

## Attachment E

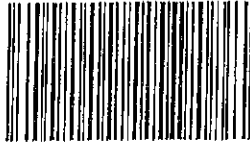
Stephen L. Vagnini  
Monterey County Recorder  
Recorded at the request of  
Filer

ORDAWN  
8/23/2011  
8:29:00

1 RECORDING REQUESTED BY:  
2 California Department of Parks and Recreation  
Office of Grants and Local Services

3 WHEN RECORDED MAIL TO:  
4 Office of Grants and Local Services  
PO Box 942896  
5 Sacramento, CA 94296-0001  
Attn: Cristelle Taillon

DOCUMENT: 2011045789



Titles: 1/ Pages: 15

Fees....

Taxes...

Other... 2.00

AMT PAID \$2.00

6 No fee shall be charged per GC § 27383

8 DEED RESTRICTION

9  
10 I. WHEREAS, the Redevelopment Agency of the County of Monterey (hereinafter referred  
11 to as "Owner(s)" is/are recorded owner(s) of the real property described in Exhibit A, attached and  
12 incorporated herein by reference (hereinafter referred to as the "Property"); and

13 II. WHEREAS, the California Department of Parks and Recreation (hereinafter referred to  
14 as "DPR") is a public agency created and existing under the authority of section 5001 of the California  
15 Public Resources Code (hereinafter referred to as the "PRC"). And

16 III. WHEREAS, Owner(s) (or Applicants) applied to DPR for grant funds available pursuant  
17 to the 2006 Parks Bond Act, Statewide Park Development and Community Revitalization for Creation  
18 of the new Pajaro Community Park through acquisition and development of 4.9 acres in Monterey  
19 County. Construct a new plaza/kiosco, baseball/soccer field, basketball court, track, picnic areas,  
20 playground, tot lot, restroom, public art wall, parking lot, and landscaping. on the Property; and

21 IV. WHEREAS, on November 7, 2010, DPR's Office of Grants and Local Services  
22 conditionally approved Grant SW-27-002, (hereinafter referred to as "Grant") for the Creation of the  
23 new Pajaro Neighborhood Park through acquisition and development of 4.9 acres in Monterey County.  
24 Construct a new plaza/kiosco, baseball/soccer field, basketball court, track, picnic areas, playground, tot  
25 lot, restroom, public art wall, parking lot, and landscaping. on the Property, subject to, among other  
26 conditions, recordation of this Deed Restriction on the Property; and  
27

1 V. WHEREAS, but for the imposition of the Deed Restriction condition of the Grant, the  
2 Grant would not be consistent with the public purposes of the 2006 Parks Bond Act, Statewide Park  
3 Development and Community Revitalization and the funds that are the subject of the Grant could  
4 therefore not have been granted; and

5 VI. WHEREAS, Owner(s) has/ve elected to comply with the Deed Restriction of the Grant,  
6 so as to enable Owner(s), to receive the Grant funds and perform the work described in the Grant;

7 NOW, THEREFORE, in consideration of the issuance of the Grant funds by DPR, the  
8 undersigned Owner(s) for himself/herself/themselves and for his/her/their heirs, assigns, and successors-  
9 in-interest, hereby irrevocably covenant(s) with DPR that the condition of the grant (set forth at  
10 paragraph(s) 1 through 5 and in Exhibit B hereto) shall at all times on and after the date on which this  
11 Deed Restriction is recorded constitute for all purposes covenants, conditions and restrictions on the use  
12 and enjoyment of the Property that are hereby attached to the deed to the Property as fully effective  
13 components thereof.

14 1. DURATION. (a) This Deed Restriction shall remain in full force and effect and shall  
15 bind Owner(s) and all his/her/their assigns or successors-in-interest for the period running from July 1,  
16 2009 through June 30, 2039.

