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AGREEMENT FOR VEHICLE MAINTENANCE SERVICES

City of Monterey and Monterey Peninsula Water Management District

THIS AGREEMENT for Vehicle Maintenance Services is made and entered into this ____ day of _____, 201__, by and between the City of Monterey (hereinafter "Monterey"), a municipal corporation, as the service provider, and the Monterey Peninsula Water Management District (hereinafter "MPWMD").

WHEREAS, MPWMD desires to utilize the City of Monterey for vehicle maintenance services, as outlined in detail in the attached **Exhibit A**; and

WHEREAS, Monterey is willing and qualified to provide such services to MPWMD upon the terms and conditions set forth herein; and

WHEREAS, California Government Code section 54981 provides the City Council of Monterey and Board of Directors of MPWMD with the authority to contract for performance of municipal services by the former within the territory of the later; and

WHEREAS, the City of Monterey authorized this agreement on _____, 2012 by the passage of Resolution No. [_____]; and

WHEREAS, the MPWMD authorized this agreement on _____, 2012 ~~by the passage of Resolution No. [_____]~~;

NOW, THEREFORE, in consideration of the recitals and the mutual obligations of the parties as herein expressed, Monterey and MPWMD agree as follows:

1. **SERVICES TO BE PROVIDED.** MPWMD hereby engages Monterey to perform, and Monterey hereby agrees to perform, the services described in Exhibit A in conformity with the terms of this Agreement.

1.01. **FINAL DECISION AUTHORITY.** MPWMD's Planning and Engineering Manager shall have final decision authority over the results of the services performed on behalf of MPWMD, and all work performed by Monterey shall be to the satisfaction of MPWMD's Planning and Engineering Manager. In instances where a dispute arises over the Planning and Engineering Manager determination, MPWMD's General Manager shall render a final decision.

1.02. **DUTIES OF MONTEREY AND MPWMD.** See **Exhibit A**.

1.03. **EXTRA WORK.** Monterey shall not perform extra work without written authorization from MPWMD's General Manager or designee. Any extra work so authorized shall be within the general scope of work set forth in this Agreement.

2. **PAYMENTS BY MPWMD.** MPWMD shall pay Monterey in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this agreement. Fees are generally based on percentage of fees collected by the MPWMD.

3. **TERM OF AGREEMENT.**

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3.01. **INITIAL TERM.** The term of this Agreement shall be from June 30, 2012 through June 30, 2017, unless sooner terminated pursuant to the terms set forth in section 7 herein.

3.02. **EXTENSIONS.** This Agreement may be extended by up to five (5) consecutive one (1) year periods, or for shorter extension periods as agreed to by the parties, by written mutual agreement of both parties' City Managers specifying the renewal and end dates. At the time of any extension, or at any other time as may be necessary during the term of the Agreement, the labor rates schedule (**Exhibit A**) may be adjusted by written agreement between the City Managers of each party. Should either party decide not to extend the Agreement beyond the initial one (1) year or subsequent one (1) year terms, notice of such decision shall be provided to the other party no later than 30 days before the expiration date of the Agreement.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement.

Exhibit A Scope of Services/Payment Provisions

5. **PERFORMANCE STANDARDS.**

5.01. Monterey warrants that Monterey and Monterey's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed (if applicable) to perform the work and deliver the services required under this Agreement, and that they are not employees of MPWMD.

5.02. Monterey, its agents, employees and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

5.03. Monterey shall furnish all materials, equipment, and personnel necessary to carry out the specific services set forth in **Exhibit A** herein, except as otherwise specified in this Agreement. Monterey shall not use MPWMD's premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

5.04. Monterey shall perform all services set forth in **Exhibit A** in a timely manner consistent with the time Monterey would perform similar services within its own jurisdiction whenever possible; however, Monterey projects shall be given priority over MPWMD projects if scheduling conflicts arise and Monterey shall not be liable for any delays in performing MPWMD's work if such delays are caused by such scheduling conflicts.

