

MEMORANDUM OF UNDERSTANDING FOR THE USE OF REAL PROPERTY

**APN: 161-401-039
Portola Drive
Salinas, California 93901**

**COUNTY OF MONTEREY
c/o RESOURCE MANAGEMENT AGENCY**

1441 Schilling Place, South Building, 2nd Floor, Salinas, California 93901

MONTEREY COUNTY REGIONAL FIRE DISTRICT

19900 Portola Drive Salinas, California 93908

Term

November 1, 2017 through October 31, 2027

As may be extended

MEMORANDUM OF UNDERSTANDING FOR THE USE OF REAL PROPERTY

THIS MEMORANUM OF UNDERSTANDING (MOU) is entered into between the COUNTY OF MONTEREY, a political subdivision of the State of California, (hereafter, "COUNTY"), and the MONTEREY COUNTY REGIONAL FIRE DISTRICT (hereafter, "DISTRICT"). Hereafter, COUNTY and DISTRICT are collectively referred to as "the parties".

In consideration of the public benefit derived from the use of the subject premises which consists of sand bag distribution by the DISTRICT to the public pursuant to the terms and conditions set forth below, the COUNTY does hereby authorize the DISTRICT to use certain Real Property located at Portola Drive and west of Creekside Court**** Assessor's Parcel Number APN: 161-401-039 (hereinafter "Premises") as shown in "EXHIBIT A - DESCRIPTION OF THE PREMISES" (attached and incorporated by this reference).

1. THE PREMISES:

- a. The Premises is further identified TR#:515 TORO CREEK ESTATES TR NO 515 PARCEL that certain .41 acres of land.
- b. The Premises is within County Service Area 15. The use for the Premises is deemed open space.
- c. Compliance with the "Americans with Disabilities Act of 1990" (ADA): DISTRICT shall ensure that the Premises is in compliance with the Americans with Disabilities Act of 1990 (ADA), as amended, and, if necessary, prior to the Commencement Date, shall modify the Premises to comply with the ADA and the regulations promulgated to implement the ADA.

2. **TERM:** The term shall be for ten (10) years, commencing November 1, 2017 and ending October 31, 2027, unless sooner terminated as provided in this Memorandum of Understanding.
3. **TERMINATION BY COUNTY:** COUNTY may terminate this MOU by providing a six (6) month written notice to vacate the premises to the DISTRICT during the term of this MOU. DISTRICT agrees to vacate the Premises during the term of this MOU, without penalty to the COUNTY, within six (6) months of receipt of COUNTY's six (6) month written notice to vacate. Upon termination of this MOU, DISTRICT shall be responsible for the removal of any alterations unless otherwise agreed upon in writing by the parties.
4. **TERMINATION BY DISTRICT:** DISTRICT may terminate this MOU by providing a six (6) month written notice of intent to vacate the premises to COUNTY during the term of this MOU. COUNTY will accept said six (6) month notice of termination without penalty to the DISTRICT. Upon termination of this MOU, DISTRICT shall be responsible for the removal of any alterations unless otherwise agreed upon in writing by the parties.
5. **OPTION TO EXTEND MOU:** The parties shall have the option to extend this MOU for two (2) additional ten (10) year terms on the same terms and conditions upon ninety days advance written notice by either party prior to the termination of this MOU.

6. RENT: \$00.00
7. DELIVERY OF PREMISES: COUNTY agrees to deliver to the DISTRICT physical possession of the Premises upon commencement of the term set forth in Section 2 above.
8. PREMISE IMPROVEMENTS AND ALTERATIONS:
 - a. "AS IS" CONDITION OF PREMISES AND UNDERGROUND FACILITIES: COUNTY makes no representations as to the condition of the Premises and its underground facilities. DISTRICT takes occupancy of the Premises in an "as is" condition. No buildings or structures associated with such use shall be installed with the exception of a chain linked fence, pursuant to **EXHIBIT B** – PREMISE IMPROVEMENTS and aggregate base rock (Caltrans Class 2 Specification) utilizing best management storm water practices to avoid sediment pollution into the adjacent creek. This exception includes the installation of a silt fence and straw waddles alongside the creek boundary. All improvements made or constructed shall comply with all local, state and federal laws and regulations and shall have the prior written approval of the COUNTY. COUNTY will not repair or maintain nor contribute funding toward the installation of premise improvements or alternations nor to the repair or maintenance of the Premises or underground facilities now or in the future. If applicable DISTRICT shall be responsible for compliance with any and all easements, known or unknown, and all costs associated. It is DISTRICT's responsibility to discover, and comply with said easements.
 - b. DISTRICT agrees that any fencing, filling, excavating, leveling, grading, or other improvements to the Premises, desired or made by DISTRICT, shall be at DISTRICT'S sole cost and expense. Before doing any of the foregoing or making any improvements on the Premises, DISTRICT shall obtain the prior written approval of the COUNTY and receive such development or improvement permits as may be legally required.
 - c. DISTRICT shall commit no waste upon the Premises, and will use the Premises in a good, sound manner, and in accordance with good practices of soil conservation. DISTRICT shall return the Premises to COUNTY at the end of this MOU in at least as good a condition as when received.
 - d. With the exception of the drainage ditch identified on **EXHIBIT B**, DISTRICT shall mow, prune, and generally maintain vegetation, and grass cover on the Premises to control dust and erosion, and minimize fire risk to the fullest extent possible at DISTRICT'S sole cost and expense.
 - e. DISTRICT shall also take reasonable precautions to protect the oak trees on the Premises including hand digging under the dripline of the oak tree to install fence. Any tree maintenance other than minor pruning of branches under 1" in diameter, shall require written permission from the COUNTY and shall require any applicable planning permits pursuant to the Monterey County Tree Ordinance.
 - f. DISTRICT shall provide off-street parking for the Premises. Off-street parking layout shall be subject to the prior written approval by the COUNTY. Vehicles shall not be permitted to drive from Portola Drive on to the sidewalk to access the site. The gates are for pedestrian access, and hand carts only. If the sidewalk becomes damaged due to the use contemplated by the