17 2. TAXES AND ASSESSMENTS. It is intended that this Deed Restriction is irrevocable  
18 and shall constitute an enforceable restriction within the meaning of a) Article XIII, section 8, of the  
19 California Constitution; and b) section 402.I of the California Revenue and Taxation Code or successor  
20 statute. Furthermore, this Deed Restriction shall be deemed to constitute a servitude upon and burden to  
21 the Property within the meaning of section 3712(d) of the California Revenue and Taxation Code, or  
22 successor statute, which survives a sale of tax-deeded property.

23 3. RIGHT OF ENTRY. DPR or its agent or employees may enter onto the Property at times  
24 reasonably acceptable to Owner(s) to ascertain whether the use restrictions set forth above are being  
25 observed.  
26  
27

1 4. REMEDIES. Any act, conveyance, contract, or authorization by Owner(s) whether  
2 written or oral which uses or would cause to be used or would permit use of the Property contrary to the  
3 terms of this Deed Restriction will be deemed a violation and a breach hereof. DPR may pursue any and  
4 all available legal and/or equitable remedies to enforce the terms and conditions of this Deed Restriction.  
5 In the event of a breach, any forbearance on the part of DPR to enforce the terms and provisions hereof  
6 shall not be deemed a waiver of enforcement rights regarding any subsequent breach.

7 5. SEVERABILITY. If any provision of these restrictions is held to be invalid, or for any  
8 reason becomes unenforceable, no other provision shall be affected or impaired.

9  
10 Dated: August 19<sup>th</sup>, 20 11

11  
12 Business Name (if property is owned by a business): NONE

13  
14 Signed:  \_\_\_\_\_

15 Signed: NONE \_\_\_\_\_

16 PRINT/TYPE NAME & CAPACITY OF ABOVE  
17 (GRANTEE'S AUTHORIZED REPRESENTATIVE)  
JIM COOK, DIRECTOR  
18 Redevelopment and Housing

19 PRINT/TYPE NAME & CAPACITY OF ABOVE  
20 (ADDITIONAL SIGNATURE, AS REQUIRED)

21 \*\*\*NOTARY ACKNOWLEDGEMENT ON THE NEXT PAGE\*\*\*  
22  
23  
24  
25  
26  
27

1 State of California

2 County of MONTEREY

3 On AUGUST 19, 2011 before me, GRETCHEN J. MARKLEY, a Notary Public,  
4 personally appeared Jim Cook, who proved to me on the basis of  
5 satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
6 acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that  
7 by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the  
8 person(s) acted, executed the instrument.

9 I certify under PENALTY OF PERJURY under the laws of the State of California that the  
10 foregoing paragraph is true and correct.

11 WITNESS my hand and official seal.

12 Signature Gretchen Markley (Seal)



15 State of California

16 County of \_\_\_\_\_

17 On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public,  
18 personally appeared \_\_\_\_\_, who proved to me on the basis of  
19 satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
20 acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that  
21 by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the  
22 person(s) acted, executed the instrument.

23 I certify under PENALTY OF PERJURY under the laws of the State of California that the  
24 foregoing paragraph is true and correct.

25 WITNESS my hand and official seal.

26 Signature \_\_\_\_\_ (Seal)

## EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN AN UNINCORPORATED AREA, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

### PARCEL I:

A part of Rancho Bolsa De San Cayetano, beginning at a point in the Patent Survey Boundary of said Rancho, said point being also in the Northwesterly boundary of a 15 acre tract of land conveyed by Francis S. Spring to Fanny C. Porter and John T. Porter by Deed dated November 21, 1879 and recorded in Volume Z of Deeds, at Page 345, Monterey County Records, and from which said point of beginning the most Northerly corner of said 15 acre Tract of land bears along said Patent Survey boundary and Boundary of said 15 acre Tract, N. 23° 17' E., 692.58 feet distant, and the most Westerly corner of "Subdivision No. 2 of the land of Estate of Fanny C. Porter", as said subdivision is shown on that certain map file for record on January 26, 1938 in Volume 4 of Maps, "Cities and Towns", at Page 14, Monterey County Records, bears with the following two courses and distances:

