

Attachment F

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**Right of Entry and
Agreement for Installation of Improvements
(No Reimbursement)**

This Right of Entry and Agreement for Installation of Improvements (“Agreement”) is made effective as of the last date appearing above the signatures below, by and between _____ and the County of Monterey.

I. RECITALS

A. _____ (“Owner”) is the owner of real property, including improvements, at _____ (the “Property”) located in the unincorporated area of Monterey County.

B. The County of Monterey (“County”) is a public agency, organized and existing under the laws of the State of California.

C. In August 2020, County and its citizens experienced significant wildfires known as the River Fire, Carmel Fire, and Dolan Fire.

D. As a result of the damage caused by the River Fire, Carmel Fire, and Dolan Fire, including to forested and vegetated areas on the hills and slopes in the area, significant runoff and debris flow could be experienced during the rainy season in 2020-2021, and subsequent years, which presents an immediate and future threat to the public health, safety and welfare of residents and property owners in the area.

E. A federally funded program, the Emergency Watershed Protection Program (“EWP”), administered through the Natural Resources Conservation Service, exists to assist County in providing remedial and protective measures (the “Protective Measures”) to its citizens for hazardous conditions created by natural disasters such as the River Fire, Carmel Fire, and Dolan Fire.

F. Through EWP, County must undertake to contract for the implementation of the Protective Measures. County is reimbursed for up to 75% of the expenses associated with the construction or installation of the Protective Measures, but is responsible for a matching contribution of up to 25% (cash and like-kind) (the “County Match”).

G. County desires to utilize the EWP to provide assistance to its citizens who may benefit from the Protective Measures under terms and conditions by which the owner of property benefited by the installation of Protective Measures accepts responsibility for a proportionate share of the County Match, and agrees to hold County harmless from liability associated with the installation and effectiveness of the Protective Measures, and to hold harmless any other public or private property owner on whose

property Protective Measures that benefit the Property are placed (the “Other Property Owners”). Owner is an Other Property Owner for purposes of this Agreement.

H. To implement the EWP, County is required to enter onto the Property, and Owner desires to grant permission to County to enter onto the Property under the terms and conditions, and for the purposes, set forth below.

NOW, therefore, in consideration of the mutual promises contained in this Agreement, Owner and the County (“Party” (singular) or “Parties” (plural)) agree as follows:

II. AGREEMENT

1. Right of Entry. Owner hereby grants to the County the right to enter upon the Property solely for the purposes set forth in this Agreement, and under the terms and conditions set forth herein.

2. Effective Date and Term. This Agreement shall be effective as of _____, 2020, and shall remain in effect until April 15, 2023, unless earlier terminated as set forth below.

3. Scope of Work. The approved Damage Survey Report no. _____, attached hereto and incorporated herein by reference (“DSR”), generally describes the Protective Measures to be installed in that area of the County that includes the Property. Those Protective Measures include _____. The Parties understand and agree that the Protective Measures to be installed on the Property shall be a portion of those generally described in the DSR, and shall be more particularly described in approved plans and specification. Generally, the Scope of Work for the installation of the Protective Measures on the Property includes _____, and any related work.

4. Installation of Protective Measures. County shall cause the Protective Measures to be installed on the Property at no cost to Owner. County shall hire an independent contractor to perform such work.

5. Maintenance of Protective Measures. County may, but shall have no obligation to, maintain the Protective Measures for so long as the Protective Measures remain on the Property. The County’s decision to provide maintenance, either routine or extraordinary, may depend upon the availability of County resources in light of current circumstances, and the ability of Owner to reimburse County for such expenses.

6. Removal of the Protective Measures. Owner acknowledges that the risk against which the Protective Measures are designed to protect may exist for at least three (3) years, and that it is recommended that the Protective Measures remain in place for that period of time. County shall cause the Protective Measures to be removed from the Property at no cost to Owner at the earlier of: a) three (3) years following the installation of the Protective Measures; or b) within a reasonable time following approval by County

of a written request from Owner. Under no circumstances shall Owner remove, or cause to be removed, the Protective Measures without the written permission of County. If Owner elects to have the Protective Measures removed prior to April 15, 2023, and County consents, this Agreement shall terminate following the removal of the Protective Measures, except that the provisions of Section 9 shall survive the termination of this Agreement for any reason.