6. **PAYMENT CONDITIONS.**

6.01. Payment for Monterey's services under this Agreement shall be made by MPWMD upon the monthly submission to MPWMD by Monterey of an invoice for services rendered by Monterey in the preceding month. Payment shall be made within thirty (30) days after receipt of such invoice. An additional two percent (2%) will be paid as a late payment carrying charge for each thirty days of delinquency thereafter. Any disputed invoices shall be brought to Monterey's attention within ten (10) days of receipt or invoices will be deemed acceptable.

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6.02. MPWMD and Monterey acknowledge that there may be partially completed projects at both the beginning and the end of term of this Agreement or any extensions thereof. There will therefore be cases when applicant fees have been paid to MPWMD prior to the beginning of the term of this Agreement but the project is completed during the term of this Agreement, resulting in Monterey providing services on a project during the term of this Agreement but not receiving a percentage of the fees paid to MPWMD for that project. There will also be cases when applicant fees are paid to MPWMD during the term of this Agreement or any extensions thereof, but the project is not completed during the term of the Agreement or any extensions thereof, resulting in Monterey receiving a percentage of the fees for that project but not completing the services on that project. MPWMD and Monterey agree that the payments to Monterey as provided in **Exhibit A** shall be deemed fair compensation for the work provided by Monterey during the term of this Agreement, regardless of the partially completed projects at the beginning and the end of the term of this Agreement or any extensions thereof.

6.03. Monterey shall receive payment for work performed pursuant to the payment provisions set forth in **Exhibit A**, regardless of whether MPWMD elects to charge fees. For projects subject to waivers of fees, MPWMD shall calculate the amount of fees otherwise due, and pay Monterey accordingly.

6.04. Monterey shall not receive reimbursement for travel expenses unless set forth in **Exhibit A** herein.

7. TERMINATION.

7.01. During the term of this Agreement, either party may terminate the Agreement for any reason by giving written notice of termination to the other party at least 30 days prior to the effective date of termination. In the event of an adverse claim or litigation involving either party and related to the services of this Agreement, this Agreement may be terminated by either party giving written notice at least 10 days prior to the effective date of termination. Any termination notice shall set forth the effective date of termination.

7.02. MPWMD may cancel and terminate this Agreement for good cause effective immediately upon written notice to Monterey. "Good cause" includes the failure of Monterey to perform the required services at the time and in the manner provided under this Agreement. If MPWMD terminates this Agreement for good cause, MPWMD may be relieved of the payment of any consideration to Monterey, and MPWMD may proceed with the work in any manner which MPWMD deems proper. The cost to MPWMD shall be deducted from any sum due Monterey under this Agreement.

7.03. Monterey may cancel and terminate this Agreement for good cause effective immediately upon written notice to MPWMD. "Good cause" includes but is not limited to failure of MPWMD to pay Monterey at the time and in the manner provided under this Agreement or other failure of MPWMD to fulfill its responsibilities set forth in **Exhibit A** herein. Termination of this Agreement pursuant to this section shall not be construed to limit Monterey's right to obtain, by any means available at law, the amount MPWMD still owes Monterey.

8. **IMMUNITY.** As MPWMD's authorized representative, Monterey shall be recognized as having rights to any immunities it is entitled to. In no event shall any duties contained in **Exhibit A**, or otherwise herein, negate any legal protections or immunities available to the parties under local, state or federal law. Monterey's liability, including, without

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limitation, that referenced in Section 9 herein, shall be limited to an amount not to exceed the fee earned for each project.

9. INDEMNIFICATION.

9.01 Each party shall indemnify, defend and hold harmless the other party, to the extent allowed by law and in proportion to fault, against any and all third-party liability for claims, demands, costs or judgments (direct, indirect, incidental or consequential) involving bodily injury, personal injury, death, property damage or other costs and expenses (including reasonable attorneys' fees, costs and expenses) arising or resulting from the acts or omissions of its own officers, agents, employees or representatives carried out pursuant to the obligations of this Agreement.

