ADVANCE FUNDING AGREEMENT

between

THE COUNTY OF MONTEREY

and

THE MONTEREY COUNTY WATER RESOURCES AGENCY

for

FUNDING OF EMERGENCY PROTECTIVE MEASURE PROJECTS RESULTING FROM STORM AND FLOOD DAMAGE INCURRED DURING THE DECEMBER 2022 - JANUARY 2023 ATMOSPHERIC RIVER STORMS

This advance funding agreement ("Agreement") is entered into as of the effective date herein by and between the County of Monterey and the Monterey County Water Resources Agency.

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 ("Agency") 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 Agency (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 Agency owns and operates two reservoirs: Lake San Antonio, located in the County of Monterey, and Lake Nacimiento, located in the County of San Luis Obispo (the "Reservoirs"); a portion of the Pajaro River Levee located in Monterey County as the non-federal sponsor to the United States Army Corps of Engineers; the Old Salinas River Slide Gate and Access Road; as well as numerous flood control and related facilities throughout Monterey County; and,

WHEREAS, the Reservoirs provide water storage for, and flood control protection to, the Salinas River Groundwater Basin ("Basin") downstream of the Reservoirs, and also improve water supply and groundwater recharge in the Basin; the Pajaro River Levee provides flood protection to

the adjacent farm lands and community of Pajaro; and the Old Salinas River Slide and Road provides flood control and habitat enhancement capacity to waters of the United States; and,

WHEREAS, an atmospheric river event occurred commencing December 26, 2022 and continued into January of 2023, and damaged many Agency facilities including portions of the Pajaro Levee; the slidegate and levee road of the Salinas River Lagoon; and the Nacimiento spillway plunge pool and an access road to Nacimiento Dam ("Emergency Projects"). Preliminary repair cost of damages to Agency facilities is estimated at $16 million, and will be further refined over coming weeks, in consultation with Federal Emergency Management Agency ("FEMA") and State Office of Emergency Services ("OES") teams; and,

WHEREAS, on January 10, 2023, the Board of Supervisors of the County ratified a Proclamation of Local Emergency due to an atmospheric river event commencing December 26, 2022, and continuing into January of 2023 throughout Monterey County; and,

WHEREAS, the Agency has identified a number of emergency protective measures for these Emergency Projects to eliminate or lessen immediate threats to lives, public health, and safety, and lessen immediate threat of significant additional damage to improved public and private property in a cost effective manner; and,

WHEREAS, Agency costs for the Emergency Projects are anticipated to be repaid with reimbursements by FEMA, the California Disaster Assistance Act ("CDAA"), and/or other State of California resources; and,

WHEREAS, the Agency currently does not have the financial resources to immediately complete the Emergency Projects; and,

WHEREAS, the Emergency Projects will provide significant public benefits to the citizens of the County by protecting their health, safety, welfare and property; and,

WHEREAS, due to the benefits accruing to the County and the Agency as a whole from the Emergency Projects, the County is prepared to advance the necessary funds for such work on the condition that the County shall be repaid such funds incurred implementing the Emergency Projects as reimbursed by FEMA, CDAA, or other State of California resources; **NOW THEREFORE**,

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

1. Reimbursement and Funding.

Subject to all other terms of this Agreement the County shall advance to the Agency up to the sum of $7,000,000 (the "Advance") for the purpose of funding the Emergency Projects.

The Advance shall be provided to the Agency periodically as necessary for cashflow purposes upon receipt of Agency documentation verifying the need for the expenditures (e.g. invoices from contractors). Documentation shall be submitted to the County Administrative Office.

2. Effective Date and Term.

The effective date of this Agreement shall be the date last signed by either of the Parties. This Agreement shall be effective until all funds are repaid by the Agency to the County pursuant to Paragraph 3 or the Agreement is terminated early pursuant to Paragraph 4.

3. Repayment.

To the extent permitted by law, at such time as the Emergency Projects are reimbursed from other sources, the Agency shall repay to the County the Advance (or the portion thereof having been paid to the Agency at the time of reimbursement of the Emergency Projects) within 15 business days receipt of the reimbursement. If there is no such outside reimbursement, or portion of reimbursement, the Advance or respective portions of the Advance shall be considered a County Contribution without repayment for the public purposes set forth in the recitals, and no reimbursement to the County shall be required for those portions of the Advanced not reimbursed from other sources. Notwithstanding the foregoing, the County shall have no obligation to provide any Advances beyond June 30, 2027.

