MEMORANDUM OF UNDERSTANDING

between

THE MONTEREY COUNTY WATER RESOURCES AGENCY

and

THE COUNTY OF MONTEREY

regarding

PERFORMANCE OF SERVICES

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THE MONTEREY COUNTY WATER RESOURCES AGENCY

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PERFORMANCE OF SERVICES

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 Monterey County Water Resources Agency ("WRA") is a special act agency of the State of California with duties and responsibilities set forth in Chapter 52 of the California Water Code Appendix ("WRA Act"), and is the successor to the Monterey County Flood Control and Water Conservation District; and

WHEREAS, the County and the WRA (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 County is governed by an elected Board of Supervisors; and

WHEREAS, the WRA is governed by the same Board of Supervisors sitting ex officio as the Board of Supervisors of the Water Resources Agency; and

WHEREAS, the WRA also has a Board of Directors which is advisory to the Board of Supervisors of the WRA, but which also has certain final authority as more fully set forth in the WRA Act; and

WHEREAS, from time-to-time the County performs certain services for the WRA, and from time-to-time the WRA performs certain services for the County; and

WHEREAS, the provision of services by each to the other has historically been undertaken without formal written agreement regarding how and when the services would be provided, and without formally addressing the compensation for the services; and

WHEREAS, it is the desire of both the County and the WRA to more clearly set forth the services that each will provide to the other, and the basis upon which any such services will be compensated.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the County and the WRA agree as follows:

1. Effective date and term.
   This Memorandum of Understanding ("MOU") shall be effective on the date last signed by either of the parties, and shall continue in effect unless terminated as set forth in Section 4, below.

2. Definitions.
   The definitions set forth in this MOU shall apply herein and in the attached Appendices, unless otherwise indicated. Other definitions may be set forth in the attached Appendices.

3. Services to be provided.
   The County shall provide such services to the WRA, and the WRA shall provide such services to the County, on the terms and conditions as more specifically set forth in the Appendices to this MOU, which are attached hereto and incorporated herein by reference. Appendices may be amended, added, or deleted from time-to-time upon the mutual agreement of the Parties.

   The party performing such services shall be referred to as the "Performing Party," and the party receiving such services shall be referred to as the "Receiving Party."

4. Termination.
   This MOU, or any of the Appendices, may be terminated by either party for any reason or no reason upon the giving of sixty (60) days written notice to the other party, such notice to be delivered as provided in Section 6, below. The effective date of the termination shall be in the notice provided by the terminating party, but in no event shall be earlier than the time required for effective notice. Any sums due for the performance of services by the Performing Party through the date of termination shall be paid by the Receiving Party.

5. Defense and Indemnification.
   The Performing Party shall defend and indemnify the Receiving Party from and against any claim, cost or expense of any kind, including litigation expenses and attorney's fees, arising out of the negligent performance of services by the Performing Party, such defense and indemnification obligation to be in proportion to the comparative negligence

of each party. Should either party declare that it will not provide a defense and indemnification pursuant to this Section on the basis that it believes it has not been negligent, or for any other reason, the other party may proceed to defend against any such claim at its own expense, but its rights to a defense and indemnification shall be reserved to be determined in any court proceeding or mutual agreement.

6. Notices.

All notices regarding performance under this MOU 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 five (5) days following deposit with the U.S. Postal Service.

