

Attachment B

OPERATION AND MAINTENANCE AGREEMENT

by and between the
COUNTY OF MONTEREY
AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE COUNTY OF MONTEREY
and the
PAJARO/SUNNY MESA COMMUNITY SERVICES DISTRICT

Relating to the Operation and Maintenance of the Completed
PAJARO NEIGHBORHOOD COMMUNITY PARK

This OPERATION MAINTENANCE AGREEMENT ("Agreement") is entered into as of October 2, 2012 by and between the COUNTY OF MONTEREY, AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY, a body corporate and politic ("Successor Agency") and the PAJARO/SUNNY MESA COMMUNITY SERVICES DISTRICT ("CSD"), a public corporation, with reference to the following facts:

RECITALS

A. California Assembly Bill 1X 26, enacted on June 28, 2011 and upheld by the California Supreme Court on December 29, 2011, dissolved all California redevelopment agencies effective February 1, 2011 through amendments to the California Health and Safety Code (the "Amended Code"). Pursuant to Sections 34173, 34175, and 34176 of the Amended Code, and by operation of law, the County of Monterey, as Successor Agency to the Redevelopment Agency of the County of Monterey, has assumed the rights, duties, and obligations pertaining to all functions of the original County redevelopment agency, and as such has assumed the rights, duties, and obligations pertaining to the Property. Consequently, the County of Monterey in its capacity as Successor Agency, and not the original redevelopment agency, is party to this Agreement.

B. The Successor Agency is the owner of that certain real property in the unincorporated area of County of Monterey located at 24 San Juan Road in the community of Pajaro, more specifically consisting of Assessors Parcel Nos. (APN) 117-341-002, 117-341-003, and 117-331- 025, as shown and described in Exhibit A hereto (the "Site").

C. The Successor Agency is the recipient of a grant in the amount of Five Million Dollars (\$5,000,000) issued by the State of California pursuant to the Statewide Park Development and Community Revitalization Program of 2008 (Proposition 84) (the "Grant"), for the purpose of developing a public park presently known as the Pajaro Neighborhood Community Park (the "Project").

D. On November 9, 2011, by approval of Resolution No. 11-039 (PLN090275), the Monterey County Planning Commission approved a Combined Development Permit to allow the Project. Condition of Approval No. 13 of said Permit reads:

Prior to the issuance of grading/building permits for the park, the Redevelopment Agency (owner) shall submit evidence of an agreement for the maintenance of the

park. This agreement should include the entity responsible for park operations, security, daily park functions such as litter removal, graffiti/vandalism removal, landscaping maintenance, lighting upkeep, inspections of park appurtenances, daily playground equipment maintenance, restroom cleaning schedule, and an ongoing security plan in coordination with the Sheriffs Office. Agreement shall include contact information of responsible parties and contact information for personnel responsible for oversight. The responsible entity and Sheriffs Office contact information must be posted in at least three (3) locations throughout the park in the event a matter requires immediate attention. No agreement shall impose direct fees for the use of the park.

E. Upon completion of the park improvements and recording of a Notice of Completion for the construction of the Project, is the parties desire that the CSD accept responsibility to operate and maintain the completed improvements as a public park in compliance with the terms and conditions of the Grant and the Combined Development Permit.

F. It is anticipated that the CSD will also accept ownership of the Site and completed improvements under a Property Transfer Agreement to be developed and approved at a future date, prior to completion of the Project.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. The Successor Agency shall enter into all agreements with the Architect, Construction Manager, Construction Contractors, and others, and shall take all steps necessary to design and construct the Project at the Successor Agency's sole and complete cost. The Successor Agency shall have the right to use the proceeds of the Grant, and such other Successor Agency funds as it determines necessary and appropriate, for this purpose.

2. Upon Completion of the Project, as evidenced by the recording of a Notice of Completion for the Project, the CSD agrees to operate and maintain the Project as a public park at the CSD's sole cost in accordance with the terms and conditions of the Grant and with Condition of Approval No. 13 of the Combined Development Permit approved by Monterey County Planning Commission Resolution No. 11-039 (PLN090275) on November 9, 2011, as follows:

a. The Successor Agency shall have no responsibility for operation and maintenance of the Project upon Completion of the Project as evidenced by the recording of the Notice of Completion.

b. The Successor Agency shall obtain and assign to the CSD all warranties of workmanship, materials, and equipment related to the construction and installation of fixtures and equipment related to the Project.

