

**CONTRACT BETWEEN THE PAJARO REGIONAL
FLOOD MANAGEMENT AGENCY AND THE MONTEREY
COUNTY WATER RESOURCES AGENCY FOR THE
PROVISION OF MAINTENANCE AND REPAIR SERVICES**

This contract for the provision of maintenance and repair services (the “Agreement”) is entered into on this 12th day of July 2023 by and between the Pajaro Regional Flood Management Agency, a joint powers agency (“PRFMA”), and the Monterey County Water Resources Agency, established in 1990 by special act of the state legislature codified at Water Code Appendix Chapter 52 (“MCWRA”) (collectively, the “Parties”).

WHEREAS, the County of Santa Cruz, the County of Monterey, the City of Watsonville, MCWRA, and Santa Cruz County Flood Control and Water Conservation District entered into a Joint Exercise of Powers Agreement (“Joint Powers Agreement”) creating PRFMA as a separate agency organized and operating under the Joint Exercise of Powers Act (Government Code section 6500 *et seq.*) to implement flood risk reduction solutions in the Pajaro Valley, including the Pajaro River Federal Flood Control Project (“Project”); and

WHEREAS, Section 3.03 of the Joint Powers Agreement authorizes the PRFMA to make and enter into contracts necessary to the accomplishment of the purposes of the Joint Powers Agreement and to contract for services as needed; and

WHEREAS, PRFMA has determined that it requires maintenance and repair services as described in Exhibit A (“Scope of Services”) and has determined that such services may be obtained most economically through contract with MCWRA for the use, as needed, of certain MCWRA officers, agents, and/or employees; and

WHEREAS, MCWRA is willing to provide PRFMA with the maintenance services it requires and PRFMA is willing to contract with MCWRA for maintenance services on an as-needed basis under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. Definitions.

- (a) “Scope of Services”: Such maintenance services as are set forth in Exhibit A and incorporated herein by this reference.
- (b) “Approved Fee Schedule”: MCWRA’s compensation rates as set forth in the fee schedule attached hereto as Exhibit B and incorporated herein by this reference. This fee schedule shall remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.
- (c) “Commencement Date”: July 1, 2023

- (d) “Termination Date”: December 1, 2023, unless terminated by the Parties per Section 15 below.

2. **Term.**

This Agreement will remain in effect beginning upon Commencement Date and terminating on the Termination date, unless amended, extended, or terminated as provided herein.

3. **MCWRA’s Rights and Obligations.**

- (a) **Services.** MCWRA shall perform the maintenance and repair services identified in Exhibit A, the Scope of Services.
- (b) **Insurance.** MCWRA acknowledges and represents that it is sufficiently insured for the risks it undertakes pursuant to this Agreement.
- (c) **Records.** MCWRA shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to PRFMA under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to MCWRA under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of PRFMA. In addition, pursuant to California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of PRFMA or as part of any audit of PRFMA, for a period of three (3) years after final payment under this Agreement.
- (d) **Status of Employees.** All MCWRA employees working in conjunction with PRFMA and/or PRFMA employees under this Agreement shall remain MCWRA employees and compensated by MCWRA and shall not have any claim or right to employment, civil service protection, salary, benefits, compensation, or claims of any kind or nature from PRFMA as a result of this Agreement.

4. **PRFMA’s Rights and Obligations.**

- (a) **Changes to Scope of Services.** PRFMA shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

- (b) **Status of Employees.** All PRFMA employees working in conjunction with MCWRA and/or MCWRA employees under this Agreement shall remain PRFMA employees and compensated by PRFMA and shall not have any claim or right to employment, civil service protection, salary, benefits, compensation, or claims of any kind or nature from MCWRA as a result of this Agreement.

5. Compensation.

- (a) PRFMA agrees to compensate MCWRA for the services provided under this Agreement and MCWRA agrees to accept payment in accordance with the Approved Fee Schedule, **Exhibit B**, in full satisfaction for such services.
- (b) MCWRA shall submit to PRFMA an invoice, on a monthly basis, for services performed pursuant to this Agreement. Each invoice shall identify the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. MCWRA shall include a copy of each subcontractor invoice, if any, for which reimbursement is sought in the invoice.
- (c) PRFMA shall pay total amount invoiced within 30 days of receiving the invoice.
- (d) PRFMA shall not withhold applicable taxes or other payroll deductions from payments made to MCWRA except as otherwise required by law. MCWRA shall be solely responsible for calculating, withholding, and paying all taxes.