9.02 Each party will protect, defend, indemnify and hold harmless the other party (including their officials, employees and agents as the same may be constituted now and from time to time hereafter) from and against any and all liabilities, losses, damages, expenses or costs, whatsoever (including reasonable attorneys' fees, costs and expenses), which may arise against or be incurred by the other party as a result of or in connection with any actual or alleged breach of this Agreement by either party.

9.03 These indemnity provisions shall survive the termination or expiration of this Agreement. Further, each party will be liable to the other party for attorneys' fees, costs and expenses, and all other costs and expenses whatsoever, which are incurred by the other party in enforcing these indemnity provisions.

11. INSURANCE

10.01 Each party shall maintain in effect, at its own cost and expense, the following insurance coverage provided either through a bonafide program of self-insurance, commercial insurance policies, or any combination thereof as follows:

10.02 Commercial General Liability or Public Liability with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

a. Auto Liability including owned, leased, non-owned, and hired automobiles, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

b. If a party employs others in the performance of this Agreement, that party shall maintain Workers' Compensation in accordance with California Labor Code section 3700 with a minimum of \$1,000,000 per occurrence for employer's liability, for the duration of time that such workers are employed.

c. Each party shall maintain in effect throughout the term of this agreement all risk property insurance, excluding earthquake and flood, on all permanent property of an insurable nature in an amount sufficient to cover at least 100% of the replacement costs of said property.

10.03 All insurance required by this Agreement shall:

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a. Be placed (1) with companies admitted to transact insurance business in the State of California and with a current A.M. Best rating of no less than A:VI or with carriers with a current A.M. Best rating of no less than A:VII; or (2) disclosed self-insurance with limits acceptable to the other party.

b. Provide that each party's insurance is primary and non-contributing insurance to any insurance or self-insurance maintained by the other party and that the insurance of the other party shall not be called upon to contribute to a loss covered by a party's insurance.

c. Subsequent to execution of this Agreement, each party shall file certificates of insurance with the other party evidencing that the required insurance is in effect.

11. **NON-DISCRIMINATION.** During the performance of this Agreement, Monterey, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in Monterey's employment practices or in the furnishing of services to recipients. Monterey shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. Monterey and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, Monterey is at all times acting and performing as an independent contractor and not as an employee of MPWMD. No offer or obligation of permanent employment with MPWMD or particular MPWMD department or agency is intended in any manner, and Monterey shall not become entitled by virtue of this Agreement to receive from MPWMD any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits.

13. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to MPWMD's and Monterey's contract administrators at the addresses listed below:

FOR MPWMD: David Stoldt General Manager	FOR MONTEREY: Fred Meurer City Manager
5 Harris Court, Building G P.O. Box 85 Monterey, CA 93942	City Hall Monterey, CA 93940
Ph: (831) 658-5600	Ph. (831) 646-3760

14. **MISCELLANEOUS PROVISIONS.**

14.01. Conflict of Interest. Monterey represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement which would directly or

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indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.

14.02. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by MPWMD and Monterey.

14.03. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by MPWMD and Monterey. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

14.04. Contractor. The term "Monterey" as used in this Agreement includes Monterey's officers, agents, and employees acting on Monterey's behalf in the performance of this Agreement.

14.05. Disputes. Monterey shall continue to perform under this Agreement during any dispute. Monterey and MPWMD hereby agree to make good faith efforts to resolve disputes as quickly as possible. In the event any dispute arising from or related to this Agreement results in litigation or arbitration, the prevailing party shall be entitled to recover all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers (whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

14.06. Assignment and Subcontracting. Monterey shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of MPWMD. None of the services covered by this Agreement shall be subcontracted without the prior written approval of MPWMD. Notwithstanding any such subcontract, Monterey shall continue to be liable for the performance of all requirements of this Agreement.

14.07. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of MPWMD and Monterey under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

14.08. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

14.09. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

14.10. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.

14.11. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

14.12. Non-exclusive Agreement. This Agreement is non-exclusive and both MPWMD and Monterey expressly reserve the right to contract with other entities for the same or similar services.

