

# Attachment O

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## Monterey County Board of Supervisors

### Board Order

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

#### Agreement Nos. A-13085; A-13086; and A-12775; A-13835

Upon motion of Supervisor Phillips, seconded by Supervisor Salinas and carried by those members present, the Board of Supervisors hereby:

- a. Approved Amendment No. 2 to Professional Services Agreement No. A-13085 with Whitson and Associates, Inc. dba Whitson Engineers (Whitson) to include additional services for the comprehensive evaluation of Project alternatives and potential impacts to complete the Final Design of the Carmel River Floodplain Restoration and Environmental Enhancement (CRFREE) Project, in Carmel, to increase the not to exceed amount by \$56,000 for a total amount not to exceed \$1,169,987, and to extend the expiration date for approximately eighteen (18) months for a revised term of April 13, 2016 to December 31, 2019;
- b. Approved Amendment No. 1 to Reimbursement Agreement No. A-13086 with The Big Sur Land Trust (BSLT), a California nonprofit public benefit corporation, to allow reimbursement to Monterey County for costs incurred by Whitson under Professional Services Agreement No. A-13085 as amended, to increase the not to exceed amount by \$56,000 for a total amount not to exceed \$636,000 with no extension to the term of April 14, 2016 until full reimbursement;
- c. Approved Amendment No. 4 to Professional Services Agreement No. A-12775 with Denise Duffy & Associates, Inc. (DD&A) to include additional biological surveys and complete environmental review of the CRFREE Project, in Carmel, to increase the not to exceed amount by \$187,488 for a total amount not to exceed \$562,727, and to extend the expiration date for approximately eighteen (18) months for a revised term of July 29, 2014 to December 31, 2019;
- d. Approved a Reimbursement Agreement with BSLT, a California nonprofit public benefit corporation, to allow reimbursement to Monterey County for costs incurred by DD&A under Professional Services Agreement No. A-13835 as amended, in the amount not to exceed \$187,488, for a term effective upon latest date of signature until full reimbursement; and
- e. Authorized the Resource Management Agency Director to execute Amendment No. 2 to Professional Services Agreement No. A-13085 with Whitson and associated Amendment No. 1 to Reimbursement Agreement No. A-13086 with BSLT, and Amendment No. 4 to Professional Services Agreement No. A-12775 with DD&A and associated Reimbursement Agreement with BSLT, and future amendments to the Agreements where the amendments do not significantly alter the scope of work or change the approved Agreement amounts

PASSED AND ADOPTED on this 27th day of February 2018, by the following vote, to wit:

AYES: Supervisors Alejo, Salinas, Phillips and Parker  
NOES: None

ABSENT: Supervisor Adams

I, Nicholas E. Chiulos, Acting Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 80 for the meeting February 27, 2018.

Dated: February 28, 2018  
Corrected: March 1, 2016.  
File ID: A 18-045

Nicholas E. Chiulos, Acting Clerk of the Board of Supervisors  
County of Monterey, State of California

By Denise Hancock Deputy

**AMENDMENT NO. 4  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN COUNTY OF MONTEREY AND  
DENISE DUFFY & ASSOCIATES, INC.**

**THIS AMENDMENT NO. 4** to the Professional Services Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Denise Duffy & Associates, Inc. (hereinafter, "CONTRACTOR") is hereby entered into between the County and the CONTRACTOR (collectively, the "Parties") and effective as of the last date opposite the respective signatures below.

**WHEREAS**, CONTRACTOR entered into a Professional Services Agreement with County on August 1, 2014 (hereinafter, "Agreement") to provide environmental documentation, California Environmental Quality Act (CEQA)/National Environmental Quality Act (NEPA), and regulatory permitting for the Carmel River Floodplain Restoration and Environmental Enhancement Project (hereinafter, "Project") beginning July 29, 2014 through June 30, 2016 for an amount not to exceed \$256,769.25; and

**WHEREAS**, Agreement was amended by the Parties on September 11, 2015 (hereinafter, "Amendment No. 1", including Exhibit A-1- Scope of Services/Payment Provisions) to extend the term for approximately thirteen (13) additional months through July 29, 2017 and to increase the amount by \$65,000.00 which resulted in a not to exceed amount of \$321,769.25; and

**WHEREAS**, Agreement was amended by the Parties on May 6, 2016 (hereinafter, "Amendment No. 2", including Exhibit A-2 - Scope of Services/Payment Provisions) to reallocate funding within the Agreement in the amount of \$33,500.00 from existing tasks to expand tasks required by the United States Fish and Wildlife Service (USFWS) and the California Department of Transportation (Caltrans) and to increase the amount by \$6,095.00 which resulted in a not to exceed amount of \$327,864.25 with no extension to the term; and

**WHEREAS**, Agreement was amended by the Parties on February 9, 2017 (hereinafter, "Amendment No. 3", including Exhibit A-3 - Scope of Services/Payment Provisions) to extend the term for approximately eleven (11) additional months through June 30, 2018, to expand the scope of services, and to increase the amount by \$47,375.00 which resulted in a not to exceed amount of \$375,239.25; and

**WHEREAS**, due to new information and on-going coordination and negotiations between the County, California Department of Parks and Recreation (DPR) and Carmel Area Wastewater District (CAWD), the Parties have identified the need to expand Task 2.1, Task 3.1, Task 3.2, Task 3.3, Task 3.4, Task 3.7, Task 3.8, Task 3.9, Task 5 and Task 6 of the original scope of services for completion of the Project, as further set out in Exhibit A-4, attached hereto and incorporated herein by reference; and

**WHEREAS**, the Parties wish to further amend the Agreement to extend the term for approximately eighteen (18) additional months to December 31, 2019 and to increase the amount by \$187,488 for a total amount not to exceed \$562,727.25 to allow CONTRACTOR to continue to provide tasks identified in the Agreement as previously amended and as amended by this Amendment No.4.

**NOW, THEREFORE**, the Parties agree to amend the Agreement as follows:

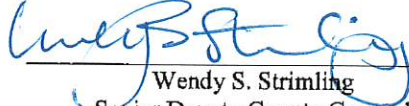
1. Amend the first sentence of Paragraph 1, "Services to be Provided", to read as follows:  
  
The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibits A, A-1, A-2, A-3 and A-4 in conformity with the terms of this Agreement.
2. Amend Paragraph 2, "Payments by County", to read as follows:  
  
County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibits A, A-1, A-2, A-3 and A-4, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$562,727.25.
3. Amend the first sentence of Paragraph 3, "Term of Agreement", to read as follows:  
  
The term of this Agreement is from July 29, 2014 to December 31, 2019, unless sooner terminated pursuant to the terms of this Agreement.
4. Amend Paragraph 4, "Additional Provisions/Exhibits", by adding "Exhibit A-4, Scope of Services/Payment Provisions" and "Exhibit D, State Coastal Conservancy Agreement No. 17-024".
5. In all places within the Agreement as previously amended, any reference to "Task 2, Prepare National Environmental Protection Act (NEPA) Required Technical Studies", is hereby replaced with "Task 2, Prepare California Environmental Quality Act (CEQA) and National Environmental Protection Act (NEPA) Required Technical Studies".
6. All other terms and conditions of the Agreement as previously amended remain unchanged and in full force.
7. This Amendment No. 4 and all previous amendments shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
8. The recitals to this Amendment No. 4 are incorporated into the Agreement and this Amendment No.4.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 4 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

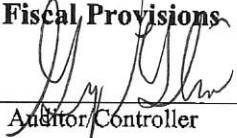
**COUNTY OF MONTEREY**

By:   
Carl P. Holm, AICP  
RMA Director  
Date: 3/2/2018

**Approved as to Form and Legality  
Office of the County Counsel**

By:   
Wendy S. Strimling  
Senior Deputy County Counsel  
Date: 2/22/18

**Approved as to Fiscal Provisions**

By:   
Auditor/Controller  
Date: 2-3-18

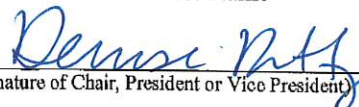
**Approved as to Indemnity, Insurance Provisions**

By: \_\_\_\_\_  
Risk Management

Date: \_\_\_\_\_

**CONTRACTOR\***

Denise Duffy & Associates, Inc.  
Contractor's Business Name

By:   
(Signature of Chair, President or Vice President)

Its: Denise Duffy, President  
(Printed Name and Title)

Date: 2/16/18

By:   
(Signature of Secretary, Asst. Secretary, CFO,  
Treasurer or Asst. Treasurer)

Its: Denise Duffy, Secretary  
(Printed Name and Title)

Date: 2/16/18

\*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managing members. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

## EXHIBIT A-4 - SCOPE OF SERVICES/PAYMENT PROVISIONS

To Agreement by and between  
County of Monterey, hereinafter referred to as "County"  
and  
Denise Duffy & Associates, Inc., hereinafter referred to as "CONTRACTOR"

### A. SCOPE OF SERVICES

- A.1 CONTRACTOR shall provide additional services and staff, and otherwise do all things necessary for or incidental to the performance of work for the Carmel River Floodplain Restoration and Environmental Enhancement Project (hereinafter, "Project"), as set forth below:

**Task 2. Prepare California Environmental Quality Act (CEQA) and National Environmental Protection Act (NEPA) Required Technical and Biological Studies**

CONTRACTOR has identified new information and has coordinated with the County, California Department of Parks and Recreation (hereinafter, "DPR"), and the Carmel Area Wastewater District (hereinafter, "CAWD") to expand the services of the tasks below for the Project.

**Task 2.1 Natural Environment Study**

Review and revise the 2015 botanical surveys as necessary to ensure compliance with regulatory guidance; specifically, that surveys are not conducted during severe drought.

*Total estimated cost for completion of Task 2.1 is an additional \$9,604.*

**Task 3. Preparation of the Combined CEQA/NEPA Document**

CONTRACTOR, based on the new information available and outcomes of the ongoing coordination with County, DPR, CAWD and regulatory agencies, will provide the expanded services of the tasks below for the Project.

**Task 3.1.1 Project Alternatives Analysis**

CONTRACTOR will provide additional alternatives analysis services for the environmental review process, as requested by County. Services may include but are not limited to review of technical analysis and response to agency or stakeholder comments, developing and evaluating Project alternatives.

Should a formal alternatives analysis be requested, CONTRACTOR will develop a reasonable range of Project alternatives to be analyzed at the same technical level as the preferred alternative. Work with the Project hydrologic and civil engineering team members to determine the most appropriate and efficient approach to developing alternatives, including reexamining alternatives previously considered and focusing on potential alternatives to reduce or avoid

## **EXHIBIT A-4 - SCOPE OF SERVICES/PAYMENT PROVISIONS**

one (1) or more environmental impacts. For budget purposes, this assumes no new technical studies will be required.

*Total estimated cost for completion of Task 3.1.1 is \$20,572.*

**Task 3.2.1 Prepare Revised 1<sup>st</sup> Administrative Draft CEQA/NEPA Document**  
CONTRACTOR will identify a CEQA/NEPA document format that County, the United States Fish and Wildlife Service (USFWS), and Caltrans can agree upon. All sections of the document will be inserted into the new template, the document reformatted, and additional alternatives analyses information incorporated. A significant portion of this work includes adding new alternatives analysis, inserting new information and analysis into the hydrology and biology section, and updating the executive summary.

*Total estimated cost for completion of Task 3.2.1 is \$28,078.*

**Task 3.3.1 Prepare Revised 2nd Administrative Draft CEQA/NEPA Document**  
CONTRACTOR will revise the CEQA/NEPA document in response to comments.

