

Attachment D

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CALIFORNIA WILDLIFE CONSERVATION BOARD

GRANT AGREEMENT

Between

STATE OF CALIFORNIA, WILDLIFE CONSERVATION BOARD

and

COUNTY OF MONTEREY

and

BIG SUR LAND TRUST

and

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

and

MONTEREY PENINSULA REGIONAL PARK DISTRICT

for

**CARMEL RIVER FLOODPLAIN RESTORATION AND
ENHANCEMENT**

MONTEREY COUNTY, CALIFORNIA

WC-1947CA

**State of California
Natural Resources Agency
Department of Fish and Wildlife
Wildlife Conservation Board**

GRANTEE: County of Monterey
1441 Schilling Place, Second Floor South
Salinas, CA 93901
Attn.: Carl P. Holm, AICP
Phone: 831-775-5103
E-mail: holmcp@co.monterey.ca.us

GRANTOR: Wildlife Conservation Board
P.O. Box 944209
Sacramento, California 94244-2090
Attn.: Cara Allen, State Representative
Phone: (916) 445-1095
E-mail: Cara.Allen@wildlife.ca.gov

LANDOWNERS: Big Sur Land Trust
P.O. Box 4071 Monterey, CA 93942
Attn.: Jeannette Tuitele-Lewis, President
Phone: (831) 625-5523
E-mail: jtuitele@bigsurlandtrust.org

California Department of Parks and Recreation,
Monterey District
2211 Garden Road, Monterey, CA 93940
Attn.: Brent Marshall, District Superintendent
Phone: (831) 649-2836
E-mail: Brent.Marshall@parks.ca.gov

Monterey Peninsula Regional Parks District
P.O. Box 223340 Carmel, CA 93922
Attn.: Rafael Payan, General Manager
Phone: (831) 372-3196
E-mail: payan@mprpd.org

Grant Agreement No.: WC-1947CA

Board Approval Date: February 26, 2020

Projected Completion Date: November 30, 2024

Terms of Agreement:

Capital Improvements: Notice to Proceed Date (APR 03 2020) through
November 30, 2024

Management: Completion of Capital Improvements to
November 30, 2045

Project Life: Twenty-five years

Project ID: 2017070

FUNDING CERTIFICATION

I hereby certify that (a) the following funds will be encumbered on behalf of Grantor; and (b) Grant Funds shall not be disbursed unless and until sufficient proceeds from the source identified below become available to Grantor to disburse.

DocuSigned by:
Steve Bouthillier 2/27/2020
B2474E4C Fiscal Officer Date:

WCB Total Grant Amount: \$2,500,000.00

Grant Amount: \$32,148.00
Fund Source: Habitat Conservation Fund, Section 2786ef
Appropriation Item: Chapter 20, Statutes of 2013
3640-801-0262
Expenditure Code: 19-1000-706-53000

Grant Amount: \$181,170.00
Fund Source: Habitat Conservation Fund, Section 2786ef
Appropriation Item: Chapter 14, Statutes of 2017
3640-801-0262
Expenditure Code: 19-1000-706-57007

Grant Amount: \$47,532.00
Fund Source: Habitat Conservation Fund, Section 2786ef(1E)
Appropriation Item: Chapter 21, Statutes of 2012
3640-301-0262
Expenditure Code: 19-1000-706-52000

Grant Amount: \$57,903.00
Fund Source: Habitat Conservation Fund, Section 2786ef(1E)
Appropriation Item: Chapter 33, Statutes of 2011
3640-301-0262
Expenditure Code: 19-1000-706-51000

Grant Amount: \$2,181,247.00
Fund Source: Habitat Conservation Fund, Section 2786ef
Appropriation Item: Chapter 23, Statutes of 2016
3640-801-0262
Expenditure Code: 19-1000-706-56006

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1. SCOPE OF AGREEMENT

Pursuant to the Wildlife Conservation Law of 1947, Chapter 4.1 (California Riparian Habitat Conservation Program) of Division 2, (commencing with Section 1385) of the California Fish and Game Code; and the approval granted by the Wildlife Conservation Board on February 26, 2020, the Wildlife Conservation Board (Grantor) hereby grants to County of Monterey (Grantee), a sum not to exceed two million five hundred thousand dollars (\$2,500,000.00) (Grant Funds), upon and subject to the terms and conditions of this Grant Agreement (Agreement).

2. PURPOSES OF GRANT

Grantor is entering into this Agreement, and the Grant Funds shall be used, only for the purpose of assisting Grantee with the project generally described as riparian and floodplain habitat restoration (Project) on approximately 135 acres of publicly- and privately-owned land located in Monterey County, California (Property). The Property is generally shown on the attached Exhibit A - LOCATION MAP. The Big Sur Land Trust, California Department of Parks and Recreation, and the Monterey Peninsula Regional Park District are the fee owners of the Property.

3. CONDITIONS OF GRANT

Grantor's obligation to disburse Grant Funds under this Agreement is conditioned upon and subject to the satisfactory completion of all of the following conditions:

- 3.1 Grantor shall have reviewed and approved all documents pertaining to the Project, including, without limitation, feasibility and planning studies, designs, plans, budgets, cost estimates, timelines, and agreements. Such review and approval by Grantor will be for compliance with this Agreement as well as funding and other requirements applicable to Grantor and shall not be unreasonably withheld.
- 3.2 Grantor shall have reviewed and approved a certified resolution or other appropriate action of the governing board or governing body of Grantee, authorizing the execution and performance of this Agreement and the carrying out of the Project by Grantee.
- 3.3 Grantee shall have disclosed all funding sources for the Project, including all amounts applied for or obtained from sources other than Grantor. These amounts shall be reflected in the attached Exhibit B – BUDGET (Budget) by Budget category. As between Grantor and Grantee, Grantee shall be responsible for any and all Project costs that exceed the amount of the Grant Funds provided under this Agreement.
- 3.4 The grant proposal shall have been approved by the Wildlife Conservation Board at a public meeting, this Agreement shall have been fully executed by Grantor and Grantee, and Grantee shall have received a written "Notice to Proceed" from Grantor. The approval of the grant proposal by the Wildlife Conservation Board, if such approval is given, shall not constitute authorization for the commencement of the Project or expenditure of Grant Funds. No expenditure made or activity initiated prior to Grantee's receipt of a written Notice to Proceed from Grantor will be eligible for reimbursement by Grantor.

