

**EXHIBIT 12-C**

**AGREEMENT BETWEEN THE  
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT AND**

**LSA**

**FOR SECTION 106 CONSULTING SERVICES  
FOR THE RANCHO SAN CARLOS ROAD BANK STABILIZATION PROJECT**

THIS AGREEMENT is entered into this 5<sup>th</sup> day of December 2017, by and between LSA, hereinafter called "Consultant," and the Monterey Peninsula Water Management District, hereinafter called "MPWMD".

**SECTION I  
SCOPE OF SERVICES**

MPWMD hereby engages Consultant for services as set forth in **Exhibit A**, Scope of Work.

**SECTION II  
COMPENSATION**

**A. FEE SCHEDULE**

Fees payable to Consultant for services specified herein shall be in accordance with the Fee Schedule in **Exhibit B**.

**B. METHOD OF PAYMENT**

Payment of fees shall be based on work completed, as documented in monthly billings submitted by Consultant. Work reports shall be rendered in accordance with the schedule shown in **Exhibit C**, Work Schedule. Payments are due and payable within thirty (30) days after receipt of each invoice subject to a finding by MPWMD that work performed has been satisfactory and that payment is for the work specified in **Exhibit A**, Scope of Work. Where MPWMD finds the work to be unsatisfactory, MPWMD shall describe deficiencies in writing to Consultant within ten (10) days. The final invoice for work performed shall be submitted not later than sixty (60) days following completion of such work.

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### C. MAXIMUM PAYMENT

Payments to Consultant for services rendered and expenses incurred under this Agreement **shall not exceed \$ 23,175 without prior written approval from MPWMD.**

### D. LATE PERFORMANCE PENALTY

Time is of the essence to this Agreement. Except for typical Force Majeure circumstances and any delay attributable to MPWMD, in the event Consultant is unable to perform satisfactory work within thirty (30) days of the date such work is due pursuant to Exhibit C, Work Schedule, MPWMD may, in its discretion, withhold an additional ten percent (10%) of the fees which would otherwise be payable pursuant to the fee schedule set forth in Exhibit B.

Except for typical Force Majeure circumstances and any delay attributable to MPWMD, in the event Consultant is unable to perform satisfactory work within sixty (60) days of the date such work is due pursuant to Exhibit C, Work Schedule, MPWMD SHALL withhold twenty percent (20%) of the fees which would otherwise be payable pursuant to the Fee Schedule set forth in Exhibit B, and SHALL reduce the maximum payment stated in Section II, Paragraph C of this Agreement by twenty percent (20%). Said reductions shall be deemed liquidated damages for the untimely performance of work required by this Agreement, and the Consultant shall be deemed to have waived any claim for such fees by reason of his/her failure to perform in a timely fashion.

## SECTION III INSPECTION OF WORK

The books, papers, records and accounts of Consultant or any subconsultants retained by Consultant insofar as they relate to charges for services, or are in any way connected with the work herein contemplated, shall be open at all reasonable times to inspection and audit by the agents and authorized representatives of MPWMD at Consultants Headquarters. Said records shall be retained for a minimum of five (5) years after completion of services.

## 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 MPWMD. Digital data used to generate tables, figures, diagrams, images, Geographical Information System (GIS) or Computer Aided Design (CAD) layers shall be considered separate deliverables and shall be provided to MPWMD after acceptance by MPWMD of the final work product(s).

Global Positioning System (GPS) data deliverables shall include the following:

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- Original rover files, unless otherwise specified by MPWMD
- Base station correction files, unless otherwise specified by MPWMD
- Differentially corrected GPS files, if requested by MPWMD
- Copies of field data collection notes
- Completed documentation sheet for each collection event
- Almanac files are optional

GIS deliverables shall include the following:

- Geospatial dataset [generated from GPS data] in Environmental Systems Research Institute, Inc.'s (ESRI) shapefile format, including a projection file. In this regard, point features shall be generated as point shapefiles, linear features shall be generated as line shapefiles, and area features shall be generated as polygon shapefiles.
- Each geospatial dataset shall be accompanied by documentation sufficient to meet the Content Standard for Digital Geospatial Metadata (CSDGM), Vers. 2 (FGDC-STD-001-1998), dated June 1998.
- Any geospatial dataset derived from new or existing geospatial data in shapefile format, along with an explanation of the methodology used to generate the derived geospatial data.

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 C, Work Schedule. Time is of the essence to this Agreement, and late performance shall result in a waiver of a part of the fees payable pursuant to the terms of this Agreement.

### SECTION VI 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 MPWMD. Consultant shall have exclusive and complete control over his/her employees and subcontractors, and shall determine the method of performing the services hereunder.
- B. MPWMD shall not charge Consultant for providing data and studies. Consultant represents that he/she is familiar with such materials in the possession of MPWMD and that they are sufficient to discharge MPWMD's obligation hereunder.

