

MEMORANDUM OF UNDERSTANDING

between

THE COUNTY OF MONTEREY

and

THE MONTEREY COUNTY WATER RESOURCES AGENCY

regarding

MORO COJO SLOUGH / MOSS LANDING ROAD
TIDE GATE REPAIR

RECITALS

- A. The County of Monterey ("County") is a political subdivision of the State of California; and
- B. 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
- C. Facilities belonging to both the County and the Agency in the area of the Moro Cojo Slough at Moss Landing Road are in need of repairs, as more particularly described in Section 2 of this Memorandum of Understanding ("MOU"), as a result of the current facilities being at the end of their anticipated life expectancy; and
- D. The scope of work and all the activities to be undertaken under this MOU are collectively referred to as the "Project"; and
- E. The County and Agency desire to work cooperatively in doing the work and performing the services required to accomplish the Project, and in sharing the costs of the Project between them.

NOW THEREFORE, the County and Agency agree as follows:

1. Effective Date and Term.

This MOU will be effective as of the date last signed by either of the parties and, unless earlier terminated as provided in this MOU, shall remain in effect until the completion of the Project herein described, and satisfaction of all conditional permitting. This MOU may be amended from time-to-time by mutual written agreement of the parties.

2. Scope of Work.

The purpose of the Project is the repair of the three 48" culvert pipes and tide gates located under Moss Landing Road at the Moro Cojo Slough.

3. Obligations of the Parties.

A. Agency.

- i. The Agency shall:
 - a. Solicit design consultants, contractors, and/or vendors necessary for the successful cost effective completion of the Project.
 - b. Allow the County to review all requests to design consultants, contractors, and/or vendors necessary for the successful completion of the Project.
 - c. Allow the County to participate on all proposal selection panels/boards for design consultants, contractors, and/or vendors.
 - d. Obtain written approval from the County of all selections of design consultants, contractors, and /or vendors prior to contract offers and awards.
 - e. Except as specifically set forth herein, obtain all necessary permits needed for proceeding with the Project.
 - f. Provide the County with a copy of, or include the County in, all correspondence between the Agency and applicable design consultants, contractors, vendors, or permitting agencies.
- ii. The Agency shall assign an officer or employee to undertake the Agency's obligations pursuant to this MOU, who shall be designated the Project Manager. The County must approve the assignment in writing, which approval shall not be unreasonably withheld. The Agency may change the designation from time-to-time with the County's written approval, which approval shall not be unreasonably withheld. In the performance of duties under this MOU, the Project Manager shall communicate and coordinate with, and receive approvals (when required) from, the County Project Representative, as may be necessary or appropriate.

B. County.

- i. The County, in a timely manner, shall:

- a. Review all requests for design consultants, contractors, and/or vendors necessary for the successful completion of the Project.
 - b. Appoint a County staff member in writing to participate on all proposal selection panels/boards for design consultants, contractors, and/or vendors. The Agency must approve the appointment in writing, which approval shall not be unreasonably withheld.
 - c. Provide written approval to the Agency on all selections of design consultants, contractors, and/or vendors prior to contract offers and awards.
 - d. Allow and authorize the Agency to obtain all necessary permits needed for proceeding with the Project.
 - e. Provide the Agency with a copy of, or include the Agency in, all correspondence between the County and applicable design consultants, contractors, vendors, or permitting agencies.
- ii. The County shall designate an officer or employee who shall review the Agency's performance of its obligations under this MOU and who shall be designated the "County Project Representative". The County shall notify the Agency of the officer or employee so designated, and may change such designation from time- to-time upon written notice to the Agency.

4. Share of Costs.

- i. Internal staff: Each party shall be responsible for the cost and expense of its own staff and other internal costs.
- ii. Design and Construction: The parties shall mutually agree to all costs of design and construction, including permit costs and costs to comply with the California Environmental Quality Act, and bear such costs in equal shares.
- iii. Monitoring: The parties shall bear the costs of monitoring required as a result of any state or federal permit in equal shares, for so long as such monitoring is required.
- iv. Ongoing Operation and Maintenance:
 - a. After the completion of the Project, unless superseded by a subsequent MOU or an amendment to this MOU, the County shall be solely responsible for the costs of ongoing future operation and maintenance of the three repaired culvert pipes, or their replacements, at Moss Landing Road at the Moro Cojo Slough. The County's responsibility will encompass the full length of the repaired culvert pipes, or their replacements, from the mechanical connection at the headwall, located on the harbor side of Moss Landing Road, to the culvert pipe inlets located within the boundary of the Moro Cojo slough. The County shall be responsible for obtaining all necessary permits, at the County's own expense, for future maintenance and repairs related to the three culvert pipes, or their replacements.