4. DISBURSEMENTS

- 4.1 Upon satisfaction of all of the Conditions of Grant set forth in Section 3, above, and so long as Grantee is not in breach or default under this Agreement, Grantor agrees to disburse the Grant Funds to Grantee, in arrears, in installments as set forth in this Section 4. Disbursements shall be made not more frequently than monthly and disbursements of less than \$5000.00 should be made not more frequently than quarterly. All disbursements shall be subject to the availability of funds for purposes of the Project as provided in Section 4.8.
- 4.2 Grantee shall request disbursement of Grant Funds by submitting a disbursement request to Grantor for approved budgeted work performed on the Project in accordance with Section 4.3. Disbursement shall be contingent upon approval of the disbursement request by Grantor.
- 4.3 The disbursement request must be submitted on Grantee's letterhead, signed by an authorized representative of Grantee, and include a written description of the work completed during the period of the disbursement request. Requests for disbursement must be itemized using the same categories included in the attached Budget. Exhibit C – DISBURSEMENT REQUEST TEMPLATE provides the format to use for submitting disbursement requests to Grantor. Each disbursement request shall contain supporting or back-up documentation for all amounts shown on the request, including receipts for all materials and supplies, all Grantee staff time shown by number of hours worked and hourly rate, and all contractor or sub-contractor services.
- 4.4 Grantor may withhold ten percent (10%) of the total approved amount from each disbursement (Retained Grant Funds) until Grantor has approved the completion of the Project, the final report required by Section 6.4, and the final request for disbursement.
- 4.5 Upon completion of Project activities, Grantee may request disbursement of the Retained Grant Funds. Grantee shall submit this request no later than thirty (30) days after the Projected Completion Date (as defined in Section 6.1)
- 4.6 Please submit disbursement requests electronically to WCB at WCB Clerical@wildlife.ca.gov and WCB Project Manager Cara Allen, (Cara.Allen@wildlife.ca.gov) with "Project ID 2017070 Invoice No. ____" in the subject line.

Alternatively, hard copy requests for disbursement can be sent to:

Wildlife Conservation Board
P.O. Box 944209
Sacramento, California 94244-2090
Attn: Cara Allen

- 4.7 Grantee shall reimburse Grantor for any erroneous disbursement of Grant Funds under this Agreement. Reimbursement shall occur within 30 days of written demand by Grantor. Interest shall accrue at the highest rate allowed by law from the time that reimbursement becomes due and owing until received by Grantor.

- 4.8 Despite any contrary provision of this Agreement, Grantor shall not be obligated to disburse any remaining unpaid portion of the Grant Funds unless and until sufficient funds identified for allocation to the Project (as further specified in the Funding Certification attached to this Agreement) are released by the State Treasurer's Office to Grantor for expenditure for this grant. No request for disbursement submitted prior to the release of such funds to Grantor shall be effective.
- 4.9 With the final invoice, Grantee shall provide a completed Final Cost Share Accounting Form (Exhibit D – FINAL COST SHARE TEMPLATE) when work is completed. The completed Final Cost Share Accounting Form shall identify and delineate all cost share funds expended and in-kind services provided during the Grant term before Project completion and will be consistent with Exhibit B – BUDGET.

5. BUDGET AND INDIRECT COSTS

- 5.1 The attached Budget is an estimate of the Grantee's anticipated costs for the Project and discloses all funding sources for the Project, including all amounts applied for or obtained from sources other than Grantor. Should the Budget not disclose all funding sources for the Project, Grantor may refer this grant to the Department of Finance for a Project audit. Grantee may seek additional funding from sources other than Grantor, with Grantor's approval, to cover cost increases or to reduce Grantor's cost share. Should Grantee obtain additional funds from sources other than Grantor, Grantee shall promptly notify Grantor of the amounts and sources of the additional funding and submit a proposed new budget reflecting any changes to Grantor for its approval.

When actual Project costs indicate that the costs of certain Budget categories payable by Grantor are higher than estimated, and these higher costs are offset by lower costs in other Budget categories payable by Grantor, the Grantee may submit a written request to Grantor to shift funds between such Budget categories. Contingencies shall be used only upon written approval by Grantor. Grantor shall approve or deny a requested Budget revision or use of contingencies in writing within 10 business days of receipt of Grantee's written request.

- 5.2 Indirect cost rates are limited to 20 percent of the total direct WCB Grant Funds minus subcontractor and equipment costs. Any amount over 20 percent will not be funded but may be used as cost share. If Grantee seeks to recover indirect or administrative costs, this item should be included as a line item in the Budget. Any cost that is billed as a direct cost may not be included in indirect cost rates. Indirect costs include, but are not limited to, the following: workers compensation insurance, utilities, office space rental, phone, and copying which is directly related to completion of the Project.

Costs for subcontractors and purchase of equipment cannot be included in the calculation of indirect costs in the Budget. It is the responsibility of the Grantee to keep documentation for all indirect costs claimed in Exhibit B. For all indirect costs claimed, Grantee must keep backup documents in audit-ready files (these documents are not provided to WCB).

6. GRANTEE'S COVENANTS

In consideration of this Agreement, Grantee hereby covenants and agrees as follows:

- 6.1. Grantee will complete or cause to be completed all Project activities in accordance with Grantee's proposed design and specifications submitted to Grantor, a copy of which is attached as Exhibit E - WORK PLAN and incorporated herein by this reference, on or before November 30, 2024 (Projected Completion Date). The Project will be considered complete when all Project activities have been completed and Grantor has approved the completion of the Project, the final report required by Section 6.4, and the final request for disbursement.
- 6.2 Grantee is responsible for obtaining all necessary permits and approvals for the Project (including its construction, management, monitoring, operation, use and maintenance), and complying with all federal, state and local statutes, laws, regulations, ordinances, orders and other governmental and quasi-governmental requirements that apply to the Project (including its construction, management, monitoring, operation, use and maintenance).
- 6.3 Grantee shall recognize the cooperative nature of the Project and shall provide credit to the Grantor on signs, demonstrations, promotional materials, advertisements, publications and exhibits prepared or approved by Grantee referencing the Project. Any sign installed on the Property referencing the Project shall be subject to the mutual agreement of Grantor, Grantee and Landowner regarding text, design and location and shall display the logo of Grantor.
- 6.4 Not later than 30 days following the completion of all Project activities Grantee will submit either five hard copies or one hard copy and one digital copy of a final report of accomplishments, including pre- and post-Project photographs and a final design or site plan of the Project, to Grantor.
- 6.5 Grantee shall ensure that the Property restored with funds provided by Grantor is operated, used and maintained throughout the Project Life consistent with the Purposes of Grant and in accordance with the long-term management plan for the Project attached as Exhibit F – MANAGEMENT PLAN. Grantee may contract with Landowner to manage the Project on behalf of Grantee, however, as between Grantor and Grantee such management will remain the responsibility of Grantee.
- 6.6 The Grantee shall cause the Landowner to permit Grantor, the California Department of Fish and Wildlife, and their respective members, officers, employees, agents and representatives, to access the Property at least once every twelve months from the date of Grantor's Notice to Proceed through the end of the Project Life for purposes of inspections and monitoring. Such access shall be at times reasonably acceptable to the Landowner and the requester following written or verbal request to the Grantee.

7. BREACH AND REMEDIES

- 7.1 In the event of a breach of Grantee's obligations under this Agreement, Grantor shall give notice to Grantee describing the breach. If Grantee does not cure the breach described in the Grantor's notice within 90 days after the date of Grantor's notice (or, if the breach cannot reasonably be cured within 90 days, Grantee does not commence

the cure within the 90-day period and diligently pursue it to completion), then Grantee shall be in default of this Agreement.