County of Monterey

CAO
163 W. Alisal St., Third Floor
Salinas, CA 93901
baumanl@co.monterey.ca.us

Copy to:

Charles J. Mckee, County Counsel
163 W. Alisal St., Third Floor
Salinas, CA 93901
mckeecj@co.monterey.ca.us

Monterey County Water Resources Agency

General Manager
1441 Schilling Pl., North Bldg.,
Salinas, CA 93901

Copy to:

Kelly L. Donlon, Deputy County Counsel
163 W. Alisal St., Third Floor
Salinas, CA 93901
donlonkl@co.monterey.ca.us

IN WITNESS WHEREOF, COUNTY and WRA execute this agreement as follows:

THE COUNTY OF MONTEREY

By _____
Lew C. Bauman
County Administrative Officer
3/12/19

Dated: January ____, 2019

MONTEREY COUNTY WATER RESOURCES AGENCY

By _____
Shauna Lorance
Interim General Manager
3/27/19

Dated: January ____, 2019

APPROVED AS TO FORM

CHARLES J. MCKEE, County Counsel

By _____
Leslie J. Girard
Chief Assistant County Counsel

APPROVED AS TO FORM

CHARLES J. MCKEE, County Counsel

By _____
Kelly L. Donlon
Deputy County Counsel

APPENDIX A

RESOURCE MANAGEMENT AGENCY

PURPOSE AND EFFECTIVE DATE

This Appendix A sets forth the agreement of the Parties with respect to services provided by and between the County of Monterey Resource Management Agency ("RMA") and the WRA. This Appendix A is effective as of the date last signed by either of the Parties ("Effective Date").

PERFORMANCE OF SERVICES

Upon the Effective Date:

1. The RMA will perform the functions and provide the services as set forth in Exhibit 1, and the WRA will perform the services for the RMA also as set forth in Exhibit 1. The WRA will immediately deliver to the RMA all work product, both past and current, related to development review, drainage review, floodplain management, and other RMA and WRA processes previously performed by the WRA for the RMA;
2. The WRA will cause existing stormwater and or drainage management agreements with developers and others to be assigned to the RMA, and the RMA will accept all such assignments; and
3. The WRA will release to the RMA all amounts in escrow related to stormwater and or drainage management agreements upon receipt by the WRA of fully executed agreement assignments.

RESPONSIBILITY FOR SERVICES

1. RMA.
   In addition to the foregoing, upon the Effective Date, the RMA, at its cost and expense, will assume all responsibility with respect to stormwater and drainage management agreements, development and drainage review, floodplain management, and other services previously performed by the WRA for the benefit of RMA, whether required by state or County laws, regulations or policies, or by the WRA Act. The RMA will hold the WRA harmless for the implementation thereof. The WRA will remain liable for errors and omissions on its part for development and drainage review, floodplain management, and other services previously performed by the WRA for the RMA prior to the Effective Date.

2. WRA.
   Upon request of the RMA, the WRA shall provide assistance to the RMA with respect to development and drainage review, and floodplain management. Services for such assistance shall be compensated in accordance with the appropriate hourly rate for the applicable personnel. The WRA shall provide to the RMA on an annual basis,

commencing with the Effective Date, a schedule of such rates, and such rates may be adjusted from time-to-time by the WRA which shall immediately notify the RMA of any such adjustments.

RESOURCE MANAGEMENT AGENCY

By_____
Carl Holm
RMA Director

Dated: January ____, 2019

WATER RESOURCES AGENCY

By_____
Interim General Manager

Dated: January ____, 2019

EXHIBIT 1 TO APPENDIX A

WRA Development Review Duties To Be Performed By The RMA

Grading

- Review for potential impacts to flood elevations (i.e., grading within the FEMA-defined floodway).
- Review to ensure the building site or building is elevated properly.
- Review to ensure development is safe from flow related erosion hazards.
- Review to ensure grading activities comply with setbacks from rivers and water courses to ensure watercourse capacity is not reduced or otherwise adversely affected.
- Review, when necessary, for related drainage improvements (e.g., projects which require flood and storm water control measures; drainage measures to enhance groundwater recharge and protect water quality; and larger scale projects needing detention/retention pond construction).

Erosion Control

- Review for compliance with stormwater control plans.

