## Attachment B



### Successor Agency to the Redevelopment Agency of The County of Monterey

168 West Alisal Street, 1st Floor Salinas, CA 93901 831.755.5066

#### **Board Order**

Agreement No.: A-12361

Acting as the Board of Directors of the Successor Agency to the Redevelopment Agency of the County of Monterey upon motion of Director Salinas, seconded by Director Parker, and carried by those members present, the Board of Directors hereby:

Approved and authorized the Chair to sign an Operation and Maintenance Agreement with the Pajaro/Sunny Mesa Community Services District for operation and maintenance of the Pajaro Neighborhood Park when construction of the park is completed.

PASSED AND ADOPTED on this 4th day of December 2012, by the following vote, to wit:

AYES:

Directors Armenta, Calcagno, Salinas, Potter, and Parker

NOES:

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on December 4, 2012

Dated: December 5, 2012 File Number: SRDAA 12-008

Gail T. Borkowski, Clerk of the Board of Supervisors County of Monterey, State of California

By <u>Nanise</u> Han well
Deputy

#### 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. <u>Indemnification</u>. 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. <u>Evidence of Coverage</u>: 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 <u>not</u> 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. <u>Qualifying Insurers:</u> 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. <u>Insurance Coverage Requirements:</u> 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. <u>Commercial general liability insurance</u>, 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. <u>Business automobile liability insurance</u>, 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. <u>Workers' Compensation Insurance</u>, 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. <u>Professional liability insurance</u>, 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.

5. Notices, Demands and Communications Between the Parties. Formal notices, demands and communications between the Successor Agency and the CSD shall be deemed sufficiently given and shall not be effective unless in writing, and served (i) personally, (ii) by independent, reputable overnight commercial courier, (iii) by facsimile transmission, immediately followed by service of the original of the subject item in the manner provided in subsections (i), (ii) or (iv) hereof, or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

#### If to Successor Agency:

County of Monterey, as Successor Agency to the Redevelopment Agency of

the County of Monterey

Economic Development Department

168 W. Alisal St., 3<sup>rd</sup> Floor Salinas, California 93901

Attention: Director of Economic Development

Fax: 831-755-5398

If to CSD: Pajaro/Sunny Mesa Community Services District

136 San Juan Rd

Watsonville, CA 95076

Attention: Don Rosa, General Manager

Fax: 831-724-6935

Any party may, from time to time, by notice in writing served on the other parties, designate an additional and/or different mailing address or person to whom all such notices are thereafter to be addressed. Any notice served personally shall be deemed delivered upon receipt, if served by mail or independent courier shall be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt, or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the U.S. Postal Service or independent courier, and if served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile (provided the original is thereafter delivered as aforesaid).

#### 6. Nonliability of Public Officials and Employees

- a. No member, official, employee, or agent of the Successor Agency or the CSD shall be personally liable to each other, or any successor in interest, or any other party, in the event of any default or breach or for any amount which may become due or on any obligation under the terms of this Agreement.
- b. Notwithstanding anything herein to the contrary, the foregoing statement of non-liability expressly excludes the Architect, Construction Manager, and contractors hired by the Successor Agency to perform services in connection with this Agreement.
- 7. <u>Entire Agreement, Waivers and Amendments</u>. This Agreement constitutes the entire exclusive agreement among the parties relating to the specific matters covered in this Agreement. All prior or contemporaneous verbal or written agreements, understandings,

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

Chair, Board of Supervisors

Chair, Board of Directors

APPROVED AS TO FORM:

County Counsel

APPROVED AS TO INDEMNITY/INSURANCE LANGUAGE: Risk Management AGEMENT

COUNTY OF MONTEREY

APPROVED AS TO INDEMNITY/

By: INSURANCE LANGUAGE

Date: Date:

#### **EXHIBIT "A"**

DESCRIPTION OF THE LANDS OF THE COUNTY OF MONTEREY, AS SUCCESSOR AGENCY TO THE REDEVELOPEMENT AGENCY OF MONTEREY COUNTY;

SITUATE IN THE RANCHO BOLSA DE SAN CAYETANO, COUNTY OF MONTEREY, STATE OF CALIFORNIA; AND

BEING a portion of the lands described in PARCEL I, of the lands conveyed to "THE REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY, A PUBLIC BODY, CORPORATE AND POLITICAL", by Grant Deed, dated April 10, 2010, and recorded May 17, 2010, Document No. 2010027220 Official Records of Monterey County Records; and

BEING a portion of the lands described in PARCEL II of the lands conveyed to "THE REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY, A PUBLIC BODY, CORPORATE AND POLITICAL", by Grant Deed, dated April 10, 2010, and recorded May 17, 2010, Document No. 2010027220 Official Records of Monterey County Records; and being more particularly described as follows to wit;

BEGINNING at a found 1" Iron Pipe tagged RCE15310 in the northeastern line of the Southern Pacific Railroad right-of- way, at the most southern corner of the above mentioned PARCEL I of the lands conveyed to, "THE REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY, A PUBLIC BODY, CORPORATE AND POLITICAL", from which point, a 3/4" inch iron pipe (open) at the most northern corner of that certain Lot 34, being the intersection of the northwesterly boundary thereof with the southwesterly line of Florence Avenue, as said Lot, boundary and Line are shown on that certain map entitled "FANNY C. PORTER SUBDIVISION 4", recorded January 11, 1944, in Volume 4 of Cities and Towns, at Page 68, Monterey County Records bears North 43°12'00" East 480.62' feet distant;