- 7.2 In the event of a default by Grantee before the Project is complete then, in addition to any and all other remedies available at law or in equity, Grantor may seek specific performance of this Agreement. Grantee agrees that specific performance is an appropriate remedy because the benefits to Grantor from Grantee's completion of the Project in accordance with this Agreement, as described in Section 2 (Purposes of Grant), are unique and damages would not adequately compensate Grantor for the loss of such benefits.
- 7.3 In the event of a default by Grantee, in addition to any and all other remedies available at law or in equity, Grantor may withhold Grant Funds from Grantee or may require reimbursement of Grant Funds that were disbursed in error due to a breach of the Grant terms, including incorrect billing of indirect costs as identified in Section 5.2.
- 7.4 In the event of a default by Grantee, in addition to any and all other remedies available under this Agreement, at law or in equity, Grantor may require Grantee to reimburse the Grant Funds to Grantor in an amount determined by application of the following Reimbursement Formula:

"Reimbursement Formula"

Formula: Dollar amount of Grant Funds divided by Project Life, times the number of years remaining in the Project Life.

Example: Grantor grants \$50,000.00 to Grantee for the restoration and enhancement of wetland and riparian habitat, and the Project Life is 25 years. With 10.5 years remaining on the Project Life, the Grantee is in default under the Agreement. The reimbursement amount would be \$21,000, calculated as follows:

$$(\$50,000.00 \div 25 \text{ years}) \times 10.5 \text{ years} = \$21,000$$

Reimbursement shall be due from Grantee immediately upon written demand by Grantor. Interest shall accrue at the highest rate allowed by law from the time that the reimbursement becomes due until it is actually received by Grantor.

- 7.5 Any costs incurred by Grantor, where Grantor is the prevailing party, in enforcing the terms of this Agreement, including but not limited to costs of suit, attorneys' and experts' fees, at trial and on appeal, and costs of enforcing any judgment, shall be borne by Grantee.
- 7.6 Waiver of any breach or default by Grantee shall not be deemed to be a waiver of any subsequent breach or default, nor shall it constitute a modification of this Agreement.

8. ADDITIONAL TERMS AND CONDITIONS

8.1 Grantee Responsible for Project

While the Grantor undertakes to assist the Grantee with the Project by providing a grant pursuant to this Agreement, the Project itself remains the sole responsibility of the

Grantee. Grantor undertakes no responsibilities to the Grantee, the Landowner, or any third party, other than as expressly set out in this Agreement. The responsibility for implementing the Project is solely that of the Grantee, as is the responsibility for any claim or suit of any nature by any third party related in any way to the Project.

8.2 Contracts

All agreements between Grantee and any third party related to the Project must be in writing and contain language that establishes the right of the auditors of the State of California to examine the records of the third party relative to the goods, services, equipment, materials, supplies or other assistance provided to Grantee for the Project. Grantee shall provide a complete copy of each agreement over \$10,000.00 to Grantor prior to commencing work.

8.3 Indemnification

To the fullest extent permitted by law, Grantee shall indemnify, protect, and hold harmless the Wildlife Conservation Board and the State of California, and their respective members, officers, agents, employees and representatives, from and against any and all claims, demands, damages, losses, costs (including attorneys' fees), expenses, and liability of any nature (Claims) arising out of or incident to the Project, Grantee's entry upon and use of the Property, and the performance of, or failure to observe or perform, any obligations of the Grantee under this Agreement. The obligations of Grantee under this Section 8.3 include, without limitation, Claims resulting from the generation, use, storage, disposal, release or threatened release of any hazardous or toxic substance, material or waste; petroleum or petroleum products and other substances that present a threat to human health or the environment.

8.4 Amendment; Severability

This Agreement may be modified only by a written amendment signed by Grantor, Grantee and Landowner. No oral or written understanding or agreement not incorporated in this document shall be binding on the parties.

If any provision of this Agreement or the application thereof to any person or circumstance is held to be invalid or unenforceable, that shall not affect any other provision of this Agreement or applications of the Agreement that can be given effect without the invalid provision or application. To this end the provisions of this Agreement are severable.

8.5 Independent Capacity of Grantee; Withholding and Payments

Grantee, its members, officers, directors, employees, agents, and representatives, is each acting in an independent capacity in entering into and carrying out this Agreement, and not as a partner, member, officer, agent, employee, or representative of Grantor. Grantee is responsible for withholding and paying employment taxes, insurance and deductions of any kind required by federal, state, or local laws.

8.6 No Assignment or Transfer

This Agreement is not assignable or transferable by Grantee, either in whole or in part, without the prior written consent of Grantor which Grantor may grant or withhold in Grantor's discretion.

8.7 Accounting/Records/Audits

Grantee shall maintain complete and accurate records of its actual Project costs, in accordance with generally accepted accounting principles and practices, and shall retain said records for at least three years after final disbursement by Grantor. During such time, Grantee shall make said records available (or cause them to be made available) to the State of California for inspection and audit purposes during normal business hours. Expenditures not documented, and expenditures not allowed under this Agreement or otherwise authorized in writing by Grantor shall be borne by Grantee. The audit shall be confined to those matters connected with this Agreement, including but not limited to administration and overhead costs.

8.8 Use of Grant Funds to Secure Additional Funding

Grantee agrees that the funding provided under this Agreement shall not be used as cost share for other grants, or to secure loans or other monetary awards without written approval from the Executive Director, Wildlife Conservation Board. Such approval shall not be unreasonably withheld as long as the purposes for which the grant was awarded are maintained.

8.9 Termination or Suspension of Agreement

At any time before Grantee has broken ground on the Project Grantor may terminate this Agreement for any reason by providing Grantee not less than 30 days written notice of termination. In addition, Grantor may suspend this Agreement at any time upon written notice to Grantee. In either case, Grantee shall immediately stop work under this Agreement and take all reasonable measures to prevent further costs to Grantor. The Grantor shall be responsible for reasonable and non-refundable obligations or expenses incurred by the Grantee under this Agreement prior to the date of the notice to terminate or suspend, but only up to the undisbursed balance of funding authorized in this Agreement. Any notice suspending work under this Agreement shall remain in effect until Grantor authorizes work to resume by giving further written notice to Grantee.

8.10 Resolution of Disputes

The State Project Representative is identified on Page i of this Agreement. The State Project Representative has initial jurisdiction over each controversy arising under or in connection with the interpretation or performance of this Agreement or disbursement of Grant Funds. The Grantee will diligently pursue with the State Project Representative a mutually agreeable settlement of any such controversy.

If the controversy cannot be resolved between Grantee and the State Project Representative, the Grantee must direct the grievance together with any evidence, in writing, to the Executive Director of the Wildlife Conservation Board. The grievance must state the issues in the dispute, the legal authority or other basis for the Grantee's position and the relief sought.

The Executive Director or designee shall meet with a representative of the Grantee to review the issues. A written decision signed by the Executive Director or designee shall be returned to the Grantee within twenty (20) working days of the conclusion of this meeting.