(1) S. 86° 04' E., 297.67 feet; thence

(2) N. 30° 37' E., 57.62 feet; thence from point of beginning and leaving said Patent Survey Boundary and Boundary of said 15 acre Tract of land, and running

(1) S. 86° 04' E., 180.13 feet; thence

(2) S. 41° 02 1/2' E., at 12.93 feet a 2" x 3" post, at 58.43 feet a 1 inch diameter steel bar set flush with the ground, at 87.43 feet a 2" x 3" post, 151.0 feet to a 1 inch diameter steel bar set flush with the ground; thence

(3) Along the arc of a circular curve to the right, the center of which bears S. 48° 57 1/2' W., 960 feet distant, for a distance of 335.80 feet to a 1 inch diameter steel bar set flush with the ground; thence

(4) S. 43° 14' W., 480.5 feet to a 1 1/4 inch diameter iron pipe set in the Northeasterly line of the Southern Pacific Railroad right of way, 50.0 feet from the centerline of the main line Track; thence along said railroad right of way line

(5) N. 50° 01 1/2' W., 100.0 feet to a 1 inch diameter steel bar; thence leave said right of way line and crossing said railroad

(6) S. 39° 58 1/2' W., 135.6 feet to a 1 1/4 inch diameter iron pipe; thence

(7) N. 8° 00' W., at 270.0 feet to a 1 1/4 inch diameter iron pipe, 286.33 feet to a point in said Patent Survey Boundary; thence along said Patent Survey Boundary

(8) N. 23° 17' E., 819.30 feet to the point of beginning.

Excepting therefrom all that portion of land lying within the limits of said Southern Pacific Company Railroad right of way, particularly described as follows: Beginning at a 1 inch diameter steel bar set in the Northeasterly line of the above mentioned Southern Pacific Railroad right of way, at the Northwesterly extremity of that certain course hereinabove numbered (5); thence along said right of way line, N. 50° 01 1/2' W., 331.55 feet to a point in the aforementioned Patent Survey Boundary; thence along said Patent Survey Boundary, S. 23° 17' W., 104.39 feet to a point in the Southwesterly line of said railroad right of way; thence along last mentioned right of way line, S. 50° 01 1/2' E., 301.58 feet; thence N. 39° 58' W., 100.00 feet to the place of beginning.

Also excepting therefrom so much of said property as has been taken for levee, highway and other public purposes in a decree of condemnation, recorded March 11, 1941 in Volume 711 of Official Records of Monterey County at Page 105.

Also excepting therefrom that portion of the herein described property lying Southwesterly of the Southwesterly line of the said

Southern Pacific Company Railroad right of way exception set forth.

Also excepting therefrom that portion of said land lying within the boundaries of the Pajaro River Project.

PARCEL II:

That certain real property situate, lying and being in Lot 16 of the Atherton Partition, so called, of the Rancho Bolsa De San Cayetano, in the County of Monterey, State of California, particularly described as follows:

Beginning at the most Westerly corner of San Juan Street, as said corner and street are shown on Map entitled, "Subdivision No. 2 of the land of Estate of Fanny C. Porter", filed January 26, 1938 in the Office of the County Recorder of the County of Monterey, State of California, and now on file in said Office in Map Book Four, Cities and Towns, at Page 14; said corner being in the Southeasterly boundary of that certain piece or Parcel of land conveyed from the Estate of Fanny C. Porter, deceased, to Lorena Lee Dong by Deed dated February 28, 1948, recorded in Book 1042 of Official Records, at Page 209; and running thence from said place of beginning along said Southeasterly boundary

(1) South  $30^{\circ} 37'$  West 57.62 feet to the most Southerly corner of said Piece or Parcel of land; thence along the Southwesterly Boundary thereof,

