

MEMORANDUM OF UNDERSTANDING/AGREEMENT

between

THE MONTEREY COUNTY WATER RESOURCES AGENCY

and

THE SALINAS VALLEY BASIN GROUNDWATER SUSTAINABILITY AGENCY

regarding

TECHNICAL AND PROFESSIONAL ASSISTANCE TO THE SALINAS VALLEY
BASIN GROUNDWATER SUSTAINABILITY AGENCY FOR THE DEVELOPMENT
OF A GROUNDWATER SUSTAINABILITY PLAN

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, the Salinas Valley Basin Groundwater Sustainability Agency (SVBGSA) is an agency formed through a Joint Exercise of Powers Agreement to implement within the Salinas Valley Groundwater Basin (“Basin”) the provisions of the “Sustainable Groundwater Management Act” (SGMA); and

WHEREAS, SGMA requires that for all basins designated as high- or medium-priority and subject to conditions of “critical overdraft”, a Groundwater Sustainability Plan (GSP) be developed and implemented by January 31, 2020; and

WHEREAS, the Basin includes two sub-basins that that are high priority and in critical overdraft condition, requiring a GSP by January 31, 2020, all other sub-basins will require GSPs no later than January 31, 2022; and

WHEREAS, the SVBGSA is currently contemplating a single GSP for the Basin, to be developed and submitted to the California Department of Water Resources no later than January 31, 2020; and

WHEREAS, it is the SVBGSA’s obligation to cause the development and implementation of the GSP; and

WHEREAS, the SVBGSA is lacking in the technical expertise and background information to appropriately develop and implement the GSP; and

WHEREAS, it will be necessary for the SVBGSA to contract with a consultant (“GSP Consultant”), and receive other technical support to develop and implement the GSP; and

WHEREAS, the Agency possesses the necessary technical expertise and background information to assist the SVBGSA and its GSP Consultant in preparation of the GSP; and,

WHEREAS, the Agency is prepared to assist the SVBGSA and its GSP Consultant in its obligation to develop and implement the GSP; and

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

NOW THEREFORE,

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the Agency and the SVBGSA 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 GSP. This MOU may be amended from time-to-time by mutual written agreement of the parties.

2. Obligations of the Parties

A. SVBGSA

i. The SVBGSA will contract with the GSP Consultant to perform the development and implementation of the GSP, and, except as may be specifically agreed to herein or otherwise in writing by the parties, the SVBGSA will be solely responsible for all costs and expenses associated with the development, approval, and implementation of the GSP.

ii. The SVBGSA shall designate an officer or employee who shall oversee the Agency’s performance of its obligations under the MOU (the “GSA Representative”). The SVBGSA shall notify the Agency of the GSA Representative so designated, and may change such designation from time-to-time upon written notice to the Agency.

B. Agency

i. The Agency shall provide to the SVBGSA those services and duties as described under this MOU and in Attachments A and B, as follows:

a. Task A: Cost share between the Agency and the SVBGSA to expedite completion of 2016 Groundwater Extraction Management Systems (GEMS) data processing and reporting.

b. Task B: Non-specific technical and professional assistance to be provided by the Agency to the SVBGSA on an as-needed basis.

ii. The Agency shall assign an officer or employee to undertake the Agency's obligations pursuant to this MOU, who shall be designated the WRA Representative. The SVBGSA 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 SVBGSA's written approval, which approval shall not be unreasonably withheld. In the performance of duties under this MOU, the WRA Representative shall communicate and receive direction from the GSA Representative with respect to all aspects of the Agency's performance of duties hereunder.

iii. Except as specifically provided herein, this MOU does not cover expansion, refinement or modification of the GEMS program, or address Agency implementation of specific elements of the GSP as may be adopted by the SVBGSA.

3. Compensation.

The parties anticipate that the WRA Representative shall be an employee in the hydrologist or engineer class at the Agency. It is agreed by the parties that services may be provided pursuant to this MOU by others than the WRA Representative, but that such services shall also be rendered by Agency employees in the hydrologist or engineer class. The SVBGSA shall pay 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 SVBGSA, which approval shall not be unreasonably withheld.

The parties agree that the cost for services rendered under Task A pursuant to this MOU shall be a onetime agreed upon amount of Eighty-Five Thousand Dollars (\$85,000).