8.11 Drug-Free Workplace Certification

By signing this Agreement, Grantee hereby certifies under penalty of perjury under the laws of the State of California that Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- 8.11.1 Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- 8.11.2 Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - a) the dangers of drug abuse in the workplace;
 - b) the person's or organization's policy of maintaining a drug-free workplace;
 - c) any available counseling, rehabilitation, and employee assistance programs; and,
 - d) penalties that may be imposed upon employees for drug abuse violations.
- 8.11.3 Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed contract:
 - a) will receive a copy of the company's drug-free policy statement; and,
 - b) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

Failure to comply with these requirements may result in suspension of disbursements under this Agreement or termination of the Agreement or both and Grantee may be ineligible for award of any future state contracts if the Grantor determines that any of the following has occurred: (1) Grantee has made false certification, or (2) Grantee violates the certification by failing to carry out the requirements as noted above.

8.12 Union Organizing

By signing this Agreement, the Grantee hereby acknowledges the applicability to this Agreement of Government Code Sections 16645 through 16649, and certifies that:

- 8.12.1 No state funds disbursed by this grant will be used to assist, promote, or deter union organizing;
- 8.12.2 Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure;
- 8.12.3 Grantee shall, where state funds are not designated as described in 8.12.2 above, allocate, on a pro-rata basis, all disbursements that support the grant program; and
- 8.12.4 If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

8.13 Labor Code Requirements; Prevailing Wage

State grants may be subject to California Labor Code requirements, which include prevailing wage provisions. Certain State grants administered by the California Wildlife Conservation Board and the California Department of Fish and Wildlife are not subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code. For more details, please refer to California Fish and Game Code Section 1501.5 and to the Department of Industrial Relations (DIR) website at <http://www.dir.ca.gov>. Grantee shall pay prevailing wage to all persons employed in the performance of any part of the Project if required by law to do so.

8.14 Disposition of Equipment

Title or ownership of equipment with a unit cost of \$5,000 or more may be retained by Grantee or Grantor upon end of the grant cycle; final disposition will be coordinated by WCB's Grant Manager.

8.15 Informational Products

All informational products (e.g. data, studies, findings, management plans, manuals, photos etc.) relating to California's natural environment and produced with the use of public funds shall be cataloged in the California Geoportal (<http://portal.gis.ca.gov/geoportal/catalog/main/home.page>), maintained by the California Department of Technology.

8.16 Non-Discrimination

During the performance of this Agreement, Grantee shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40), sex, sexual orientation, or use of family-care leave, medical-care leave, or pregnancy-disability leave. Grantee shall take affirmative action to ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Grantee shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 (a-f) et seq.), and applicable regulations (California Code of Regulations, Title 2, Section 7285 et seq.). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated by reference into this Agreement. Grantee shall give written notice of its obligations under this non-discrimination clause to labor organizations with which Grantee has a collective bargaining or other agreement and shall post in conspicuous places available to employees and applicants for employment, notice setting forth the provisions of this section. Grantee shall also include the nondiscrimination and compliance provisions of this Agreement in all contracts related to the Project.

9. NOTICE OF AGREEMENT

The terms, conditions and restrictions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their personal representatives, heirs, successors, and assigns and shall continue as a servitude running with the Property for the Project Life.

Grantee and Landowner each agrees to sign, have acknowledged by a Notary Public, and deliver to Grantor for recording a separate document, in a form substantially as shown in Exhibit G - NOTICE OF UNRECORDED GRANT AGREEMENT, to provide constructive notice of this Agreement.

10. AUTHORIZATION

The signature of the Executive Director certifies that at the meeting of the Wildlife Conservation Board held on February 26, 2020, the Board authorized the award of a grant of up to \$2,500,000.00 to Grantee for the Project.

11. EFFECTIVENESS OF AGREEMENT

This Agreement shall be deemed executed and effective when fully signed by authorized representative(s) of each of Grantor, Grantee and Landowner. Each party shall sign five original counterparts of this Agreement. Each fully executed counterpart shall be deemed an original. Grantee and Landowner(s) shall each receive one fully executed original and Grantor shall receive one fully executed original.

12. EXHIBITS

Each of the Exhibits referenced in this Agreement is incorporated by reference as though set forth in full herein. The following Exhibits are attached to this Agreement:

- Exhibit A** – Location Map
- Exhibit B** – Budget
- Exhibit C** – Disbursement Request Template
- Exhibit D** – Final Cost Share Template
- Exhibit E** – Work Plan
- Exhibit F** – Management Plan
- Exhibit G** – Form of Notice of Unrecorded Grant Agreement

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement.

GRANTOR


STATE OF CALIFORNIA
WILDLIFE CONSERVATION BOARD

By: 
John P. Donnelly
Executive Director

Date: 4/3/20

GRANTEE

COUNTY OF MONTEREY

By: 
Carl P. Holm
Director, Resource Management Agency

Date: Feb 11, 2020

By signing below, Landowner approves the Project and authorizes Grantee, its agents, employees, representatives, invitees, contractors, and subcontractors to enter on and use the Property for all purposes necessary or appropriate to carry out the Project and the obligations of Grantee under this Agreement. Landowner agrees to ensure that any activity on or use of the Property is consistent with the Purposes of Grant and the long-term management plan for the Project attached as Exhibit F - MANAGEMENT PLAN.


LANDOWNERS

BIG SUR LAND TRUST

By: 
Jeannette Tuitele-Lewis
President/CEO

Date: Feb 12, 2020

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

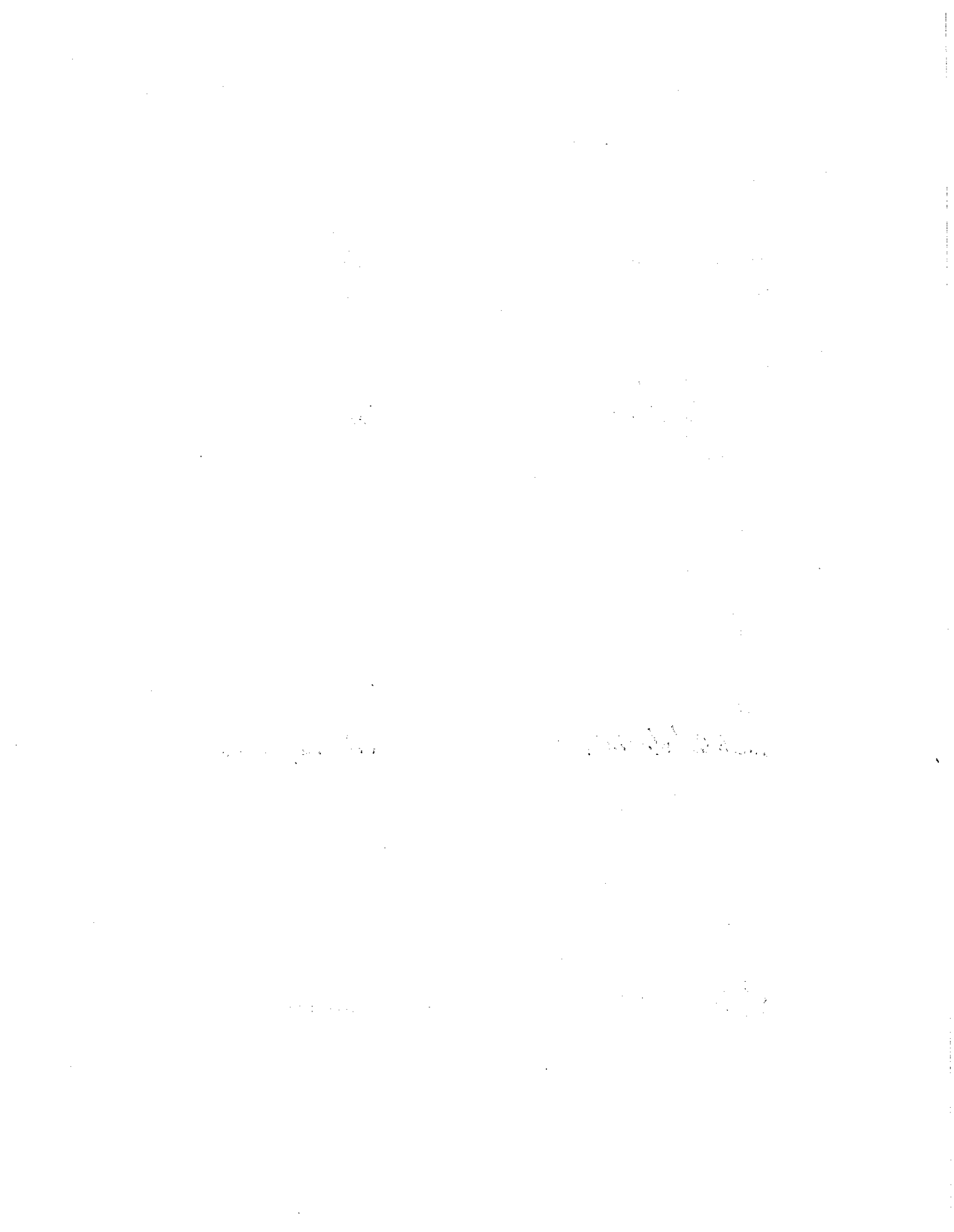
By: 
Brent Marshall
Monterey District Superintendent