(2) North  $86^{\circ} 04'$  West, 117.54 feet to an angle point in the Northeasterly Boundary of that certain 7.56 acre Tract of land conveyed from the Estate of Fanny C. Porter, deceased to Laurence C. Karstedt by Deed dated March 20, 1939, recorded in Book 615 of Official Records at Page 283; thence leave the Boundary of said Piece or Parcel of land and running along the Northeasterly Boundary of said 7.56 acre Parcel of land

(3) South  $41^{\circ} 02' 1/2'$  East, 151.0 feet; thence

(4) On the arc of a circular curve to the right, the center of which bears South  $48^{\circ} 57' 1/2'$  West 960 feet distant, for a distance of 35.05 feet in a Southeasterly direction, thence leaving last mentioned boundary

(5) On the arc of a circular curve to the right, the center of which bears North  $51^{\circ} 03'$  East 75 feet distant, for a distance of 95.01 feet in a Northwesterly direction; thence

(6) North  $33^{\circ} 38'$  East, 84.95 feet; thence

(7) N.  $38^{\circ} 13' 1/2'$  West, 29.09 feet to the place of beginning.

Excepting so much of said property that has been taken for Levee, Highway and other Public Purposes in a Decree of Condemnation, recorded March 11, 1941 in Volume 711 of Official Records of Monterey County at Page 105.

Also excepting therefrom that Portion of said land lying within the Boundaries of the Pajaro River Project.

APN: 117-341-002, 117-341-003, and 117-331-025

**EXHIBIT B**State of California - Natural Resources Agency  
Department of Parks and Recreation**GRANT CONTRACT**

2006 Parks Bond Act

**Statewide Park Development and Community Revitalization**GRANTEE Monterey Co Redevel. AgencyGRANT PERFORMANCE PERIOD is from July 01, 2009 through June 30, 2017CONTRACT PERFORMANCE PERIOD is from July 01, 2009 through June 30, 2009PROJECT TITLE PAJARO COMMUNITY PARKPROJECT NUMBER 8W-27-002

The GRANTEE agrees to the terms and conditions of this contract, hereinafter referred to as AGREEMENT, and the State of California, acting through its Director of Parks and Recreation, pursuant to the State of California, agrees to fund the total State grant amount indicated below. The GRANTEE agrees to complete the GRANT SCOPE as defined in the GRANT SCOPE / Cost Estimate Form of the APPLICATION filed with the State of California referenced by the application number indicated above.

The General and Special Provisions attached are made a part of and incorporated into the Contract.

Monterey Co Redevel. Agency

Grantee

By Jim Cook

Typed or printed name of Authorized Representative

Signature of Authorized Representative

Address 168 W Alisal St 3rd Fl Salinas CA 93901Title Director of Redevelopment and HousingDate 12/23/10STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATIONBy [Signature]Date 1/10/11**CERTIFICATION OF FUNDING**

CONTRACT NO 03904056	AMENDMENT NO	CALSTARS VENDOR NO. 400000470100			PROJECT NO. 8W-27-002	
AMOUNT ENCUMBERED BY THIS DOCUMENT \$5,000,000.00		FUND. SAFE DRINKING WTR, COASTAL PROTECTION FUND OF 2008				
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT		ITEM 3790-102-8051(1)	CHAPTER 1/09	STATUTE 09	FISCAL YEAR 2010/11	
TOTAL AMOUNT ENCUMBERED TO DATE \$5,000,000.00		INDEX 1091	OBJ. EXPEND 702	POA. 85100	PROJECT / WORK PHASE	
T.B.A. NO.		I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance.				
S.R. NO.		ACCOUNTING OFFICER'S SIGNATURE <u>[Signature]</u>			DATE 1/10/11	

