

JUL 01 2004

**AGREEMENT FOR EMPLOYMENT  
OF GENERAL MANAGER**

MPWMD

This Agreement is made and entered into this 21<sup>st</sup> day of June 2004, by and between the MONTEREY PENINSULA WATER MANAGEMENT DISTRICT (the "DISTRICT") and DAVID A. BERGER ("BERGER"). This Agreement (the "Agreement") shall have an effective date of June 21, 2004. In consideration of the mutual covenants contained herein, the parties agree as follows:

**I. EMPLOYMENT.****A. Appointment of General Manager.**

The Board of Directors of the DISTRICT hereby appoints DAVID A. BERGER to the position of General Manager of the MONTEREY PENINSULA WATER MANAGEMENT DISTRICT to perform the functions and duties set forth in Exhibit A (as amended from time to time), and to perform such other duties and functions reasonable and customary to the General Manager position as the Board of Directors shall from time to time assign. BERGER is an at-will employee and shall serve at the pleasure of the Board of Directors. BERGER shall report for duty commencing July 12, 2004.

**B. Term of Agreement.**

1. The initial term of this Agreement shall be approximately two (2) years, commencing on the date shown in Section I A above, and expiring on June 30, 2006. The parties agree that no later than February 28, 2006, the parties shall meet to discuss renewal of this Agreement. The Board of Directors shall meet to decide on such renewal within 30 days thereafter.

2. Nothing in this Agreement shall prevent or otherwise interfere with the right of the DISTRICT to terminate this Agreement without cause at any time, or the right of BERGER to resign at any time from his position, as set forth below in Section I C 1.

**C. Termination of Employment.**

1. The Board of Directors may terminate this Agreement during its term without cause, by providing BERGER one hundred eighty (180) days written notice. Full salary and benefits due BERGER under this Agreement will continue to be provided to him during this

notice period, if exercised. Such advance notice, or salary and benefits shall not be required in the event BERGER: (1) is terminated after being convicted of a felony or a misdemeanor involving fraud, embezzlement, misappropriation of funds, or theft, (2) voluntarily resigns, or (3) is permanently incapable for medical reasons of performing the duties of the General Manager.

2. BERGER may terminate this Agreement by giving the DISTRICT sixty (60) days' written notice in advance of termination, at the end of which period this Agreement will terminate, unless the DISTRICT and BERGER otherwise agree. Upon termination, whether voluntary or otherwise, BERGER shall be paid for all accrued, but unused, vacation, sick leave, and holiday time pursuant to the provisions of the DISTRICT'S Personnel Policy Manual ("Personnel Manual") then in effect.

3. Notice pursuant to this Agreement shall be in writing given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

a. DISTRICT: Board of Directors  
Monterey Peninsula Water Management District  
P. O. Box 85  
Monterey, CA 93942

b. BERGER: DAVID A. BERGER  
104 Latham Street  
Piedmont, CA 94611

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

## **II. POWERS, DUTIES AND RESPONSIBILITIES.**

### **A. Employment Duties.**

BERGER shall function as the General Manager of the DISTRICT and shall be vested with the powers, duties and responsibilities set forth in the position of General Manager which are indicated either in Exhibit A or the adopted job description, the terms of which are incorporated herein by reference. The Board of Directors may modify the employment duties of the General Manager from time to time by exercise of its sole discretion, provided all assigned duties shall be reasonable and customary for the General Manager position. In addition,

BERGER shall perform such other duties as may be assigned by the Board of Directors, and which are consistent, reasonable and customary with the position of General Manager, without additional compensation. BERGER is an at-will employee and shall serve at the pleasure of the Board of Directors.

**B. Hours of Work.**

BERGER is expected to devote necessary time outside normal office hours to business of the DISTRICT. BERGER shall maintain regular office hours at the offices of the DISTRICT during customary business hours, except when absent in the proper performance of his duties and responsibilities as General Manager.

**C. Outside Professional Activities.**

BERGER agrees to devote his full productive time, ability, efforts and attention to the DISTRICT'S business during the term of this Agreement. BERGER may undertake limited outside activities, such as (a) serving as an officer of a professional organization, or (b) other related activities, only upon advance written request and in accord with the prior written authorization of the Board of Directors, and only provided those activities do not in any way interfere with or adversely affect his employment as General Manager or the performance of his duties as provided herein.