*Total estimated cost for completion of Task 3.3.1 is \$15,692.*

**Task 3.4. Prepare Screencheck and Public Review Draft CEQA/NEPA Document and Noticing**  
CONTRACTOR will revise the document in response to comments. This scope of services assumes that the USFWS will be responsible for the Federal noticing requirements associated with an Environmental Impact Statement (EIS) if that is the document chosen.

*CONTRACTOR has not yet completed this task and requests an additional \$5,436 for completion of Task 3.4.*

**Task 3.7 Prepare Screencheck Draft Final CEQA/NEPA Document, Mitigation Monitoring and Reporting Program (MMRP) and CEQA Findings**  
CONTRACTOR will revise the document in response to comments. This scope of services assumes the USFWS will be responsible for the Federal noticing and Record of Decision documents.

*CONTRACTOR has not yet completed this task and requests an additional \$3,902 for completion of Task 3.7.*

**3.8 Prepare Final Environmental Document, MMRP and CEQA Findings**  
CONTRACTOR will revise the materials in responses to comments.

## EXHIBIT A-4 - SCOPE OF SERVICES/PAYMENT PROVISIONS

*CONTRACTOR has not yet completed this task and requests an additional \$7,948 for completion of Task 3.8.*

### **3.9 Optional Tasks**

CONTRACTOR will provide optional tasks as a result of on-going coordination and communication through the environmental review process with stakeholders and regulatory agencies. Optional activities may include unanticipated additional work related to Task 3 above, including, but not limited to, converting the Environmental Impact Report (EIR) to an EIS document to meet NEPA requirements if it becomes necessary.

*Total estimated cost for completion of Task 3.9 is \$70,000.*

CONTRACTOR will not access the funds for these optional tasks without prior express written consent from County.

### **Task 5. Project Management**

The additional work identified in this amended scope of services will necessitate additional costs in project management by CONTRACTOR.

*CONTRACTOR has not yet completed this task and requests an additional \$9,844 for completion of Task 5.*

### **Task 6. Meetings**

CONTRACTOR continues to participate in bi-weekly Project coordination meetings, and due to unanticipated Project complexity requires additional staff to participate in bi-weekly meetings.

*CONTRACTOR has not yet completed this task and requests an additional \$16,412 for completion of Task 6.*

## **B. PAYMENT PROVISIONS**

### **B.1 COMPENSATION/ PAYMENT**

County shall pay an amount not to exceed **\$187,488.00**, for a total amount not to exceed **\$562,727.25** for the performance of all things necessary for or incidental to the performance of work as set forth in Exhibits A, A-1, A-2 and A-3, and A-4, Scope of Services/Payment Provisions. CONTRACTOR'S compensation for services rendered shall be based on the attached Cost Estimate.

CONTRACTOR warrants that the cost charged for services under the terms of this Agreement are not in excess of those charged to any other client for the same services performed by the same individuals.

## **EXHIBIT A-4 - SCOPE OF SERVICES/PAYMENT PROVISIONS**

### **B.2 CONTRACTOR'S BILLING PROCEDURES**

Payment shall be based upon satisfactory acceptance of the work completed per task as outlined in the CONTRACTOR's monthly invoice.

Invoices under this Agreement shall be submitted monthly and promptly, and in accordance of Paragraph 6, "Payment Conditions", of the Agreement. All invoices shall reference Multi-Year Agreement (MYA) number (MYA #3000\*1375), Project name and associated Purchase Order number, and an original hardcopy shall be sent to the following:

County of Monterey  
Resource Management Agency - Finance Division  
1441 Schilling Place, South 2<sup>nd</sup> Floor  
Salinas, California 93901-4527

Any questions pertaining to invoices under this Agreement shall be directed to the RMA Finance Division at (831) 755-4800.

County may, in its sole discretion, terminate the Agreement or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.

**DISALLOWED COSTS:** CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

# EXHIBIT A-4 - SCOPE OF SERVICES/PAYMENT PROVISIONS

Denise Duffy & Associates, Inc.

Cost Estimate for

Amendment No. 4 to the Professional Services Agreement (PSA) for the  
Carmel River Floodplain Restoration and Environmental Enhancement (CRFREE) Project

| Carmel River Floodplain Restoration and Environmental Enhancement (CRFREE) Project |                                                                                |              |              |
|------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|--------------|--------------|
| Item                                                                               | Description                                                                    | Fixed Fee    | Hourly Rate  |
| 2.1                                                                                | Natural Environment Study                                                      | \$ 18,792.60 | \$ 9,604.00  |
| 2.2 - 2.10                                                                         | All other CEQA/NEPA Studies                                                    | \$ 98,042.00 | \$ 98,042.00 |
| 3.1                                                                                | CEQA/NEPA Project and Alternative Descriptions                                 | \$ 12,982.75 | \$ 12,982.75 |
| 3.1.1                                                                              | Project Alternatives Analysis                                                  | \$ 20,572.00 | \$ 20,572.00 |
| 3.2                                                                                | Prepare 1st Administrative Draft CEQA/NEPA Document                            | \$ 62,920.00 | \$ 62,920.00 |
| 3.2.1                                                                              | Revised 1st Administrative Draft CEQA/NEPA Document                            | \$ 28,078.00 | \$ 28,078.00 |
| 3.3                                                                                | Prepare 2nd Administrative Draft CEQA/NEPA Document                            | \$ 13,062.75 | \$ 13,062.75 |
| 3.3.1                                                                              | Revised 2nd Administrative Draft CEQA/NEPA Document                            | \$ 15,692.00 | \$ 15,692.00 |
| 3.4                                                                                | Prepare Screencheck and Public Review Draft CEQA/NEPA Document and Noticing    | \$ 14,762.75 | \$ 6,436.00  |
| 3.5                                                                                | Respond to Public Comments and Prepare 1st Administrative Draft Final Document | \$ 10,596.75 | \$ 10,596.75 |
| 3.6                                                                                | Prepare 2nd Administrative Draft Final Document and Draft MMRP                 | \$ 6,392.75  | \$ 6,392.75  |
| 3.7                                                                                | Prepare Screencheck Draft Final CEQA/NEPA Document, MMRP and CEQA Findings     | \$ 3,076.75  | \$ 3,902.00  |
| 3.8                                                                                | Prepare Final Environmental Document, MMRP and CEQA Findings                   | \$ 9,714.75  | \$ 7,948.00  |
| 3.9                                                                                | Optional Tasks                                                                 | \$ 70,000.00 | \$ 70,000.00 |

## EXHIBIT A-4 - SCOPE OF SERVICES/PAYMENT PROVISIONS

### PAYMENT PROVISIONS

Invoices for services/work products/deliverables under this Agreement shall be submitted monthly, shall identify the document or work product being delivered, include monthly progress reports, state the percentage of task completion, state the percentage of budget expended to date, and shall include the following:

#### 1. Invoice Coversheet

**Denise Duffy & Associates, Inc.**

**Carmel River Floodplain Restoration and Environmental Enhancement Project**

Date: \_\_\_\_\_

Invoice No.: \_\_\_\_\_

Original Agreement Amount/Term: \$256,769.25; July 29, 2014 – June 30, 2016  
Amendment No. 1: Increased by \$65,000.00; Extended Term to July 29, 2017  
Amendment No. 2: Increased by \$6,095.00 and Reallocated Funds  
Amendment No. 3: Increased by \$47,375.00; Extended Term to June 30, 2018  
Amendment No. 4: Increases by \$187,488.00; Extends Term to December 31, 2019

#### This Invoice: Task 2.

\$9,604.00

**Prepare CEQA and NEPA Required Technical Studies**

Task 2.1, Natural Environment Study

#### Task 3.

\$20,572.00

**Preparation of the Combined CEQA/NEPA Document**

Task 3.1.1, Project and Alternative Analysis

\$28,078.00

Task 3.2.1, Revised 1<sup>st</sup> Administrative Draft CEQA/NEPA Document

\$15,692.00

Task 3.3.1, Revised 2<sup>nd</sup> Administrative Draft CEQA/NEPA Document

\$5,436.00

Task 3.4, Prepare Screencheck and Public Review Draft CEQA/NEPA Document and Noticing

\$3,902.00

Task 3.7, Prepare Screencheck Draft Final CEQA/NEPA Document, MMRP and CEQA Findings

\$7,948.00

Task 3.8, Prepare Final Environmental Document, MMRP and CEQA Findings

\$70,000.00

Task 3.9, Optional Tasks

#### Task 5

**Project Management**

\$9,844.00

Additional Project Management

#### Task 6.

**Meetings**

\$16,412.00

Additional Meetings

#### Total Increase:

**\$187,488.00**

Remaining Balance \$ \_\_\_\_\_

Approved as to Work/Payment: \_\_\_\_\_

Melanie Beretti, Special Programs Manager

\_\_\_\_\_ Date

#### 2. Invoice Detail

Each invoice shall indicate the hours worked by task and by staff member, with the corresponding billing rates.

# EXHIBIT D - STATE COASTAL CONSERVANCY AGREEMENT NO. 17-024

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
 Std. 2 (Grant - Rev 08/08)

|                                                                        |         |
|------------------------------------------------------------------------|---------|
| AGREEMENT NUMBER<br><b>17-024</b>                                      | AM. NO. |
| TAXPAYER'S FEDERAL EMPLOYER<br>IDENTIFICATION NO.<br><b>94-2473415</b> |         |

THIS AGREEMENT, made and entered into this 15<sup>th</sup> day of November, 2017,  
 in the State of California, by and between State of California, through its duly elected or appointed, qualified and acting  
 TITLE OF OFFICER ACTING FOR STATE Executive Officer AGENCY State Coastal Conservancy, hereafter called the Conservancy, and  
 GRANTEE'S NAME Big Sur Land Trust, hereafter called the Grantee.  
 The Grantee, for and in consideration of the covenants, conditions, agreements, and stipulations of the Conservancy hereinafter expressed  
 does hereby agree as follows:

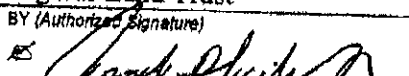
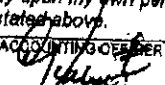
## SCOPE OF AGREEMENT

Pursuant to Chapter 3 and 5.5 of Division 21 of the California Public Resources Code, the State Coastal Conservancy ("the Conservancy") hereby grants to the Big Sur Land Trust ("the grantee") a sum not to exceed \$245,000 (two hundred forty-five thousand dollars), subject to this agreement. The grantee shall use these funds to prepare an environmental review document and related studies for permitting of the Carmel River Floodplain Restoration and Environmental Enhancement Project ("the project") for the Lower Carmel River Floodplain area of Carmel-By-The-Sea, Monterey County as shown on Exhibit A, which is incorporated by reference and attached.

