wide training programs (such as safety, sexual harassment), employee assistance program, and general office support.
- Use of upper level AGENCY staff for overall coordination, management and support of storm water permitting activities.

EXHIBIT "C"

DUTIES OF THE PROGRAM MANAGER

Duties of the Program Manager

The **Program Manager** will perform duties (referred to as Tasks) including, but not limited to, the following:

- Task 1.** Arranging for and conducting meetings of the Management Committee, including preparation of agenda materials and meeting minutes.
- Task 2.** Preparing draft documents for review, editing, and finalization by the Management Committee.
- Task 3.** Coordination with RWQCB and SWRCB on Phase 2 storm water permitting issues.
- Task 4.** Researching and reporting on various topics of interest to the Management Committee.
- Task 5.** Contracting with, and managing the work of, outside consultants to perform related work, if deemed necessary and appropriate by the Management Committee.
- Task 6.** Preparing the permit application.
- Task 7.** Preparing the Annual Report(s) required by the Permit, and other permit-related reports and documents, other than those that are to be prepared by the individual PERMITTEES.
- Task 8.** Other activities as requested by the Management Committee.