Grantee: 1/11/11



## I. RECITALS

1. This AGREEMENT is entered into between the State of California, by and through the California Department of Parks and Recreation (hereinafter referred to as "STATE") and Monterey Co. Redevelopment Agency (hereinafter referred to as "GRANTEE").
2. The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 authorizes STATE to award grants to eligible entities for the purpose of Division 43 of the Public Resources Code.
3. Pursuant to the Statewide Park Development and Community Revitalization Act of 2008, STATE is authorized to oversee and manage grants to eligible entities for the purposes stated within its provisions. Funding for this three hundred sixty eight million (\$368 million) grant program was made available through the Sustainable Communities and Climate Change Reduction chapter in Proposition 84. (Public Resources Code Division 43, Chapter 9, §75065(b)).
4. Pursuant to the Proposition 84 2006 Bond Act, STATE is authorized to oversee and manage grants to eligible entities for the purposes stated within its provisions. Funding for the ninety three million (\$93 million) Nature Education Facilities Program grant program was made available through the Parks and Nature Education Facilities chapter in Proposition 84. (Public Resources Code Division 43, Chap. 8, §75063 (b)).
5. Sustainable Communities and Climate Change Reduction chapter in Proposition 84. (Public Resources Code Division 43, Chapter 9, §75065(b).), STATE is authorized to oversee and manage grants to eligible entities for the purposes stated within its provisions. Funding for this three hundred sixty eight million (\$368 million) grant program was made available through the Sustainable Communities and Climate Change Reduction chapter in Proposition 84. (Public Resources Code Division 43, Chapter 9, §75065(b)).
6. The STATE hereby grants to GRANTEE a sum (hereinafter referred to as "GRANT MONIES") not to exceed Five Million Dollars (\$5,000,000.00 ), subject to the terms and conditions of this AGREEMENT, the GUIDES, any legislation applicable to the ACT, and the APPLICATION.
7. In consideration thereof GRANTEE agrees to abide by the terms and conditions of this AGREEMENT as well as the provisions of the ACT. GRANTEE acknowledges that the GRANT MONIES are not a gift or a donation.
8. In addition to the terms and conditions of this AGREEMENT, the parties agree that the terms and conditions contained in the documents set forth below are hereby incorporated into and made part of this AGREEMENT.
  - a. The GRANT ADMINISTRATION GUIDE;
  - b. The APPLICATION GUIDE;
  - c. The submitted APPLICATION.

## II. GENERAL PROVISIONS

### A. Definitions

As used in this AGREEMENT, the following words shall have the following meanings:

1. The term "ACT" means the statutory basis for these grant programs.
2. The term "APPLICATION" means the individual project application packet for a grant pursuant to the enabling legislation and/or grant program process guide requirements.
3. The term "ACQUISITION" means to obtain fee title of real property or a permanent easement which provides the recipient permanent rights to use the property for the purposes of the project. Leases or rentals do not constitute ACQUISITION.
4. The term "CONTRACT PERFORMANCE PERIOD" means the period of time described in Section 1 of this AGREEMENT.
5. The term "COMPETITIVE GRANT PROGRAM" means the Statewide Park Program or Nature Education Facilities Program.
6. The term "DEVELOPMENT" means capital improvements to real property by means of construction of permanent or fixed features of the property.
7. The term "GRANT PERFORMANCE PERIOD" means the period of time described in the contract face sheet during which eligible costs can be charged to the grant and which begins on the date of appropriation and ends on the fund liquidation date.
8. The term "GRANT SCOPE" means the items listed in the GRANT SCOPE/Cost Estimate Form found in the APPLICATION.
9. The term "GUIDES" means the documents identified as the "Application Guide for the Statewide Park Development and Community Revitalization Act of 2008", or the "Application Guide for the Nature Education Facilities Program" and the "Grant Administration Guide". The GUIDES provide the procedures and policies controlling the administration of the grant.
10. The term "PROJECT TERMINATION" refers to the non-completion of a GRANT SCOPE.
11. The term "STATE" refers to the State of California acting by and through the California Department of Parks and Recreation.

### B. Project Execution

1. Subject to the availability of GRANT MONIES in the ACT, the STATE hereby grants to the GRANTEE a sum of money not to exceed the amount stated in Section I of this AGREEMENT, in consideration of, and on condition that, the sum be expended in carrying out the purposes set forth in the GRANT SCOPE, and under the terms and conditions set forth in this AGREEMENT.

