

**AMENDMENT NO. 1 TO
ADVANCE FUNDING AGREEMENT**

between

THE COUNTY OF MONTEREY

and

THE SAN ARDO WATER DISTRICT

for

**FUNDING OF EMERGENCY REPAIRS TO THE DISTRICT’S WASTEWATER
TREATMENT FACILITY INCURRED DURING THE JANUARY – FEBRUARY 2023
ATMOSPHERIC RIVER STORMS**

This Amendment No. 1 is made to the advance funding agreement (“Agreement”) is entered into as of the effective date herein by and between the County of Monterey and the San Ardo Water District.

WHEREAS, the County of Monterey (“County”) is a political subdivision of the State of California with duties and responsibilities set forth in various provisions of the California Constitution, and state laws and regulations; and,

WHEREAS, the San Ardo Water District (“District”) is a California Special District providing water and wastewater services to the unincorporated San Ardo Community; and,

WHEREAS, the County and District (separately a “Party”, collectively the “Parties”) are separate legal entities, with separate and distinct duties and responsibilities as set forth in their respective organic laws; and,

WHEREAS, the District owns and operates a wastewater treatment plant that was damaged during the January 2023 atmospheric river events; and,

WHEREAS, the damage to the facility prevents the facility from operating and created the need to transport via tanker truck wastewater for appropriate disposal along surface roads and federal highway; and,

WHEREAS, such transport presents a public health and safety issue to the residents of the San Ardo community due to the absence of proper wastewater disposal, and to the public who may live or work along the transport route in the event there is a crash or other event that cause a spill of the wastewater which is a hazardous material; and,

WHEREAS, the District does not have the financial resources to cause the necessary

repairs to be made to the facility (“Repairs”); and,

WHEREAS, a portion of the costs of the Repairs may be eligible for reimbursement through the Federal Emergency Management Agency (“FEMA”), the California Disaster Assistance Act (“CDAA”), or other State of California resources, due to the federal and state proclamations of emergency and designation of the County of Monterey as eligible for the Public Assistance Program administered by FEMA; and,

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

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

WHEREAS, an Advanced Funding Agreement to complete the emergency repairs was approved in March 2023; and,

WHEREAS, an amendment to the Advanced Funding Agreement is necessary to fund the emergency repairs in Fiscal Year 2024 due to project delays; and,

NOW THEREFORE,

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

1. Reimbursement and Funding.

Subject to all other terms of this Agreement the County shall advance to the District up to the sum of \$1,187,500 (the “Advance”) for the purpose of funding the Repairs.

The Advance shall be provided to the District periodically as necessary for cashflow purposes upon receipt of District documentation verifying the need for the expenditures (e.g. invoices from contractors) and that the expenditures are for debris removal, maintenance and approved associated costs related to FEMA Declared Disaster DR4683, that took place during the incident period from December 27, 2022 to January 31, 2023. Documentation shall be submitted to the County Administrative Office.

2. Effective Date and Term.

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

3. Repayment.

To the extent permitted by law, at such time as the Repairs are reimbursed from other sources, the District shall repay to the County the Advance (or the portion thereof having been paid to the District at the time of reimbursement of the Repairs) within 15 business days receipt of the reimbursement. If there is no such outside reimbursement, or portion of reimbursement, the parties shall meet and confer in good faith regarding the ability of the District to repay the Advance and the appropriate terms of such repayment. Notwithstanding the foregoing, the County shall have no obligation to provide any Advances beyond June 30, 2024.

4. Compliance with FEMA Requirements and Regulations

The District will comply with the rules and regulations established by Title 44 of the Code of Federal Regulations (Stafford Act § 325, 42 U.S.C. § 5165c; 44 C.F.R. § 1.4.), 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and the guidance in the Public Assistance Program and Policy Guide (PAPPG) to ensure the District receives the maximum possible eligible reimbursement amount.

5. Early Termination.

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

6. No Additional Payments.

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

7. No Further Obligations.

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

8. Lead Agency.

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

9. Indemnification.

To the maximum extent permitted by law, the District shall defend, indemnify and hold harmless the County, its officers, agents, and employees, from and against any and all demands, claims, causes of action, suits, judgments, liabilities, liens, losses, damages, expenses, fines, penalties and assessments (collectively, “damages”) incurred or sustained by the County arising from or related to the performance by the District of its obligations under this Agreement excepting therefrom any damages arising from or related to the gross negligence or willful misconduct of the County, its officers, agents, or employees.

10. General Provisions.

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

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

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

D. Notices. All notices regarding performance under this Agreement shall be sent by hand delivery, electronic mail, or U.S. mail (certified mail, return receipt requested and postage prepaid) to the persons and addresses listed below. Either party may change the designated person by notice to the other party. If sent by U.S. mail, delivery shall be presumed 5 days following deposit with the U.S. Postal Service.

District:	County: Sonia M. De La Rosa County Administrative Officer 163 W. Alisal St., Third Floor Salinas, CA 93901 (831) 755-5115
Copy to:	Copy to: Leslie J. Girard, County Counsel 168 W. Alisal St., 3 rd Floor Salinas, CA 93901 (831) 755-5365

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

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

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

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

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

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

San Ardo Water District

County of Monterey

By _____
[Name]
[Title]

By _____
Sonia M. De La Rosa
County Administrative Officer

Date : _____

Date : _____

Approved as to form:

San Ardo Water District

County of Monterey

By _____
[Name]
District Counsel

Leslie J. Girard
County Counsel

Date : _____

Date : _____

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