DISTRICT or by any invitees of the DISTRICT, the DISTRICT will be solely responsible for repair of the sidewalk, including all costs associated with said repair.

9. **USE:** The Premises shall be used by the DISTRICT solely and exclusively for the purposes of providing a public benefit consisting of sand bag distribution by the DISTRICT to the public. All other uses are prohibited without express written consent by the COUNTY. Failure by the DISTRICT to comply with the terms of this provision will result in a default, and the MOU will be subject to termination at the sole discretion of the COUNTY.

DISTRICT'S use of the Premises, as provided in this MOU, shall be in accordance with the following:

- a. DISTRICT shall comply with all laws concerning the Premises or use of the Premises.
 - b. DISTRICT shall not use the Premises in any manner that will constitute waste, nuisance or unreasonable annoyance to owners or occupants of adjacent properties.
10. **COUNTY'S ENTRY OF PREMISES:** COUNTY and its authorized representatives shall have the right to enter the Premises at all reasonable times for purposes of inspection, flood control, and to transport sandbags onto the Premises, etc. DISTRICT agrees to provide sufficient clear space for MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY – DEPARTMENT OF PUBLIC WORKS AND FACILITIES dump trucks to travel to Premises and other areas designated by COUNTY.
11. **SUPERVISION:** DISTRICT agrees to provide responsible supervision for all activities on the Premises. Furthermore, DISTRICT shall indemnify and hold COUNTY harmless from any and all claims, actions, and liability for any and all damages including damages caused by fire, theft, vandalism, and or other costs associated with such claims, actions or liability resulting from the DISTRICT's use of the Premises. DISTRICT shall be required to secure the Premises to preclude entrance at all times except during a public event held by the DISTRICT or when two or more authorized representatives of the DISTRICT are on the Premises.
12. **TAXES:** The property interest created by this MOU may be subject to property taxation and the DISTRICT may be subject to property taxes levied on such property interest.
13. **INSURANCE COVERAGE REQUIREMENTS:** Without limiting DISTRICT'S duty to indemnify, DISTRICT shall maintain in effect throughout the term of this MOU a policy or policies of insurance or program of self-insurance acceptable to the County with the following minimum limits of liability:
- a. Comprehensive general liability, including, but not limited to premises, personal injuries, products, and completed operations, with a combined single limit of not less than \$1,000,000.00 per occurrence; and
 - b. Comprehensive automobile liability covering all motor vehicles, including owned, hired and non-owned, used for purposes under this MOU, with a combined single limit of not less than \$1,000,000.00 per occurrence; and
 - c. Worker's compensation insurance in the manner required by California Labor Code section 3700 and any other applicable state statute, and with a minimum of \$1,000,000.00 per occurrence for employer's liability.

GENERAL INSURANCE REQUIREMENTS: All insurance required by this MOU shall be with a company acceptable to COUNTY and authorized by law to transact insurance business in the State of California. All such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of two years following termination of this MOU. A legally established and maintained self-insurance program by DISTRICT that otherwise satisfies the requirement of this section shall be deemed acceptable by COUNTY.

Each liability policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation or non-renewal thereof.

Liability policies shall provide an endorsement naming COUNTY, its officers, agents and employees as Additional Insured's and shall further provide that such insurance is primary insurance and that the insurance of the Additional Insured's shall not be called upon to contribute to a loss covered by DISTRICT'S insurance.

