

DRAFT

COST SHARING AGREEMENT

TO FUND THE ACTIVITIES OF THE PAJARO REGIONAL FLOOD MANAGEMENT AGENCY (PRFMA)

BY AND AMONG THE

CITY OF WATSONVILLE,

SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION

DISTRICT—ZONE 7,

MONTEREY COUNTY WATER RESOURCES AGENCY

AND

PAJARO REGIONAL FLOOD MANAGEMENT AGENCY

PAJARO REGIONAL FLOOD MANAGEMENT AGENCY

COST SHARING AGREEMENT

This Cost Sharing Agreement (“Agreement”) is made and entered into effective _____ (the “Effective Date”) by and among the following public agencies (individually, “Party” and collectively, “Parties”):

1. Santa Cruz County Flood Control and Water Conservation District, Zone 7 (“Zone 7”), created by resolutions of the Santa Cruz County Flood Control and Water Conservation District pursuant to Chapter 77 of the Water Code Appendix (West’s Annotated California Codes);
2. City of Watsonville, a municipal corporation (herein called “Watsonville”);
3. Monterey County Water Resources Agency (“MCWRA”), a special act agency of the State of California with duties and responsibilities set forth in Chapter 52 of the California Water Code Appendix; and
4. Pajaro Regional Flood Management Agency (“PRFMA” or “Agency”).

WHEREAS, PRFMA was formed under the Joint Exercise of Powers Act, Government Code sections 6500 et seq., pursuant to a Joint Exercise of Powers Agreement (“JPA Agreement”) dated July 21, 2021 in order to coordinate, finance, acquire, construct, improve, operate and maintain flood management infrastructure in Santa Cruz and Monterey Counties.

WHEREAS, the Member Agencies of the PRFMA are:

1. County of Santa Cruz, a political subdivision of the State of California organized and existing under the laws of the State of California;
2. Zone 7;
3. County of Monterey, a political subdivision of the State of California organized and existing under the laws of the State of California;
4. Watsonville; and
5. MCWRA.

WHEREAS, the JPA Agreement authorizes the PRFMA to:

- a. Study, plan, and implement ways and means to provide a reasonable program and plan of operation for the control of waters within or flowing into the boundaries of the Agency;
- b. Participate in financing or re-financing any Infrastructure, in accordance with any terms and conditions imposed by the JPA Law;

- c. Make and enter into contracts necessary to the accomplishment of the purposes of the JPA Agreement;
- d. Contract for the services of engineers, attorneys, planners, financial consultants, and other contractors and consultants as needed;
- e. Employ such persons as it deems necessary;
- f. Enter into agreements with the United States of America, the State of California, or any other public or private person to provide a portion or all of the local contribution which may be required for Infrastructure constructed by the State or Federal governments or one or more Member Agencies;
- g. Acquire, construct, manage, control, maintain, improve, repair, replace, and/or operate any Infrastructure; provided, however, that the Agency shall not do so as to Infrastructure within the boundaries of a Member Agency without its prior written agreement;
- h. Acquire by eminent domain or otherwise, and to hold and dispose of, any interest in real or personal property necessary to the accomplishment of the purposes of the JPA Agreement;
- i. Receive gifts, contributions, and donations of property, funds, services, and other forms of financial or other assistance from any persons, firms, corporations, or governmental entities;
- j. Sue and be sued in its own name;
- k. Adopt rules, regulations, policies, bylaws, and procedures governing the operation of the Agency;
- l. Incur debts, liabilities, or obligations;
- m. Levy and collect assessments and/or special taxes and to participate in other financing districts;
- n. Establish, revise, and collect fees as a condition of development of land or otherwise;
- o. Apply for, accept, and receive state, federal, or local licenses, permits, grants, loans, and other aid from any agency of the United States of America, or of the State of California, or from any other public or private entity necessary for the accomplishment of the purposes of the JPA Agreement;
- p. Perform all acts necessary or proper to carry out fully the purpose of the JPA Agreement and not inconsistent with the JPA Law;
- q. Invest money not required for the immediate necessities of the Agency pursuant to Government Code sections 6505.5 and 53601;
- r. Refinance indebtedness incurred by one or more Member Agencies in connection with any of the purposes of the JPA Agreement;

- s. Apply for letters of credit or other form of financial guarantees to secure the repayment of bonds and enter into agreements in connection therewith;
- t. Carry out and enforce the JPA Agreement; and
- u. Exercise all other powers common to the Member Agencies and authorized by Government Code section 6508.

WHEREAS, the JPA Agreement does not allocate contributions among the Member Agencies or among the Parties to this Agreement.

WHEREAS, the Parties desire to allocate financial contributions to the PRFMA as set forth in this Agreement.

NOW, THEREFORE, in consideration of the above findings and of the mutual promises contained herein, the Parties do hereby agree as follows:

Section 1. Definitions.

Section 1.1 “Infrastructure” includes, without limitation, watercourses, drainage channels, conduits, ditches, canals, water storage facilities, pumping plants, levees, buildings and structures or other capital facilities for the management and disposal of waters within the boundaries of the PRFMA, or outside and running into the PRFMA, or to conserve any waters for beneficial use within the PRFMA, including easements and rights-of-way.