(Continued on following pages)

The provisions on the following pages constitute a part of this agreement.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written.

|                                                                                                                                                                                                               |                                                                                                                |                                                                                                                   |                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| STATE OF CALIFORNIA                                                                                                                                                                                           |                                                                                                                | GRANTEE                                                                                                           |                                                                                                                                                                                                                                            |
| AGENCY<br>State Coastal Conservancy                                                                                                                                                                           |                                                                                                                | GRANTEE (If other than an individual, state whether a corporation, partnership, etc.)<br>Big Sur Land Trust       |                                                                                                                                                                                                                                            |
| BY (Authorized Signature)<br>                                                                                              |                                                                                                                | BY (Authorized Signature)<br> |                                                                                                                                                                                                                                            |
| PRINTED NAME AND TITLE OF PERSON SIGNING<br>Samuel Schuchat, Executive Officer                                                                                                                                |                                                                                                                | PRINTED NAME AND TITLE OF PERSON SIGNING<br>Jeannette Tuitele-Lewis, President/CEO                                |                                                                                                                                                                                                                                            |
| ADDRESS & PHONE NUMBER<br>1515 Clay Street, 10 <sup>th</sup> Floor<br>Oakland, CA 94612<br>Phone: (510) 286-1015                                                                                              |                                                                                                                | ADDRESS<br>509 Hartnell Street<br>Monterey, CA 93940<br>Phone: (831) 625-5523                                     |                                                                                                                                                                                                                                            |
| AMOUNT ENCUMBERED BY THIS DOCUMENT<br><br>\$245,000.00                                                                                                                                                        | PROGRAM/CATEGORY (CODE AND TITLE)<br>Local Assistance<br>(OPTIONAL USE)<br>Carmel River Floodplain Restoration | FUND TITLE<br>Federal Trust Fund                                                                                  | I certify that this agreement is exempt from Department of General Services' approval.<br><br><br>Erlinda Corpuz<br>Procurement and Contracts Manager |
| PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT<br><br>\$-0-                                                                                                                                                       | ITEM<br>3760-101-089000000<br>(F10AP00825/15.614)(USFWS)                                                       | CHAPTER<br>10                                                                                                     |                                                                                                                                                                                                                                            |
| TOTAL AMOUNT ENCUMBERED TO DATE<br>\$245,000.00                                                                                                                                                               | OBJECT OF EXPENDITURE (CODE AND TITLE)<br>Enhancement                                                          | STATUTE<br>2015                                                                                                   |                                                                                                                                                                                                                                            |
|                                                                                                                                                                                                               |                                                                                                                | FISCAL YEAR<br>15/16                                                                                              |                                                                                                                                                                                                                                            |
| I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.                                                                 |                                                                                                                |                                                                                                                   |                                                                                                                                                                                                                                            |
| SIGNATURE OF ACCOUNTING OFFICER<br>                                                                                        |                                                                                                                | DATE<br>11/01/2017                                                                                                |                                                                                                                                                                                                                                            |
| <input checked="" type="checkbox"/> GRANTEE <input checked="" type="checkbox"/> ACCOUNTING <input type="checkbox"/> PROJECT MANAGER <input type="checkbox"/> CONTROLLER <input type="checkbox"/> STATE AGENCY |                                                                                                                |                                                                                                                   |                                                                                                                                                                                                                                            |

## EXHIBIT D - STATE COASTAL CONSERVANCY AGREEMENT NO. 17-024

Big Sur Land Trust  
Grant Agreement No. 17-024  
Page 2

### SCOPE OF AGREEMENT (Continued)

Grantee, in collaboration with the County of Monterey, shall prepare final joint environmental documentation, including all required assessments and studies, for the Carmel River Floodplain Restoration and Environmental Enhancement Project (CRFREE), pursuant to the California Environmental Quality Act (CEQA) and pursuant to the National Environmental Policy Act (NEPA). It is contemplated that the environmental documentation required under CEQA and NEPA may consist of a joint environmental impact report/environmental impact statement (EIR/EIS) or an EIR/Environmental Assessment. In preparing the environmental documentation, grantee shall solicit comments and input from grant funding agencies and other responsible agencies by issuance of an administrative draft prior to publishing a draft for public review. The County of Monterey will be the lead agency for CEQA and the United States Fish and Wildlife Service, with Caltrans, will be the lead agency under NEPA. Grantee shall also provide project management, including agency coordination, fund raising and public engagement.

The grantee shall carry out the project in accordance with this agreement and a work program as provided in the "WORK PROGRAM" section, below. The grantee shall provide any funds beyond those granted under this agreement which are needed to complete the project.

### CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT

The grantee shall not commence the project and the Conservancy shall not be obligated to disburse any funds under this agreement until the following conditions precedent have been met:

1. The board of trustees of the grantee has adopted a resolution designating positions whose incumbents are authorized to negotiate and execute this agreement and amendments to it on behalf of the grantee.
2. The Executive Officer of the Conservancy ("Executive Officer") has approved in writing:
  - a. The work program for the project as provided in the "WORK PROGRAM" section, below.
  - b. All contractors that the grantee intends to retain in connection with the project.
3. The grantee has provided written evidence to the Conservancy that the grantee has provided for required insurance coverage, including additional insured endorsement, as described in the "INSURANCE" section, below.
4. The grantee has completed and returned to the Conservancy the Federal Sub-Awardee Questionnaire.

**EXHIBIT D – STATE COASTAL CONSERVANCY AGREEMENT NO. 17-024**

Big Sur Land Trust  
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**CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT** (Continued)

In carrying out the project, the grantee shall:

1. Complete final environmental documentation under CEQA and NEPA for the CRFREE, as that project is described in the Conservancy's 2017 application for Federal financial assistance, amendment, entitled "2010 Coastal Wetlands, Carmel River Floodplain Restoration and Environmental Enhancement Project", which included an updated narrative description of the CRFREE. A copy of the application with included narrative project description has been provided to the grantee
2. Comply with all applicable terms and conditions that may be required by the FWS NCWC Grant to the Conservancy or that may be necessary to enable the Conservancy to comply with terms and conditions of the grant (see "NCWC GRANT REQUIREMENTS" section, below).

**TERM OF AGREEMENT**

This agreement shall take effect when signed by both parties and received in the office of the Conservancy together with the resolution described in the "CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT" section of this agreement. An authorized representative of the grantee shall sign the first page of the originals of this agreement in ink.

This agreement shall run from its effective date through December 31, 2019 ("the termination date") unless otherwise terminated or amended as provided in this agreement. However, all work shall be completed by June 1, 2019 ("the completion date").

**AUTHORIZATION**

The signature of the Executive Officer of the Conservancy on this agreement certifies that at its June 15, 2017 meeting, the Conservancy adopted the resolution included in the staff recommendation attached as Exhibit B. This agreement is executed under that authorization.

Funding for the project under this agreement is being provided by a grant (the "NCWC Grant") to the Conservancy by the U. S. Fish and Wildlife Service under its National Coastal Wetlands Conservation Grant Program. The Executive Officer's signature on this agreement acknowledges that the NCWC Grant has been awarded specifically for the work under this agreement. In carrying out the project work under this agreement the grantee shall comply with

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### AUTHORIZATION (Continued)

all applicable requirements imposed by the NCWC Grant, as detailed in "NCWC Grant Requirements" section, below.

### NCWC GRANT REQUIREMENTS

In accordance with the requirements of the NCWC Grant, any work under this agreement is subject to additional provisions under that grant. With respect to such work, the grantee shall comply with all award requirements under the NCWC Grant, including all of those requirements (collectively "Award Requirements") found in the following NCWC Grant documents:

- A. United States Fish and Wildlife Service ("USFWS") Notice of Notice of Federal Assistance Award for C-31-L-1, "Odello East Floodplain Restoration Project, Monterey County, CA" dated August 27, 2010 (the "Award Notice"), as amended by USFWS Notice of Federal Assistance Award for F10AP00825 (C-31-L-1) Amendment 1, dated January 16, 2014 ("Award Notice, Am. 1"), and as further amended by USFWS "Notice of Amendment to Grant Award for FBMS# F10AP00825 (C-31-L-1) Amendment 2 ("Award Notice, Am. 2"). These NCWC Grant award notices are collectively attached to this agreement as Exhibit C and incorporated by this reference. USFWS issued the Award Notice, Am. 2 based on the Conservancy's 2017 application for Federal financial assistance amendment entitled "2010 Coastal Wetlands, Carmel River Floodplain Restoration and Environmental Enhancement Project", which included an updated narrative description of the CRFREE (the "Grant Proposal"), to which the NCWC Grant is to be applied. Although an important element of the Notice of Award, Am. 2, the Grant Proposal is not attached to this agreement because of the substantial size of the document. Instead, an electronic copy of the Grant Proposal has been separately provided to the grantee and the Grant Proposal is incorporated into this agreement by this reference.
- B. USFWS, Financial Assistance Award Terms and Conditions, Effective Date January 6, 2017, found on the internet at this address:  
<https://www.fws.gov/grants/pdfs/USFWSFAAwardTermsandConditions01-06-17B.pdf>

The grantee shall carefully review all of the Award Requirements and, as applicable, comply with those requirements. The Award Requirements include, *but are not limited to*, the following:

1. The "Special Conditions and Provisions" of the Award Notice, Award Notice, Am. 1, and Award Notice Am. 2.

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### NCWC GRANT REQUIREMENTS (Continued)

The grantee shall provide to the Conservancy the information necessary for the Conservancy to comply with the following or any other applicable requirements. The information may be combined with information otherwise required under this agreement.

- a. Interim and final performance and financial reports. (See Award Notice, Am. 2, page 3, "Reporting Requirements").
2. Grantee shall carry out the project consistent with the description set forth in the Grant Proposal, which is included in Exhibit C.
3. USFWS, Financial Assistance Award Terms and Conditions, Effective Date January 6, 2017, found on the internet at this address: <https://www.fws.gov/grants/pdfs/USFWSFAAawardTermsandConditions01-06-17B.pdf> including, *but not limited to*:
  - a. Requirements of subgrantees under 2 CFR §1400 – Government wide Debarment and Suspension (Non-procurement).
  - b. Requirements of 2 CFR §1401, Drug-Free Workplace.
  - c. Requirements under 43 CFR Part 18, New Restrictions on Lobbying, including executing and returning to the State the Certification Regarding Lobbying: [http://apply07.grants.gov/apply/forms/sample/GG\\_LobbyingForm-V1.1.pdf](http://apply07.grants.gov/apply/forms/sample/GG_LobbyingForm-V1.1.pdf)
  - d. Compliance with the requirements of the federal Administrative Requirements and Audit Requirements found at 2 C.F.R. Part 200, Subparts A through E. These requirements include, *but are not limited to*, the following:
    - i. Record retention and access requirements under 2 CFR §200.333 et seq.
    - ii. Procurement Standards, found at 2 CFR §§200.317– 200, which require grantee to: use specified methods of procurement (§200.320); take all specified affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible (§200.321); perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, currently \$150,000, but periodically adjusted for inflation (§200.323); and to incorporate into any procurement contract the applicable provisions described in Appendix II to Part 200— Contract Provisions for non-Federal Entity Contracts Under Federal Awards (§200.326).

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**NCWC GRANT REQUIREMENTS** (Continued)

- iii. Grantee shall undertake an annual federal single audit (or alternative) as and when required by 2 CFR, Part 200, Subpart F (2 CFR §§ 200.500 et seq.) and provide a copy to the Conservancy on completion of each such audit throughout the term of this agreement. Further, on execution of this agreement, the grantee shall provide the Conservancy with a copy of its most recently completed annual federal single audit (or alternative) and shall complete and return to the Conservancy the questionnaire concerning internal audit controls (the "Federal Sub-Awardee Questionnaire"), which has been provided by the Conservancy to the grantee.
- c. Grantee shall comply with federal Davis Bacon Act and the Department of Labor regulations concerning the Davis-Bacon Act and other federal wage laws. When required by the Davis-Bacon Act, the Department of Labor's (DOL) government-wide implementation of the Davis-Bacon Act, or by Federal program legislation, all laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of \$2,000 financed by Federal assistance funds must be paid wages not less than those established for the locality of the Project (prevailing wage rates) by the DOL. Non-federal entities must include in their construction contracts a requirement that the contractor or subcontractor comply with the requirements of the Davis-Bacon Act and the DOL regulations. In addition, grantee must comply with Pres. Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60) (all construction contracts awarded in excess of \$10,000); the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3) (for contracts for construction or repair); and Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5) (construction contracts awarded in excess of \$2,000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).
- f. Grantee shall comply with the requirements specified in 2 CFR Part 175, prohibiting specified acts involving "trafficking in persons" by grantee or its employees during the term of the federal grant. Grantee, its employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.
- g. Requirements under 41 USC §4712, Enhancement of Recipient and Subrecipient Employee Whistleblower Protection, which requires compliance with the following:

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**NCWC GRANT REQUIREMENTS** (Continued)

- (i) This award, related subawards, and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards, and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies established at 41 USC 4712.
- (ii) Grantee and its contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712.
- (iii) The grantee shall insert this clause, including this paragraph (c), in all subawards and in contracts over the simplified acquisition threshold related to this award.