THENCE from said POINT OF BEGINNING, northwesterly along the northeasterly line of said Southern Pacific Railroad right of way, North 49°58'30" West 355.07' feet, to 1" iron pipe tagged RCE 15310 on the southeasterly boundary of the Pajaro River Project, as said boundary is described in volume 654 of Official Records, at Page 314, Monterey County. California as "PARCEL NO.29";

THENCE North 38°12'15" East 618.90' feet (described as N 37°51' E 623.6 feet, in said "PARCEL NO. 29") to a 1" iron pipe tagged RCE 15310;

THENCE North 68°58'25" East (described as N 68°23' 45" E in said "PARCEL NO. 29") 108.38' feet, to a 1" iron pipe tagged RCE 15310 on the northwestern boundary of Parcel 1 of the lands described in the quitclaim deed conveyed to," MARIA DEL REFUGIO CORRAL, TRUSTEE OF THE MARIA DEL REFUGIO CORRAL 2006

REVOCABLE TRUST", dated December 4, 2006, and Recorded January 03, 2007, Document No. 2007000521, Official Records of Monterey County Records; and

THENCE leaving said Pajaro River Project boundary and running along the northwestern boundary of the above mentioned lands conveyed to," MARIA DEL REFUGIO CORRAL, TRUSTEE OF THE MARIA DEL REFUGIO CORRAL 2006 REVOCABLE TRUST", dated December 4, 2006, and Recorded January 03, 2007, Document No. 2007000521, Official Records of Monterey County Records, South 33°38'00" West 66.83' feet to a 1" iron pipe tagged RCE15310;

THENCE southerly, 94.66 feet along the arc of a tangent curve to the left, having a radius of 75.00 feet, through a central angle of 72°18'51" to a 1" iron pipe tagged RCE 15310 on that certain course numbered (3), as said course is described in PARCEL I of the lands conveyed to "THE REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY, A PUBLIC BODY, CORPORATE AND POLITICAL", by Grant Deed, dated April 10, 2010, and recorded May 17, 2010, Document No. 2010027220 Official Records of Monterey County Records;

THENCE leaving said northwestern boundary, along said course numbered (3), southeasterly 183.62' feet along the arc of a non-tangent curve to the right, having a radius of 960.00' feet, whose center bears South 50°52'51" West, through a central angle of 10°57'32" to a ½" iron pipe tagged L.S. 3233 at the beginning of a non-tangent curve;

THENCE southeasterly, along the arc of a non-tangent curve to the right, having a radius of 960.00 feet, whose center bears South 62°00'33" West, through a central angle of 6°55'14", 115.96' feet, more or less, to a point that is 1.00' feet, distant perpendicular from a 3/4" inch iron pipe (open) at the northwestern boundary of Lot 34, as said Lot is shown on that certain map entitled "entitled "FANNY C. PORTER SUBDIVISION 4", recorded January 11, 1944, in Volume 4 of Cities and Towns, at Page 68, Monterey County Records, said point also being the most northern corner of the Lands conveyed by the COUNTY OF MONTEREY, AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF MONTEREY (a body politic and corporate) to ROBERTO RODRIGUEZ AND MARIA ELENA RODRIGUEZ, his wife as joint tenants, by Quitclaim deed, dated July 2, 2012, and Recorded August 29, 2012, Document No. 2012050309, Official records of Monterey County Records;

**THENCE** leaving said course (3), along the northwestern boundary of said quitclaim deed. South 43°09'East 7.60' feet to an angle therein;

THENCE South 66°28'45"West 8.07' feet to an angle therein;

THENCE South 43°33'21" West 30.49' feet to an angle therein;

THENCE South 45°00'35" West 23.03' feet, more or less to the northwesterly prolongation of the southwestern boundary of Lot 34, as said lot is shown on the abovementioned map entitled "FANNY C. PORTER SUBDIVISION 4",

recorded January 11, 1944, in Volume 4 of Cities and Towns, at Page 68, Monterey County Records, said point being the most northern corner of the Lands conveyed by the COUNTY OF MONTEREY, AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF MONTEREY (a body politic and corporate) to Donald R. Peterson and Diane R. Peterson, husband & wife, as community property with rights of survivorship, by Quitclaim deed, dated July 2, 2012, and Recorded August 29, 2012, Document No. 2012050310, Official records of Monterey County Records;

THENCE South 45°00'35" West 3.51' feet:

THENCE South 21°18'54" East 5.84' feet, more or less to the northwestern boundary of Lot 33 as said Lot is shown on that certain map entitled "entitled "FANNY C. PORTER SUBDIVISION 4", recorded January 11, 1944, in Volume 4 of Cities and Towns, at Page 68, Monterey County Records;

THENCE southwesterly along the northwestern boundary of Lot 33,Lot 32, Lot 31, Lot 30, Lot 29, Lot 28 & Lot 27, as said lots are shown on that certain map entitled "FANNY C. PORTER SUBDIVISION 4", recorded January 11, 1944, in Volume 4 of Cities and Towns, at Page 68, Monterey County Records, South 43°12'00" West 406.57' feet, more or less to the POINT OF BEGINNING;

Subject to easements and rights of ways of record

See "EXHIBIT A" Page 4 of 4, attached hereto, and made a part hereof;

File No. 24232
Drawn By BH
Checked Canna
September 4, 2012

BRYAN F. HAPPEE PLS 8229 RENEWAL DATE 12/31/13

Surveyed and compiled in August 2012 by Bowman & Williams Consulting Civil Engineers file number 24232

No. 8229

CALI



