

MEMORANDUM OF UNDERSTANDING

between

THE MONTEREY COUNTY WATER RESOURCES AGENCY

and

THE COUNTY OF MONTEREY

regarding

PAJARO REGIONAL FLOOD MANAGEMENT AGENCY MONETARY
CONTRIBUTIONS

WHEREAS, the County of Monterey (“County”) is a political subdivision of the State of California with duties and responsibilities set forth in various provisions of the California Constitution, and state laws and regulations; and,

WHEREAS, the Monterey County Water Resources Agency (“MCWRA”) is a flood control and water agency established in 1990 by special act of the state legislature codified at Water Code Appendix Chapter 52, and is the successor to the Monterey County Flood Control and Water Conservation District established in 1947, also by special act of the state legislature; and,

WHEREAS, the County and MCWRA (separately a “Party”, collectively the “Parties”) are separate legal entities, with separate and distinct duties and responsibilities as set forth in their respective organic laws; and,

WHEREAS, the Pajaro Regional Flood Management Agency (“PRFMA”) was formed under the Joint Exercise of Powers Act, Government Code section 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 or maintain flood management infrastructure on the Pajaro River in Santa Cruz and Monterey Counties; and,

WHEREAS, the Member Agencies of the PRFMA are County of Santa Cruz, Santa Cruz County Flood Control and Water Conservation District, Zone 7 (“Zone 7”), County of Monterey, City of Watsonville, and MCWRA, and PRFMA is the lead local agency to work with the United States Army Corps of Engineers (“USACE”) in continuing the Pajaro River Federal Flood Control Project to benefit both Santa Cruz and Monterey Counties, which is currently maintained jointly by Zone 7 and MCWRA; and,

WHEREAS, MCWRA is currently negotiating an Operations, Maintenance, Repair, Rehabilitation and Replacement Agreement with the PRFMA to transfer MCWRA's assets, current responsibilities, operation and maintenance activities, capital projects, flood monitoring, and related emergency response, all of which relate to Pajaro infrastructure in MCWRA's Zones 1/1A to the PRFMA; and,

WHEREAS, the proposed Fiscal Year ("FY") 2022-2023 budget of the PRFMA is \$3.832 million, and on July 13, 2022, the PRFMA certified a newly formed Proposition 218 benefit zone that will collect \$1,200,000 a year in assessments; and,

WHEREAS, a Cost Share Agreement has been proposed by PRFMA to allocate annual contributions of Watsonville, Zone 7, and MCWRA ("Cost Share Agencies") to fund operating expenses of the PRFMA by dedicating existing revenues generated within the boundaries of the PRFMA; the contributions from the Cost Share Agencies will be subject to an annual cost-of-living adjustment and the contribution allocations are \$2,138,400 for Zone 7, \$49,900 for Watsonville, and \$443,700 for MCWRA from its Zone 1/1A special assessments; and,

WHEREAS, MCWRA needs parts of its Zone 1/1A assessments to pay its administrative and overhead expenses directly tied to the Zone 1/1A which include third party insurance cost, reimbursements to other government agencies, and charges by other County service departments (see **Exhibit A** for a list of expense categories identified as the administrative and overhead expenses); and,

WHEREAS, in FY 2022-2023, MCWRA will dedicate at least \$250,000 of Zone 1/1A assessment revenue to PRFMA and, for the benefit of Monterey County and public generally, the County will contribute up to \$193,700 in FY 2022-2023 which contribution will be continued annually to cover funding gaps for the next seven years with the final contribution in FY 2029-2030; and,

WHEREAS, the funding gap will be calculated using the difference between MCWRA's maximum cost share amount of \$443,700 and the Zone 1/1A assessments available for PRFMA cost share; it is the expectation of the Parties that as the operations and responsibilities of PRFMA grow, MCWRA's Zone 1/1A assessments be available for contributions to PRFMA will increase; as operations and responsibilities of PRFMA grow, it is expected that MCWRA administrative and overhead expenses will decrease; and the annual contribution by County shall not exceed \$193,700; the County will annually reconcile the actual administrative and overhead expenses to ensure they are legitimate and appropriate costs related to Zone 1/1A assessments; NOW THEREFORE,

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the County and MCWRA agree as follows:

1. Effective Date and Term.

This MOU will be effective as of the date last signed by either of the Parties and shall continue in effect until June 30, 2030, unless terminated as set forth in Section 3, below.