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### Standard Provisions

#### WORK PROGRAM

Before beginning the project, the grantee shall submit a detailed work program to the Executive Officer for review and written approval of its consistency with this grant agreement. The work program shall include:

1. The specific tasks to be performed.
2. A schedule of completion for the project, specifically listing the completion date for each project component and a final project completion date.
3. A detailed project budget. The project budget shall describe all labor and materials costs of completing each component of the project. For each project component, the project budget shall list all intended funding sources including the Conservancy's grant, and all other sources of monies, materials, or labor.

If all or any part of the project to be funded under this agreement will be performed by third parties ("contractors") under contract with the grantee, then the grantee shall, prior to initiating any contractor selection process, submit the selection package to the Executive Officer for review and written approval as to consistency with the purposes of this grant agreement. Upon approval by the Executive Officer, the grantee shall proceed with the contractor selection process. Prior to final selection of a contractor, the grantee shall submit to the Executive Officer for written approval the names of all contractors that the grantee intends to hire. The grantee shall then comply with the above paragraph regarding submission and approval of a work program prior to project commencement.

The work program shall have the same effect as if included in the text of this agreement. However, the work program may be modified without amendment of this agreement upon the grantee's submission of a modified work program and the Executive Officer's written approval of it. If this agreement and the work program are inconsistent, the agreement shall control.

The grantee shall carry out the project in accordance with the approved work program.

#### COORDINATION AND MEETINGS

The grantee shall coordinate closely with Conservancy staff and other involved entities, including local, state and federal agencies, and shall participate in meetings and other communications as necessary to ensure coordination.

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### **WORK PRODUCTS AND ACKNOWLEDGMENT OF CONSERVANCY SUPPORT**

All material, data, information, and written, graphic or other work produced, developed or acquired under this agreement is subject to the unqualified and unconditional right of the Conservancy to use, reproduce, publish, display, and make derivative use of all such work, or any part of it, free of charge and in any manner and for any purpose; and to authorize others to do so. If any of the work is subject to copyright, trademark, service mark, or patent, the Conservancy is granted and shall have a perpetual, royalty-free, nonexclusive and irrevocable license to use, reproduce, publish, use in the creation of derivative works, and display and perform the work, or any part of it, and to grant to any third party a comparable and coextensive sublicense.

The grantee shall include in any contract with a third party for work under this agreement terms that preserve the rights, interests, and obligations created by this section, and that identify the Conservancy as a third-party beneficiary of those provisions.

The grantee shall not utilize the work produced under this agreement for any profit-making venture, or sell or grant rights to a third party for that purpose.

In order to acknowledge the Conservancy's support of the project, the Conservancy's name and logo shall be included in the final report in a prominent location

### **COSTS AND DISBURSEMENTS**

When the Conservancy determines that all "CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT" have been fully met, the Conservancy shall disburse to the grantee, in accordance with the approved project budget, a total amount not to exceed the amount of this grant, as follows:

The Conservancy shall disburse funds for costs incurred to date, less five percent, upon the grantee's satisfactory progress under the approved work program and upon submission of a "Request for Disbursement" form, which shall be submitted no more frequently than monthly but no less frequently than quarterly. The Conservancy shall disburse the five percent withheld upon the grantee's satisfactory completion of the project and compliance with the "PROJECT COMPLETION" section, below, and upon the Conservancy's acceptance of the project.

The Conservancy will reimburse the grantee for expenses necessary to the project when documented by appropriate receipts. The Conservancy will reimburse travel and related expenses at actual costs not to exceed the rates provided in Title 2, Division 1, Chapter 3, Subchapter 1, Article 2 of the California Code of Regulations ("CCR"), except that reimbursement may be in excess of these rates upon documentation that these rates are not reasonably available to the grantee. Reimbursement for the cost of operating a private vehicle

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### COSTS AND DISBURSEMENTS (Continued)

shall not, under any circumstance, exceed the current rate specified by the State of California for unrepresented state employees as of the date the cost is incurred. The Conservancy will reimburse the grantee for other necessary expenses if those expenses are reasonable in nature and amount taking into account the nature of the project, its location, and other relevant factors.

The grantee shall request disbursements by filing with the Conservancy a fully executed "Request for Disbursement" form (available from the Conservancy). The grantee shall include in the form its name and address, the number of this agreement, the date of the submission, the amount of the invoice, the period during which the work was actually done, and an itemized description, including time, materials, and expenses incurred, of all work done for which disbursement is requested. Hourly rates billed to the Conservancy and specified in the approved work program budget shall be equal to the actual compensation paid by grantee to employees, which may include employee benefits. The form shall also indicate cumulative expenditures to date, expenditures during the reporting period, and the unexpended balance of funds under the grant agreement.

An authorized representative of the grantee shall sign the form. Each form shall be accompanied by:

1. All receipts and any other source documents for direct expenditures and costs that the grantee has incurred,
2. Invoices from contractors that the grantee engaged to complete any portion of the work funded under this agreement and any receipts and any other source documents for costs incurred and expenditures by any such contractor, unless the Executive Officer makes a specific exemption in writing.
3. A supporting progress report summarizing the current status of the work and comparing it to the status required by the work program (budget, timeline, tasks, etc.), including written substantiation of completion of the portion of the project for which the grantee is requesting disbursement.

The grantee's failure to fully execute and submit a Request for Disbursement form, including attachment of supporting documents, will relieve the Conservancy of its obligation to disburse funds to the grantee unless and until the grantee corrects all deficiencies.

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### **EXPENDITURE OF FUNDS AND ALLOCATION OF FUNDING AMONG BUDGET ITEMS**

The total amount of this grant may not be increased except by written amendment to this agreement. The grantee shall expend funds consistent with the approved project budget. Expenditure on items contained in the approved project budget, other than overhead and indirect costs, may vary by as much as ten percent without prior approval by the Executive Officer, provided that the grantee first submits a revised budget to the Conservancy and requests disbursement based on the revised budget. Any deviation greater than ten percent, and any deviation that shifts funds from approved budget items into an overhead or indirect costs category, must be identified in a revised budget approved in advance and in writing by the Executive Officer. The Conservancy may withhold payment for items which exceed the amount allocated in the project budget by more than ten percent and which have not received the approval required above. Any increase in the funding for any particular budget item shall mean a decrease in the funding for one or more other budget items unless there is a written amendment to this agreement.

### **PROJECT COMPLETION**

The grantee shall complete the project by the completion date provided in the "TERM OF AGREEMENT" section, above. Upon completion of the project, the grantee shall supply the Conservancy with evidence of completion by submitting:

1. The plan and any other work products specified in the work program for the project, each in a format or formats (for example, paper, digital, photographic) approved by the Executive Officer.
2. A fully executed final "Request for Disbursement."

Within thirty days of the grantee's submission of the above, the Conservancy shall determine whether the grantee has satisfactorily completed the project. If so, the Conservancy shall issue to the grantee a letter of acceptance of the project. The project shall be deemed complete as of the date of the letter.

### **EARLY TERMINATION, SUSPENSION AND FAILURE TO PERFORM**

Before the project has commenced, either party may terminate this agreement for any reason by providing the other party with seven days notice in writing.

Before the project is complete, the Conservancy may terminate or suspend this agreement for any reason by providing the grantee with seven days notice in writing. In either case, the grantee

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### **EARLY TERMINATION, SUSPENSION AND FAILURE TO PERFORM** (Continued)

shall immediately stop work under the agreement and take all reasonable measures to prevent further costs to the Conservancy. The Conservancy shall be responsible for any reasonable and non-cancelable obligations incurred by the grantee in the performance of 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 further written notice from the Conservancy authorizes work to resume.

If the grantee fails to complete the project as required, or fails to fulfill any other obligations of this agreement prior to the termination date, the grantee shall be liable for immediate repayment to the Conservancy of all amounts disbursed by the Conservancy under this agreement. The Conservancy may, at its sole discretion, consider extenuating circumstances and not require repayment for work partially completed. This paragraph shall not be deemed to limit any other remedies the Conservancy may have for breach of this agreement.

Before the project is complete, the grantee may terminate this agreement for any reason by providing the Conservancy with seven days notice in writing and repaying to the Conservancy all amounts disbursed by the Conservancy under this agreement. The Conservancy may, at its sole discretion, consider extenuating circumstances and allow early termination without repayment for work partially completed.

On or before the date of termination of the agreement under this section, whether terminated by the grantee or the Conservancy, the grantee shall provide the Conservancy with all work, material, data, information, and written, graphic or other work produced, developed or acquired under this agreement (whether completed or partial), in appropriate, readily useable form.

The parties expressly agree to waive, release and relinquish the recovery of any consequential damages that may arise out of the termination or suspension of this agreement under this section.

The grantee shall include in any agreement with any contractor retained for work under this agreement a provision that entitles the grantee to suspend or terminate the agreement with the contractor for any reason on written notice and on the same terms and conditions specified in this section.

### **INDEMNIFICATION AND HOLD HARMLESS**

The grantee shall be responsible for, indemnify and hold harmless the Conservancy, its officers, agents and employees from any and all liabilities, claims, demands, damages, or costs, including without limitation litigation costs and attorneys fees, resulting from or arising out of the willful or negligent acts or omissions of the grantee, its officers, agents, contractors, subcontractors and employees, or in any way connected with or incident to this agreement, except for the active

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### INDEMNIFICATION AND HOLD HARMLESS (Continued)

negligence of the Conservancy, its officers, agents or employees. The duty of the grantee to indemnify and hold harmless includes the duty to defend as provided in Civil Code Section 2778.

The grantee waives any and all rights to any type of express or implied indemnity or right of contribution from the State, its officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this agreement.

Nothing in this agreement is intended to create in the public or in any member of it rights as a third-party beneficiary under this agreement.

### INSURANCE

Throughout the term of this agreement, the grantee shall procure and maintain insurance, as specified in this section, against claims for injuries to persons or damage to property that may arise from or in connection with any activities by the grantee or its agents, representatives, employees or contractors associated with the project undertaken pursuant to this agreement. As an alternative, with the written approval of the Executive Officer, the grantee may satisfy the coverage required by this section in whole or in part through: (a) its contractors' procurement and maintenance of insurance for work under this agreement, if the coverage otherwise fully satisfies the requirements of this section; or (b) the grantee's participation in a "risk management" plan, self insurance program or insurance pooling arrangement, or any combination of these, if consistent with the coverage required by this section.

