

MEMORANDUM OF UNDERSTANDING

between

THE COUNTY OF MONTEREY

and

THE MONTEREY COUNTY WATER RESOURCES AGENCY

regarding

SUPERVISION AND MANAGEMENT OF THE 2010 GENERAL PLAN  
SALINAS VALLEY GROUNDWATER BASIN ZONE 2C STUDY

WHEREAS, the County of Monterey (“County”) is a political subdivision of the State of California; and

WHEREAS, the Monterey County Water Resources Agency (Agency) is a flood control and water agency established in 1990 by special act of the state legislature codified at Water Code Appendix Chapter 52, and is the successor to the Monterey County Flood Control and Water Conservation District established in 1947, also by special act of the state legislature; and

WHEREAS, in October of 2010, the County adopted the 2010 Monterey County General Plan (“2010 General Plan”) in conformance with its duties under state law; and

WHEREAS, Policy PS 3.1 of the 2010 General Plan, as amended in March, 2013, (“Policy PS 3.1”), requires the County to perform a study of Zone 2C (“Zone 2C Study”) of the Salinas Valley Groundwater Basin (“Basin”) that:

- 1) evaluates existing data for seawater intrusion and groundwater levels collected by the Agency as of the date the study is commenced;
- 2) evaluates the total water demand for all existing uses and future uses designated in the 2010 General Plan environmental impact report for the year 2030;
- 3) assesses and provides conclusions regarding the degree to which the total water demand for all uses designated in the 2010 General Plan for the year 2030 are likely to be reached or exceeded;
- 4) evaluates on an annual basis during the study period groundwater elevations and the seawater intrusion boundary; and
- 5) based on historical data and the data produced by the study, evaluates and provides conclusions regarding future trends and any expected movement of groundwater elevations and the seawater intrusion boundary; and,

WHEREAS, it is the County's obligation to cause the Zone 2C Study to be performed; and,

WHEREAS, the Board of Supervisors for the County has included in the Zone 2C Study a requirement for a short term assessment of the health of the Basin; and,

WHEREAS, the County has neither the expertise nor the background information to appropriately perform the Zone 2C Study; and,

WHEREAS, it will therefore be necessary for the County to contract with a consultant to perform the Zone 2C study; and,

WHEREAS, the County similarly has neither the expertise nor background information to appropriately supervise and manage the study as it is performed; and,

WHEREAS, the Agency possesses the necessary expertise and background information; and,

WHEREAS, the Agency is prepared to assist the County in the supervision and management of the Zone 2C Study; and,

WHEREAS, because the County and Agency are separate and distinct public entities, it is necessary and appropriate for the County and Agency to enter into this Memorandum of Understanding ("MOU") whereby the responsibilities of each with respect to the Zone 2C Study are set forth, and the compensation to be paid to the Agency for its services is agreed upon;

NOW THEREFORE, the County and Agency agree as follows:

1. Effective Date and Term.

This MOU will be effective as of the date last signed by either of the parties and, unless earlier terminated as provided in this MOU, shall remain in effect until the completion of the Zone 2C Study as described in Policy PS 3.1, a copy of which is enclosed as Attachment A. This MOU may be amended from time-to-time by mutual written agreement of the parties.

2. Obligations of the Parties.

A. County.

i. The County will contract with a consultant to perform the Zone 2C Study, and, except as may be specifically agreed to herein or otherwise in writing by the parties, the County will be solely responsible for all costs and expenses associated with the Zone 2C Study.

ii. The County shall designate an officer or employee who shall oversee the Agency's performance of its obligations under the MOU (the "County Representative"). The

County shall notify the Agency of the officer or employee so designated, and may change such designation from time-to-time upon written notice to the Agency.

B. Agency.

i. The Agency will, on behalf of the County, supervise and manage the consultant and the performance of the Zone 2C Study.

ii. The Agency shall assign an officer or employee to undertake the Agency's obligations pursuant to this MOU, who shall be designated the Project Manager. The County must approve the assignment in writing, which approval shall not be unreasonably withheld. The Agency may change the designation from time-to-time with the County's written approval, which approval shall not be unreasonably withheld. In the performance of duties under this MOU, the Project Manager shall communicate and coordinate with, and receive direction from, the County Representative as may be necessary or appropriate.

