

**RIGHT OF ENTRY AND INDEMNIFICATION AGREEMENT
BETWEEN
THE COUNTY OF MONTEREY,
AND
PAJARO/SUNNY MESA COMMUNITY SERVICES DISTRICT**

This Right of Entry and Indemnification Agreement (“Agreement”) is made by and between the **Pajaro/Sunny Mesa Community Services District**, a community services district of Monterey County formed pursuant to Title 6, Division 3 of the Government Code (hereinafter referred to as “PSMCSD” or “District”) and the **County of Monterey**, a political subdivision of the State of California (hereinafter referred to as “County”), and collectively referred to as “the Parties”.

This Agreement permits the County the right to enter and temporarily use PSMCSD’s Pajaro Park property identified as Assessor’s Parcel Number 117-341-009, 117-341-010, and 117-331-025, located at **24 San Juan Road, Pajaro, California 95076** (“Property”), for the purposes set forth below.

Term:	March 1, 2025 – December 31, 2025
Hours:	Monday through Friday 7:30 am – 7:30 pm* *By prearranged access with District based on an agreed upon construction schedule
County Contact:	Department of Public Works, Facilities & Parks, Chief of Parks Bryan Flores 831-796-6425 FloresB1@co.monterey.ca.us
District Contact:	General Manager Judith Vazquez-Varela 831-722-1389 judyvazquez@pajarosunnymesa.com

1. PURPOSE

An atmospheric river brought heavy rain across the County leading to a breach of the Pajaro Levee on March 10, 2023. California Assembly Bill 102 (hereinafter, “AB102”) allocated \$20,000,000 to the County to support the community of Pajaro. The Property, maintained and operated by PSMCSD, is an integral component of the social fabric of the community of Pajaro. The County has awarded \$1,200,000 of AB102 funding to repairs and refurbishments at the Property.

Funding for the Property may be utilized for replacement of the soccer field turf, playground refurbishment, and/or replacement or addition of benches, tables, and/or park infrastructure and equipment. The Project directly benefits Monterey County residents by repairing public park facilities that are within walking distance for the entire Pajaro community and play a role in improving the lives of residents by enhancing community involvement in health, education, and pride. The purpose of this Agreement is to formalize the requirements associated with AB102 funding, ensure all governing guidance is clearly outlined for compliance purposes, and permit Right of Entry for the performance of grant funded work by the County on the Property.

2. UNDERSTANDING OF THE PARTIES

2.1 With this funding the County will collaborate with PSMCSD to complete repairs at the Property. Total funds expended by the County on repairs shall be at the discretion of the County. The County will determine the final scope of work in coordination with PSMCSD.

2.2 This Agreement covers temporary access by County to PSMCSD’s Property for the purposes of design and construction of repairs/replacements to Pajaro Park facilities at the Property. The County will coordinate with PSMCSD to determine an agreed upon construction timeline. PSMCSD shall comply with the established construction schedule once created. PSMCSD is responsible for notifying the public and relevant entities of any construction activities, including park closures, restricted access, or other impacts, such as but not limited to, noise and traffic. Additionally, PSMCSD shall take sole responsibility for engaging with the community to provide timely and accurate updates regarding the construction work. This includes issuing notices, posting signage, and utilizing other communication methods to properly inform the community of project timelines, progress, and any changes that may affect park access or use.

2.3 **Maintenance:** PSMCSD must have adequate maintenance procedures to keep the awarded repairs/ replacements in good condition. PSMCSD must regularly inspect, service and maintain the awarded repairs/ replacements and keep in good working condition. PSMCSD shall establish and maintain accurate maintenance records related to the awarded repairs/replacements. Maintenance records must be retained by the PSMCSD for the life of the repairs/replacements and must be provided to County upon request.