Date: 2/12/2020

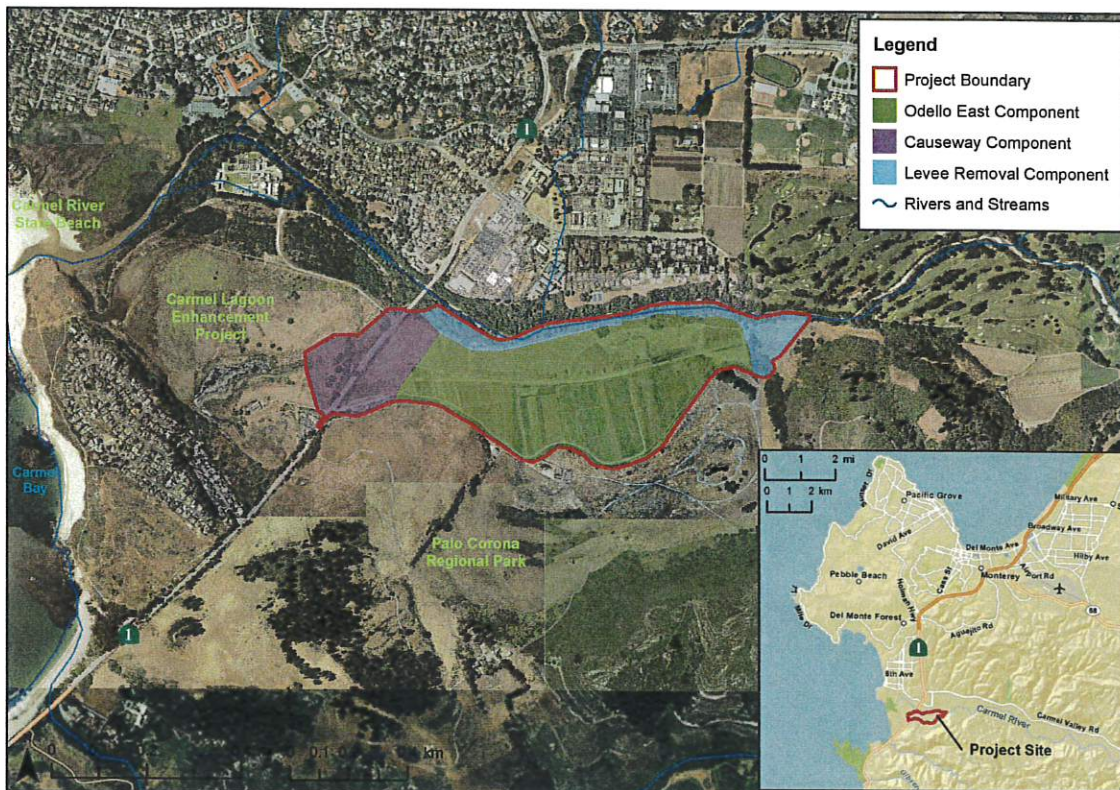
MONTEREY PENINSULA REGIONAL PARK DISTRICT

By: 
Rafael Payan
General Manager

Date: 02.12.20



LOCATION MAP



BUDGET

Project Task	WCB	Non-WCB Funds*	Total Cost
1. Project Management	---	\$47,491	\$47,491
2. Floodplain Designs	\$357,443	---	\$357,443
3. Floodplain Construction	\$1,655,507	\$5,525,569	\$7,181,076
4. Habitat Restoration	\$487,050	\$899,950	\$1,387,000
TOTAL	\$2,500,000	\$6,473,010	\$8,973,010

*Monterey County Resource Management Agency, Department of Water Resources, and State Coastal Conservancy.

**No indirect charges were requested as a part of this project

***The Carmel River Floodplain Restoration and Environmental Enhancement Project (Project) includes two related construction components: floodplain restoration and a new causeway. WCB is partially funding activities associated with the floodplain restoration, and the causeway will be funded in a separate effort. This budget exhibit only includes costs associated with the floodplain restoration efforts.



DISBURSEMENT REQUEST TEMPLATE

Letterhead (include Name, address, telephone, contact person name)

Invoice Date: _____
 Invoice No: _____

Project Name: Carmel River Floodplain Restoration and Enhancement
Agreement Number: WC-1947CA
WCB Project ID Number: 2017070
Term of Project: Beginning and November 30, 2024
Invoice Period Covered: Beginning and End Date
 describe if any, along with date
Amendments: _____
WCB Project Manager: Cara Allen, Senior Environmental Scientist, (916) 445-1095, Cara.Allen@wildlife.ca.gov

PROJECT TASK	TOTAL COST	COST SHARE, CUMULATIVE** WCB ALLOCATION	WCB PRIOR INVOICED AMOUNT	CURRENT WCB INVOICE	Remaining Balance of WCB allocation available for expenditure on this task
Describe in separate row each project task in the Budget approved by the WCB. Must be identical to those shown in the approved budget unless amended.	Show the total cost for each task. Must be identical to those shown in the approved budget unless amended.	Enter the total dollars of all non-WCB invoices. This column should increase progressively with successive invoices, unless amended.	Sum all invoices already submitted to the WCB for payment on this task. Include amounts retained by WCB.	Amount of current invoice applied to this task.	Remaining Balance of WCB allocation available for expenditure on this task.
Task 1 (describe)					
Task 2 (describe)					
Task 3 (describe)					
Task 4 (describe)					
Task 5 (describe)					
...					
TOTAL	Sum of all items	Sum of all items	Sum of all items	Sum of all items	Sum of all items