3. Compensation.

The parties anticipate that the Project Manager shall be an employee in the hydrologist class. It is agreed by the parties that services may be provided pursuant to this MOU by others than the Project Manager, but that such services shall also be rendered by employees in the hydrologist class. The County shall pay to the Agency, as compensation for the services provided pursuant to this MOU, according to the rate schedule attached as Attachment B. The rate schedule in Attachment B may be amended annually by the Agency upon approval by the County, which approval shall not be unreasonably withheld.

The parties anticipate that the cost for services rendered pursuant to this MOU shall average approximately Seventy-five Thousand dollars (\$75,000) per year and that the Zone 2C Study will take approximately five (5) years to complete. The initial budget for the Agency's services under this MOU shall be an amount not to exceed One Hundred and Fifty Thousand Dollars (\$150,000), and the parties shall revise the budget and amend this MOU as necessary to reflect additional fees and expenses required for services. Proposed budget increases must be approved by the County before any increased charges or expenditures are incurred.

The maximum amount of the County's liability over the full term of this MOU shall include the initial budget amount, as it may be revised as provided in this section. The Agency shall endeavor to provide services pursuant to this MOU in the most cost-effective and efficient manner.

Travel authorized by the County will be reimbursed as follows: transportation at actual fare for economy or coach class, meals and lodging not to exceed the County's per diem unless authorized in advance. The County will not pay the Agency for the travel time.

4. Claims and Payment.

Not later than ten working days after the last day of each month, the Agency shall submit to the County a claim, on a form or in a format approved by the County, setting forth in detail the time and expense items incurred by the Agency during the previous month, for which payment is sought, and setting forth such other information pertinent to the claim as the County may require. The fees charged shall be calculated correctly, contain no charges previously billed, and be consistent with the approved hourly fee schedule set forth in Attachment B, as amended from time to time pursuant to Section 3, and budget maximum set forth above. The following information shall be set forth accurately in or attached to the billing invoice:

(a) Staffing level, hourly rate, and detailed time and activity descriptions for each employee including but not limited to time spent with respect to conferences, correspondence, telephone calls, meetings, research, project review; and

(b) Invoices supporting all outside costs and expenses.

The County Representative shall certify the Agency's claim within ten working days, either in the requested amount or in such other amount as the County Representative approves in conformity with this MOU. The County Representative shall promptly submit such certified claim to the Auditor. The Auditor shall thereafter pay the balance of the certified claim not later than 45 calendar days after receipt of the certified claim.

If for any claim the County certifies a lesser amount than the amount requested, and if the Agency desires to dispute the amount so certified, the Agency must submit a written notice of protest to the County within 20 working days after the Agency's receipt of the certification. The parties shall then promptly meet to review the dispute and resolve it on a mutually acceptable basis. No court action may be taken on such dispute until the parties have met and attempted to resolve the dispute in person.

5. Termination.

A. By the County.

The County may terminate this MOU at any time for its convenience and without cause. Upon such termination, the County shall pay to the Agency all sums then due and owing for services performed through the effective date of the termination, subject to all other provisions of this MOU.

B. By the Agency.

The Agency may terminate this agreement at any time upon giving thirty (30) calendar days written notice to the County. Upon such termination, and unless the County notifies the Agency in writing that it will not need a substitute Project Manager, the Agency shall continue to provide such services as the County may require until such time as the County is able to identify a substitute Project Manager to render necessary services. The County shall not unreasonably

delay in identifying such substitute Project Manager or in providing written notice that it will not require a substitute Project Manager. The County shall pay to the Agency all sums due and owing for services performed through the effective date of the termination, subject to all other provisions of this MOU. The effective date of termination is the termination date contained in Agency's notice of termination, as extended by any additional time required by County, pursuant to this paragraph.

6. Insurance and Indemnification.

The Agency participates in the County's general liability and worker's compensation insurance pool. The Agency agrees to continue that participation for the term of this MOU unless the County agrees in writing that the Agency may obtain its own insurance coverage. In the event that the Agency obtains its own insurance coverage, it shall maintain such insurance from qualifying insurers as the County may approve (such approval not to be unreasonably withheld) in such amounts and with such limits, and upon such other terms, as is the custom or practice for the County regarding similar agreements.