4. Early Termination.

Should the County Board of Supervisors, in its sole discretion, determine that the Emergency Projects or a portion of the Emergency Projects: A) have been abandoned by the Agency; or B) are unlikely to be implemented; then the County Board of Supervisors may terminate this Agreement upon 10 days written notice to the Agency. The County shall have no obligation to make any further Advance for work performed after the date of termination, and any Advance already paid to the Agency shall not be repaid and shall be considered a County Contribution without repayment.

5. No Additional Payments.

Except as may be specifically agreed to in writing by the County, or as specifically set forth in this Agreement, the County shall not be liable to the Agency for any further advances, payments, costs or expenses of any kind with respect to the Emergency Project other than the Advance outlined in this Agreement.

6. No Further Obligations.

Nothing in this Agreement binds the County to any further obligations with respect to the Emergency Projects.

7. Lead Agency.

Nothing in this Agreement shall obligate the County to be the Lead Agency for purposes of the California Environmental Quality Act regarding the Emergency Projects. The Agency shall be the Lead Agency for all such purposes.

8. Indemnification.

To the maximum extent permitted by law, the Agency 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 the Agency of its obligations under this Agreement excepting therefrom any damages arising from or related to the gross negligence or willful misconduct of the County, its officers, agents, or employees.

9. General Provisions.

A. No Assignment. The Agency shall not assign or transfer this Agreement, or any part thereof, without the written consent of the County, nor shall the Agency assign any monies due or to become due to the Agency hereunder without the previous written consent of the County.

B. Independent Contractor. Nothing in this Agreement shall be construed or interpreted to make the Agency, its employees, agents or contractors anything but independent contractors, and in all the Agency's activities and operations pursuant to this Agreement, the Agency, its employees, agents and contractors shall not, for any purposes, be considered employees or agents of the County.

C. Authority to Bind the County. It is understood that the Agency, in the performance of this Agreement, has no authority to bind the County to any agreements or undertakings with respect to any and all persons or entities with whom the Agency deals in the course of business.

D. Notices. All notices regarding performance under this Agreement 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 personby notice to the other party. If sent by U.S. mail, delivery shall be presumed 5 days following deposit with the U.S. Postal Service.

Agency: Lew Bauman General Manager 1441 Schilling Pl., North Bldg., Salinas, CA 93901 (831) 755-4860 Copy to: Kelly L. Donlon, Assistant County Counsel 168 W. Alisal St., 3rd Floor Salinas, CA 93901 (831) 755-5313	County: Sonia M. De La Rosa County Administrative Officer 163 W. Alisal St., Third Floor Salinas, CA 93901 (831) 755-5115 Copy to: Leslie J. Girard, County Counsel 168 W. Alisal St., 3rd Floor Salinas, CA 93901 (831) 755-5365

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

F. No Waiver. No covenant or condition of this Agreement can be waived except by the written consent of the County. Forbearance or indulgence by the County in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the Agency. The County shall be entitled to invoke any remedy available to the County under this Agreement or by law or in equity despite said forbearance or indulgence.

G. Sole Agreement. This Agreement 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 Agreement shall be of no force or effect excepting a subsequent modification in writing, signed by the parties hereto.

H. Venue. If any party herein initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that venue thereof shall be the County of Monterey, State of California.

I. Construed Pursuant to California Law. The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California.

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

IN WITNESS WHEREOF, the County and the Agency have caused this Agreement to be executed:

Monterey County Water Resources Agency	County of Monterey
By_____	By_____
Lew Bauman Interim General Manager	Sonia M. De La Rosa County Administrative Officer
Date :_____	Date :_____

Approved as to form:

Monterey County Water Resources Agency	County of Monterey
By_____	_____
Kelly L. Donlon Assistant County Counsel and Agency Counsel	Leslie J. Girard County Counsel
Date :_____	Date :_____