Total Current Invoice: \$ _____
Less Retention*: \$ () _____
TOTAL PAYMENT DUE: \$ _____

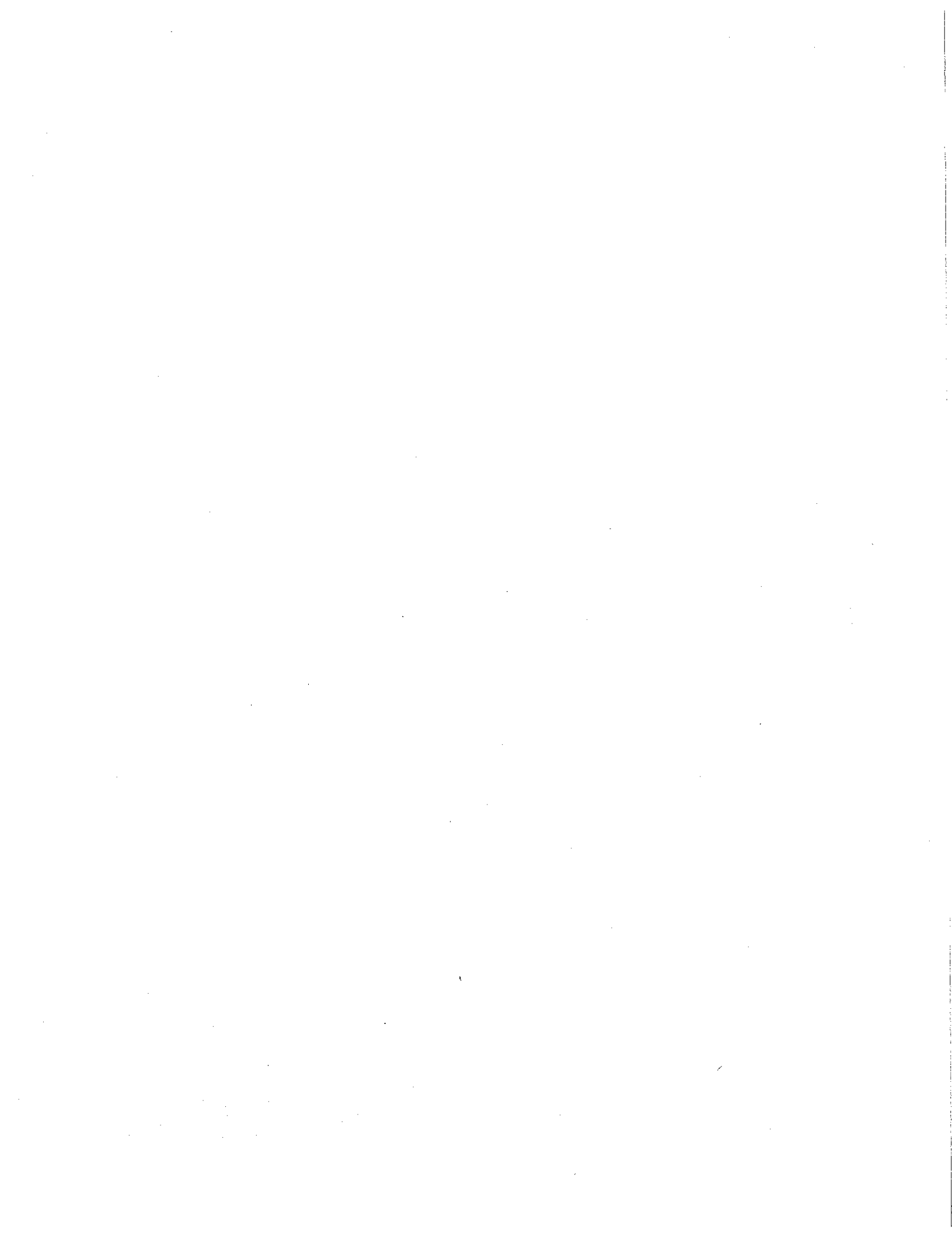
CURRENT RETENTION \$ _____
PREVIOUS RETENTION \$ _____
TOTAL RETENTION WITHHELD TO DATE: \$ _____

Approved for Payment
 By: _____ Printed Name _____ Date _____

*Retention: Unless otherwise approved in advance by WCB, 10% of total current invoice will be retained by WCB until the end of the project.

Each Invoice/Disbursement request should be accompanied by the following:

1. A detailed statement of services for the period covered by the invoice (photos may also be included if appropriate).
2. Supporting or back-up documentation for all charges on the invoice, including receipts for all materials and supplies, all Grantee staff time shown by number of hours worked and hourly rate, and all sub-contractor services.
3. Clearly reconcile all supporting documents and identify them with the charges reflected in the invoice. If the attached supporting document includes a charge that will be reimbursed in part by the WCB and another funding source, clearly indicate the portion being paid by the WCB, and reconcile this amount with the invoice.
4. **Column: Cost Share, Cumulative: this column should include the total dollars for all cost share funds and in-kind services provided per invoice period, and should accumulate progressing forward with each invoice. Please refer to EXHIBIT D - FINAL COST SHARE TEMPLATE, and contact WCB Project Manager for additional questions.



FINAL COST SHARE ACCOUNTING FORM

Letterhead (include Name, address, telephone, contact person name)

Project Name: Carmel River Floodplain Restoration and Enhancement
Agreement Number: WC-1947CA
Term of Project: Beginning and November 30, 2024
Amendments: describe if any, along with date
WCB Project Manager: Cara Allen, Senior Environmental Scientist, (916) 445-1095, Cara.Allen@wildlife.ca.gov

PROJECT TASK	TOTAL COST	ALLOCATION	WCB			COST SHARE			TOTAL COST SHARE**
	Column will be identical to Grant Exhibit B	Column will be identical to Grant Exhibit B	Column will be identical to Grant Exhibit B	Cost Share Source Name	Cost Share Source Name	Cost Share Source Name	Cost Share Source Name	Sum of all items	
Task 1 (describe)									
Task 2 (describe)									
Task 3 (describe)									
Task 4 (describe)									
Task 5 (describe)									
TOTAL	Sum of all items	Sum of all items	Sum of all items	Sum of all items	Sum of all items	Sum of all items	Sum of all items	Sum of all items	

NOTES

- ** This column will be the same as WCB Disbursement Template, "Cost Share, Cumulative", and should be identical to cost share presented in Grant Exhibit B.
- Cost share backup documents to include: invoices, timesheets, or time estimates with justification. Grantee will keep backup documents for audit-ready files (backup documents will not be provided to WCB).
- This EXHIBIT D - FINAL COST SHARE ACCOUNTING FORM should be included with the final invoice when work is completed, in advance of retention release invoice.
- If Project has numerous partners with small cost share items, these may be consolidated into one column. Please discuss with WCB Project Manager.