The Agency shall indemnify, defend, and hold harmless the County, its officers, agents, and employees from any claim, liability, loss, injury or damage arising out of, or in connection with the Agency's negligent acts or omissions, or those of its officers, employees, agents or subcontractors, in the performance of this MOU, excepting only loss, injury or damage caused by the negligence or willful misconduct of COUNTY, its officers or employees. The Agency shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Agency is obligated to indemnify, defend and hold harmless the County under this MOU.

The County shall indemnify, defend, and hold harmless the Agency, its officers, agents, and employees from any claim, liability, loss, injury or damage arising out of, or in connection with the County's negligent acts or omissions, or those of its officers, employees, agents or subcontractors, in the performance of this MOU, excepting only loss, injury or damage caused by the negligence or willful misconduct of the Agency, its officers or employees. The County shall reimburse the Agency for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the County is obligated to indemnify, defend and hold harmless the Agency under this MOU.

7. General Provisions.

A. No Assignment. The Agency shall not assign or transfer this MOU, or any part thereof, without the written consent of the County, nor shall the Agency assign any monies due or to become due to the Agency hereunder without the previous written consent of the County.

B. Independent Contractor. Nothing in this MOU shall be construed or interpreted to make the Agency, the Project Manager or other Agency employees anything but independent contractors, and in all the Agency's activities and operations pursuant to this MOU, neither the Agency, the Project Manager, nor other Agency employees shall for any purposes be considered employees or agents of the County.

C. Authority to Bind the County. It is understood that the Agency, in the performance of any and all duties under this MOU, has no authority to bind the County to any agreements or undertakings with respect to any and all persons or entities with whom the Agency deals in the course of business.

D. Nondisclosure of Information. The Agency shall not disclose, without express written consent of the County, any information relating to the County business which has been submitted by the County to the Agency pursuant to the services to be rendered pursuant to this MOU. In the event that this MOU is terminated, the Agency shall immediately return to the County all papers, documents and the like belonging to the County.

E. Notices.

(i) Notices permitted or required to be given to the respective parties under this MOU shall be deemed given (1) when personally delivered to the County Representative or to the Project Manager; (2) when personally delivered to the party's principal place of business during normal business hours (i.e., to the Monterey County offices in Salinas, California, or to the Agency's office), by leaving the notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by fax machine to the other party, to the fax number indicated below; or (4) 3 days after the notice is deposited in the U.S. mail (by first class, certified, registered, or express mail), with postage fully prepaid, addressed to the party as indicated below.

(ii) Notices mailed to the parties shall be addressed as follows:

To the County:  
Carl Holm  
Deputy Director, RMA  
County of Monterey  
168 W. Alisal St.  
Salinas, CA 93901  
Phone: (831) 755-5103  
Fax: (831) 755-5877

To the Agency:  
Howard Franklin, P.G.  
Senior Water Resources Hydrologist  
Water Resources Agency  
893 Blanco Circle  
Salinas, CA 93901-4455  
Phone: (831) 755-4860  
Fax: (831) 424-7935

The mailing addresses and fax numbers specified in this paragraph may be changed by either party, by giving notice to the other in the manner provided herein.

F. Subcontracting. The Agency shall not subcontract or otherwise assign any portion of the work to be performed under this MOU without prior written approval of the County. Any and all subcontracts shall be subject to the provisions contained in this MOU.

G. Modifications. This MOU may be modified or amended only by written agreement of the parties. No waiver or modification of this MOU or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the parties hereto.

H. No Waiver. No covenant or condition of this MOU can be waived except by the written consent of the County. Forbearance or indulgence by the County in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the Agency. The County shall be entitled to invoke any remedy available to the County under this MOU or by law or in equity despite said forbearance or indulgence.

I. Sole Agreement. This MOU contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this MOU shall be of no force or effect excepting a subsequent modification in writing, signed by the parties hereto.

J. Venue. If any party herein initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that venue thereof shall be the County of Monterey, State of California.

K. Construed Pursuant to California Law. The parties hereto agree that the provisions of this MOU will be construed pursuant to the laws of the State of California.