- b. After the completion of the Project, unless superseded by a subsequent MOU or an amendment to this MOU, the Agency shall be solely responsible for the costs of ongoing operation and maintenance of the three existing tide gates at the headwall, the mechanical connector between the headwall and HDPE section of culvert pipe, and for the integrity of the seal between the mechanical connector and culvert pipe or their replacements. The Agency shall be responsible for obtaining all necessary permits, at the Agency's own expense, for future maintenance and repairs related to the three existing tide gates and headwall, or their replacements.

5. Project Costs / Not to Exceed.

Total cost of this Project, excluding any internal costs generated, shall not exceed \$400,000. Notwithstanding any other provision of this MOU, the total share of responsibility for external costs only for both the County and Agency shall not exceed \$200,000 each.

6. Claims and Payment.

Claims for payment by either party shall only be made for outside expenses such as consultants, contractors, vendors, and materials as required for the completion of this Project pursuant to 3.A.i.a.

A. Claims by the County.

Not later than ten working days after the last day of each month, the County shall submit to the Agency a claim, on a form or in a format approved by the Agency, setting forth in detail the expense items incurred by the County during the previous month, for which payment is sought, and setting forth such other information pertinent to the claim as the Agency may require:

- i. The County shall make no claims against the Agency for payment arising from internal costs to the County such as, but not limited to, staff salaries and administrative costs associated with this MOU and the Project.
- ii. Invoices supporting all outside costs and expenses.

The Agency Project Manager shall certify the County's claim within ten working days, either in the requested amount or in such other amount as the Agency Project Manager approves in conformity with this MOU. The Agency Project Manager shall promptly submit such certified claim to the Auditor. The Auditor shall thereafter pay the balance of the certified claim not later than 45 calendar days after receipt of the certified claim.

If for any claim the Agency certifies a lesser amount than the amount requested by the County, and if the County desires to dispute the amount so certified, the County must submit a written notice of protest to the Agency within 20 working days after the County's receipt of the certification. The parties shall then promptly meet to review the dispute and resolve it on a mutually acceptable basis. No court action may be taken on such dispute until the parties have met and attempted to resolve the dispute in person.

B. Claims by the Agency.

Not later than ten working days after the last day of each month, the Agency shall submit to the County a claim, on a form or in a format approved by the County, setting forth in detail the expense items incurred by the Agency during the previous month, for which payment is sought, and setting forth such other information pertinent to the claim as the County may require:

- i. The Agency shall make no claims against the County for payment arising from internal costs to the Agency such as, but not limited to, staff salaries and administrative costs associated with this this MOU and the Project.
- ii. Invoices supporting all outside costs and expenses.

The County Project Representative shall certify the Agency's claim within ten working days, either in the requested amount or in such other amount as the County Project Representative approves in conformity with this MOU. The County Project Representative shall promptly submit such certified claim to the Auditor. The Auditor shall thereafter pay the balance of the certified claim not later than 45 calendar days after receipt of the certified claim.

If for any claim the County certifies a lesser amount than the amount requested by the Agency, and if the Agency desires to dispute the amount so certified, the Agency must submit a written notice of protest to the County within 20 working days after the Agency's receipt of the certification. The parties shall then promptly meet to review the dispute and resolve it on a mutually acceptable basis. No court action may be taken on such dispute until the parties have met and attempted to resolve the dispute in person.

7. Termination.

A. By the County.

The County may terminate this MOU at any time for its convenience and without cause. Upon such termination, the County shall pay to the Agency:

- i. All sums then due and owing for services performed through the effective date of the termination.
- ii. All future sums incurred for future ongoing monitoring or maintenance required as a result of permit requirements in force at the time of termination, and subject to all other provisions of this MOU.

B. By the Agency.

The Agency may terminate this MOU at any time for its convenience and without cause. Upon such termination, the Agency shall pay to the County:

- i. All sums then due and owing for services performed through the effective date of the termination.
- ii. All future sums incurred for future ongoing monitoring or maintenance required as a result of permit requirements in force at the time of termination, and subject to all other provisions of this MOU.

8. Insurance and Indemnification.

The Agency participates in the County's worker's compensation insurance pool, and the Agency agrees to continue that participation for the term of this MOU unless the County agrees in writing that the Agency may obtain its own worker's compensation insurance coverage. The Agency has obtained its own general liability insurance coverage from a qualified insurer, and it shall maintain that coverage in the amounts in effect on the effective date of this MOU from such qualifying insurers as the County may approve (such approval not to be unreasonably withheld), and upon such other terms as is the custom or practice for the County regarding similar agreements.