WORK PLAN

The primary purpose of the Carmel River Floodplain Restoration and Enhancement (CRFREE) project is to restore hydrologic function across the entire 135-acre project site and restore connectivity between the lower Carmel River and its southern floodplain for both habitat restoration and flood protection purposes.

The Wildlife Conservation Board (WCB) is only funding work associated with floodplain restoration of the overall project, including final design, floodplain restoration construction, which includes an agricultural preserve and regional trail elements, and habitat restoration (Project). Full completion of the CRFREE project includes construction of a new causeway on State Route 1 (SR 1) which will be funded separately by other partners.

The Project is an integral part of ongoing restoration efforts for the lower Carmel River region that began in 1998. The California Department of Parks and Recreation (State Parks) completed the Carmel River Lagoon Enhancement project in 2004 with support from WCB at the historical Carmel River Lagoon site west of SR 1. State Parks and the California Department of Transportation also completed habitat restoration activities at the Carmel River Lagoon and in associated wetland areas west of SR 1 and created the Carmel River Mitigation Bank.

The Project received funding from WCB in 2010 for project management, design, permitting and environmental review only. No implementation activities were completed during this project.

The primary objectives of the Project are to address the long-standing problems of flood management and floodplain habitat loss along lower Carmel River.

The key components of the Project's objectives are as follows:

- Recover the natural functions and values of the Carmel River floodplain.
- Establish native vegetation typical of river corridor environments and provide a denser and more diverse riparian habitat.
- Restore approximately 80 acres of riparian and upland habitats within the historic floodplain thereby providing important habitat for sensitive species including the federally listed California red-legged frog.
- Utilize the improved connectivity between the main channel and southern floodplain to reduce flooding hazards along the developed areas located north of the river.
- Increase flow conveyance and habitat connectivity between the Project site and Carmel River Lagoon Enhancement Project through the reconnection of the Project site with the adjacent floodplain, benefiting habitat for the federally listed, south/central California Coast Steelhead.
- Provide storage and recharge of groundwater on the restored floodplain.
- Improve quality of water entering the Carmel Lagoon by providing additional storage and filtration for sediment and nutrients through a functioning floodplain and associated riparian habitat.

The Project will result in a more regular flooding regime with lateral connectivity between the river channel and floodplain, and longitudinal connectivity between the floodplain and the lagoon. Reconnecting the floodplain with both the river and lagoon will enable hydrologic and geomorphic processes to improve overall river and floodplain function and support a mosaic of biologically and physically diverse ecological communities. Floodplain connectivity under the proposed SR 1 causeway will enhance wildlife movement and facilitate future recreational access to Carmel River State Beach from Palo Corona Regional Park and the public South Bank Trail.

Task 1 – Project Management

Grantee will manage all consultant and construction contracts using standard contracting and project oversight procedures. Grantee will prepare quarterly progress reports and reimbursement requests with a brief description of the work and activities performed, milestones achieved, any accomplishments, and any challenges encountered in the performance of the work during the reporting period. Upon completion of the project, a final written report will be prepared that would include, but not be limited to, a description of conditions before the project was executed, summary of the completed project, site restoration and techniques used, description of the results of the project, analysis of the techniques used, description of planned long-term monitoring and adaptive management, and photographs on-site before, during, and after implementation that document project conditions. Project administration activities also include coordination with other agencies and Project partners.

No funds are being requested from WCB for this task.

**Deliverables:*

- *Quarterly progress reports*
- *Draft and Final Floodplain Restoration Project Report*

Task 2 – Floodplain Designs

Complete final designs, construction plans, specifications, and estimates for floodplain restoration construction. Execute memorandum of understanding (MOU) with each landowner that establishes roles and responsibilities of each party for floodplain construction activities including habitat restoration.

**Deliverables:*

- *100% designs for floodplain restoration*
- *Copies of draft and executed MOU(s) for construction activities.*

Task 3 – Floodplain Construction

Clear, grade, excavate, and salvage trees within the historic floodplain. Approximately 100 acres of existing farmland will be graded to create the topographic characteristics necessary to support the restoration of native floodplain habitats and to elevate the approximately 23-acre agricultural preserve. The majority of grading activities will occur on the project's east side, with some lesser grading occurring west of SR 1. Grading activities will lower the south bank levee in multiple locations on the upstream end of the project site to an elevation that will allow 5-year flood events to access the floodplain and alleviate flood pressure on adjacent developed areas. Salvageable riparian trees and rootwads will be replanted on the Project's east side.

Braided distributary channels will be excavated within the floodplain to convey flood flows from the levee breaches. The floodplain will be graded with a gentle slope to convey flood flows downstream and will include shallow depressional features designed to reduce flow velocities and capture sediment and organic material. Large portions of the floodplain adjacent to the braided distributary channels will be graded as low as possible for dual purposes: to provide flood capacity and to support the establishment of riparian vegetation by decreasing the depth to groundwater. Small portions of the floodplain will be graded at higher relative elevations to direct flood flows into the distributary channels. These higher elevation areas will offer topographic complexity and wildlife refugia when the site floods, but they will be further from groundwater and therefore will be planted with more drought tolerant riparian species. These design features will introduce subtle variation in topography to the floodplain, which will be subject to episodic inundation and deposition of sediment and organic material.

Most of the soil excavated during floodplain reconfiguration will be placed on the agricultural preserve in the southern portion of the Project site to the east of SR 1. A channel for an intermittent drainage will be constructed to capture runoff from the slopes of the adjacent Palo Corona Regional Park and hillside seeps and convey these flows toward the downstream portion of the floodplain. This intermittent drainage channel will be graded with benches and gentle bank slopes to allow for establishing a corridor of riparian habitat. A remnant stock pond located along a drainage just upslope from the levee breaches will be left intact, but site grading will broaden the pond's berm to spread overflow across a broad slope that will support new riparian vegetation.

**Deliverables:*

- *As-builts for floodplain construction*
- *Pre- and post-pictures of salvaged trees (include in quarterly reports)*

Task 4 – Habitat Restoration

Following grading, the Project site will be actively revegetated on the west and east sides. Revegetation on the west side will be guided by the *Restoration and Management Plan for the Carmel River Floodplain Restoration and Environmental Enhancement Project* (H.T. Harvey & Associates, November 2016) (RMP).

A Habitat Management Plan (HMP) will be developed for at least 80 acres on the east side of SR 1. The HMP will also incorporate the processes and functions of levee breaches into the basis of design. Pilot plantings will be installed east of SR 1 immediately following floodplain construction to help inform the HMP and adaptive management of the entire Project site. Active revegetation during the grant term will be described and quantified in the Draft HMP and may include areas that correspond to the high flow conveyance channels, the intermittent drainage channel, slopes below the remnant stock pond, and or the elevated areas between the conveyance channels, see Attachment 1. Seed collection and propagation and plant procurement will occur to facilitate significant progress towards planting at least half of the total revegetation identified in the HMP during the grant term.

The draft and final HMP will include, but is not limited to, the following:

- Identification of contours, design plan, plant palette, watering needs, planting schedule, criteria for survivorship and cover, and long-term maintenance for

revegetation on lands east of SR 1 that are owned by BSLT and Monterey Peninsula Regional Park District.