The GRANTEE shall assume the obligation to furnish any additional funds that may be necessary to complete the GRANT SCOPE.

2. After STATE has approved the APPLICATION, all changes and alterations to the GRANT SCOPE must be approved in writing by the STATE. GRANTEE'S failure to comply with this provision may be construed as a breach of the terms of the AGREEMENT and result in the enforcement of the Project Termination provision section E. found in this AGREEMENT.

To maintain the integrity of the COMPETITIVE GRANT PROGRAM, the GRANTEE agrees that any other project changes or alterations which deviate from the project selection criteria responses provided by the GRANTEE in the original competitive APPLICATION must be submitted in writing to the STATE for prior approval.

3. The GRANTEE shall complete the GRANT SCOPE in accordance with the time of the GRANT PERFORMANCE PERIOD set forth on page one of this AGREEMENT, and under the terms and conditions of this AGREEMENT.
4. The GRANTEE shall comply with the California Environmental Quality Act (Public Resources Code, Section 21000, et. seq., Title 14, California Code of Regulations, Section 15000 et. seq.).
5. The GRANTEE shall at all times comply with all applicable current laws and regulations affecting ACQUISITION and DEVELOPMENT projects, including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and laws and codes pertaining to individuals with disabilities, including but not limited to the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et. seq.) and the California Unruh Act (California Civil Code §51 et seq.)
6. If the GRANT SCOPE includes ACQUISITION of real property, the GRANTEE agrees to comply at all times with all applicable State and local laws or ordinances affecting relocation and real property ACQUISITION.
7. GRANTEE agrees that lands acquired with GRANT MONIES shall not be acquired through the use of eminent domain.

#### C. Project Costs

1. GRANTEE agrees to abide by the GUIDES.
2. GRANTEE acknowledges that the STATE may make reasonable changes to its procedures as set forth in the GUIDES. If the STATE makes any changes to its procedures and guidelines, STATE agrees to notify GRANTEE within a reasonable time.

#### D. Project Administration

1. If GRANT MONIES are advanced for ACQUISITION projects, the GRANT MONIES shall be placed in an escrow account. If GRANT MONIES are advanced and not expended, the unused portion of the advanced funds shall be returned to the STATE within 60 days after the close of escrow.
2. If GRANT MONIES are advanced for DEVELOPMENT projects, the advanced funds shall be placed in an interest bearing account until expended. Advanced funds must be spent within six months from the date of receipt, unless the STATE waives this requirement. Interest earned on the advanced funds shall be used on the project as approved by the STATE. If GRANT MONIES are advanced and not expended, the unused portion of the grant and any

Interest earned shall be returned to the STATE within 60 days after project completion or the end of the GRANT PERFORMANCE PERIOD whichever is earlier.

3. The GRANTEE shall submit written project status reports within 30 calendar days after the STATE has made such a request. In any event, the GRANTEE shall provide the STATE a report showing total final project expenditures within 60 days of project completion or the end of the GRANT PERFORMANCE PERIOD, whichever is earlier. The GRANT PERFORMANCE PERIOD is identified on page one of this AGREEMENT.
4. The STATE shall have the right to inspect all property or facilities acquired and/or developed pursuant to this AGREEMENT and the GRANTEE shall make such property or facilities available for inspection upon 24 hours notice from the STATE.
5. The GRANTEE and the STATE agree that if the GRANT SCOPE includes DEVELOPMENT, final payment may not be made until the work described in the GRANT SCOPE is complete.
6. Any grant funds that have not been expended by the GRANTEE shall revert to the STATE.