Stormwater Management/Drainage Control

- Review to enforce multi-objective drainage policies for areas outside the NPDES boundary (note – the RMA already does this work for areas within NPDES boundary):
    - Flood control/reduction of runoff rates;
    - Groundwater recharge;
    - Erosion control; and
    - Water quality best management practice.
- Review plans for compliance with drainage policies related to flood control and water quality standards.
    - Oil-Grit Separators
    - Retention Facilities
    - Detention Facilities
- All duties created by existing WRA stormwater and/or drainage management agreements.

Floodplain Management/NFIP Community Rating System

- Review plans, for construction in the FEMA-defined 100-year floodplain, to ensure all new structures and substantial improvements are elevated and/or floodproofed properly (e.g., residential lowest floor a minimum of 1 foot above the base flood evaluation with flood vents, non-residential floodproofed and watertight to the passage of water, and certification by a registered civil engineer or architect).
- Require FEMA Elevation Certificates to certify buildings are constructed in accordance with the approved plans.
- Ensuring that NFIP Community Rating System ("CRS") credit is received for the following activities:
    - CRS Activity 310 – Elevation Certificates
    - CRS Activity 320 – Map Information Service

- CRS Activity 330 – Outreach Projects
- CRS Activity 340 – Hazard Disclosure
- CRS Activity 350 – Flood Protection Information
- CRS Activity 360 – Flood Protection Assistance
- CRS Activity 370 – Flood Insurance Promotion
- CRS Activity 410 – Floodplain Mapping
- CRS Activity 420 – Open Space Preservation
- CRS Activity 430 – Higher Regulatory Standards
- CRS Activity 440 – Flood Data Maintenance
- CRS Activity 450 – Stormwater Management
- CRS Activity 510 – Floodplain Management Planning
- CRS Activity 540 – Drainage System Maintenance
- CRS Activity 610 – Flood Warning and Response
- CRS Activity 630 – Dams

Water Supply

- Assume responsibility for tracking water allocations in the unincorporated portion of the Monterey Peninsula/Carmel Valley area water allocation system.

Inspections/Enforcement

- Investigate/evaluate complaints and communicate with Code Enforcement.
- Attend ALJ hearings as requested by Code Enforcement.

General Plan

- Approve mitigation measures for new insurable buildings located within the floodplain (General Plan "GP" Policy S-2.10).
- On-site improvements or other methods for storm water detention to maintain post-development, off-site, peak flows at no greater than pre-development levels. (GP Policy S-3.1).
- Runoff Performance Standards to reduce storm flows plus capture and recharge runoff. (GP Policy S-3.5).
- Preparation of a Flood Criteria or Drainage Design Manual (GP Policy S-3.7).
- Identification of important groundwater recharge areas on large-scale development project sites (GP Policy PS-2.9 c).
- Endeavor to create specific criteria for a determination of Long Term Sustainable Water Supply as required by GP Policy 3.1 and 3.2, and assume current responsibility for providing an analysis of LTSWS for discretionary projects.

WRA Development Review Duties To Remain With WRA

- Engage in a cooperative relationship with regional, state and federal agencies to provide public outreach and technical assistance programs on erosion and sediment control, efficient water use, water conservation and reuse, and groundwater management. (GP Policy OS-3.8).

- The County will endeavor to develop specific criteria for proof of a long-term, sustainable water supply (GP Policy PS-3.1, 3.2). Once there is a defined project to develop the specific criteria, WRA will participate in the development of the specific criteria with the County. The WRA will be reimbursed by the County for its work on this project.
- Review and comment on portions of Environmental Impact Reports on projects being processed by the RMA. The WRA will be reimbursed on a time and materials basis by the RMA.
- The WRA will analyze the regional draft Reclamation Ditch Watershed Impact Fee Program developed in March 2011 and develop an impact fee schedule based on a project's impact to the Reclamation Ditch system. The proposed impact fees will provide the necessary funding not currently available to pay for needed planning studies, environmental work, and capital improvement projects needed to mitigate (or partially mitigate) impacts from future development on the Reclamation Ditch regional drainage system.