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:
  - a. Insurance Services Office ("ISO") Commercial General Liability coverage, occurrence basis (Form CG 00 01) or comparable.
  - b. Automobile Liability coverage - ISO Form Number CA 0001, Code 1 (any auto).
  - c. Workers' Compensation insurance as required by the Labor Code of the State of California.
2. Minimum Limits of Insurance. Grantee shall maintain coverage limits no less than:

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**INSURANCE** (Continued)

- a. General Liability:  
*(Including operations, products and completed operations, as applicable)* \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the activities under this agreement or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Executive Officer.
4. Required Provisions Concerning the Conservancy and the State of California.
  - a. Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party, except after thirty days' prior written notice by first class mail has been given to the Conservancy; or in the event of cancellation of coverage due to nonpayment, after ten days prior written notice to the Conservancy. The grantee shall notify the Conservancy within two days of receipt of notice that any required insurance policy will lapse or be cancelled. At least ten days before an insurance policy held by the grantee lapses or is cancelled, the grantee shall provide the Conservancy with evidence of renewal or replacement of the policy.
  - b. The grantee hereby grants to the State of California, its officers, agents, employees, and volunteers, a waiver of any right to subrogation which any insurer of the grantee may acquire against the State of California, its officers, agents, employees, and volunteers, by virtue of the payment of any loss under such insurance. Grantee agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the grantee has received a waiver of subrogation endorsement from the insurer.
  - c. The general liability and automobile liability policies are to contain, or to be endorsed to contain, the following provisions:
    - (i) The State of California, its officers, agents and employees are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the grantee; and with respect to liability arising out of work or operations, including completed operations, performed by or on

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**INSURANCE** (Continued)

behalf of the grantee including materials, parts or equipment furnished in connection with such work or operations.

- (ii) For any claims related to this agreement, the grantee's insurance coverage shall be primary insurance with respect to the State of California, its officers, agents and employees, and not excess to any insurance or self-insurance of the State of California.
- (iii) The limits of the additional insured coverage shall equal the limits of the named insured coverage regardless of whether the limits of the named insurance coverage exceed those limits required by this agreement.
- d. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
- 5. Acceptability of Insurers. Insurance shall be placed with insurers admitted to transact business in the State of California and having a current Best's rating of "B+:VII" or better or, in the alternative, acceptable to the Conservancy and approved in writing by the Executive Officer.
- 6. Verification of Coverage. The grantee shall furnish the Conservancy with original certificates and amendatory endorsements, or copies of the applicable policy language, effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Executive Officer before work commences. The Conservancy reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage, at any time.
- 7. Contractors. The grantee shall include all contractors as insureds under its policies or shall require each contractor to provide and maintain coverage consistent with the requirements of this section. To the extent generally available, grantee shall also require each professional contractor to provide and maintain errors and omissions liability insurance appropriate to the contractor's profession and in a reasonable amount in light of the nature of the project.
- 8. Premiums and Assessments. The Conservancy is not responsible for premiums and assessments on any insurance policy.

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### AUDITS/ACCOUNTING/RECORDS

The grantee shall maintain financial accounts, documents, and records (collectively, "records") relating to this agreement, in accordance with the guidelines of "Generally Accepted Accounting Principles" ("GAAP") published by the American Institute of Certified Public Accountants. The records shall include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to work under the agreement. Time and effort reports are also required. The grantee shall maintain adequate supporting records in a manner that permits tracing from the request for disbursement forms to the accounting records and to the supporting documentation.

Additionally, the Conservancy or its agents may review, obtain, and copy all records relating to performance of the agreement. The grantee shall provide the Conservancy or its agents with any relevant information requested and shall permit the Conservancy or its agents access to the grantee's premises upon reasonable notice, during normal business hours, to interview employees and inspect and copy books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this agreement and any applicable laws and regulations.

The grantee shall retain the required records for a minimum of three years following final disbursement by the Conservancy. The records shall be subject to examination and audit by the Conservancy and the Bureau of State Audits during the retention period.

If the grantee retains any contractors to accomplish any of the work of this agreement, the grantee shall first enter into an agreement with each contractor requiring the contractor to meet the terms of this section and to make the terms applicable to all subcontractors.

The Conservancy may disallow all or part of the cost of any activity or action that it determines to be not in compliance with the requirements of this agreement.

### NONDISCRIMINATION

During the performance of this agreement, the grantee and its contractors shall not deny the agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The grantee shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. The grantee and contractors shall comply with the provisions of the

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### **NONDISCRIMINATION** (Continued)

Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the Conservancy to implement such article. The grantee shall permit access by representatives of the Department of Fair Employment and Housing and the Conservancy upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or the Conservancy shall require to ascertain compliance with this clause. The grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

The grantee shall include the nondiscrimination and compliance provisions of this clause in all contracts to perform work under this agreement.

### **INDEPENDENT CAPACITY**

The grantee, and the agents and employees of the grantee, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

### **ASSIGNMENT**

Without the written consent of the Executive Officer, this agreement is not assignable by the grantee in whole or in part.

### **TIMELINESS**

Time is of the essence in this agreement.

### **EXECUTIVE OFFICER'S DESIGNEE**

The Executive Officer shall designate a Conservancy project manager who shall have authority to act on behalf of the Executive Officer with respect to this agreement. The Executive Officer shall notify the grantee of the designation in writing.

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**AMENDMENT**

Except as expressly provided in this agreement, no change in this agreement shall be valid unless made in writing and signed by the parties to the agreement. No oral understanding or agreement not incorporated in this agreement shall be binding on any of the parties.

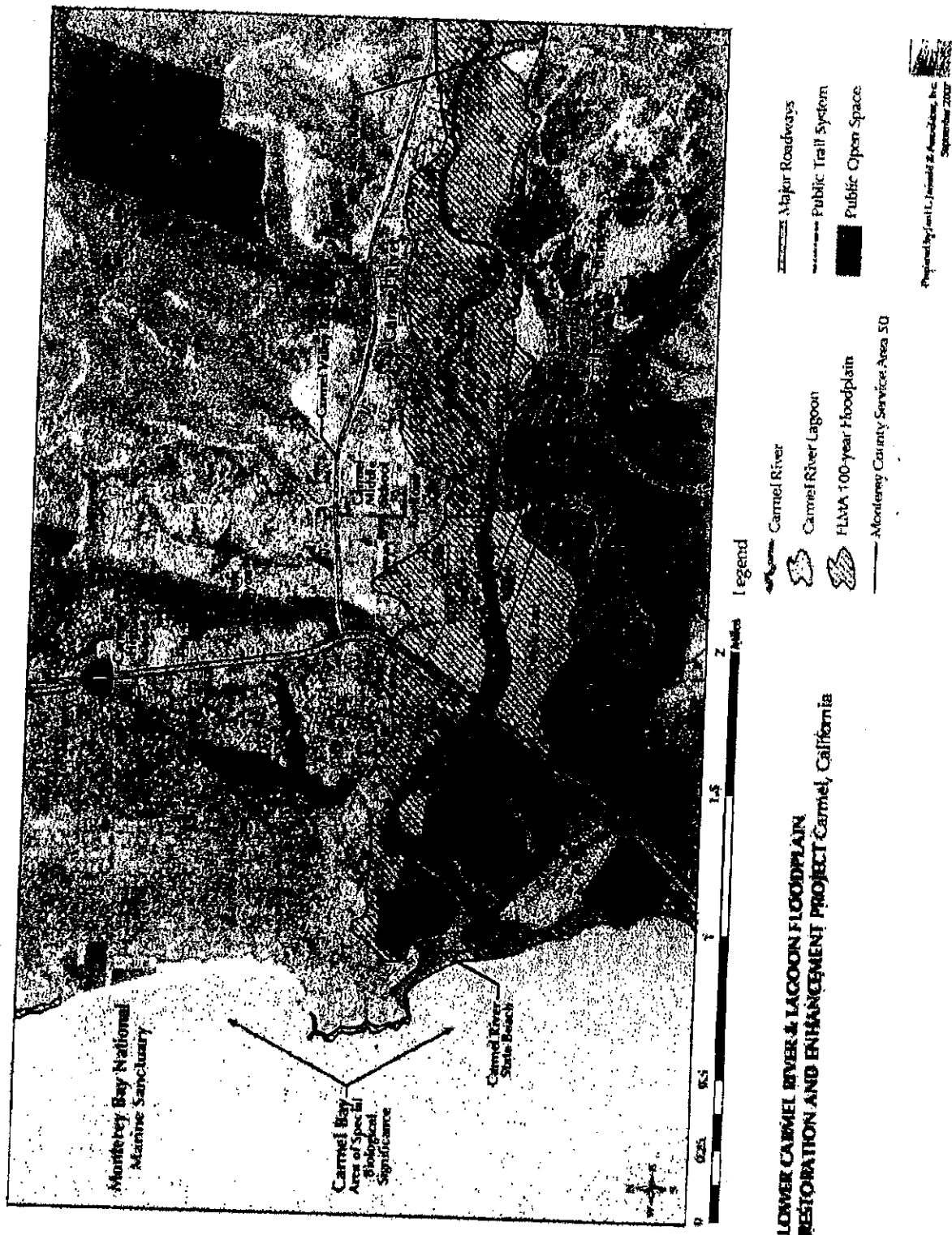
**LOCUS**

This agreement is deemed to be entered into in the County of Alameda.

**SURVIVAL**

The obligations in the "WORK PRODUCTS AND ACKNOWLEDGMENT OF CONSERVANCY SUPPORT" and "INDEMNIFICATION AND HOLD HARMLESS" sections, above, shall survive the termination of this agreement.

Exhibit 1b: Site Map



COASTAL CONSERVANCY

Staff Recommendation

June 15, 2017

**LOWER CARMEL RIVER FLOODPLAIN RESTORATION – DESIGN AND ENVIRONMENTAL COMPLIANCE**

Project No. 08-036-01

Project Manager: Tom Gandesbery

**RECOMMENDED ACTION:** Augmentation of the Conservancy's August 5, 2010 authorization to disburse an additional amount of up to \$245,000 from a grant from the U.S. Fish and Wildlife Service to the Big Sur Land Trust for the Lower Carmel River Floodplain Restoration Project in Monterey County.

**LOCATION:** Lower Carmel River, Monterey County (Exhibit 1)

**PROGRAM CATEGORY:** Integrated Coastal and Marine Resources

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**EXHIBITS**

Exhibit 1: Project Location Map

Exhibit 2: August 5, 2010 Staff Recommendation

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**RESOLUTION AND FINDINGS:**

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31111 & 31220 of the Public Resources Code:

"The State Coastal Conservancy hereby augments its August 5, 2010 authorization to disburse an additional amount of up to two hundred and forty five thousand dollars (\$245,000) of federal grant funds to the Big Sur Land Trust (BSLT) to prepare project design, conduct additional environmental review, and prepare permit applications for the Lower Carmel River Floodplain Restoration Project in Monterey County. This authorization remains subject to the August 5, 2010 resolution conditions."

Staff further recommends that the Conservancy adopt the following findings:

"Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed project is consistent with the current Project Selection Criteria and Guidelines.
2. The proposed project remains consistent with the Conservancy's June 5, 2008 and August 5, 2010 authorizations regarding the purposes and objectives of Chapters 3 and 5.5 of Division

*LOWER CARMEL RIVER FLOODPLAIN RESTORATION*

21 of the Public Resources Code, respectively funding feasibility studies and Integrated Coastal and Marine Resources Protection; the Project Selection Criteria and Guidelines; local watershed management plans and water quality control plans; the nonprofit qualifications of the BSLT; and compliance with the California Environmental Quality Act."

**PROJECT SUMMARY:**

Staff recommends that the Conservancy amend its August 5, 2010 authorization to disburse an additional \$245,000 to the Big Sur Land Trust (BSLT) for the Lower Carmel River Floodplain Restoration Project in Monterey County. The additional funding will be used to work with the County of Monterey to prepare a Draft and Final Environmental Impact Report and Statement (EIR/EIS), consistent with the California Environmental Policy Act and National Environmental Policy Act (CEQA/NEPA, respectively).