The Agency shall indemnify, defend, and hold harmless the County, its officers, agents, and employees from any claim, liability, loss, injury or damage arising out of, or in connection with the Agency's negligent acts or omissions, or those of its officers, employees, agents or subcontractors, in the performance of this MOU, excepting only loss, injury or damage caused by the negligence or willful misconduct of COUNTY, its officers or employees. The Agency shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Agency is obligated to indemnify, defend and hold harmless the County under this MOU.

The County shall indemnify, defend, and hold harmless the Agency, its officers, agents, and employees from any claim, liability, loss, injury or damage arising out of, or in connection with the County's negligent acts or omissions, or those of its officers, employees, agents or subcontractors, in the performance of this MOU, excepting only loss, injury or damage caused by the negligence or willful misconduct of the Agency, its officers or employees. The County shall reimburse the Agency for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the County is obligated to indemnify, defend and hold harmless the Agency under this MOU.

9. General Provisions.

A. No Assignment.

- i. The Agency shall not assign or transfer this MOU, 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.
- ii. The County shall not assign or transfer this MOU, or any part thereof, without the written consent of the Agency, nor shall the County assign any monies due or to become due to the County hereunder without the previous written consent of the Agency.

B. Independent Contractor.

Nothing in this MOU shall be construed or interpreted to make the Agency, the Agency Project Manager or other Agency employees anything but independent contractors, and in all the Agency's activities and operations pursuant to this MOU, neither the Agency, the Agency Project Manager, nor other Agency employees shall 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 any and all duties under this MOU, 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. Authority to Bind the Agency.

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

E. Nondisclosure of Information.

- i. The Agency shall not disclose, without express written consent of the County, any information relating to the County business which has been submitted by the County to the Agency pursuant to the services to be rendered pursuant to this MOU. In the event that this MOU is terminated, the Agency shall immediately return to the County all papers, documents and the like belonging to the County.
- ii. The County shall not disclose, without express written consent of the Agency, any information relating to Agency business which has been submitted by the Agency to the County pursuant to the services to be rendered pursuant to this MOU. In the event that this MOU is terminated, the County shall immediately return to the Agency all papers, documents and the like belonging to the Agency.

F. Notices.

- i. Notices permitted or required to be given to the respective parties under this MOU shall be deemed given (1) when personally delivered to the Agency Project Manager or County Project Representative; (2) when personally delivered to the party's principal place of business during normal business hours (i.e., to the Monterey County offices in Salinas, California, or to the Agency's office), by leaving the notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by fax machine to the other party, to the fax number indicated below; or (4) 3 days after the notice is deposited in the U.S. mail (by first class, certified, registered, or express mail), with postage fully prepaid, addressed to the party as indicated below. All notices shall be in writing.

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ii. Notices mailed to the parties shall be addressed as follows:

To the County:

Carl Holm

Director, RMA

County of Monterey

168 W. Alisal Street, Second Floor

Salinas, CA 93901

Phone: 831-755-5103

Fax: 831-755-5877

To the Agency:

Brent Buche

Deputy General Manager-O&M Div.

Water Resources Agency

893 Blanco Circle

Salinas, CA 93901-4455

Phone: 831-755-4860

Fax: 831-424-7935

The mailing addresses and fax numbers specified in this paragraph may be changed by either party, by giving notice to the other in the manner provided herein.

G. Subcontracting.

- i. The Agency shall not subcontract or otherwise assign any portion of the work to be performed under this MOU without prior written approval of the County. Any and all subcontracts shall be subject to the provisions contained in this MOU.
- ii. The County shall not subcontract or otherwise assign any portion of the work to be performed under this MOU without prior written approval of the Agency. Any and all subcontracts shall be subject to the provisions contained in this MOU.

H. Modifications.

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

I. No Waiver.

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

J. Sole Agreement.

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

K. 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.

L. Construed Pursuant to California Law.

The parties hereto agree that the provisions of this MOU will be construed pursuant to the laws of the State of California.

IN WITNESS WHEREOF, COUNTY and AGENCY have caused this Memorandum of Understanding to be executed:

Dated: _____

COUNTY OF MONTEREY

By: _____
Lew Bauman,
County Administrative Officer

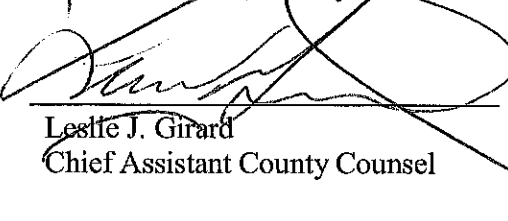
Dated: _____

WATER RESOURCES AGENCY

By: _____
David E. Chardavoyne,
General Manager

APPROVED AS TO FORM AND LEGALITY

CHARLES J. MCKEE, County Counsel

By: 

Leslie J. Girard
Chief Assistant County Counsel