2.4 Governing Guidance

This funding award is subject to all applicable grant requirements, guidelines, information bulletins, instructions, terms, and conditions. PSMCSD shall comply with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, grant memos, instructions, terms, and conditions related to this award including California Assembly Bill 102 (“AB 102”), the California Governor’s Office of Emergency Services (“Cal OES”) 2023 Winter Storms Flood Relief (“WS”) Program Grant requirements, the Cal OES 2024 Subrecipient Handbook (“SRH”), and applicable federal, state, and local policies and law. Per the SRH, PSMCSD certifies that PSMCSD is responsible for reviewing SRH and adhering to all of the requirements set forth therein, including, but not limited to, the following areas:

- i. Proof of Authority – SRH 1.055: PSMCSD certifies they have authority to enter into an agreement with County.
- ii. Civil Rights Compliance – SRH 2.020: PSMCSD acknowledges awareness of, and the responsibility to comply with all state and federal civil rights laws. PSMCSD certifies it will not discriminate in the delivery of services or benefits based on any protected class and will comply with all requirements of this section of the SRH.
- iii. Equal Employment Opportunity – SRH 2.025: PSMCSD certifies it will promote Equal Employment Opportunity by prohibiting discrimination or harassment in employment because of any status protected by state or federal law and will comply with all requirements of this section of the SRH.
- iv. Lobbying – SRH Sections 2.040 and 4.105: PSMCSD and any of its contractors/ subcontractors certify they will not use funds under this Agreement for any lobbying activities and will comply with all requirements of these sections of the SRH.
- v. Drug-Free Workplace Act of 1990 – SRH 2.030: PSMCSD certifies it will comply with the Drug-Free Workplace Act of 1990 and all other requirements of this section of the SRH.
- vi. California Environmental Quality Act (CEQA) – SRH 2.035: PSMCSD certifies that, if the activities of the grant subaward meet the definition of a “project” pursuant to the CEQA, Section 20165, it will comply with all requirements of CEQA and this section of the SRH.
- vii. Debarment and Suspension: PSMCSD certifies they are not debarred, suspended, or otherwise excluded from, or ineligible for, participation in federal assistance programs.

2.5 Grant Funds

AB 102 funds shall be expended by the County on behalf of PSMCSD. PSMCSD acknowledges and agrees that if it takes any action, informal or formal, to appropriate, encumber, or expend any grant funds, PSMCSD shall assume all financial obligation for such spending and shall not be entitled to reimbursement from the County. County's obligations under this award shall not at any time exceed the amount approved in the grant award, unless otherwise directed by the County Board of Supervisors.

2.6 Duplication of Benefits

PSMCSD certifies that the awarded project does not duplicate or replace funds that have been received through other existing programs. The awarded project shall be solely used to supplement existing funds. PSMCSD may be required to provide documentation certifying that a reduction of non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds. Supplanting shall result in the disallowance of the awarded project and repayment of awarded funds where applicable. Acceptance of this funding may disqualify PSMCSD from receiving other state and federal funding that they may otherwise have qualified for.

2.7 Collaboration

PSMCSD shall collaborate with County throughout the grant period of performance. This may include, but not be limited to, acquiring necessary quotes, drafting scopes of work, Request for Proposal ("RFP") or Request for Quotation ("RFQ") creation, preapproval documentation, and obtaining and furnishing requisite information, material, and records. PSMCSD must make a good faith effort to collaborate with County in a timely manner consistent with grant milestones, guidance, and assurances. Should PSMCSD deny County requests and/or refuse to engage in a timely manner, said PSMCSD shall forfeit all rights to the award.

2.8 Monitoring

PSMCSD shall cooperate in good faith with County in any evaluation, inspection, auditing, or monitoring activities conducted or authorized by Cal-OES, and/or County.

2.9 Misrepresentation

Any falsified or misleading statement, representation, certification, or documentation submitted to County by PSMCSD shall result in the immediate termination of the Agreement.

2.10 Violation

Violation of the policies and procedures contained herein may result in the withholding of a grant award, suspension from grant eligibility and/or termination of the Agreement.

3. INDEMNIFICATION

PSMCSD shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms

or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the PSMCSD's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "PSMCSD's performance" includes PSMCSD's action or inaction and the action or inaction of PSMCSD's officers, employees, agents and subcontractors.

County shall indemnify, defend, and hold harmless the PSMCSD, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the County's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "County's performance" includes County's action or inaction and the action or inaction of County's officers, employees, agents and subcontractors.

4. INSURANCE REQUIREMENTS

4.1 Evidence of Coverage: Prior to commencement of this Agreement, PSMCSD shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the PSMCSD upon request shall provide a certified copy of the policy or policies. This verification of coverage shall be sent to the County, unless otherwise directed. Work under this Agreement shall not proceed until the County has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the PSMCSD.

4.2 Qualifying Insurers: All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current A.M. Best's Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Agent.

