

DRAFT
AGREEMENT BETWEEN

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

AND

WELLMANAD

FOR
PUBLIC OUTREACH SERVICES

THIS AGREEMENT is entered into this ___th day of October 2022, by and between Phil Wellman, a sole proprietor d.b.a. WellmanAd, hereafter called "Agency," and the Monterey Peninsula Water Management District hereafter called "District".

SECTION I - SCOPE OF SERVICES

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

SECTION II – COMPENSATION

A. FEE SCHEDULE

Fees payable to Agency 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 Agency to District. Payments are due and payable within thirty (30) days after receipt of each invoice subject to a finding by District that work performed has been satisfactory and that payment is for the work specified in **Exhibit A**, Scope of Work. Where District finds the work to be unsatisfactory, District shall describe deficiencies in writing to Agency within ten (10) working days of receipt of invoice.

C. MAXIMUM PAYMENT

Payments to Agency for retained services rendered under this Agreement **shall not exceed \$7,875** per month without the prior written consent of the District. Out-of-pocket expenses incurred will be paid separately from retained services, but only upon presentation of documentation of the expense(s) and pre-approval of the District General Manager.

The Agency agrees to perform the services provided for in Exhibit A, 'Scope of Work' attached hereto and incorporated by reference as though fully set forth herein, provided that the Agency shall not be obligated to perform any services not described in the Scope of Work. Changed

or additional services shall be subject to negotiation of a new or amended Scope of Work, Budget, and Schedule and shall be authorized by amendment to this Agreement and approved as required by law.

SECTION III - INSPECTION OF WORK

The books, papers, records and accounts of Agency or any subconsultants retained by Agency 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 the District. Said records shall be retained for a minimum of five (5) years after completion of services.

SECTION IV - OWNERSHIP OF WORK PRODUCT

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 the District. Agency may retain copies for his/her own use. If, in the conduct of the work herein contemplated the Agency utilizes proprietary intellectual property, the Agency will provide to District a non-exclusive license to use such property in connection with this project.

SECTION V – TERM/TIME OF PERFORMANCE

Agency shall begin work upon the effective date of this Agreement and shall complete all tasks monthly as discussed and agreed to by the District and the Agency. Work Schedule and performance shall be consistent with the professional skill and care ordinarily provided by outreach professionals practicing in the State of California under the same or similar circumstances.

This Agreement will terminate June 30, 2023, and is subject to renewal by Agreement of the Agency and the District.

SECTION VI - RESPONSIBILITIES

- A. Agency 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. Agency shall act as an independent Agency and not as an agent or employee of the District. Agency shall have exclusive and complete control over his/her employees and subconsultants, and shall determine the method of performing the services hereunder.
- B. District shall provide Agency with all relevant data and information in its possession without charge.
- C. District shall coordinate 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. Agency shall be responsible for the reproduction of work produced by Agency hereunder.
- E. The officers, agents, and employees of the District shall cooperate with Agency in the performance of services under this agreement without charge to Agency. Agency agrees to use such services insofar as feasible to effectively discharge his/her obligations

hereunder and further agrees to cooperate with officers, agents, and employees of the District

- F. The Agency agrees to indemnify, defend and hold harmless the officers, agents and employees of the District, from any and all claims and losses accruing or resulting to any and all consultants, subconsultants, material men, laborers and any other person, firm or corporation who may be injured or damaged to the extent caused by the negligent acts, errors, and/or omissions of the Agency, Agency's employees, or Agency's subconsultants or subconsultants in the performance of the services under this Agreement.
- G. **STANDARD OF CARE:** Consistent with the professional standard of care and except as otherwise expressly set forth herein, Agency shall be entitled to rely upon the accuracy of data and information provided by District or others without independent review or evaluation. This Agreement shall not create any rights or benefits to parties other than Agency and the District. No other third party shall have the right to rely on Agency opinions rendered in connection with the Services without the written consent of Agency and the third party's agreement to be bound to the same conditions and limitations as the District.