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14.13. Construction of Agreement. MPWMD and Monterey agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

14.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

14.15. Authority. Any individual executing this Agreement on behalf of MPWMD or Monterey represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

14.16. Integration. This Agreement, including the exhibits and any documents incorporated by reference, represent the entire Agreement between MPWMD and Monterey with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between MPWMD and Monterey as of the effective date of this Agreement, which is the date that MPWMD signs the Agreement.

14.17. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

14.18. Severability. If any of the provisions contained in the Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of the Agreement for any cause. If a part of this Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

IN WITNESS WHEREOF, MPWMD and Monterey have executed this Agreement as of the day and year written on the first page herein.

CITY OF MONTEREY

MPWMD

By: _____
City Manager

By: _____
General Manager

Approved as to form:

Approved as to form:

Monterey City Attorney

MPWMD City Attorney

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EXHIBIT A

SCOPE OF SERVICES/PAYMENT PROVISIONS

MPWMD VEHICLE MAINTENANCE SERVICES

Monterey agrees to provide MPWMD the same services as currently provided the City of Monterey vehicle fleet. Said services shall include, but are not limited to, mechanical maintenance and vehicle repair.

I. City of Monterey Responsibilities:

- 1) All preventative maintenance (PM) services will be done based on Monterey's fleet experience. PM service charges include all fluid, parts, and labor relative to performing the service.
- 2) Repairs, component replacement, and repair estimates will be done on an actual time/material basis. The current contractual labor rate is **\$102.00 per hour** and is the same rate that is being applied for City of Monterey vehicle maintenance services. The labor rate is subject to change and Monterey shall give a 30-day written notice before any changes are made. Repair parts will be acquired through City of Monterey Mechanical purchasing and charged back to internal and external customers at cost plus 8%. An additional 2% charge will be added to each work order to cover miscellaneous items such as waste disposal, small parts, spray lubes, etc. Parts and labor estimates for major repairs will be given and MPWMD must approve all major repair work in advance.
- 3) Monterey reserves the right to prioritize and decline work in the event of scheduling conflicts, emergencies, or lack of expertise in a given area.
- 4) Monterey Automotive Mechanics have authorization to approve and conduct repair work up to \$350 (eg. air filters, wiper blades). All repairs over \$350 must be pre-approved by MPWMD's designated point of contact.
- 5) Monterey agrees to supply fuel to all vehicles owned by and registered to MPWMD. Fuels normally dispensed to Monterey's fleet (i.e. gasoline & diesel fuel) will be available at Monterey's Card Lock Station at the Corporation Yard, 21 Ryan Ranch Road. All authorized vehicles and personnel will be issued cards and instructions for using Monterey's Card Lock Fuel Station.
- 6) Fuel will be charged to all customers (internal and external) at 5% over cost to Monterey, to cover the cost of fuel pump maintenance and fuel management software. MPWMD will be invoiced at the beginning of the month for the preceding month's fuel. A complete log of all vehicle fuel records will accompany each invoice for the month being invoiced. Payment is due and payable no later than 30 days after receipt of invoice by MPWMD. A 10% late payment penalty will be assessed for any payment received after the 30 day deadline.

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II. Preventative Maintenance Schedule

Preventative maintenance services will be performed at 5,000 mile or 100 hour intervals. The preventative maintenance services will include: oil and filter change, chassis lube and top off all fluids. It will also include tire rotation and inspection of the brakes, tires, frame, suspension, exhaust, body, and interior, as well as all under hood components (i.e. belts, hoses, etc.). Other levels of service will be performed according to the vehicle manufacturers' recommendations.

III. MPWMD Responsibilities

All of MPWMD's vehicles requiring service or repair shall be delivered and picked up at Monterey's Corporation Yard at Ryan Ranch by MPWMD personnel. Preventative maintenance and repairs will be invoiced to MPWMD upon completion of work. Payment is due by MPWMD 30 days after receipt of each invoice from Monterey. A 10% late payment penalty will be assessed for any payment received after the 30 day deadline.