2. Obligations of the Parties.

- A. In FY 2022-2023, MCWRA will contribute \$250,000 of its Zone 1/1A assessments pursuant to the PRFMA Cost Share Agreement, and the County will contribute \$193,700 to MCWRA to cover the funding gap, so that MCWRA can contribute \$443,700 to PRFMA under the Cost Share Agreement.
- B. Between FY2023-2024 and FY2029-2030, the County will continue to cover funding gaps for next seven years with the final contribution in FY 2029-2030. The funding gaps will be determined as the difference between MCWRA's maximum cost share amount of \$443,700 and Zone 1/1A assessments available for PRFMA. The County's annual contribution to MCWRA for the Cost Share Agreement shall not exceed \$193,700.

3. Termination.

The final contribution by the County shall be in FY 2029-2030, and this MOU shall terminate without further action of the Parties on June 30, 2030. This MOU may be terminated prior to FY 2029-2030 by mutual agreement of the Parties.

4. Indemnification.

To the maximum extent permitted by law, MCWRA shall defend, indemnify and hold harmless the County, its officers, agents, and employees, from and against any and all demands, claims, causes of action, suits, judgments, liabilities, liens, losses, damages, expenses, fines, penalties and assessments (collectively, "damages") incurred or sustained by the County arising from or related to the performance by MCWRA of its obligations under this MOU excepting therefrom any damages arising from or related to the gross negligence or willful misconduct of the County, its officers, agents, or employees.

5. General Provisions.

A. Notices.

All notices regarding performance under this MOU shall be sent by hand delivery, electronic mail, or U.S. mail (certified mail, return receipt requested and postage prepaid) to the persons and addresses listed below. Either party may change the designated person by notice to the other party. If sent by U.S. mail, delivery shall be presumed five (5) days following deposit with the U.S. Postal Service.

<p>To the MCWRA:</p> <p>General Manager 1441 Schilling Pl., North Bldg., Salinas, CA 93901 (831) 755-4860</p> <p>Copy to: Kelly L. Donlon, Assistant County Counsel 168 W. Alisal St., 3rd Floor Salinas, CA 93901 (831) 755-5313</p>	<p>To the County:</p> <p>County Administrative Officer 163 W. Alisal St., Third Floor Salinas, CA 93901 (831) 755-5115</p> <p>Copy to: Leslie J. Girard, County Counsel 168 W. Alisal St., 3rd Floor Salinas, CA 93901 (831) 755-5365</p>
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B. Modifications.

This MOU may be modified or amended only by written agreement of the Parties. No waiver or modification of this MOU or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Parties hereto.

C. No Waiver.

No covenant or condition of this MOU can be waived except by the written consent of MCWRA. Forbearance or indulgence by MCWRA in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the County.

D. Sole Agreement.

This MOU contains the entire agreement of the Parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this MOU shall be of no force or effect excepting a subsequent modification in writing, signed by the parties hereto.

E. Authority to Execute.

The persons executing this MOU on behalf of their respective party represent and warrant that they have, or have received, the proper authority to so execute this MOU.

IN WITNESS WHEREOF, the County and MCWRA have caused the Memorandum of Understanding to be executed:

Monterey County Water Resources Agency

County of Monterey

By _____
Brent Buche
General Manager

By _____
Charles J. McKee
County Administrative Officer

APPROVED AS TO FORM:

Monterey County Water Resources Agency

County of Monterey

By _____
Kelly L. Donlon
Assistant County Counsel

Leslie J. Girard
County Counsel

Exhibit A

General Ledger : Object Codes of administrative and overhead expenses for the Cost Share Agreement

Object Code	Object Name
6261	Insurance - General Liability (Non-recoverable)
6262	Insurance - General Liability (Recoverable)
6266	Insurance - Property
6268	Insurance - Other (Pollution Coverage)
6351	Membership Fees
6405	Courier Services - Internal
6406	Mail Handling Charges
6415	Records Retention Charge - Internal
6601	Accounting & Auditing Charges
6603	Data Processing Services - Internal
6607	Legal Service - Internal
7013	Reimbursement to Other Governmental Agencies
7301	Cost Plan Charges

Percent applicable for the cost share contribution calculations as administrative and overhead expenses:

Fund 111 – 2.63%

Fund 112 – 100%