SECTION VII - INSURANCE

- A. Agency shall obtain and keep insurance policies in full force and effect for the following forms of coverage as shown in **Exhibit C**, Insurance Requirements.

SECTION VIII - CHANGES AND CHANGED CONDITIONS

- A. If, during the course of the work herein contemplated, the need to change the Scope of Work 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 ten (10) 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 Agency Fee Schedule in effect at the time a change is made to the Scope of Work. Any changes agreed to shall be documented by duly executed amendments to this Agreement.
- B. District reserves the right to specify individual employees, subconsultants or agents of Agency 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, subconsultants or agents are no longer assigned to the work described in this contract and/or are no longer affiliated with Agency, Agency shall immediately notify District in writing. Agency shall assign the rights to this contract to another entity, if requested by the District, as part of termination proceedings pursuant to Section IX, Termination.

SECTION IX - TERMINATION

- A. District may terminate Agency's services at any time by written notice to Agency at least thirty (30) days prior to such termination. Upon receipt of written notice from District that

this Agreement is terminated, Agency 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.

- B. Upon receipt of written notice of termination, the Agency shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to District, 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 Agency in performing the services under this Agreement.

SECTION X - SUB-CONTRACTING AND ASSIGNABILITY

It is acknowledged that this contract will involve the Agency sub-contracting a portion of the work required by 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 Agency for public works violating this section is subject to all penalties imposed by a violation of this chapter.”

During the performance of this Agreement, Agency and its consultants 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. Agency and its consultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and its consultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the 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 AGENCY

Agency 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. Agency agrees not to manage a political campaign for any candidate running for Director of the Monterey Peninsula Water Management District.

SECTION XIII - CONTINGENT FEES

Agency warrants that he/she has not employed or retained any company or person, other than a

bona fide employee working solely for the Agency 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 Agency, 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, District 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.

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:

DISTRICT: David J. Stoldt, General Manager
5 Harris Court, Bldg G
Monterey, CA 93940
Telephone: (831) 658-5651
Email: dstoldt@mpwmd.net

AGENCY: Phil Wellman
WellmanAd
26235 Atherton Place
Carmel, CA 93923
Telephone: 831-626-0466
Email: phil@wellmanad.com

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.** Insurance Requirements

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the day and year first above written.

Monterey Peninsula Water Management District

BY: David J. Stoldt

AGENCY

BY: Phil Wellman

FEDERAL TAX IDENTIFICATION NUMBER: _____

EXHIBIT A - SCOPE OF WORK

AGENCY RESPONSIBILITIES

- Outreach Strategy – Research, Branding, Communications
- Presentations – Provide review and editing of content and graphics for clarity
- Public Relations – Provide review and editing of content produced by the District for clarity – Write up to two releases per month based on talking points
- Advertising – Print, Digital, TV, Radio – Strategy, content, design, direction, project mgmt.
- Social Media – Strategy, messaging, graphics, project mgmt.
- Media Buys – Campaign schedule design, negotiation, orders, project mgmt.
- Video – Strategy, content, design, direction, production, project mgmt.
- Mailing list / eblasts – Build list, content, design, send, project mgmt.
- Collateral (brochures, flyers, annual report) – Strategy, content, design, project mgmt.
- Website – Strategy, content, design, project mgmt.

OTHER

Any and other services as needed and requested by the District, including but not limited to:

- Attend District Meetings
- Monthly Branding Ads
- Workshop Ads
- Newsletter
- Annual Report
- Drought/Flood Special Outreach
- Prop 218 Special Outreach
- Identify/Work-with 3rd Party Designer
- Update Brochures
- Order Collateral (Gifts, Stuff, Things)
- Develop Video Clips
- Event Coordination
- Update Costs of Media Buys and Direct Mail Annually
- Submit Annual Award Applications
- Submit Press Info to Publications (ACWA, CSDA, JournalAWWA, WaterWorld,Opflow (AWWA), Source)

OUTSIDE COSTS

- Agency will provide monthly budget for projects
- Approved costs paid directly to provider per requirements

- No agency markup – Project management time included in retainer
- Media and ads
- Printing
- Video production
- Web coding
- Social Media posting, boosting, metrics
- Eblast conversion and sending
- Illustration
- Photography
- Events
- Other

EXHIBIT B – FEE SCHEDULE

The scope of work shall be on a monthly retainer of \$7,875 per month and a minimum hourly commitment of 45 hours per month. Out-of-pocket and subconsultant expenses will be on a time-and-materials basis.