6. Mutual Indemnification.

- (a) MCWRA shall defend, indemnify and hold harmless the PRFMA, its Board of Directors, officers, agents, employees, volunteers, and assigns from and against all demands, claims, actions, liabilities, losses, damages, injuries to or death of persons, regulatory fines and/or penalties imposed by any local, state, or federal authority for breaches of such authority's regulations, and costs, including reasonable attorneys' fees, to the extent arising out of or resulting from the negligent or intentional acts or omissions of MCWRA, its officers, directors, agents, employees, assigns, contractors, or volunteers in connection with this Agreement.
- (b) PRFMA shall defend, indemnify, and hold harmless MCWRA, its officers, directors, agents, employees, volunteers, and assigns from and against all demands, claims, actions, liabilities, losses, damages, injuries to or death of persons, regulatory fines and/or penalties imposed by any local, state, or federal authority for breaches of such authority's regulations, and costs, including reasonable attorney's fees, to the extent arising out of or resulting from the negligent or intentional acts or omissions of the PRFMA, its Board

of Directors, officers, agents, employees, assigns, contractors, or volunteers in connection with this Agreement.

- (c) It is the intention of the Parties that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and to the extent permitted by law each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, assigns, contractors and volunteers.
- (d) This indemnity shall not be limited by the types and amounts of insurance or self-insurance maintained by the Parties.
- (e) Nothing in this Indemnity shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.
- (f) The provisions of this Indemnity shall survive the expiration or termination of the Agreement.

7. Settlement of Disputes.

The Parties will attempt in good faith to resolve any dispute or claim arising out of or in relation to this Agreement through negotiations between a director of each of the Parties with authority to settle the relevant dispute.

8. Notices.

All notices, demands, requests, consents, approvals, or communications from one of the Parties to another must be personally delivered or sent by facsimile to the persons set forth below or must be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows, or at such other address as any of the Parties may from time to time specify to the other Party in writing:

PRFMA:

Dr. Mark Strudley
Executive Director, Pajaro Regional Flood Management Agency
701 Ocean Street, Rm 410
Santa Cruz, CA 95060

MCWRA:

Ara Azhderian,
General Manager, Monterey County Water Resources Agency
1441 Schilling Pl., North Bldg.,
Salinas, CA 93901

9. **Governing Law.**

This Agreement and the rights and obligations of the Parties shall be governed by and construed according to the laws of the State of California. All disputes arising out of this Agreement shall be exclusively brought in Superior Court of California for the County of Monterey.

10. **Severability.**

If a court of competent jurisdiction voids or invalidates on its face any provision of this Agreement, such action does not affect the remainder of this Agreement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Agreement to a person or circumstance, such action does not affect the application of the provision to other persons or circumstances.

11. **Entire Agreement.**

This Agreement, together with any attached exhibits and documents referred to in it, sets forth the entire agreement of the Parties with respect to its subject matter and supersedes all prior discussions, negotiations, understandings, or agreements relating to the subject matter of this Agreement. No alteration or variation of this instrument is valid or binding unless contained in an amendment in accordance with the provisions in this Agreement.

12. **Construction.**

The Parties agree and acknowledge they have had sufficient opportunity to consult counsel of their choosing in the negotiation and preparation of this Agreement, have carefully read and understand this Agreement, and have voluntarily and without undue influence or duress entered into this Agreement. The provisions of this Agreement shall be construed as a whole and not strictly for or against any of the Parties.

13. **Waiver.**

No waiver by any of the Parties of any breach of any term or provision of this Agreement shall be deemed, nor will be, a waiver of any preceding, concurrent, or succeeding breach of the same or any other term or provision hereof.

14. **Amendment.**

The Parties may amend this Agreement only by mutual written agreement.

15. **Termination.**

This Agreement, and the rights and obligations of the Parties, may be terminated by either party

upon 14 days' written notice, except that liability for acts or omissions occurring before such termination shall survive the termination.

16. **Successors and Assigns.**

The covenants, terms, conditions, and restrictions of this Agreement are binding upon, and inure to the benefit of, the Parties and their respective personal representatives, heirs, successors, and assigns. A Party may not assign its rights, interests, obligations, or duties under this Agreement without the express written consent of the other Party.

17. **Headings.**

The headings in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and have no effect upon its construction or interpretation.