Section 1.2 “Project Commitments” means written agreements between or among the Member Agencies, PRFMA, the Parties, the State of California, the federal government or other public agencies to: (i) design, finance, acquire, construct, improve, operate or maintain Infrastructure, including funding for overhead, planning, and administrative costs; (ii) indemnify one another, one or more Member Agencies or Parties, or other public entities for liabilities arising out of such operation and maintenance or the failure of such operation and maintenance; and/or (iii) indemnify one another, one or more Member Agencies, Parties, or other public or private entities for design or construction of Infrastructure designed or constructed by the PRFMA.

Section 2. Allocation of Costs. All contributions to the PRFMA shall be allocated among the Parties in the manner set forth in Exhibit A.

Section 3. Project Commitments. This Agreement may not be rescinded or terminated, and Zone 7, MCWRA, and Watsonville may not withdraw from this Agreement while that Party’s contributions under this Agreement are used to fund Project Commitments, unless the PRFMA or another public agency has provided such reasonable written assurances to perform those Project Commitments as may be requested by the State, the Federal government, or other contracting parties to those Project Commitments. The PRFMA may assume Project Commitments of a Party by resolution of

the PRFMA Board and in no other fashion.

Section 4. Agreements Concerning PRFMA and Parties' Responsibilities. The Parties shall enter into one or more agreements transferring the current responsibilities and activities of Zone 7, MCWRA, and Watsonville regarding operation and maintenance ("O&M"), capital projects, flood monitoring, and related emergency response, all of which related to Infrastructure, to the PRFMA. Such agreement(s) shall be negotiated, executed, and approved by the Parties' legislative bodies on or before December 31, 2022, unless a later date is agreed to in writing by all Parties. In the event such agreement(s) are not negotiated, executed, and approved by this deadline, or a later date agreed to in writing by all the Parties, Zone 7, MCWRA, and Watsonville shall not be obligated to make any further contributions to PRFMA under this Agreement.

Section 5. Withdrawal. A Party may withdraw from this Agreement pursuant to the procedures set forth below.

Section 5.1 Notice. Prior to withdrawal, a Party must provide written notice of its intent to withdraw to the PRFMA, as well as all other Parties and PRFMA Member Agencies.

Section 5.2 Report. Within 60 days of receipt by the PRFMA, all Parties, and all Member Agencies of the written notice of intent to withdraw required under Section 5.1 above, the PRFMA shall order to be prepared a report ("Report") identifying the extent to which contributions from the Party proposing withdrawal ("Withdrawing Party") are used to fund Project Commitments that may prevent withdrawal pursuant to Section 3 above; the steps required to unwind the Withdrawing Party's obligation to fund Project Commitments; and alternative sources of funding the costs that would otherwise be allocated to or paid for by the Withdrawing Party's contributions. The Report shall be submitted to the PRFMA and the Member Agencies no later than 90 days after it is ordered prepared.

Section 5.3 Determination of Contributions to Fund Project Commitments. If the Report determines that no contributions from the Withdrawing Party are used to fund Project Commitments that would prevent withdrawal under Section 3 above as of the date of receipt of the notice required by Section 5.1 of this Agreement, the PRFMA shall authorize the Withdrawing Party by Resolution to withdraw from this Agreement at the next regularly scheduled meeting of the PRFMA Board. The Withdrawing Party's withdrawal from this Agreement shall be effective as of the date of adoption of said Resolution, and said Withdrawing Party shall no longer be a party to this Agreement or bound by its terms. All remaining Parties shall remain bound by the terms of this Agreement.

If the Report determines that contributions from the Withdrawing Party are used to fund Project Commitments and that withdrawal is prohibited pursuant to Section 3 of this Agreement as of the date of receipt of the notice required under section 5.1 of this Agreement, the Withdrawing Party shall remain subject to this Agreement.

Section 5.4 Appeal. The Withdrawing Party may appeal the Report's determination that its contributions are used to fund Project Commitments that prevent withdrawal under section 3 of this Agreement by submitting an appeal to the PRFMA Clerk of the Board, including all information relevant to the Withdrawing Party's position. The appeal shall be submitted no later than 60 days after receipt of the Report by the Withdrawing Party.

Within 60 days of submission of the Withdrawing Party's appeal, the Board shall set a hearing to determine the status of the Withdrawing Party's contributions to fund Project Commitments, and the Clerk of the Board shall provide the Withdrawing Party with at least 10 days' written notice of the hearing.

Within 45 days after the hearing on appeal, the Board shall provide written notice to the Withdrawing Party of its determination, which shall be final.

If the Board determines that contributions from the Withdrawing Party do not fund Project Commitments that prevent withdrawal under Section 3 of this Agreement as of the date of receipt of the notice required under section 5.1 of this Agreement, the PRMA shall authorize the Withdrawing Party by resolution to withdraw from this Agreement at the next regularly scheduled meeting of the PRFMA Board.

Section 6. Amendment. This Agreement may only be amended by written amendment signed by all Parties then subject to this Agreement.