Funding for the proposed augmentation will be from a U.S. Fish and Wildlife Service (USFWS) National Coastal Wetland Conservation \$925,000 grant awarded to the Conservancy in 2010 specifically for planning and implementation of the Lower Carmel River Floodplain Restoration project. This grant originally stipulated that \$180,000 could be used for project planning and the remaining \$745,000 was reserved for project implementation. In August 2010, the Conservancy authorized the use of \$180,000 of these funds for planning, environmental review, and permitting. However, the project partners recently decided that the project required a more comprehensive environmental document, including preparation of an EIS pursuant to NEPA. As a result, BSLT requested, an additional \$245,000 in funding to cover the planning phase of the project, leaving \$500,000 for future implementation of the project. At this writing, while the USFWS staff support this approach, it is currently evaluating a budget revision to the grant to allocate \$425,000 for planning and \$500,000 for implementation and to extend the grant term. Conservancy staff expects that the USFWS will formally approve this grant amendment prior to the Conservancy's June 15, 2017 meeting.

Since 2010, the BSLT has been working closely with the County of Monterey, the Carmel Area Wastewater District (CAWD), California State Department of Parks and Recreation (State Parks) and other stakeholders to complete restoration designs and environmental clearances. The County agreed to oversee construction of the project, and as a result has taken over the lead partnership role working in continued collaboration with BSLT. The project involves large amounts of grading to reestablish floodplain and construction of a causeway along Highway 1. For additional project information see Exhibit 2.

Staff plans to recommend additional funding for implementation of the project after the environmental document is complete.

**Site Description:** See Exhibit 2, "Site Description" section.

**Project History:** See Exhibit 2, "Project History" section.

## EXHIBIT D – STATE COASTAL CONSERVANCY AGREEMENT NO. 17-024

### LOWER CARMEL RIVER FLOODPLAIN RESTORATION

#### **PROJECT FINANCING**

##### **Current authorization**

|                                          |                  |
|------------------------------------------|------------------|
| U.S. Fish and Wildlife Service           | \$245,000        |
| <b>Subtotal of Current Authorization</b> | <b>\$245,000</b> |

##### **Previous authorization**

|                                           |                  |
|-------------------------------------------|------------------|
| U.S. Fish and Wildlife Service            | \$180,000        |
| Coastal Conservancy                       | \$250,000        |
| U.S. Environmental Protection Agency      | \$200,000        |
| County of Monterey (requested)            | \$75,000         |
| Big Sur Land Trust                        | <u>\$65,000</u>  |
| <b>Subtotal of Previous Authorization</b> | <b>\$770,000</b> |

|                            |                    |
|----------------------------|--------------------|
| <b>Total Project Costs</b> | <b>\$1,015,000</b> |
|----------------------------|--------------------|

The funding for this augmentation is provided from the USFWS National Coastal Wetlands Conservation Grant awarded to the Conservancy specifically for the Lower Carmel River Restoration Project. The National Coastal Wetlands Conservation Grant Program provides matching grants to States for acquisition, restoration, management or enhancement of coastal wetlands. The Big Sur Land Trust has provided a land donation, in-kind services, and additional funding to serve as the non-federal match necessary to receive these funds. USFWS is expected to approve a budget revision to the grant to allocate \$360,000 for planning and \$500,000 for implementation.

#### **CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:**

The project remains consistent with the Conservancy's enabling legislation as described in the August 5, 2010 staff recommendation (See Exhibit 2).

#### **CONSISTENCY WITH CONSERVANCY'S 2013 STRATEGIC PLAN GOAL(S) & OBJECTIVE(S), AS REVISED JUNE 25, 2015:**

The project is consistent with the Conservancy's Strategic Plan goals and objectives as described in the August 5, 2010 staff recommendation (See Exhibit 2).

#### **CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES:**

The project remains consistent with the Conservancy's Project Selection Criteria and Guidelines as described in the August 5, 2010 staff recommendation (Exhibit 2). However, since the August 2010 authorization, the Project Selection Criteria & Guidelines were amended to include an additional required criterion, which is that a project must promote and implement state plans and policies.

***LOWER CARMEL RIVER FLOODPLAIN RESTORATION***

**Promotion and implementation of state plans and policies:** This proposed project is consistent with the following plans and policies:

- The project implements the *California Water Action Plan* (California Natural Resources Agency, California Environmental Protection Agency, and California Department of Food and Agriculture, 2014), which includes goal number 4: protect and restore important ecosystems by improving rearing habitat for SCCC steelhead. This project will address this goal.
- The project is consistent with the California Department of Fish and Wildlife's 2005 *California Wildlife Action Plan*, which sets forth goals for the Central Coast region that include protecting sensitive species and important wildlife habitat and restoring anadromous fish populations. This project will address both of these goals.
- The project implements a recovery objective identified for the Carmel River biogeographic group in the South-Central California Coast Steelhead Recovery Plan (National Marine Fisheries Service, 2013) specifically, to "restore suitable habitat conditions and characteristics to support all life history stages of viable [steelhead] populations..." DPS Recovery Objective 6.2 (Page 6-2).

**CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:**

The project remains consistent with the Local Coastal Program as described in the August 5, 2010 staff recommendation (See Exhibit 2).

**CONSISTENCY WITH LOCAL WATERSHED MANAGEMENT PLAN/  
STATE WATER QUALITY CONTROL PLAN:**

The project remains consistent with local watershed management plans and the State Water Quality Control Plan as described in the August 5, 2010 staff recommendation (See Exhibit 2).

**COMPLIANCE WITH CEQA:**

In its August of 2010 authorization, the Conservancy determined that the project was statutorily exempt from the California Environmental Quality Act (CEQA), pursuant to 14 Cal. Code of Regulations Section 15262 because the project only involves preparation of planning studies and environmental documents for possible future actions which the Conservancy has not approved, adopted, or funded and the studies will consider environmental factors. (See Exhibit 2), , .

The proposed augmentation only increases funding for the preparation of the same planning studies and environmental documents that constitute the project. The addition of funding for this statutorily-exempt project does not have the potential for a significant effect on the environment. (See 14 Cal. Code of Regs Section 15382). Therefore, no new analysis or further compliance is required under CEQA for the approval of additional funding for this project

EXHIBIT D - STATE COASTAL CONSERVANCY AGREEMENT NO. 17-024



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Pacific Southwest Region  
Wildlife & Sport Fish Restoration Program  
2800 Cottage Way, W-1729  
Sacramento, California 95825-1846

In Reply Refer To:  
FWS/R8/WSFR

Ms. Trish Chapman  
California Coastal Conservancy  
1330 Broadway, Suite 1300  
Oakland, California 94612

August 27, 2010

Subject: Notice of Federal Assistance Award for C-31-L-1

Dear Ms. Engeman:

The enclosed Application for Federal Assistance, C-31-L-1, Odello East Floodplain Restoration Project, Monterey County, CA, is approved effective January 4, 2010, with a total Federal share in the amount of \$925,000. The performance period of this award is January 4, 2010, through December 31, 2013.

**Terms of Acceptance:** Per <http://www.doi.gov/pam/TermsandConditions.html>, acceptance of a Federal Financial award from the Department of the Interior (DOI) carries with it the responsibility to be aware of, and comply with the terms and conditions of the award. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means. Awards are based on the application submitted to, and as approved by DOI and are subject to the terms and conditions incorporated either directly or by reference to the following:

- Program legislation/regulation.
- Special terms and conditions.
- Code of Federal Regulations/Regulatory Requirements, as applicable

43 CFR 12(A) Administrative and Audit Requirements and Cost Principles for Assistance Programs

43 CFR 12(E) Buy American Requirements for Assistance Programs



**EXHIBIT D – STATE COASTAL CONSERVANCY AGREEMENT NO. 17-024**

43 CFR 12(C) Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

43 CFR 12(F) Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, other Non-Profit and Commercial Organizations

43 CFR 43 Governmentwide Requirements for a Drug-Free Workplace

43 CFR 42 Governmentwide Debarment and Suspension (Nonprocurement)

43 CFR 18 New Restrictions on Lobbying

Interim Guidance for Financial Status and Performance Reporting, dated May 12, 2009

**Special Conditions and Provisions for land acquisition:**

- Cost accounting is required at the Grant level.
- USFWS must receive: (a) annual interim financial status reports and annual interim performance reports; and (b) final financial status reports and performance reports no later than 90 days after the expiration or termination of grant support.
- This project needs additional review and environmental compliance in order to conduct the earth moving activities proposed. Only the land acquisition, project design and permitting, monitoring and surveys, and project management are funded at this time. Up to \$216,000 may be drawn for the aforementioned activities. The remaining funds, (\$709,000) are not released until environmental compliance is completed per the paragraphs below, and the Wildlife and Sport Fish Restoration Program (WSFR), Grant Management Specialist has informed the grantee in writing that they may continue.
- Although the grant funds to be used in the earth moving and restoration portion of the project will not be used to work in the streambed or in any listed species habitat, analysis must be completed and any necessary permits (ESA, ACOE, RWQCB etc) must be acquired prior to being able to draw funding for this portion of the project. The grantee will provide copies of the permits and/or documentation to the WSFR Office before any funds for the earth moving and restoration planting can be drawn.
- Part of the project is post project restoration and water quality monitoring. Since it is unknown, if any listed or candidate species will repopulate the restored areas during the term of this grant; if a listed or candidate species is encountered during monitoring, then monitoring shall cease in that area until the grantee/subgrantee have consulted with the USFWS Ventura Field Office and received any needed authorization or permits to continue. Any permits required to continue monitoring and surveys shall be provided to the WSFR Grant Management Specialist.

**EXHIBIT D – STATE COASTAL CONSERVANCY AGREEMENT NO. 17-024**

- There will be no in-stream work undertaken using funds from this grant. Therefore, there would be No Effect to steelhead. However, if this situation were to change, as evidenced by the ongoing monitoring, the grantee/subgrantee will cease the activity until consulting with NOAA and providing the necessary documentation to the WSFR Office.
- The grantee/subgrantee will consult with the State Historic Preservation Office prior to conducting the earth-moving activities planned for this project. Prior to releasing the funding for the earthmoving activities, the WSFR Office must be provided with documentation that the SHPO consultation has been completed and any conditions have been complied with.
- Prior to acquiring the donated nonfederal match property, the following conditions must be completed:
  1. A certified appraiser must conduct an appraisal that meets Federal land acquisition standards. Specifically the appraisal must comply with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). This must occur for the property you plan to encumber as non-Federal land match for the Federal grant share.
  2. Following the appraisal, an appraisal review is required. The appraisal review may be provided by your agency, by contract, or through agreement with another state agency. Only a certified or licensed review appraiser may conduct the review appraisal. If you do not have access to a certified or licensed review appraiser the WSFR office can coordinate with the Office of Valuation Services (OVS) to conduct the review appraisal for your agency. Please be aware that workload issues in the OVS may affect the timeliness of the appraisal review. At least 90-days will be required to obtain a review by OVS.
  3. The appraisal and review appraisal documents must be submitted to the WSFR office for review and approval prior to drawing the funds for which this property is the nonfederal match.
  4. The deed of the nonfederal match properties shall be encumbered to ensure that the land will be managed, in perpetuity, to maintain the coastal wetland values consistent with the goals and objectives of this grant. Evidence of such shall be included as part of the final report.

Please contact me or Becky Miller at (916) 978-6185 if you have any questions.