4.3 Insurance Coverage Requirements: Without limiting PSMCSD duty to indemnify, PSMCSD shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance: including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate.

Auto Liability Coverage: must include motor vehicles, including scheduled, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit or Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Workers' Compensation Insurance: if PSMCSD employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Professional Liability Insurance: if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a “claims-made” basis rather than an occurrence basis, the PSMCSD shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage (“tail coverage”) with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

If the PSMCSD maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the PSMCSD.

4.4 Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, 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 three years following the date PSMCSD completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Additional Insured Status:

The County of Monterey, its officers, officials, employees, and volunteers are to be covered as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations performed by or on behalf of the PSMCSD including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage shall be provided in the form of an endorsement to the PSMCSD’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

Primary Coverage:

For any claims related to this contract, the PSMCSD’s insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the PSMCSD’s insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Waiver of Subrogation:

PSMCSD hereby grants to County a waiver of any right to subrogation which any insurer of said PSMCSD may acquire against the County by virtue of the payment of any loss under such insurance. PSMCSD agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision

applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

Prior to the execution of this Agreement by the County, PSMCSD shall file certificates of insurance with the County, showing that the PSMCSD has in effect the insurance required by this Agreement. The PSMCSD shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect. PSMCSD shall always during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator. If the certificate is not received by the expiration date, County shall notify PSMCSD and PSMCSD shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by PSMCSD to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

5. TERM

This Agreement shall become effective on the date first shown above and shall remain in full force and effect until December 31, 2025, unless amended or terminated at any time upon mutual consent of the Parties or until terminated by for cause.

6. MISCELLANEOUS

6.1 Amendments

This Agreement may be amended only by written agreement signed by each of the Parties.

6.2 Waivers

No waiver of any provision of this Agreement will be valid unless it is in writing and signed by all of the Parties. Waiver by any Party at any time of any breach of this Agreement cannot be deemed a waiver of or consent to a breach of the same or any other provision of this Agreement. If a Party's action requires the consent or approval of any other Party, that consent or approval on any one occasion cannot be deemed a consent to or approval of that action on any later occasion or a consent or approval of any other action.

6.3 Binding Effect and Assignment

This Agreement shall be binding upon and inure to the benefit of the Parties and their successors or assigns. This Agreement is for the benefit only of the Parties, and no third parties are intended to be benefited by this AGREEMENT.

6.4 Governing Law

This Agreement, and the Parties' performance under this Agreement, will be exclusively governed by the laws of the State of California without regard to its conflict of law provisions.

6.5 Construction

The headings used in this Agreement are for convenience only and will not affect the meaning or interpretation of this Agreement. This Agreement will not be construed against any Party as the principal draftsman. The words "include" and "including" when used are not exclusive and mean "include, but are not limited to" and "including but not limited to," respectively.

6.6 Capitalized Terms

Capitalized terms have the meanings given to them in this Agreement.

6.7 Severability

If any term of this Agreement is inconsistent with applicable law, then upon the request of any Party, the Parties will promptly meet and confer to determine how to amend the inconsistent term in a manner consistent with law, but all parts of this Agreement not affected by the inconsistency will remain in full force and effect.

6.8 Further Assurances

The Parties agree to cooperate reasonably and in good faith with one another to implement the terms of this Agreement, and to negotiate and execute any further Agreements and perform any additional acts that are reasonably necessary to carry out the terms of this Agreement.

6.9 Notices

Any notices or other communications to be sent by one Party to the other under this Agreement shall be in writing and shall be given by personal or electronic delivery to the persons designated above, with copies delivered as indicated, or by U.S. Mail, return receipt requested, with copies mailed as indicated.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the day and year written below.

COUNTY OF MONTEREY

PAJARO SUNNY MESA COMMUNITY SERVICES DISTRICT

Randy Ishi
Director of Public Works, Facilities, and Parks

Date

DocuSigned by:
Judith Vazquez-Varela
1989FC9163B04EC...

Judith Vazquez-Varela
General Manager

1/29/2025 | 9:46 AM PST

Date

Kelsey Scanlon
Director of Emergency Management

Date

Approved as to Form

Signed by:
Michael J. Whilden
2C6F38174B4949D...

Michael J. Whilden, Deputy County Counsel

1/29/2025 | 10:44 AM PST

Date