7. Scheduling. County shall provide Owner reasonable notice in writing prior to entry upon the Property pursuant to this Agreement.

8. Third Party Beneficiary. County anticipates entering into agreements for the installation of Protective Measures with owners of property that will be benefited by such installation within the area covered by the DSR. County anticipates that such agreements will contain a provision holding Owner harmless from any and all claims, causes of action, liabilities, damages, judgments, losses, cost and expenses including, without limitation, reasonable attorneys' fees and costs, arising out of or resulting from the installation, operation, presence, effectiveness or maintenance of the Protective Measures. The Parties agree that Owner is intended to be a third party beneficiary of any such agreements. The Parties also agree that Owner is intended to be a third party beneficiary of any agreement for the installation of the Protective Measures with any independent contractor pursuant to Section 4.

9. Waiver of Claims and Indemnity. County hereby waives and irrevocably releases, and shall indemnify, defend and hold harmless, Owner from and against any and all claims, causes of action, liabilities, damages, judgments, losses, cost and expenses including, without limitation, reasonable attorneys' fees and costs, arising out of or resulting from the installation, operation, presence, effectiveness or maintenance of the Protective Measures, except for the sole or gross negligence, or willful misconduct of Owner. Nothing in this Agreement shall affect the rights of Owner against any independent contractor retained or hired by County to install, repair, maintain, or remove the Protective Measures. The provisions of this section will survive the termination of this Agreement for any reason whatsoever.

10. Permits and Approvals. The County shall be responsible for determining any requirements for and obtaining any governmental or other permits or approvals necessary to lawfully install the Protective Measures, and shall obtain such permits or approvals at County expense.

11. Miscellaneous.

11.1 Notices. All notices or other communications required or permitted hereunder shall be in writing and sent by regular mail to the address of the appropriate party as set forth below. Notice shall be deemed given and received five (5) days after mailing.

To Owner:

To County:

County of Monterey
Department of PWWP
1441 Schilling Place, 2nd Floor
Salinas, CA 93901
Attn: _____

11.2 Entire Agreement. This Agreement constitutes the entire agreement between Owner and County relating to the subject matter hereof and supersedes any and all prior or contemporaneous agreements or understandings between them relating thereto. This Agreement may only be amended by a writing signed by both Owner and County.

11.3 Severability of Provisions. If any provision of this Agreement or the application of any such provision to any person or circumstance is held invalid, the remainder of this Agreement, and the application of such provision other than to the extent it is held invalid, will not be invalidated or affected thereby.

11.4 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, without regard to its conflicts of law provisions. The Parties agree that venue for the resolution of any dispute arising from or relating to this Agreement or the breach hereof shall lie in Monterey County, California.

11.5 Waiver. No failure by County or Owner to insist upon the strict performance of any term or condition of this Agreement or to exercise any right or remedy available to Owner or County will constitute a waiver. No breach or default of any provision of this Agreement will be waived, altered, or modified. No waiver of any breach or default will affect or alter any term or condition of this Agreement, and such term or condition will continue in full force and effect with respect to any other then existing breach or default thereof.

11.6 Attorney's Fees. In any litigation, arbitration, or other proceeding by which one Party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, in addition to any other relief to which the prevailing party may be entitled, the prevailing party shall be entitled to recover its reasonable attorney fees, costs and expenses, to resolve the dispute and to enforce the final judgment.

County of Monterey

Dated: _____, 2020

By: _____

Owner

Dated: _____, 2020

APPROVED AS TO FORM

Office of the County Counsel-Risk Manager
LESLIE J. GIRARD, County Counsel-Risk Manager

By _____

Mary Grace Perry
Deputy County Counsel

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