The parties anticipate that the initial budget for the Agency under Task B shall not exceed approximately One Hundred and Twenty-Five Thousand Dollars (\$125,000) per fiscal year for the term of the contract; however, all services shall be billed to the SVBGSA on a time and materials basis as set forth in Attachment B. This amount will be prorated based on the date of execution of this MOU for the remainder of the current Fiscal Year (FY2018). The parties shall revise the budget and amend this MOU as necessary to reflect additional fees and expenses required for services. Proposed increases must be approved by the SVBGSA before any increase charges or expenditures are incurred.

The Agency shall endeavor to provide services pursuant to this MOU in the most cost-effective and efficient manner.

Travel authorized by the SVBGSA will be reimbursed as follows: transportation at actual fare for economy or coach class, to be pre-approved by the SVBGSA; vehicular travel, meals and lodging not to exceed the rates established by the County of Monterey's per diem unless authorized in advance. The SVBGSA will pay for the Agency's travel time if travel is required beyond the boundaries of the County of Monterey.

4. Claims and Payment

Not later than ten working days after the last day of each month, the Agency shall submit to the SVBGSA a claim, on a form or in a format approved by the SVBGSA, 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 SVBGSA 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. 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 GSA Representative shall certify the Agency's claim within fifteen working days, either in the requested amount or in such other amount as the GSA Representative approves in conformity with this MOU. The GSA Representative shall promptly submit such certified claim for payment, and the SVBGSA shall thereafter pay the balance of the certified claim not later than 30 calendar days after receipt of the certified claim.

If for any claim the SVBGSA 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 SVBGSA 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 Agency

The Agency may terminate this agreement at any time for any reason subject to the following:

i. The Agency shall provide written notice to the SVBGSA of its intent to terminate this agreement. Within fourteen days of receipt of such notice (as set forth in Section D, below), the parties shall meet and confer in good faith to determine the reason for the termination, and attempt to resolve the reasons for termination set forth by the Agency.

ii. If the issues cannot be resolved by mutual agreement, the Agency may terminate this agreement upon giving thirty (30) calendar days written notice to the SVBGSA following the meet and confer obligation set forth above.

iii. Upon such termination the Agency shall continue to provide such services as the SVBGSA may require, at the aforesaid rates, until such time as the SVBGSA is able to identify another person or entity to render the necessary services. The SVBGSA shall not unreasonably delay in identifying such substitute person or entity, or in providing written notice that it will not require such substitute person or entity.

iv. The SVBGSA 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 either as agreed to by the parties or set forth in the Agency's notice of termination set forth in paragraph 5.A.ii, above, as may be extended by mutual agreement of the parties, or as required by the provisions of this paragraph 5.A.

B. By the SVBGSA

The SVBGSA may terminate this MOU at any time for its convenience and without cause upon giving thirty (30) calendar days written notice to the Agency. The SVBGSA 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 SVBGSA's notice of termination.

6. Insurance and Indemnification

[need language]

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 SVBGSA, nor shall the Agency assign any monies due or to become due to the Agency hereunder without the previous written consent of the SVBGSA.

B. Independent Contractor

Nothing in this MOU shall be construed or interpreted to make the Agency, the Agency Representative 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 Agency Representative, nor other Agency employees shall for any purposes be considered employees or agents of the SVBGSA.

C. Non-disclosure of Information

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

D. 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 GSA Representative or to the WRA Representative; (2) when personally delivered to the party's principal place of business during normal business hours, 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; or (3) 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:

<p><u>To the Agency:</u></p> <p><u>David E. Chardavoyne, General Manager</u> <u>P.O. Box 930</u> <u>Salinas, CA 93902</u> <u>(831) 755-4860</u> <u>(831) 424-7935 (facsimile)</u></p> <p><u>Copy to:</u></p> <p><u>Jesse J. Avila, Deputy County Counsel</u> <u>168 W. Alisal St., 3rd Floor</u> <u>Salinas, CA 93901</u> <u>(831) 755-5366</u> <u>(831) 755-5283 (facsimile)</u></p>	<p><u>To the SVBGSA:</u></p> <p><u>Gary Petersen, General Manager</u> <u>P.O. Box 1350</u> <u>Carmel Valley, CA 93924</u> <u>(831) 471-7518</u> <u>(831) 471-7508 (facsimile)</u></p> <p><u>Copy to:</u></p> <p><u>Leslie J. Girard, SVBGSA Counsel</u> <u>168 W. Alisal St., 3rd Floor</u> <u>Salinas, CA 93901</u> <u>(831) 755-5365</u> <u>(831) 755-5283 (facsimile)</u></p>
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The addresses and fax numbers in this paragraph may be changed by either party, by giving notice to the other in the manner provided herein.