18. **Counterparts; Electronic Signatures.**

The Parties may execute this instrument in two or more counterparts, which must, in the aggregate, be signed by all Parties, and each counterpart shall be deemed an original instrument as against any Party who has signed it. The Parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed or emailed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, or a digital signature.

[Signature Page to immediately follow]

IN WITNESS WHEREOF, each Party represents and warrants that its undersigned signatories have the authority to and do hereby execute this Agreement as follows:

Pajaro Regional Flood Management Agency

Monterey County Water Resources Agency

By: DocuSigned by: Mark Strudley
Signature

By: DocuSigned by: Ara Azhderian
Signature

Printed: Mark Strudley
Title: Executive Director
Date: 9/14/2023 | 11:49 AM PDT

Printed: Ara Azhderian
Title: General Manager
Date: 9/14/2023 | 1:44 PM PDT

Attest:

By: _____

Date: _____

Approved as to form:

By: DocuSigned by: Gary B. Bell
Gary B. Bell,
PRFMA Counsel

By: DocuSigned by: Kelly L. Donlon
Kelly L. Donlon
MCWRA Counsel

Date: 9/14/2023 | 12:35 PM PDT

Date: 9/14/2023 | 12:44 PM PDT

EXHIBIT A
Scope of Work

MCWRA staff will provide maintenance and repair services on an as-needed basis to support the transition of the operations, maintenance, repair, replacement and rehabilitation (“OMRR&R”) services that PRFMA has assumed on July 1, 2023 through a separate OMRR&R Assignment Agreement, for the Project. PRFMA will identify the activities and request assistance in writing from MCWRA to perform the services, in accordance with federal law, guidance, and any applicable version of the Federal Operation and Maintenance Manual. After receiving a request in writing, MCWRA will agree to perform the requested services, if available to do so, and complete the services as directed by PRFMA staff.

Assistance on the three critical repair projects identified in the Monterey County Public Law 84-99 Request for Expedited Assistance for Pajaro River Federal Levee Project Left Bank Breach Repairs is hereby requested. MCWRA staff hereby agrees to perform the Non-Federal Sponsor duties associated with supporting the United States Army Corps of Engineers in completing those projects prior to the 2024 rainy season commencing on or before December 31, 2023. These tasks may be completed in conjunction with PRFMA staff or, at PRFMA’s written request, transferred back to PRFMA for completion without MCWRA’s assistance. Any agreements associated with these projects will be coordinated with PRFMA and transferred as necessary but only through written agreement between PRFMA and MCWRA.

Exhibit B Fee Schedule

FY 2023-24 MCWRA Billable Rates

CLASSIFICATION	HOURLY RATE
ACCOUNTANT III	\$ 163.00
ACCOUNTANT II	\$ 121.00
ACCOUNTING TECHNICIAN	\$ 101.00
ADMINISTRATIVE SERVICES ASSISTANT	\$ 146.00
ASSISTANT WATER MAINTENANCE SUPERINTENDNT	\$ 119.00
ASSOCIATE WATER RESOURCES ENGINEER	\$ 190.00
ASSOCIATE WATER RESOURCES HYDROLOGIST	\$ 194.00
DEPUTY GENERAL MANAGER	\$ 295.00
ENGINEERING AIDE II	\$ 100.00
FINANCE MANAGER III	\$ 218.00
GENERAL MANAGER	\$ 368.00
HYDROELECTRIC TECHNICIAN	\$ 110.00
OFFICE ASSISTANT III	\$ 92.00
SENIOR SECRETARY - CONFIDENTIAL	\$ 100.00
SENIOR WATER MAINTENANCE WORKER	\$ 102.00
SENIOR WATER RESOURCES ENGINEER	\$ 226.00
SENIOR WATER RESOURCES HYDROLOGIST	\$ 226.00
WATER MAINTENANCE SUPERINTENDNT	\$ 153.00
WATER MAINTENANCE WORKER I	\$ 88.00
WATER MAINTENANCE WORKER II	\$ 94.00
WATER RESOURCES BIOLOGIST	\$ 137.00
WATER RESOURCES ENGINEER	\$ 137.00
WATER RESOURCES HYDROLOGIST	\$ 137.00
WATER RESOURCES TECHNICIAN	\$ 117.00

Note: All invoiced staff rates will comply with the corresponding personnel policy or memorandum of understanding associated with the classifications billed.