IN WITNESS WHEREOF, COUNTY and AGENCY have caused this Memorandum of Understanding to be executed:

DATED: \_\_\_\_\_

COUNTY OF MONTEREY

By \_\_\_\_\_

Benny Young  
Director, Resource Management Agency

DATED: \_\_\_\_\_

WATER RESOURCES AGENCY

By \_\_\_\_\_

David Chardavoyne  
General Manager, Water Resources Agency

APPROVED AS TO FORM AND LEGALITY

CHARLES J. MCKEE, County Counsel

By \_\_\_\_\_  
Leslie J. Girard  
Chief Assistant County Counsel

[APPROVED AS TO FISCAL PROVISIONS

By \_\_\_\_\_  
(Auditor/Controller)]

[APPROVED AS TO LIABILITY PROVISIONS

By \_\_\_\_\_  
(Risk Management)]



# **ATTACHMENT A**

## **POLICY PS-3.1**

PS-3.1

Except as specifically set forth below, new development for which a discretionary permit is required, and that will use or require the use of water, shall be prohibited without proof, based on specific findings and supported by evidence, that there is a long-term, sustainable water supply, both in quality and quantity to serve the development.

This requirement shall not apply to:

- a. the first single family dwelling and non-habitable accessory uses on an existing lot of record; or
- b. specified development (a list to be developed by ordinance) designed to provide: a) public infrastructure or b) private infrastructure that provides critical or necessary services to the public, and that will have a minor or insubstantial net use of water (e.g. water facilities, wastewater treatment facilities, road construction projects, recycling or solid waste transfer facilities); or
- c. development within Zone 2C of the Salinas Valley groundwater basin, provided the County prepares or causes to be prepared a study for the Board of Supervisors regarding Zone 2C, to be completed no earlier than October 31, 2017 and no later than March 31, 2018 that does the following:
  - 1) evaluates existing data for seawater intrusion and groundwater levels collected by Monterey County Water Resources Agency as of the date the study is commenced;
  - 2) evaluates the total water demand for all existing uses and future uses designated in the General Plan EIR for the year 2030;
  - 3) assesses and provides conclusions regarding the degree to which the total water demand for all uses designated in the General Plan for the year 2030 are likely to be reached or exceeded;
  - 4) evaluates on an annual basis during the study period groundwater elevations and the seawater intrusion boundary;
  - 5) based on historical data and the data produced by the study, evaluates and provides conclusions regarding future trends and any expected movement of groundwater elevations and the seawater intrusion boundary;
  - 6) should the study conclude that i) total water demand for all uses designated in the General Plan for the year 2030 is likely to be exceeded; or ii) groundwater elevations are likely to decline by the year 2030 and iii) the seawater intrusion boundary is likely to advance inland by the year 2030, the study shall make recommendations on measures the County could take to address any or all of those conditions; and
  - 7) addresses such other matters as the Board of Supervisors determines are appropriate.

Within two months following the completion of the study, the Board of Supervisors shall hold an open and noticed public hearing on the results of the study. If the study reaches the conclusions for Zone 2C identified in subsection 6) i or 6) ii and 6) iii, the Board of Supervisors shall adopt one or more measures identified in the study, or other appropriate measures, to address the identified conditions. This exception for Zone 2C shall be a rebuttable presumption that a Long Term Sustainable Water Supply exists within Zone 2C, and the presumption shall remain in effect until and unless the study reaches the conclusion for Zone 2C identified in subsection 6) i or 6) ii and 6) iii. Development in Zone 2C shall be subject to all other policies of the General Plan and applicable Area Plan.

Following completion of the study described herein, and the adoption of measures as may be recommended in the study, if any, the County shall prepare a report to the Board of Supervisors every five (5) years for Zone 2C that examines the degree to which a) total water demand for all uses predicted in the General Plan EIR for year 2030 will be reached; or b) groundwater elevations, the seawater intrusion boundary have changed since the prior reporting period; and c) other sources of water supply are available.

**ATTACHMENT B**

**COSTS AND FEES**

The County shall pay the Agency the fees and necessary expenses for services performed under this MOU. The fees and expenses shall be calculated and charged in accordance with the hourly rates and expense method of billing identified below.

Senior Water Resources Hydrologist: \$154.86 per hour

Associate Water Resources Hydrologist: \$125.98 per hour

Water Resources Hydrologist: \$97.73 per hour

The County will not pay the Agency for travel time. The County will reimburse the Agency for the actual expenses related to the travel in accordance with the terms set forth in the MOU.