Sincerely,



Susan Detwiler, Chief  
Wildlife & Sport Fish Restoration Program

Cc: Sean Williamson, State Coastal Conservancy, Oakland, CA

EXHIBIT D – STATE COASTAL CONSERVANCY AGREEMENT NO. 17-024



United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Pacific Southwest Region  
Wildlife & Sport Fish Restoration Program  
2800 Cottage Way, W-1729  
Sacramento, California 95825



In Reply Refer To:  
FWS/R8/WSFR

Ms. Kate Goodnight  
State Coastal Conservancy  
1330 Broadway, Suite 1300  
Oakland, California 94612

January 16, 2014

Subject: Notice of Federal Assistance Award for F10AP00825 (C-31-L-1) Amendment 1

Dear Ms. Goodnight:

The enclosed Application for Federal Assistance, F10AP00825, Amendment 1, FY 2010, Coastal Wetland, Odello East Floodplain Restoration Project, request for time extension is approved effective December 16, 2013. The performance period of this award is January 4, 2010, through December 31, 2018.

**Terms of Acceptance:**

Per [http://www.doi.gov/pam/programs/financial\\_assistance/TermsandConditions.cfm](http://www.doi.gov/pam/programs/financial_assistance/TermsandConditions.cfm), acceptance of a Federal Financial award from the Department of the Interior (DOI) carries with it the responsibility to be aware of and comply with the terms and conditions of the award. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means. Awards are based on the application submitted to, and as approved by DOI and are subject to the terms and conditions incorporated either directly or by reference to the following:

- Program legislation/regulation.
- Special terms and conditions.
- Code of Federal Regulations/Regulatory Requirements, as applicable

2 CFR 25 – Central Contractor Registration and Data Universal Numbering System

2 CFR 170 – Reporting Sub-awards and Executive Compensation

2 CFR 1400 – Government wide Debarment and Suspension (Non-procurement)

**EXHIBIT D – STATE COASTAL CONSERVANCY AGREEMENT NO. 17-024**

2 CFR 175 – Trafficking Victims Protection Act of 2000

43 CFR 12(A) Administrative and Audit Requirements and Cost Principles for Assistance Programs

43 CFR 12(E) Buy American Requirements for Assistance Programs

43 CFR 12(C) Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

43 CFR 12(F) Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, other Non-Profit and Commercial Organizations

43 CFR 43 Governmentwide Requirements for a Drug-Free Workplace

43 CFR 42 Governmentwide Debarment and Suspension (Nonprocurement)

43 CFR 18 New Restrictions on Lobbying

305 DM 3 Integrity of Scientific and Scholarly Activities

Interim Guidance for Financial Status and Performance Reporting, dated May 12, 2009

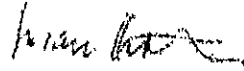
**Special Provisions and Conditions:**

- All provisions and conditions previously identified and listed for this grant shall remain in effect with this amendment.
- Annual Federal Financial Reports (SF425) and Performance Reports will be due June 29, 2014, and on that date every year until the completion of the grant. Final Reports will be due 90 days from the ending date of the grant (Due: March 31, 2019). For further information regarding reporting requirements and sanctions please see the reporting guidance issued May 12, 2009 in the Wildlife and Sport Fish Restoration Toolkit located at:  
<http://wsfrprograms.fws.gov/subpages/toolkitfiles/intgdrpt.pdf>
- Under the terms and conditions of this award, your organization must maintain an active SAM registration until the final financial report is submitted or final payment is received, whichever is later. If your organization's SAM registration expires during the required period, the U.S. Fish & Wildlife Service will suspend payment under this and all other Service awards to your organization until you update your organization's SAM registration.
- Your organization's CCR registration is set to expire on December 18, 2014. Under the terms and conditions of this award, your organization is required to maintain an active CCR registration throughout the entire approved award period.

**EXHIBIT D - STATE COASTAL CONSERVANCY AGREEMENT NO. 17-024**

Please contact me or Bart Prose at (916) 978-6152 if you have any questions.

Sincerely,



Susan K. Detwiler, Chief  
Wildlife & Sport Fish Restoration Program

Enclosure: SF424 and Grant Narrative

**EXHIBIT D – STATE COASTAL CONSERVANCY AGREEMENT NO. 17-024**



**United States Department of the Interior**

**FISH AND WILDLIFE SERVICE**  
Pacific Southwest Region  
Wildlife & Sport Fish Restoration Program  
2800 Cottage Way, W-1729  
Sacramento, California 95825



In Reply Refer to:  
FWS/R8/WSPR

August 16, 2017

Mr. Thomas Gandesbery, Project Manager  
California State Coastal Conservancy  
1515 Clay Street, 10<sup>th</sup> Floor  
Oakland, California 94612-1401  
**DUNS: 808322408**

**Subject: Notice of Amendment to Grant Award for FBMS# F10AP00825 (C-31-L-1)**  
**Amendment 2**

Dear Mr. Gandesbery:

Your organization's application for Federal financial assistance amendment titled "2010 Coastal Wetlands, Carmel River Floodplain Restoration and Environmental Enhancement Project (previously Odello East Floodplain Restoration Project)" submitted to the U.S. Fish and Wildlife Service (Service)'s CFDA Program 15.614 is approved effective March 21, 2017. This award is amended as follows: time extension, modify scope, budget and match.

The performance period of this award is January 4, 2010 through December 31, 2019. Only allowable costs resulting from obligations incurred during the performance period and any authorized pre-award costs may be charged to this award. All obligations incurred under the award must be liquidated no later than 90 calendar days after the end of the performance period, unless the Service approves a final financial reporting period extension (see Reporting Requirements section below). If you need more time to complete project activities, you must submit a written request to [r8fa\\_grants@fws.gov](mailto:r8fa_grants@fws.gov) before the end of the stated performance period.

**Payments:**

Your organization has completed enrollment in U.S. Treasury's Automated Standard Application for Payment (ASAP) system ([https://www.fiscal.treasury.gov/fservices/gov/pmt/asap/asap\\_home.htm](https://www.fiscal.treasury.gov/fservices/gov/pmt/asap/asap_home.htm)). When requesting payment in ASAP, your Payment Requestor will be required to enter an Account ID (see table below). The number assigned to this award is the partial Account ID in ASAP. When entering the Account ID in ASAP, the Payment Requestor should enter the award number identified in the subject line on letter followed by a percent sign (%). Refer to the ASAP.gov Help menu for detailed instructions on requesting payments in ASAP.

# EXHIBIT D – STATE COASTAL CONSERVANCY AGREEMENT NO. 17-024

Use the information below to identify your award funds at: <https://www.asap.gov>

| ASAP Accounting Information |       | FY/Funding Title            | Federal Share    | % of Federal Share | State Share      | % of State Share | Total Award        |
|-----------------------------|-------|-----------------------------|------------------|--------------------|------------------|------------------|--------------------|
| FT0AP00825-0001-0000        | Orig  | Coastal Wetland             | 925,000          | 14%                | 5,472,100        | 86%              | 6,397,100          |
|                             | Amd 1 | Time Ext only               |                  |                    |                  |                  |                    |
|                             | Amd 2 | Time Ext, Scope & Match Chg |                  | 75%                | (5,163,767)      | 25%              | (5,163,767)        |
| <b>Totals:</b>              |       |                             | <b>\$925,000</b> | <b>75%</b>         | <b>\$308,333</b> | <b>25%</b>       | <b>\$1,233,333</b> |

## Terms of Acceptance:

Acceptance of a financial assistance award (i.e., grant or cooperative agreement) from the Service carries with it the responsibility to be aware of and comply with the terms and conditions applicable to the award. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means. Awards are based on the application submitted to and approved by the Service. Awards are subject to the terms and conditions incorporated into the notice of award either by direct citation or by reference to the following: Federal regulations; program legislation or regulation; and special award terms and conditions. The terms and conditions of Service awards flow down to subrecipients and contractors, unless a particular award term or condition specifically indicates otherwise. The Federal regulations applicable to Service recipients and their subrecipients and contractors are listed by recipient type in the **Service Financial Assistance Award Terms and Conditions** posted on the Internet at <http://www.fws.gov/grants/atc.html>. If you do not have access to the Internet and require a printed copy of the award terms and conditions, contact the Service Project Officer identified below.

If Recipient decides to not accept this award, Recipient must notify the Service Project Officer in writing within 30 calendar days of that decision.

## Special Conditions and Provisions:

- Your organization's CCR registration is set to expire on May 30, 2018. Under the terms and conditions of this award, your organization is required to maintain an active CCR registration throughout the entire approved award period.
- All provisions and conditions previously identified and listed for this grant shall remain in effect with this amendment.
- This grant may not be extended beyond December 31, 2019.
- This project requires additional review and completion of environmental compliance prior to project implementation. As such, \$500,000 for project implementation is not approved to be drawn until such compliance has been completed and you are notified in writing from us that you may draw these funds. However, up to \$425,000 may be drawn for environmental review, planning, and project management.

# EXHIBIT D – STATE COASTAL CONSERVANCY AGREEMENT NO. 17-024

## Reporting Requirements:

| Report Title                              | Report Period:        | Due Date   |
|-------------------------------------------|-----------------------|------------|
| Interim Federal Financial Report (SF-425) | 01/04/2010-03/31/2018 | 06/29/2018 |
| Interim Performance Report                | 01/04/2010-03/31/2018 | 06/29/2018 |
| Interim Federal Financial Report (SF-425) | 01/04/2010-03/31/2019 | 06/29/2019 |
| Interim Performance Report                | 01/04/2010-03/31/2019 | 06/29/2019 |
| Final Federal Financial Report (SF-425)   | 01/04/2010-12/31/2019 | 03/30/2020 |
| Final Performance Report                  | 01/04/2010-12/31/2019 | 03/30/2020 |

All Reports should be sent to [r8fa\\_grants@fws.gov](mailto:r8fa_grants@fws.gov).

Recipients must use the Standard Form (SF) 425, *Federal Financial Report* form for all financial reporting. This form is available at <http://www.grants.gov/web/grants/forms/post-award-reporting-forms.html#sortBy=1> or Wildlife and Sport Fish Restoration Toolkit located at: <http://fawiki.fws.gov/display/WTk/Toolkit+Homepage>.

Performance reports must contain: 1) a comparison of actual accomplishments with the goals and objectives of the award as detailed in the approved scope of work; 2) a description of reasons why established goals were not met, if appropriate; and 3) any other pertinent information relevant to the project results. Please include the Service award number provided in the subject line of this letter on all reports.

Financial and performance reporting due dates may be extended by the Service upon receipt of a written request addressed to the Service at [r8fa\\_grants@fws.gov](mailto:r8fa_grants@fws.gov) identifying the type of report to be extended, the requested revised due date, and a justification for the extension. The Service may approve an additional extension if justified by a catastrophe that significantly impairs the recipient's operations. Requests for reporting due date extensions must be received by the Service no later than one day before the original reporting due date.

**System for Award Management (SAM) Registration:** Under the terms and conditions of this award, your organization must maintain an active SAM registration at <https://www.sam.gov/portal/public/SAM/> until the final financial report is submitted or final payment is received, whichever is later. If your organization's SAM registration expires during the required period, the Service will suspend payment under this and all other Service awards to your organization until you update your organization's SAM registration.

## Project Contacts:

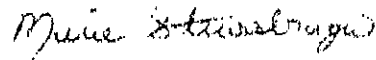
| The Service Project Officer for this award is:                                                                                                                         | The Recipient Project Officer for this award is:                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| Justin Cutler, Grant Management Specialist<br>Phone: (916) 414-6457<br>Cell: (916) 768-2336<br>Email: <a href="mailto:justin_cutler@fws.gov">justin_cutler@fws.gov</a> | Thomas Gandesbery, Project Manager<br>Phone: (510) 286-7028<br>Email: <a href="mailto:tgandesbery@scc.ca.gov">tgandesbery@scc.ca.gov</a> |

**EXHIBIT D – STATE COASTAL CONSERVANCY AGREEMENT NO. 17-024**

Please contact Justin Cutler with any questions. Please include the Service award number provided in the subject line of this letter in all written communications.