Equipment Rates

Based on the California State Transportation Agency, Department of Transportation Division of Construction
Labor Surcharge and Equipment Rental Rates
 Effective April 1, 2023 through March 31, 2024

MCWRA-owned equipment (all rental equipment will be invoiced at current rental rates)

TRUCK, TRUCK TRAILERS, EXCL. DUMP TRUCKS & EQPT TRAIL	[TRUCK]
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DELAY FACTOR = 0.11 **OVERTIME FACTOR = 0.88**

Includes all attachments and accessories related to hauling, with and without trailers as needed. Includes water trucks, freight trucks and passenger vehicles, including 4wd option. Listed by Mfr's Gross Vehicle Weight in Kilograms(pounds). For tractor-trailer units, the gross vehicle weight of the cargo carrying unit or units will control. In the case of water trucks, the tank capacity expressed in kilograms (pounds) of water plus 20%, will determine the gross vehicle weight. For attachment allowance, see attachment class.

TRUCKS		[T&TT]	
<u>OVER</u>	<u>TO</u>	<u>Code</u>	<u>Rate</u>
CARS , LIGHT TRUCKS			
3175 (7000)	5443 (12000) No small pickups	00-06	\$37.61
5443 (12000)	9072 (20000)	06-12	\$42.39
9072 (20000)	12701(28000)	12-20	\$54.71
12701 (28000)	16330 (36000)	20-28	\$57.71
16330 (36000)	21773 (48000)	28-36	\$63.46
21773 (48000)	27216 (60000)	36-48	\$84.44
27216(60000) & Over		48-60	\$93.61
		60	\$105.34

TRUCKS, OFF-HIGHWAY	[TRUOF]
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DELAY FACTOR = 0.20 **OVERTIME FACTOR = 0.80**

Includes all attachments and accessories. Includes end dump, belly dump and earthmover types. Listed in accordance with Mfr's rated capacity in tonnes (tons). In the case of earthmover types, rated by Mfr's volumetric capacity, a factor of 1.4 tonnes per cubic meter (1-1/2 tons per cubic yard) of struck capacity shall be used.

TRUCK OFF-HIGHWAY		[TRU]	
<u>OVER</u>	<u>TO</u>	<u>Code</u>	<u>Rate</u>
9.1 (10)	13.6 (15)	10-15	\$64.30
16.3 (18)	20.0 (22)	18-22	\$114.18
20.0 (22)	24.5 (27)	22-27	\$143.03
24.5 (27)	29.0 (32)	27-32	\$163.21
29.0 (32)	36.3 (40)	32-40	\$222.71
36.3 (40)	49.9 (55)	40-55	\$333.03
49.9 (55)	60.8 (67)	55-67	\$373.47

TRUCKS, DUMP, ON-HIGHWAY	[TRUON]
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DELAY FACTOR = 0.16 **OVERTIME FACTOR = 0.83**

Includes all end dump, side dump and belly dump types; including all attachments and accessories.

TRUCK ON-HIGHWAY		[TRUN]	
<u>Model</u>		<u>Code</u>	<u>Rate</u>
2 axles		2AXL	\$73.34
3 axles		3AXL	\$93.59
4 axles		4AXL	\$103.79
5 axles		5AXL	\$117.60

WELDING EQUIPMENT	[WELD]
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DELAY FACTOR = 0.18 **OVERTIME FACTOR = 0.83**

ARC WELDING MACHINES **[AWM]**

Diesel, gas or electric powered. Includes helmets, holders, cable and all attachments and accessories. Rate capacity in amps.

<u>OVER</u>	<u>TO</u>	<u>Code</u>	<u>Rate</u>
0	250	0-250	\$8.83
250	500	250-500	\$17.19
over	500	500	\$17.35

GAS WELDING OUTFIT **[GWO]**

Includes regulator, 7.6 meters (25 feet) of hose, torch, goggles, lighter and attachments and accessories. Gas and rod shall be paid separately.

<u>Model</u>	<u>Code</u>	<u>Rate</u>
ALL	ALL	\$0.33

TRAILERS, EQUIPMENT, LOW BED [TRAIL]**DELAY FACTOR = 0.44 OVERTIME FACTOR = 0.65**

Includes all attachments and accessories related to hauling. The rates cover drop deck type with and without folding/removable gooseneck or oscillating trunion. Pilot vehicles are extra. Listed in accordance with number of axles and tires per axle. Includes jeeps, booster axles, and dollies. All loads shall be hauled legally or within Caltrans Permit Policy.