#### **E. Project Termination**

1. In the event of non-completion of a GRANT SCOPE, the GRANTEE shall return all GRANT MONIES to the STATE.
2. This AGREEMENT may be rescinded, modified or amended only by mutual written agreement between the GRANTEE and the STATE, unless the provisions of this AGREEMENT provide that mutual agreement is not required for a rescission, modification or amendment.
3. Failure by the GRANTEE to comply with the terms of this AGREEMENT, as well as any other grant contracts or other agreements that GRANTEE has entered into with STATE, may be cause for suspension of all obligations of the STATE under this AGREEMENT unless the STATE determines that such failure was due to no fault of the GRANTEE. In such case, STATE may reimburse GRANTEE for eligible costs properly incurred in performance of this AGREEMENT despite non-performance of the GRANTEE. To qualify for such reimbursement, GRANTEE agrees to mitigate its losses to the best of its ability.
4. The GRANTEE agrees that in the event of a breach of this AGREEMENT, the STATE may seek, in addition to all remedies provided by law, specific performance of the AGREEMENT in accordance with the purpose of the AGREEMENT to preserve, protect and increase the quantity and quality of parks, public recreation facilities, opportunities and/or historic resources available to the people of the State of California.

#### **F. Budget Contingency Clause**

For purposes of this program, if funding for any fiscal year is reduced or deleted by the budget act, executive order, the legislature, or by any other provision of statute, the STATE shall have the option to either cancel this contract with no liability occurring to the STATE, or offer a contract amendment to GRANTEE to reflect a reduced grant amount. This paragraph shall not require the mutual agreement as addressed in Paragraph E, subsection 2, of this AGREEMENT.

#### G. Indemnity

1. The GRANTEE shall waive all claims and recourse against the STATE including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this AGREEMENT except valid legal claims arising from the concurrent or sole negligence of the STATE, its officers, agents, and employees.
2. To the fullest extent of the law, the GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the ACQUISITION, DEVELOPMENT, construction, operation or maintenance of the property described as the project which claims, demands or causes of action arise under California Government Code Section 895.2 or otherwise except for liability arising out of the concurrent or sole negligence of the STATE, its officers, agents, or employees.
3. The GRANTEE agrees that in the event the STATE is named as codefendant under the provisions of California Government Code Section 895 et. seq., the GRANTEE shall notify the STATE of such fact and shall represent the STATE in the legal action unless the STATE undertakes to represent itself as codefendant in such legal action in which event the STATE shall bear its own litigation costs, expenses, and attorney's fees.
4. The GRANTEE and the STATE agree that in the event of judgment entered against the STATE and the GRANTEE because of the concurrent negligence of the STATE and the GRANTEE, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction.
5. The GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, costs, expenses or liability costs arising out of legal actions pursuant to items to which the GRANTEE has certified. The GRANTEE acknowledges that it is solely responsible for compliance with items to which it has certified.

#### H. Financial Records

1. The GRANTEE shall maintain satisfactory financial accounts, documents and records for the project and make them available to the STATE for auditing at reasonable times. The GRANTEE also agrees to retain such financial accounts, documents and records for five years following project termination or final payment, whichever is later.
2. The GRANTEE shall keep such records as the STATE shall prescribe, including records which fully disclose (a) the disposition of the proceeds of GRANT MONIES, (b) the total cost of the project; (c) the amount and nature of project funds provided by other sources, and (d) any other records that will facilitate an effective audit of use of the GRANT MONIES.
3. The GRANTEE agrees that the STATE shall have the right to inspect and make copies of any books, records or reports pertaining to this AGREEMENT or matters related thereto during regular office hours. The GRANTEE shall maintain and make available for inspection by the STATE accurate records of all of its costs, disbursements and receipts with respect to its activities under this AGREEMENT. Such accounts, documents, and records shall be retained by the GRANTEE for 5 years following final payment of GRANT MONIES.