Prior to execution of this MOU by COUNTY, DISTRICT shall file certificates of insurance or self-insurance with COUNTY, showing that the DISTRICT has in effect the insurance required by this MOU. DISTRICT shall file a new or amended certificate of insurance promptly after any change is made in any insurance policy that would alter the information on the certificate then on file. Acceptance of approval of insurance shall in no way modify or change the indemnification and hold harmless provision in this MOU, which shall continue in full force and effect.

14. **INDEMNIFICATION:** In consideration for use of the premises and its facilities, DISTRICT agrees to indemnify, defend, and hold harmless the COUNTY and its officers, agents, and employees from and against any and all claims, liabilities or losses whatsoever arising out of or in any way related to DISTRICT'S use of the Premises pursuant to this MOU, including but not limited to, claims for property damage, personal injury, death, injuries to reputation, economic losses, and emotional distress, and any legal expenses (such as attorney's fees, court costs, investigation costs, and expert fees) incurred by the COUNTY in connection with such claims. "DISTRICT'S use" includes DISTRICT'S action or inaction and the action or inaction of its officers, employees, and agents, including but not limited to DISTRICT'S invitees. The obligation of DISTRICT to indemnify does not extend to claims or losses arising out of the sole negligence or willful misconduct of the COUNTY or the COUNTY's officers, agents, or employees.
15. **ABANDONMENT:** If DISTRICT abandons said Premises, or fails to enter the premises for a period of more than sixty (60) consecutive days, the Premises may be re-let by the COUNTY for such rent and upon such terms as COUNTY may see fit.
16. **WAIVER:** The waiver, by COUNTY or DISTRICT, of any covenant or condition herein contained shall not vitiate the same or any other covenant or condition contained herein, and the terms and conditions contained herein shall apply to and bind the heirs, successors and assigns of the respective parties hereto.
17. **HOLDING OVER:** If DISTRICT, with COUNTY's consent, remains in possession of the Premises after expiration or termination of the term, or after the date in any notice given in terminating this MOU without a new or extended MOU being executed to extend said term, such possession by DISTRICT shall be deemed to be a month-to-month tenancy which shall be subject to termination upon thirty (30) days prior written notice given at any time by either party. With the exception of Section 4 which requires six months written notice to vacate or notice of intent to vacate, said month to month tenancy shall be subject to the same terms and conditions herein stated.

18. **NOTICE:** Any notices that either party desires to or is required to give to the other party shall be in writing and either served personally or sent by prepaid first class mail. Such notices shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within seventy-two (72) hours from the date of mailing.

COUNTY OF MONTEREY

Resource Management Agency
1441 Schilling Place South Building, 2nd Floor
Salinas, CA 93091
(831) 755-4800
Attn: Real Property Specialist

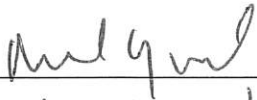
MONTEREY COUNTY REGIONAL FIRE
DISTRICT.

19900 Portola Drive
Salinas, CA 93908

20. **SUCCESSORS AND ASSIGNS:** Subject to the restriction on assignment herein below written, this MOU and all terms, covenants, and conditions hereof, shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the respective parties hereto.
21. **BOARD APPROVAL:** This MOU shall be effective only upon approval by duly authorized representatives of the COUNTY and by the Monterey County Board of Supervisors.
22. **OWNERSHIP:** The COUNTY is the owner of the Premises and shall be deemed the owner of all Premises improvements thereon, other than removable structures and fences added by the DISTRICT. All right, title and interest in and to the Premises and Premises improvements shall belong to the COUNTY. All right, title and interest to non-fixture personal property put in place by DISTRICT shall be deemed to belong to DISTRICT.
23. **ASSIGNMENT:** Neither party shall have the right or power, without the other party's prior written consent, to assign its rights or delegate its duties pursuant to this MOU.
24. **HEADINGS:** The headings in this MOU are inserted only as a matter of convenience and for reference and in no way define the scope or the extent of this MOU or the construction of any provision.
25. **COUNTERPARTS:** This MOU may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.
26. **INTERPRETATION OF AGREEMENT:** The parties understand and agree that this MOU has been arrived at through negotiation, and that neither COUNTY nor DISTRICT is to be deemed the party which prepared this MOU within the meaning of California Civil Code Section 1654.
27. **ENTIRE AGREEMENT, AMENDMENTS:** This MOU embodies the entire agreement and understanding between the parties relating to the subject matter and may not be amended, waived or discharged, except by an instrument in writing executed by both parties. This MOU supersedes all prior agreements and memoranda relating to its subject matter.

IN WITNESS WHEREOF the parties hereto have executed this MOU as of the last date opposite the signatures below.