Section 7. Meet and Confer. The Parties shall meet and confer on the 10th anniversary of the Effective Date, and at other mutually agreeable times, to discuss and consider: (i) the sufficiency of funding sources under this Agreement, (ii) any alternatives to the funding sources under this Agreement and their feasibility, and (iii) alternative arrangements and agreements, including amendments to this Agreement, to meet the Parties' goals.

Section 8. Indemnification. Each Party shall, to the fullest extent allowable under applicable law, indemnify and hold harmless the other Parties for and against any claim, action, liability, penalty, or other imposition whatsoever upon the other Parties, or any one of them, by reason of the activities of the indemnifying Party under this Agreement.

Section 9. Assignment; Binding on Successors. The rights and duties of the Parties may not be assigned or delegated without the written consent of all other Parties. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void and confer no rights on any third party. Any approved assignment or delegation shall be consistent with the terms of any then extant contributions to fund Project Commitments or other obligations of the Agency.

Section 10. Notice. Any notice or instrument required to be given or delivered shall be personally delivered or deposited in the United States mail, registered or certified, postage prepaid, addressed to the clerk or secretary of the Member Agency or Party at the address indicated on the website of

the Member Agency or Party and shall be deemed to have been received by addressee 72 hours after such deposit. Notice may be given by such other means as the Member or Party specifies in writing.

Section 11. Severability. Should a court of competent jurisdiction decide any part, term, or provision of this Agreement conflicts with law or is otherwise unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby and, to that end, the Parties declare the parts, terms, and provisions of this Agreement to be severable.

Section 12. Counterparts. This Agreement may be executed in counterparts, all of which together shall constitute a single agreement, and each of which shall be an original for all purposes. Signatures may be given by emailed pdf or other equivalent means with the same force as original wet signatures.

Section 13. Integration. This Agreement represents the full and entire Agreement among the Parties with respect to the matters covered herein.

Section 14. Authority to Bind. The legislative bodies of the Parties have each authorized execution of this Agreement, as evidenced by the respective signatures attested below. The persons signing below warrant that they have actual authority to bind their respective principals to this Agreement.

Section 15. Selection of Forum. Any legal action or proceeding arising under this Agreement shall be brought in the Superior Court of California for the County of Sacramento and may not be brought or determined in any other forum or jurisdiction. The Parties unconditionally submit to the sole and exclusive jurisdiction of the Sacramento County Superior Court.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day indicated below.

CITY OF WATSONVILLE

SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7

By: _____
MAYOR

By: _____
CHAIRPERSON

Date: _____

Date: _____

ATTEST:

ATTEST:

CITY CLERK

CLERK OF THE BOARD

APPROVED AS TO FORM:

APPROVED AS TO FORM:

CITY ATTORNEY

DISTRICT COUNSEL

MONTEREY COUNTY WATER RESOURCES AGENCY

PAJARO REGIONAL FLOOD MANAGEMENT AGENCY

By: _____
CHAIRPERSON

By: _____
CHAIRPERSON

Date: _____

Date: _____

ATTEST:

ATTEST:

AGENCY CLERK

BY: _____
SECRETARY

APPROVED AS TO FORM:

APPROVED AS TO FORM:

AGENCY COUNSEL

GENERAL COUNSEL

EXHIBIT A
Allocation of Parties' Contributions

The Parties shall contribute the amounts set forth below upon execution of this Agreement by all of the Parties and adoption by PRFMA of its 2022-23 annual budget. Thereafter, the Parties shall contribute the amounts set forth below including any adjustments on or before July 31 of each year.

It is the intent of the Parties to adjust the annual contributions for subsequent years as provided herein. Annual contributions for subsequent years may be adjusted for the increase in the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-Hayward area during the previous fiscal year ("CPI Adjustment") if approved by the increasing Party's legislative body. While Zone 7's revenues may not be increased by more than 4%, pursuant to terms previously approved and adopted, other Parties' revenues are not so limited. For years in which the CPI Adjustment exceeds 4%, all Parties able to do so – including Zone 7 if permissible – may approve a CPI Adjustment in excess of 4% and, if so approved, the CPI Adjustment shall equal the amount approved by the legislative bodies of all other Parties with the exception of Zone 7.

Moreover, the annual contribution from Zone 7 shall be at least 96% of projected revenue for Zone 7 during that fiscal year. Thus, the annual contribution from Zone 7 shall be the greater of (1) the Zone 7 initial contribution for the first fiscal year, increased by cumulative CPI Adjustments through the end of the previous fiscal year, and (2) 96% of projected Zone 7 revenue during that fiscal year. In the event that the remaining Zone 7 revenues and/or fund balance exceeds the projected 4% cost of Zone 7 administration for any fiscal year, the excess amount shall also be contributed by Zone 7.

Contributions:

Parties	Amount of Initial Contribution
City of Watsonville	\$49,000
Zone 7	\$2,138,400, but no less than 96% of projected revenue for Zone 7 during the initial year, as discussed above; plus any existing reserves or fund balance and revenues related to existing project commitments of Zone 7
Monterey County Water Resources Agency	\$443,700