c. Subject to the approval of the State of California, CSD shall operate and maintain, or cause to be operated and maintained, the Project once completed, as a public park, continuously and without interruption until and through June 30, 2039, in conformance with all the terms and conditions of any and all Governmental Permits approved therefore, and all terms and conditions of the Grant, including the Grant Application, Grant Application Guide and Grant Administration Guide.

d. Said operation and maintenance by CSD shall include the providing of all park operations, security, daily park functions such as litter removal, graffiti/vandalism removal, landscaping maintenance, lighting upkeep, inspections of park appurtenances, daily playground equipment maintenance, restroom cleaning schedule, and an ongoing security plan in coordination with the Monterey County Sheriff's Office. CSD shall ensure that the park remains open to the public during daylight hours seven days a week. The park may be locked by CSD maintenance personnel during the night. Night-time lighting shall be minimal and for security purposes only.

e. The CSD shall post and maintain signs in at least three (3) locations throughout the park giving twenty-four hour a day contact information for the Sheriff's Office and the CSD, as the entity responsible for park maintenance, in the event a matter requires immediate attention.

f. The CSD shall adopt policies to ensure there will be no discrimination in use of the park against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the park. The CSD shall further adopt policies to ensure there shall be no discrimination in use of the park on the basis of residence in the community.

g. The CSD shall not charge an entrance fee for public access to the park. Any user fees charged for special events or activities at the park shall conform to the regulations of the State of California Department of Parks and Recreation and to the provisions of the Conditional Use Permit for the Project.

3. Indemnification. CSD shall indemnify, defend, and hold harmless both the Successor Agency and the County of Monterey, and their respective officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CSD's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the Successor Agency. "CSD's performance" includes CSD's action or inaction and the action or inaction of CSD's officers, employees, agents and subcontractors.

Notwithstanding anything herein to the contrary, the foregoing indemnification expressly includes the State of California.

Notwithstanding anything herein to the contrary, the foregoing indemnification expressly excludes the Architect, Construction Manager, and contractors hired by the Successor Agency to perform services in connection with this Agreement.

The provisions of this Section shall survive the termination of this Agreement and the Completion of the Project.

4. Insurance.

a. Evidence of Coverage: Prior to commencement of this Agreement, the CSD shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition the CSD upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County Contracts/Purchasing Department, unless otherwise directed. The CSD shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such, insurance has been approved by the Successor Agency. This approval of insurance shall neither relieve nor decrease the liability of the CSD.

b. Qualifying Insurers: All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the Successor Agency's Purchasing Manager, or as otherwise approved by Successor Agency.

c. Insurance Coverage Requirements: Without limiting CSD's duty to indemnify, CSD shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

i. Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

ii. Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

iii. Workers' Compensation Insurance, if CSD employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

iv. Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CSD shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail

coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

d. Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to the Successor Agency and issued and executed by an admitted insurer (or as otherwise approved by Successor Agency) authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CSD completes its performance of services under this Agreement.

Each liability policy shall provide that the Successor Agency shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CSD and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the Successor Agency, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CSD's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the Successor Agency and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CSD's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000), or insurer's equivalent endorsement. The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99, or insurer's equivalent endorsement.

Prior to the execution of this Agreement by the Successor Agency, CSD shall file certificates of insurance with the Successor Agency's contract administrator and the County Contracts/Purchasing Division, showing that the CSD has in effect the insurance required by this Agreement. The CSD shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CSD shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by Successor Agency, annual certificates to Successor Agency's Contract Administrator and the County Contracts/Purchasing Division. If the certificate is not received by the expiration date, Successor Agency shall notify CSD and CSD shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CSD to maintain such insurance is a default of this Agreement, which entitles Successor Agency, at its sole discretion, to terminate this Agreement immediately.

representations and/or practices relative to the foregoing is hereby superseded, revoked and rendered ineffective for any purpose.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement on the date first written above.

COUNTY OF MONTEREY,
AS SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
COUNTY OF MONTEREY

PAJARO/SUNNY MESA
COMMUNITY SERVICES DISTRICT

By: *Dave Potter*
Chair, Board of Supervisors

By: *[Signature]*
Chair, Board of Directors

APPROVED AS TO FORM:
County Counsel

By: *Kay Beeman*

Date: *10/8/12*

APPROVED AS TO INDEMNITY/INSURANCE LANGUAGE:

RISK MANAGEMENT
Risk Management
COUNTY OF MONTEREY
APPROVED AS TO INDEMNITY/
By: INSURANCE LANGUAGE

By: *Martin Schumacher*
Date: *10-9-12*