E. 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 SVBGSA. Any and all subcontracts shall be subject of the provisions contained in this MOU.

F. 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.

G. No Waiver

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

H. 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.

I. 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 Monterey County Superior Court.

J. 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.

K. Authority to Execute

ATTACHMENT 1

The persons executing this MOU on behalf of their respective party represent and warrant that they have, or have received, the proper authority to so execute this MOU.

IN WITNESS WHEREOF, AGENCY and SVBGSA have caused the Memorandum of Understanding to be executed:

Monterey County Water Resources Agency

By _____
David E. Chardavoyne
General Manager

Salinas Valley Basin Groundwater
Sustainability Agency

By _____
Gary Petersen
General Manager

APPROVED AS TO FORM

CHARLES J. MCKEE, County Counsel

By _____
Jesse J. Avila
Deputy County Counsel

APPROVED AS TO FORM

Leslie J. Girard
SVBGSA Counsel

ATTACHMENT A - Services

A. Cost Share to Expedite Completion of 2016 Groundwater Extraction Management System (GEMS) Data Processing and Reporting		\$85,000
Tasks	Agency Staffing Provided	
1. Data Entry	<u>Primary:</u> Technician and Hydrologist	
2. Quality Assurance/Quality Control of Data		
3. Production of 2016 Groundwater Extraction Summary Report	<u>Primary:</u> Hydrologist <u>Secondary:</u> Associate Hydrologist	

B. Technical and Professional Assistance to the SVBGSA		\$125,000 on as-needed basis
Area of Service and Possible Tasks	Agency Staffing Provided	
1. Project Management for GSP Development		
a. Provide/assist oversight of GSP consultant Management of scope of work, project timelines, deliverables	Primary: Associate Hydrologist Secondary: Senior Hydrologist	
b. Assist with oversight of consultant budget; coordinated with Regional Government Services		
c. Stakeholder communication and engagement coordinated with facilitator		
2. Data Acquisition, Processing, and Management		
a. Develop agreements between the Agency, SVBGSA and its consultants for the sharing of proprietary information	Primary: Senior and Associate Hydrologist	
b. Coordinate with consultant on selection or design of a Data Management System (as required by CCR 23 §352.6) to ensure efficient transfer of existing data between SVBGSA, consultant, and Agency.	Primary: Associate Hydrologist Secondary: Hydrologist	
c. Facilitate the transfer of historical data to consultant for use in GSP development.	Primary: Hydrologist Secondary: Technician	
d. Refine and/or enhance ongoing Agency data collection programs to satisfy the timing, format, and extent of data required for GSP development and implementation	Primary: Senior and Associate Hydrologist Secondary: Hydrologist	
e. Implementation of refined/enhanced data collection program(s).	Primary: Hydrologist and Technician	
3. Professional Advising and Technical Support		
a. Professional review of deliverables from GSP consultant	Primary: Associate Hydrologist and Hydrologist	
b. Participation on Technical Advisory Committee	Primary: Senior or Associate Hydrologist Secondary: Hydrologist	
c. Provide consultant with subject-matter expertise on Agency water supply projects (e.g. reservoirs, CSIP, SVWP, Interlake Tunnel) or related requirements (e.g. Flow Prescription, Biological Opinion, HCP) with potential to impact GSP development.	Primary: Senior or Associate Hydrologist or Engineer	
4. Groundwater Model Management		
a. Facilitate transfer and use of Salinas Valley Integrated Hydrologic Model (SVIHM).	Primary: Associate Hydrologist Secondary: Senior Hydrologist	
b. Serve as liaison with USGS for model updates and technical assistance.		
c. Assist with interbasin or inter-GSA coordination of modeling efforts.		

ATTACHMENT B – Agency Rate Structure**Task A: Cost Share to Expedite Completion of 2016 GEMS Data Processing and Reporting**

1. The SVBGSA portion of the cost share for Task A will be a fixed amount of \$85,000.
2. Billing for Task A will be at the rates shown in Attachment B

Task B: Technical and Professional Assistance to the SVBGSA

1. Services will be provided to the SVBGSA under Task B on an as-needed basis.
2. Costs for services provided under Task B will not exceed \$125,000 and will be at the rates shown below in the Agency's rate structure, as may be adjusted from time-to-time.

Job Class Title	Hourly Rate
Senior Water Resources Hydrologist/Engineer	\$ 180.48
Associate Water Resources Hydrologist/Engineer	\$ 154.18
Water Resources Hydrologist/Engineer	\$ 131.97
Water Resources Technician	\$ 100.31