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- C. MPWMD shall coordinate with Consultant and others 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 MPWMD 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 MPWMD's officers, agents and employees.
- F. The Consultant agrees to indemnify, defend and save harmless MPWMD, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all consultants, subcontractors, material men, laborers and any other person, firm or corporation who may be injured or damaged by the negligent acts, errors, and/or omissions of the Consultant, Consultant's employees, or Consultant's subcontractors or subconsultants in the performance of this Agreement. Consultant shall not have any liability for the negligent acts, errors, and/or omissions of MPWMD or any other third party that is not Consultant's employees, subcontractors or subconsultants during the performance of this Agreement.

### SECTION VII INSURANCE

- A. Consultant shall obtain and keep insurance policies in full force and effect for the following form of coverage:
  - 1. Automobile liability including property damage and bodily injury with a combined single limit of \$300,000.
  - 2. Comprehensive General Liability (CGL) with a combined single limit of \$1,000,000.
  - 3. Consultant shall add to his/her Comprehensive General Liability insurance policy a severability of 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."
  - 4. Worker's Compensation pursuant to provisions of Section 3700 of the California Labor Code.
- B. Consultant shall provide photocopies of his/her current Automobile insurance policy [or policies], including endorsements thereto, or current certificates of insurance in lieu thereof, to MPWMD.

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- C. Consultant shall require any subcontractor to provide evidence of the same insurance coverages specified in VII.A.
- D. Consultant shall provide notice to MPWMD of any cancellation or material change in insurance coverage where MPWMD has been named as an insured, such notice to be delivered to the MPWMD in accord with Section XV of this Agreement at least ten (10) days before the effective date of such change or cancellation of insurance.
- E. Evidence acceptable to MPWMD that Consultant has complied with the provisions of this Section VII shall be provided to the MPWMD, prior to commencement of work under this Agreement.
- F. General Liability and Automobile Liability policies carried by the Consultant shall provide primary coverage instead of any and all other policies that may be in force. MPWMD shall not be responsible for any premium due for the insurance coverages specified in this Agreement.

### SECTION VIII CHANGES AND CHANGED CONDITIONS

- A. If, during the course of the work herein contemplated, the need to change the Scope of Work or the Work Schedule should arise, for whatever reasons, whichever party first identifies such need to change shall notify the other party in writing. 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 Work may also result in a change in the compensation amount. Compensation changes shall be based upon the Consultant Fee Schedule (Exhibit B) attached hereto. Any changes agreed to shall be documented by duly executed amendments to this Agreement.
- B. MPWMD reserves the right to specify individual employees, subcontractors or agents of Consultant who shall be assigned to perform the tasks specified in Exhibit A, Scope of Services. If, during the course of the work herein contemplated, there is a change such that the specified individual employees, subcontractors or agents are no longer assigned to the work described in this contract and/or are no longer affiliated with Consultant, Consultant shall immediately notify MPWMD in writing. Consultant shall relinquish the rights to this contract, if requested by MPWMD, as part of termination proceedings pursuant to Section IX, Termination.

### SECTION IX TERMINATION

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- A. MPWMD 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 MPWMD that this Agreement is terminated, Consultant shall submit an invoice for an amount that 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 MPWMD, 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.
- B. Upon receipt of written notice of termination, the Consultant shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to MPWMD, copies, including magnetic media, of data, design calculations, drawings, specifications, reports, estimates, summaries and other such information and materials as may have been accumulated by the Consultant in performing the services under this Agreement.

### 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 MPWMD. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

### 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, 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."

During the performance of this Agreement, Consultant and its contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Consultant and its contractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and its contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the

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applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

### 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.

### 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 of violation of this warranty, MPWMD 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 five (5) working days of receipt of such a statement of conflict, the second party will respond and a meeting will be arranged not more than five (5) working days thereafter to arrive at a negotiated settlement or procedure for settlement. If, within twenty (20) 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.

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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:

MPWMD:            Larry Hampson, District Engineer  
                      Monterey Peninsula Water Management District  
                      5 Harris Court, Building G  
                      or  
                      P. O. Box 85  
                      Monterey, CA 93942-0085  
  
                      Tel. (831) 658-5620

CONSULTANT:    Neil Kaptain  
                      LSA  
                      157 Park Place  
                      Pt. Richmond, California 94801  
  
                      Tel. (707) 822-8478

SECTION XVI  
AMENDMENTS

This Agreement together with **Exhibits A, B, and C** 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 Work
- Exhibit B.** Fee Schedule
- Exhibit C.** Work Schedule

**IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as**



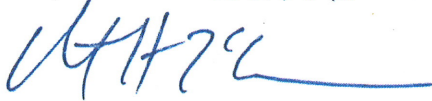
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of the day and year first above written.

**MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**

  
\_\_\_\_\_  
BY: David J. Stoldt, General Manager

CONSULTANT *LSA Associates, Inc*

  
\_\_\_\_\_  
BY: Rob McCann, CEO

FEDERAL TAX IDENTIFICATION NUMBER: ~~02-0373462~~ *94-2341614*

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### EXHIBIT A – SCOPE OF WORK

**Task 1: Prepare Area of Potential Effects (APE) Map.** LSA will prepare an Area of Potential Effects (APE) map, as required by Section 106, that depicts the area of project ground disturbance. Preparation of the APE map will require CAD or GIS files of the project to be provided by the District. \$1,500.

**Task 2: Consult Interested Parties.** LSA will conduct interested parties consultation outreach, as part of the requirements of Section 106, by contacting the Native American Heritage Commission (NAHC), Native Americans contacts on the NAHC contacts list including the Rumsen Tribe, and local Historical Societies, to request information or concerns they might have regarding cultural resources in the APE. An LSA archaeologist will attend two meetings with tribal representatives to discuss their concerns regarding the plant resource in the APE.

\*\*\*Please note\*\*\* that formal consultation may be requested between interested tribal organizations and the Corps, as the federal lead agency responsibility under 36 CFR Part 800, the regulations that implement Section 106. LSA may assist the Corps in its consultation with tribal organizations, but only in a technical capacity and subject to approval from the consulting parties for such involvement due to the government-to-government nature of such consultation. Because the nature and extent of this consultation is unknown as this time, that consultation process (beyond the outreach letters and meetings described in this proposal) are not included in this scope and fee.

**Task 3: Perform Records Search.** LSA will conduct a records search at the Northwest Information Center (NWIC) in Rohnert Park, California, to identify whether a part or all of the APE has been previously surveyed for cultural resources; whether any known cultural resources have been recorded on or adjacent to the APE; and whether the APE's sensitivity for archaeological cultural resources is low, moderate, or high.

**Task 4: Perform Background Research.** LSA will conduct background research using online resources and literature at LSA to identify the historic context and past history of the APE. This information will be used to determine if there is a potential for significant buried cultural resources on the property. If subsurface archaeological testing is required by the Corps, such testing would necessitate an augment to the scope.

**Task 5: Perform Archaeological Field Survey.** LSA will conduct a field survey of the APE.

**Task 6: Sedge Recording.** LSA will prepare California Department of Parks and Recreation 523 Series forms that document the boundary and contents of the resource. The forms will be appended to the report of findings.

**Task 7: Prepare Report of Findings.** Following the completion of the tasks outlined above, a report of findings will be prepared which describes the results of the records search, interested parties consultation, background research, and field survey. The report of findings will be prepared in accordance with the Corps' March 24, 2014, *Guidelines for Compliance with Section 106 of the National Historic Preservation Act* and the guidelines specified in *Detailed Recommendations for Section 106 Consultation Submittals*, and *Archaeological Resource Management Reports (ARMR): Recommended Contents and Format*, developed by the California Office of Historic Preservation (OHP), February 1990.

**Assumptions:**

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- LSA has budgeted eight hours to respond to comments on the report of findings.
- In addition to the sedge, if any other cultural resources are identified in or adjacent to the APE, a budget augment will be necessary to record or evaluate them.

**The required tasks listed above can be completed for a budget not to exceed \$19,390.**

### **Optional Tasks:**

If requested, LSA will complete the following optional tasks:

**ESA Action Plan.** If the Corps determines that the sedge concentration can be protected by the implementation of an ESA, LSA will prepare an ESA Action Plan that will present the procedures for installing, monitoring, and removing an ESA fence. Implementation of the plan would require a budget augment. LSA has budgeted four hours to respond to comments on the ESA Action Plan.

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**EXHIBIT B – FEE SCHEDULE**

<b>Task</b>	<b>Cost (\$)</b>
<b>Task 1: Prepare Area of Potential Effects (APE) Map</b>	1,500
<b>Task 2: Consult Interested Parties</b>	4,440
<b>Task 3: Perform Records Search</b>	1,635
<b>Task 4: Perform Background Research</b>	800
<b>Task 5: Perform Archaeological Field Survey</b>	1,050
<b>Task 6: Sedge Recording</b>	2,845
<b>Task 7: Prepare Report of Findings</b>	7,120
<b>ESA Action Plan (optional)</b>	3,785
<b>Total</b>	<b>\$ 23,175</b>

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**EXHIBIT C – WORK SCHEDULE**

Work under this Agreement is expected to be initiated in November 2017 and completed as follows:

**Task 1 – Task 6**

Within 75 days of execution of an agreement.

**Optional Task – ESA Action Plan**

Within 30 days of notification to proceed with optional work.

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