**III. COMPENSATION OF BERGER.**

**A. Salary.**

1. Upon employment and during the period ending December 31, 2004, BERGER shall receive a salary at the rate of One Hundred Twenty Five Thousand Dollars (\$125,000) per year.

2. Effective January 1, 2005, assuming the Board of Directors determines that BERGER's 6-month performance evaluation for the period ending December 31, 2004 has met or exceeded objectives and expectations established pursuant to Section IV, BERGER shall receive a salary at the rate of One Hundred Thirty Two Thousand Dollars (\$132,000) per year.

3. Effective July 1, 2005, assuming the Board of Directors determines that BERGER's 12-month performance evaluation for the period ending June 30, 2005 has met or exceeded objectives and expectations established pursuant to Section IV, BERGER shall receive a salary at the rate of One Hundred Thirty Five Thousand Dollars (\$135,000) per year.

**B. Vacation, Holiday and Sick Leave.**

BERGER shall accrue vacation, sick leave and holiday leave at the same level, and subject to the same use provisions, as apply to senior management employees pursuant to the District Personnel Manual. BERGER may take an advance against future earned leave, but any leave that is taken shall be then deducted from leave as it is later accrued.

**C. Management Benefits.**

BERGER shall receive all benefits provided to senior management employees of the DISTRICT pursuant to the Personnel Manual, and shall further receive a monthly automobile allowance of Three Hundred Dollars (\$300) per month, and additional reimbursement for mileage for travel outside of DISTRICT boundaries as provided in the Personnel Manual.

Upon authorization of the Board, and in lieu of the monthly automobile allowance and additional mileage reimbursement set forth above, the DISTRICT may elect, in its sole discretion, to provide BERGER with exclusive use of a DISTRICT vehicle for use during business and non-business periods, and for which DISTRICT will bear all costs to operate and maintain.

BERGER shall receive management leave at the same level, and subject to the same use provisions, as apply to senior management employees of the DISTRICT pursuant to the District Personnel Manual.

**D. Associations, Subscriptions and Licenses.**

The DISTRICT shall budget and pay the actual and necessary dues of BERGER relating to participation in the Association of California Water Agencies (ACWA), or such other professional organizations and subscriptions as approved by the Board of Directors.

**E. Health, Dental, Vision, Life and Disability Insurance.**

BERGER shall receive all health, vision, life insurance, short-term disability and long-term disability insurance benefits at the same level, and subject to the same use provisions, as apply to senior management employees of the DISTRICT, including dependent coverage as appropriate, pursuant to the Personnel Manual.

DISTRICT shall budget and pay the actual and reasonable non-reimbursable medical costs for one (1) full physical exam for BERGER during the second year of this Agreement. BERGER shall provide the results of this exam to the DISTRICT.

**F. Relocation Benefit.**

Upon invoice from BERGER, the DISTRICT shall pay to BERGER all actually incurred, reasonable and necessary moving expenses, not to exceed the lowest of three (3) bids obtained prior to the move.

Upon invoice from BERGER, the DISTRICT shall pay to BERGER the sum of One Thousand Five Hundred Dollars (\$1,500) per month to partially fund BERGER's actual temporary housing expenses for a period not to exceed three (3) months. This benefit shall be non-recurring.

**G. Bonding.**

The DISTRICT shall bear the full cost of any fidelity or other bond required of BERGER by reason of his employment as General Manager.

**H. Deferred Compensation.**

During the period commencing with BERGER's employment and ending June 30, 2005, the DISTRICT shall budget and pay into a deferred compensation program the sum that matches BERGER's actual contribution to that deferred compensation plan, not to exceed one (1%) percent of BERGER's annual salary.

During the period commencing July 1, 2005 and ending June 30, 2006, the shall DISTRICT budget and pay into a deferred compensation program the sum that matches BERGER's actual contribution to that deferred compensation plan, not to exceed two (2%) percent of BERGER's annual salary.

**IV. PERFORMANCE EVALUATION.**

The Board of Directors shall review and evaluate the performance of BERGER in writing at least once during his first six (6) months of employment, and at least once at the end of his first twelve (12) months of employment. Thereafter, BERGER shall be evaluated at least once each year. This performance evaluation will be based on performance objectives and expectations established by the Board of Directors, in consultation with BERGER, within 60 days following his start date with the DISTRICT.

**V. MISCELLANEOUS PROVISIONS.**

A. The text herein shall constitute the entire Agreement between the parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of BERGER.

C. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

D. In the event either party to this Agreement brings a judicial proceeding to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and related expenses and costs, including but not limited to court costs, expert witness fees and expenses, and accountant fees and expenses. Recovery of these fees and costs shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

E. The laws of the State of California shall govern this Agreement. Venue shall be in the County of Monterey.

F. This Agreement is the product of negotiation and preparation by and among parties represented by counsel. Both sides and their counsel have reviewed and have had the opportunity to revise this Agreement. The parties waive the provisions of Section 1654 of the Civil Code of California and any other rule of construction to the effect that ambiguities are to be resolved against the drafting party, and the parties warrant and agree that the language of this Agreement shall neither be construed against nor in favor of any party.

IN WITNESS WHEREOF, DAVID A. BERGER has signed and executed this Agreement, in duplicate, on the day and year first written above.

GENERAL MANAGER



DAVID A. BERGER

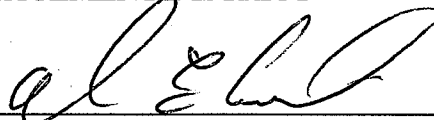
//

//

IN WITNESS WHEREOF, the DISTRICT has caused this Agreement to be signed and executed in its behalf by its Chairman who has signed and executed this Agreement, both in duplicate, on the day and year first written above.

MONTEREY PENINSULA WATER  
MANAGEMENT DISTRICT

By:



ALVIN EDWARDS, Chairman

u/MPWMD (new)/Contract/2004GM K (final) – Berger .doc

## Exhibit A

### Functions and Duties of the Monterey Peninsula Water Management District General Manager

This Exhibit A presents a descriptive list of the range of duties performed by General Manager; it is *not* intended to reflect all duties performed within the job.

The Board of Directors may modify the functions and duties of the General Manager from time to time by exercise of its sole discretion. In addition, the General Manager shall perform such other duties as may be assigned by the Board of Directors.

#### DEFINITION

The General Manager is to plan, direct, manage and oversee the activities and operations of the Monterey Peninsula Water Management District, including administrative services, planning and engineering, water resources and water demand divisions; to coordinate assigned activities with other agencies and organizations; and to provide highly responsible and complex administrative support to the Board of Directors.

#### SUPERVISION RECEIVED AND EXERCISED

Receives policy direction from the Board of Directors.

Exercises direct supervision over management, supervisory, professional, technical and clerical staff.

Provides liaison to District General Counsel.

#### ESSENTIAL FUNCTIONS

Essential responsibilities and duties of the General Manger may include, but are not limited, to the following:

1. Assume full management responsibility for all District services and activities including water management, planning, environmental mitigation, conservation and restoration programs; recommend and administer policies and procedures.
2. Manage the development and implementation of District goals, objectives, policies, and priorities for each assigned service area.

//



3. Establish, within District policy, appropriate service and staffing levels; monitor and evaluate the efficiency and effectiveness of service delivery methods and procedures; allocate resources accordingly.
4. Plan, direct and coordinate, through subordinate level managers, the District's work plan; assign projects and programmatic areas of responsibility; review and evaluate work methods and procedures; meet with management staff to identify and resolve problems.
5. Assess and monitor work load, administrative and support systems, and internal reporting relationships; identify opportunities for improvement; direct and implement changes.
6. Maintain the District's water resources simulation model (CVSIM); calibrate and document the model and application.
7. Prepare agenda and presentations for Board meetings; meet with the Chairman and Vice Chairman; run Board meetings.
8. Review bid packets, scope of work agreements and requests for proposals; execute agreements and contracts.
9. Develop the District's long-range water supply strategy/plan.
10. Select, train, motivate and evaluate District personnel; provide or coordinate staff training; work with employees to correct deficiencies; implement discipline and termination procedures.
11. Oversee and participate in development and administration of the District budget; approve the forecast of funds needed for staffing, equipment, materials, and supplies; approve expenditures and implement budgetary adjustments as appropriate and necessary.
12. Explain, justify and defend District programs, policies, and activities; negotiate and resolve sensitive and controversial issues.
13. Represent the Monterey Peninsula Water Management District to elected officials and outside agencies; coordinate District activities with other local government organizations.
14. Provide staff assistance to Board of Directors; serve as Secretary of the Board; participate on a variety of commissions and committees; prepare and present staff reports and other necessary correspondence.
15. Attend and participate in professional group meetings; stay abreast of new trends and innovations in the field of water resources management.
16. Respond to and resolve difficult and sensitive citizen inquiries and complaints.
17. Perform related duties and responsibilities as required.