Thank you for your interest and efforts in supporting conservation for fish and wildlife and their habitats.

Sincerely,



Marie Strassburger  
Chief

Enclosure: SF424, purpose



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/24/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|                                                                                                                     |  |                                                                                                                                                                                                                                                                              |  |
|---------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>PRODUCER</b><br>SelectSolutions Insurance Services<br>1350 Carlbach Avenue<br>Suite 100<br>Walnut Creek CA 94596 |  | <b>CONTACT NAME:</b> Diana Chau<br><b>PHONE (A/C, No, Ext):</b> (866)500-6359<br><b>FAX (A/C, No):</b> (925)951-0077<br><b>E-MAIL ADDRESS:</b> dianac@ppibselect.com                                                                                                         |  |
| <b>INSURED</b><br>Denise Duffy & Associates Inc.<br>947 CASS Street #5<br>Monterey CA 93940                         |  | <b>INSURER(S) AFFORDING COVERAGE</b><br><b>INSURER A:</b> Citizens Insurance Company of America<br><b>INSURER B:</b> The Hanover American Insurance Company<br><b>INSURER C:</b> Continental Casualty Company<br><b>INSURER D:</b><br><b>INSURER E:</b><br><b>INSURER F:</b> |  |
|                                                                                                                     |  | <b>NAIC #</b><br>31534<br>36064<br>20443                                                                                                                                                                                                                                     |  |

## COVERAGES

CERTIFICATE NUMBER: 17/18

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

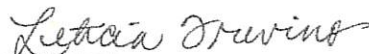
| INSR LTR | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                                   | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                                                         |   |              |            |            |                                                                                                                                                                                                                                    |  |              |            |            |                                                                                                                                                                                                                                         |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------|---------------|-------------------------|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------|------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------|------------|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br>OTHER: | Y         |          | OB3916991206  | 09/01/2017              | 09/01/2018              | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000<br>MED EXP (Any one person) \$ 5,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000<br>\$ |   |              |            |            |                                                                                                                                                                                                                                    |  |              |            |            |                                                                                                                                                                                                                                         |
|          | A                                                                                                                                                                                                                                                                                                                   |           |          |               |                         |                         | <input type="checkbox"/> AUTOMOBILE LIABILITY<br><input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY<br><input checked="" type="checkbox"/> HIRED AUTOS ONLY<br><input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY                   | Y | OB3916991206 | 09/01/2017 | 09/01/2018 | COMBINED SINGLE LIMIT (Ea accident) \$ INCL IN GL<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$                                                                   |  |              |            |            |                                                                                                                                                                                                                                         |
|          |                                                                                                                                                                                                                                                                                                                     |           |          |               |                         |                         | A                                                                                                                                                                                                                                              |   |              |            |            | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR<br><input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE<br>DED <input checked="" type="checkbox"/> RETENTION \$ 0 |  | OB3916991206 | 09/01/2017 | 09/01/2018 | EACH OCCURRENCE \$ 3,000,000<br>AGGREGATE \$ 3,000,000<br>\$                                                                                                                                                                            |
|          |                                                                                                                                                                                                                                                                                                                     |           |          |               |                         |                         |                                                                                                                                                                                                                                                |   |              |            |            | B                                                                                                                                                                                                                                  |  |              |            |            | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below<br>Y/N <input checked="" type="checkbox"/> Y N/A |
| C        | PROFESSIONAL LIABILITY                                                                                                                                                                                                                                                                                              |           |          | EEH276198480  | 11/05/2017              | 11/05/2018              | PER CLAIM \$2,000,000<br>AGGREGATE \$2,000,000                                                                                                                                                                                                 |   |              |            |            |                                                                                                                                                                                                                                    |  |              |            |            |                                                                                                                                                                                                                                         |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: CRFREE Project (Monterey County), County of Monterey, its Officers, Agents and Employees are named as additional insured (primary) on General Liability including Hired & Non-Owned Automobile Liability policy if required by written contract per attached endorsement.

## CERTIFICATE HOLDER

## CANCELLATION

|                                                                                                          |                                                                                                                                                                                                                                                                                         |
|----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| County of Monterey Contracts & Purchasing Division<br>168 W. Alisal St., 3rd Fl.<br><br>Salinas CA 93901 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br>AUTHORIZED REPRESENTATIVE<br> |
|----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## GENERAL LIABILITY SUPPLEMENTARY ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESSOWNERS COVERAGE FORM

#### A. Additional Insured by Contract, Agreement or Permit

The following is added to **SECTION II - LIABILITY, C. Who Is An Insured:**

##### Additional Insured by Contract, Agreement or Permit

a. Any person or organization with whom you agreed in a written contract, written agreement or permit that such person or organization to add as an additional insured on your policy is an additional insured only with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" caused, in whole or in part, by your acts or omissions, or the acts or omissions of those acting on your behalf, but only with respect to:

- (1) "Your work" for the additional insured(s) designated in the contract, agreement or permit including "bodily injury" or "property damage" included in the "products-completed operations hazard" only if this Coverage Part provides such coverage.
- (2) Premises you own, rent, lease or occupy; or
- (3) Your maintenance, operation or use of equipment leased to you.

b. The insurance afforded to such additional insured described above:

- (1) Only applies to the extent permitted by law; and
- (2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.
- (3) Applies on a primary basis if that is required by the written contract, written agreement or permit.
- (4) Will not be broader than coverage provided to any other insured.
- (5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.

c. This provision does not apply:

- (1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal

injury and advertising injury".

(2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.

(3) To any lessor of equipment:

(a) After the equipment lease expires; or

(b) If the "bodily injury", "property damage", or "personal and advertising injury" arises out of sole negligence of the lessor

(4) To any:

(a) Owners or other interests from whom land has been leased if the "occurrence" or offense takes place or the offense is committed after the lease for the land expires; or

(b) Managers or lessors of premises if:

(i) The "occurrence" takes place or the offense is committed after you cease to be a tenant in that premises; or

(ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.

(5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved the rendering of or failure to render any professional services by or for you.

d. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION II - LIABILITY, D. Liability and Medical Expense Limits of Insurance:**

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

1. Required by the contract, agreement or permit described in Paragraph a.; or
2. Available under the applicable Limits of Insurance shown in the Declarations.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations

**B. Aggregate Limits of Insurance per Project or per Location**

The following changes are made to **SECTION II - LIABILITY:**

1. The following is added to **SECTION II - LIABILITY, D. Liability and Medical Expenses Limits of Insurance**, paragraph 4:

The Aggregate Limits of Insurance apply separately to each of "your projects" or each "location" listed in the Declarations.

2. For the purpose of coverage provided by this endorsement only, the following is

added to **SECTION II - LIABILITY, F. Liability And Medical Expenses Definitions:**

1. "Your project" means:
  - a. Any premises, site or "location" at, on, or in which "your work" is not yet completed; and
  - b. Does not include any "location" listed in the Declarations.
2. "Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.



1. **SECTION I - PROPERTY**, if two or more of this coverage part's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.
2. **SECTION II - LIABILITY**, it is our stated intent that the various Coverage Parts, forms, endorsements or policies issued to the named insured by us, or any company affiliated with us, do not provide any duplication or overlap of coverage for the same claim, "suit", "occurrence", offense, accident, "wrongful act" or loss. We will not pay more than the actual amount of the loss or damage.

If this Coverage Part and any other Coverage Part, form, endorsement or policy issued to the named insured by us, or any company affiliated with us, apply to the same claim, "suit", occurrence, offense, accident, "wrongful act" or loss, the maximum Limit of Insurance under all such Coverage Parts, forms, endorsements or policies combined shall not exceed the highest applicable Limit of Insurance under any one Coverage Part, form, endorsement or policy.

This condition does not apply to any Excess or Umbrella Policy issued by us specifically to apply as excess insurance over this policy.

#### G. Liberalization

If we adopt any revision that would broaden the coverage under this policy without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this policy.

#### H. Other Insurance

##### 1. SECTION I - PROPERTY

If there is other insurance covering the same loss or damage, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But, we will not pay more than the applicable Limit of Insurance of **SECTION I - PROPERTY**.

##### 2. SECTION II - LIABILITY

If other valid and collectible insurance is available to the insured for a loss we cover under **SECTION II - LIABILITY**, our obligations are limited as follows:

###### a. Primary Insurance

This insurance is primary except when paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in paragraph c. below.

However, if you agree in a written contract, written agreement, or written permit that the insurance provided to any person or organization included as an Additional Insured under this Coverage Part is primary and non-contributory, we will not seek contribution from any other insurance available to that Additional Insured which covers the Additional Insured as a Named Insured except:

- (1) For the sole negligence of the Additional Insured; or
- (2) When the Additional Insured is an Additional Insured under another liability policy.

#### b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - (b) That is Property Insurance for premises rented to you or temporarily occupied by you with permission of the owner;
  - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
  - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to **SECTION II - LIABILITY, Exclusion g. Aircraft, Auto or Watercraft**; and
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under **SECTION II - LIABILITY** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the

Insured's rights against all those other insurers.

- c. When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

- d. We will share the remaining loss, if any, with any other insurance that is not described in this provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations for this Coverage.

**e. Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable Limit of Insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable Limit of Insurance to the total applicable limits of insurance of all insurers.

- f. When this insurance is excess, we will have no duty under Business Liability Coverage to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so; but we will be entitled to the insured's rights against all those other insurers.

**I. Premiums**

1. The first Named Insured shown in the Declarations:
  - a. Is responsible for the payment of all premiums; and
  - b. Will be the payee for any return premiums we pay.
2. The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation or anniversary of the effective date of this policy, we will compute the

premium in accordance with our rates and rules then in effect.

3. With our consent, you may continue this policy in force by paying a continuation premium for each successive one-year period. The premium must be:

a. Paid to us prior to the anniversary date; and

b. Determined in accordance with paragraph 2. above.

Our forms then in effect will apply. If you do not pay the continuation premium, this policy will expire on the first anniversary date that we have not received the premium.

4. Undeclared exposures or change in your business operation, acquisition or use of locations may occur during the policy period that is not shown in the Declarations. If so, we may require an additional premium. That premium will be determined in accordance with our rates and rules then in effect.

**J. Premium Audit**

1. This policy is subject to audit if a premium designated as an advance premium is shown in the Declarations. We will compute the final premium due when we determine your actual exposures.
2. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
3. The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.

**K. Transfer of Rights of Recovery Against Others to Us**

1. Applicable to **SECTION I - PROPERTY Coverage:**

If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:



- a. Prior to a loss to your Covered Property.
- b. After a loss to your Covered Property only if, at time of loss, that party is one of the following:
  - (1) Someone Insured by this Insurance;
  - (2) A business firm:
    - (a) Owned or controlled by you; or
    - (b) That owns or controls you; or
  - (3) Your tenant.

You may also accept the usual bills of lading or shipping receipts limiting the liability of carriers.

This will not restrict your insurance.

**2. Applicable to SECTION II - LIABILITY Coverage:**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair such rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

We waive any right of recovery we may have against any person or organization with whom you have a written contract, permit or agreement to waive any rights of recovery against such person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard".

This condition does not apply to Medical Expenses Coverage.

**L. Transfer of Your Rights and Duties Under This Policy**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured. If you die, your rights and duties will be transferred to your legal representative but only while that legal representative is acting within the scope of their duties as your legal representative. Until your legal representative is appointed, anyone with proper temporary custody of your property will have your rights and duties but only with respect to that property.