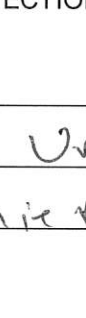
MONTEREY COUNTY FIRE PROTECTION DISTRICT

BY: 
Name: Michael Vriguidis
Title: Fire Chief

DATE: 10-5-2017


COUNTY OF MONTEREY

RESOURCE MANAGEMENT AGENCY (RMA)

BY: 
Carl P. Holm, RMA DIRECTOR


DATE: 10/13/2017

APPROVED AS TO INDEMNIFICATION/INSURANCE PROVISIONS:

BY: 
Steven F. Mauck, County Risk Manager


10/13/17

APPROVED AS TO FORM:
Office of the County Counsel
Charles J. McKee, County Counsel

BY: 
Mary Grace Perry, Deputy County Counsel

DATE: 10-5-17

APPROVED AS TO FISCAL PROVISIONS: (County Auditor/Controller)

By: 
Gary Giboney [Assistant] Auditor Controller

DATE: 10-13-17

EXHIBIT A

DESCRIPTION OF THE PREMISES

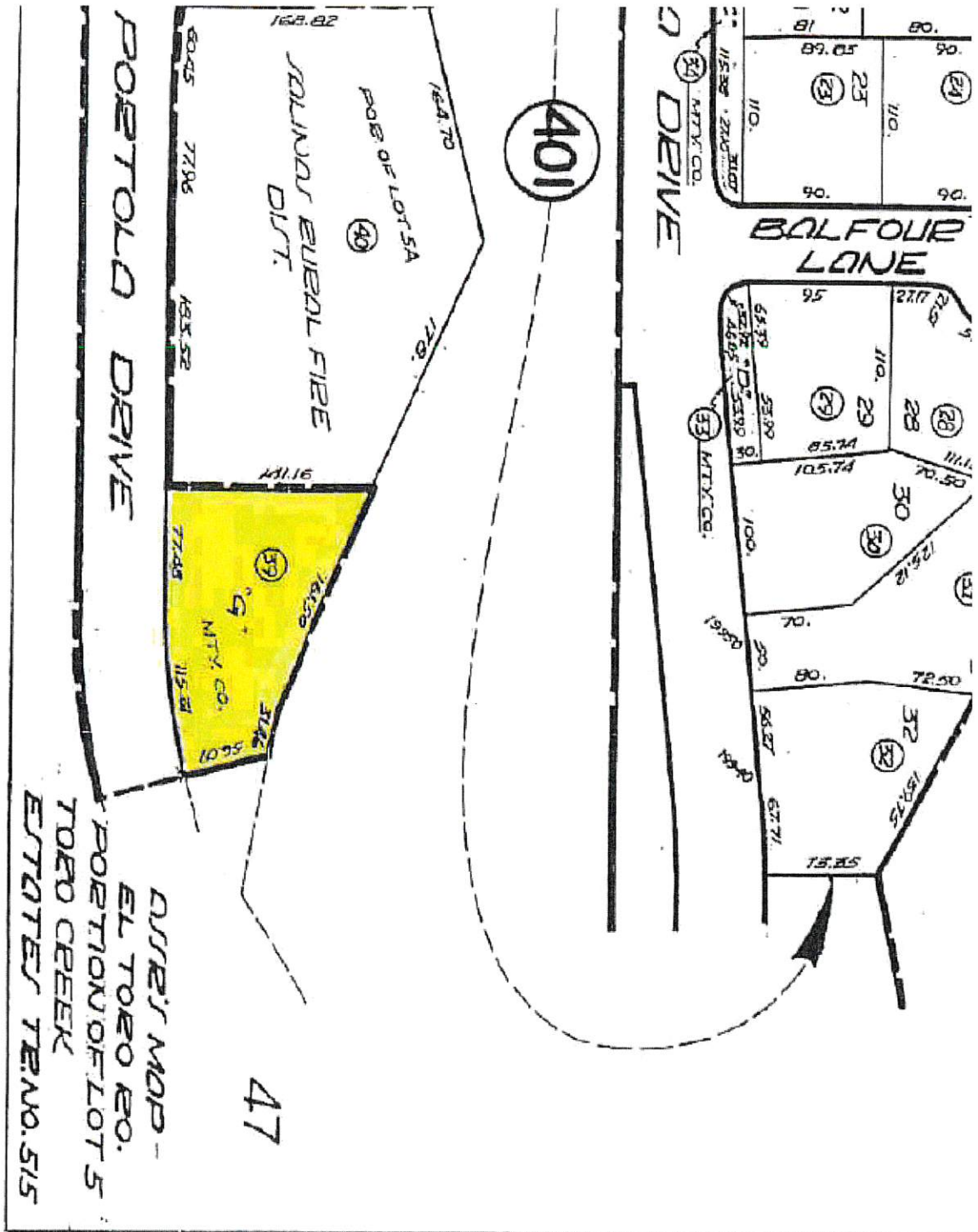


EXHIBIT B

PREMISE IMPROVEMENTS