4. The GRANTEE shall use a generally accepted accounting system.

#### I. Use of Facilities

1. The GRANTEE agrees to operate and maintain any property acquired or developed with the GRANT MONIES for the duration of the CONTRACT PERFORMANCE PERIOD.
2. The GRANTEE agrees that during the CONTRACT PERFORMANCE PERIOD, any income earned by the GRANTEE from a STATE approved non-recreational use of the project shall be used for recreational purposes at the project, or, if approved by the STATE, for recreational purposes within the GRANTEE'S jurisdiction.
3. All facilities shall have operating hours consistent with the times proposed in the APPLICATION and be open to members of the public in accordance with the project selection criteria in the APPLICATION, unless otherwise granted permission by the STATE and except as noted under the special provisions of this AGREEMENT or under provisions of the enabling legislation and/or grant program.
4. The GRANTEE agrees that for the duration of the CONTRACT PERFORMANCE PERIOD, any property acquired or developed with GRANT MONIES under this AGREEMENT shall be used only for the purposes of the grant and consistent with the GRANT SCOPE referenced in the APPLICATION unless prior written approval is given by the STATE.
5. The GRANTEE agrees to use any property acquired or developed with GRANT MONIES under this AGREEMENT only for the purposes of the grant and no other use, sale, or other disposition shall be permitted except as authorized by a specific act of the legislature in which event the property shall be replaced by the GRANTEE with property of equivalent value and usefulness as determined by STATE.
6. The property acquired or developed with GRANT MONIES may be transferred to another eligible entity only if the successor entity assumes the obligations imposed under this AGREEMENT and with written approval of the STATE.
7. Any real property (including any portion of it or any interest in it) may not be used as security for any debt or mitigation, without the written approval of the STATE provided that such approval shall not be unreasonably withheld as long as the purposes for which the GRANT MONIES were awarded are maintained. Any such permission that is granted does not make the STATE a guarantor or a surety for any debt or mitigation, nor does it waive the STATE'S rights to enforce performance under this AGREEMENT.
8. All real property, or rights thereto, acquired with GRANT MONIES shall be subject to an appropriate form of restrictive title, rights, or covenants required and approved by the STATE. If the project property is taken by use of eminent domain, GRANTEE shall reimburse the STATE an amount at least equal to the amount of GRANT MONIES received from the STATE or the pro rated full market value of the real property, including improvements, at the time of sale, whichever is higher.
9. If eminent domain proceedings are initiated against GRANTEE, GRANTEE shall notify STATE within 10 days of receiving the complaint.

#### J. Nondiscrimination

1. The GRANTEE shall not discriminate against any person on the basis of sex, race, creed, color, national origin, age, religion, ancestry, sexual orientation, disability, medical condition, or marital status in the use of property or a specific facility included in the GRANT SCOPE.
2. The GRANTEE shall not discriminate against any person on the basis of residence, and shall not apply differences in admission or other fees on the basis of residence. Fees shall be reasonable and not unduly prevent use by economically disadvantaged members of the public.

#### K. Severability

If any provision of this AGREEMENT or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of the AGREEMENT which can be given effect without the invalid provision or application, and to this end the provisions of this contract are severable.

#### L. Liability

STATE assumes no responsibility for assuring the safety of construction, site improvements or programs related to the GRANT SCOPE. The STATE'S rights under this AGREEMENT to review, inspect and approve the GRANT SCOPE and any final plans of implementation shall not give rise to any warranty or representation that the GRANT SCOPE and any plans or improvements are free from hazards or defects.

#### M. Assignability

Without the written consent of the STATE, the GRANTEE'S interest in and responsibilities under this AGREEMENT shall not be assignable by the GRANTEE either in whole or in part.

#### N. Section Headings

The headings and captions of the various sections of this AGREEMENT have been inserted only for the purpose of convenience and are not a part of this AGREEMENT and shall not be deemed in any manner to modify, explain, or restrict any of the provisions of this AGREEMENT.

O. Waiver

Any failure by a party to enforce its rights under this AGREEMENT, in the event of a breach, shall *not* be construed as a waiver of said rights; and the waiver of any breach under this AGREEMENT shall *not* be construed as a waiver of any subsequent breach.

Monterey Co. Redevelopment Agency  
Grantee

By:   
Signature of Authorized Representative (Position Authorized in the Resolution)

Title: Director, Redevelopment & Housing Office

Date: 12/23/10