LOW BED A [LB-A]

2 axle

<u>Model</u>	<u>Code</u>	<u>Rate</u>
4 Tires per axle	100	\$17.61
8 Tires per axle	200	\$22.21

LOW BED B [LB-B]

3 axle

<u>Model</u>	<u>Code</u>	<u>Rate</u>
4 Tires per axle	300	\$23.66
8 Tires per axle	400	\$27.42

LOW BED C [LB-C]

4 axle

<u>Model</u>	<u>Code</u>	<u>Rate</u>
4 Tires per axle	500	\$37.93
8 Tires per axle	600	\$47.07

LOW BED D [LB-D]

6 axle

<u>Model</u>	<u>Code</u>	<u>Rate</u>
8 Tires per axle	700	\$75.40

LOADERS, RUBBER TIRE [LDRRT]**DELAY FACTOR = 0.11 OVERTIME FACTOR = 0.89**

Includes all attachments and accessories. Clam-action buckets, 4WD and backhoes are excluded unless otherwise noted.

CATERPILLAR [CAT]

<u>Model</u>	<u>Code</u>	<u>Rate</u>
415F2	1850F2	\$59.78
416 w/ backhoe	1860	\$47.44
416 Series II w/ backhoe	1860A	\$47.68
416B 4WD w/ extend-a-hoe	1861A	\$58.43
416C 4WD w/ backhoe	1861C	\$60.33
416D w/ backhoe	1861D	\$55.27
416D 4WD w/ backhoe	1861D4	\$56.42
420D w/ backhoe	1861M	\$62.10
420D 4WD w/ backhoe	1861M4	\$63.25
420E	1861N	\$73.88
420F2	1861N2	\$86.86

TRACTORS, CRAWLER

[TRACC]

DELAY FACTOR = 0.13**OVERTIME FACTOR = 0.87**

Includes all attachments and accessories such as dozer blade and power control blocks when needed, but does not include backhoe, winch or ripper units listed elsewhere in this schedule.

D-4E direct drive	2660	\$49.93
D-4E power shift	2665	\$51.24
D-4H	2670	\$64.69
D-4H LGP	2675	\$64.02
D-4H Series II	2680	\$65.95
D-4E SA	2772	\$61.01
D-4E LGP power shift	2780	\$51.44
D-4E LGP direct drive	2782	\$51.44
D-4G XL	2790XL	\$59.09
D-5	3194	\$68.43
D-5B power shift	3206	\$71.86
D-5B SA	3325	\$78.89
D-5B LGP	3345	\$74.58
D-5C	3346	\$63.62
D-5H	3347	\$85.27
D-5H Series II	3348	\$89.38
D-5H LGP	3350	\$88.36
D-6C direct drive	3645	\$89.13
D-6C power shift	3688	\$89.78
D-6C LGP	3710	\$92.32
D-6D	3720	\$100.87
D-6D SA	3725	\$114.05
D-6D LGP	3730	\$101.27
D-6H	3732	\$115.25
D-6H Series II	3733	\$120.00
D-6H LGP	3735	\$119.89
D-6M LGP	3745	\$110.07
D-6N XL	3755	\$113.21
D-6R DS	3800	\$125.68

**HYDRAULIC CRANES & EXCAVATORS, [HCECL]
CRAWLER MOUNTED****DELAY FACTOR = 0.16****OVERTIME FACTOR = 0.84**

Includes all attachments and accessories required for lifting or digging. Pavement breaker or compactor attachments are not included.

CATERPILLAR

[CAT]

<u>Model</u>	<u>Code</u>	<u>Rate</u>
303.5E CR	0100	\$37.46
304 CR	0200	\$39.63
305C CR	0250	\$53.81
308E2 CR SB	0270	\$58.83
308DCR	0271	\$51.50
312	0300	\$62.66
312C	0300C	\$74.70
312CL	0300CL	\$74.89
314CL CR	0302CLR	\$75.88
315L	0305	\$75.53
320	0310	\$99.14
320BL	0312	\$103.55
320C	0312C	\$116.34
320CL	0312CL	\$129.31
320L	0315	\$100.63
321C LCR	0320R	\$138.83
321D LCR	0321R	\$138.16
322L	0325	\$122.91
323F L	0326	\$129.36
325	0330	\$130.69