The scope of work, associated level of effort, fee estimate, and timeline may change, and Agency will have an opportunity, in discussion with the District, to modify aspects of the fees, if necessary, to ensure that they best meet the District's goals and objectives.

EXHIBIT C - INSURANCE REQUIREMENTS

- I. Agency shall provide evidence of valid and collectible insurance carried for those exposures indicated by an "X".
- A. Professional Liability Errors & Omissions
 - B. Workers Compensation and Employers Liability
 - C. Automobile Liability - "Any Auto - Symbol 1"
 - D. Commercial or Comprehensive General Liability, including Bodily Injury, Property Damage and Personal Injury
 - E. Owners & Consultants Protective
 - F. Protection & Indemnity (Marine/Aviation)
- II. The minimum limit of protection provided by insurance policies for each of the coverages listed above shall be not less than \$1,000,000, except for coverage "D", which shall not be less than \$2,000,000. The procurement and maintenance by the Agency of the policies required to be obtained and maintained by Agency under this Agreement shall not relieve or satisfy Agency's obligation to indemnify, defend and save harmless District and the Monterey Peninsula Water Management District.
- III. Evidence of insurance carried shall be Certificates of Insurance for the current policies. District and the Monterey Peninsula Water Management District shall each be listed as a certificate holder on the Agency's Commercial or Comprehensive General Liability insurance policy and the policy must be endorsed to provide a 30-day prior written notice of cancellation, excluding cancellation due to nonpayment of premium.
- IV. Agency shall carry a commercial liability policy written on a general liability form.
- A. Such protection is to include coverage for the following hazards, indicated by an "X":
- 1. Premises and Operations
 - 2. Products and Completed Operations
 - 3. Explosion Collapse and Underground
 - 4. Broad Form Blanket Contractual
 - 5. Broad Form Property Damage
 - 6. Personal Injury, A, B & C
 - 7. Employees named as Persons Insured
 - 8. Protective and/or Contingent Liability (O&CP)

- B. The comprehensive general liability policy shall include as an additional insured District and the Monterey Peninsula Water Management District their officers, directors, agents and employees."
 - C. This policy shall contain a severability of interest clause or similar language to the following:

"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 persons included within the persons insured provision of the insurance against any other such person or organization."
 - D. All policies shall contain a provision that the insurance company shall give the District and the Monterey Peninsula Water Management District at least thirty (30) days prior written notice mailed to the address shown below prior to any cancellation or non-renewal. The 30-day written notice must be shown on all certificates of insurance.
 - E. Certificates of Insurance for the current policies shall be delivered by the Agency to the Risk Manager for the District as verification that terms A, B, C and D have been met.
- V. All insurance correspondence, certificates, binders, etc., shall be mailed to:
- Monterey Peninsula Water Management District
Attn: Administrative Services Manager
5 Harris Court, Building G
P.O. Box 85
Monterey, CA 93942-0085
- VI. All policies carried by the Agency shall be primary coverage as to the interest of the additional insured to any and all other policies that may be in force. District and the Monterey Peninsula Water Management District shall not be responsible for payment of premiums due as a result of compliance with the terms and conditions of the insurance requirements.
 - VII. All such policies of insurance shall be issued by insurance companies with general policy holders' rating of not less than "B" and authorized or admitted to do business in the State of California. The policies of insurance so carried shall be carried and maintained throughout the term of this Agreement.