- Implementation plan and timeline for initial 40 acres of the project site.
- Implementation plan and timeline for remaining 40 acres of vegetation acreage.
- Refined survival and cover metrics to be met at project's end for the initial 40 acres.
- Plantings for the initial 40 acres on the east of SR 1 will be installed at least two years prior to the grant's end date. Additional time may be considered as needed.

Plant establishment will be facilitated by a combination of precipitation, surface and groundwater and irrigation. An above-ground irrigation system will be installed in specific areas on the east and west sides of SR 1 with a site-specific controller and valves. A bubbler system will be connected to plantings that are identified in the HMP as needing supplemental watering for establishment. The irrigation system will use existing wells on both sides of SR 1 and the Project site. The irrigation system will be maintained and repaired until the plants have established and supplemental watering is no longer needed.

During the plant establishment period (approximately 3 years following plant installation) installed plants will be irrigated, any dead plants will be replaced, and browsing and nonnative plants will be controlled. The plant establishment period will be extended beyond 3 years if significant plant replacement is required.

Grantee will enter into a long-term maintenance agreement/MOU with each Project partner that will delineate the parties' role and responsibility for long-term (25 years) and adaptive management activities post-construction of the Project. Public access and its management will also be included in the applicable MOU(s).

**Deliverables:*

- *Updates to RMP, including survivorship and cover criteria to be met at project close*
- *Draft HMP at least 30 days before Final HMP, include bulleted criteria above*
- *Final HMP (expected completion by August 2022) incorporating comments from WCB and partners as needed*
- *Photo documentation of installed irrigation system (include in quarterly reports)*
- *Biological as-built report for revegetation on west side of SR 1*
- *Restored native habitat that includes, at a minimum:*
 - West of SR 1
 - *14.2 acres of willow and cottonwood riparian forest*
 - *0.5-acre of mixed riparian forest*
 - *565 plants of coastal scrub*
 - East of SR 1
 - *Successful implementation of 40-acre restoration based on metrics identified in HMP. Implementation timing may be adapted following discussion with WCB.*

- *Annual monitoring reports for all revegetation areas east and west of SR 1 submitted by December 31 of each monitoring year. Revegetation monitoring and reporting will follow the guidelines outlined in Section 6.6 and 6.10 of the RMP.*
- *Draft and executed MOUs for long-term maintenance of Project site.*



Management Plan

The duration of the Management Plan is 25 years (Project Life). The Grantee will ensure that the Project site restored with funds provided by the Grantor is operated, used and maintained throughout the Project Life consistent with the Purposes of the Grant and in accordance with the guidance documents outlined below.

The project partners (Big Sur Land Trust [BSLT], Monterey County Resource Management Agency, Monterey County Water Resources Agency, California State Parks, Monterey Peninsula Regional Park District [MPRPD], and Monterey Peninsula Water Management District) will develop a distinct Memorandum of Understanding (MOU) to address long-term maintenance. The MOU(s) will be executed prior to November 30, 2024 and be between all parties responsible for long-term maintenance of the floodplain and habitat restoration. Public access and its management will also be outlined in the MOU(s).

BSLT has established a \$2 million endowment fund for the Carmel River Floodplain Restoration and Environmental Enhancement Project that will be used for habitat restoration on the project site east of State Route 1 (SR-1) and its long-term management.

The long-term management of the floodplain and habitat restoration will be conducted according to the *Restoration and Management Plan for the Carmel River Floodplain Restoration and Environmental Enhancement*, prepared by H.T. Harvey and Associates (November, 2016) (RMP) and will also be addressed in the Habitat Management Plan (HMP) being prepared for the east side of SR-1 as part of the grant, expected completion in 2022. The RMP will be amended during final design to update any changed environmental conditions that may have occurred since the original plan was prepared and to include provisions for a 25-year maintenance and monitoring program for floodplain and habitat restoration.

The precise acreage of revegetation on the east side will be described and generally delineated in the HMP. The goal of revegetation on the east side is to establish a mosaic of natural communities that will provide for higher ecological and habitat values than the existing ruderal vegetation that currently exists on-site. The RMP expects both 16.9 acres of vegetation restoration on the west side of SR-1 and approximately 100 acres of habitat restoration on the east side to be completed as a result of the project.

The Landowners will continue regular maintenance and public access management activities on the Project Site. The Grantor will be notified in the case of any significant changes. As needed, the Grantee will coordinate with WCB and the landowners to determine appropriate adaptive management activities for the floodplain and vegetation restoration sites. In case of any failure or significant deficiencies, a corrective management strategy will be coordinated by the Grantee working with the Landowners and approved by WCB and implemented by the Grantee.

Recording requested by,
and when recorded mail to:

STATE OF CALIFORNIA
Department of Fish and Wildlife
Wildlife Conservation Board
P.O. Box 944209
Sacramento, California 94244-2090

_____ Space above this line for Recorder's Use _____
Project: Carmel River Floodplain Restoration and Enhancement
County: Monterey Project ID: 2017070

NOTICE OF UNRECORDED GRANT AGREEMENT

A Grant Agreement titled for reference purposes as **Carmel River Floodplain Restoration and Enhancement** (Agreement No. **WC-1947CA**), was entered into by and between the State of California, by and through the Wildlife Conservation Board (Board), **County of Monterey**, by and through the Resource Management Agency (Grantee) and multiple landowners, including the Monterey County Regional Park District and Big Sur Land Trust. As this recording is on the behalf of the State, please note the recording of these documents is not subject to payment of fees pursuant to Section 27383 of the Government Code.

The Board, Grantee and Landowner entered into said Grant Agreement (No. WC-1947CA), pursuant to which the Board granted funds to Grantee to perform certain activities on the certain real property in Monterey County owned by the Landowner, to , to restore riparian and floodplain habitat types The Grant Agreement term runs from **February 26, 2020**, through **November 30, 2024**, for capital improvements and restoration activities and from **February 26, 2020** through **February 29, 2045**, for management and monitoring practices. The terms, conditions and restrictions of the Grant Agreement are binding upon and inure to the benefit of the Landowner, and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running for the project life span of the project on the subject lands as described in Exhibit "A" attached hereto and incorporated herein by this reference. For additional terms and conditions of the Grant, reference should be made to the Grant Agreement which is on file with the Wildlife Conservation Board, 1700 9th Street, 4th Floor, Sacramento, California 95811.

SIGNATURE OF STATE OF CALIFORNIA, WILDLIFE CONSERVATION BOARD

_____ DATE _____
John P. Donnelly, Executive Director

SIGNATURE OF GRANTEE (NAME)

_____ DATE _____
NAME, TITLE

SIGNATURE OF LANDOWNER (NAME)

(This is an EXAMPLE NOUGA – Do Not sign this copy)
_____ DATE _____
NAME, TITLE

*Carmel River Floodplain Restoration and Enhancement, Monterey County
Grant Agreement Number WC-1947CA
Project ID 2017070*

EXHIBIT G

EXHIBIT A

LEGAL DESCRIPTION

All that certain real property situated in the County of XXXX, State of California,
described as follows: