

Attachment E

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**Right of Entry and
Agreement for Installation of Improvements
(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, a political subdivision of the State of California (“County”).

I. RECITALS

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

B. 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”).

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 specifications. 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. County shall hire an independent contractor to perform such work. Subject to Owner’s obligation to defend, indemnify and hold County and Other Property Owners harmless as set forth below, the Parties intend that Owner shall be a third party beneficiary of any agreement to install the Protective Measures.

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 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. If the Protective Measures have been removed at Owner's request, County shall have no responsibility to cause the reinstallation of the Protective Measures. 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 and the payment by Owner to County of all sums due pursuant to Section 8, below, 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. Payment.

A. EWP Reimbursed Expenses. Owner shall be responsible for that portion of the County Match attributable to the proportionate cost of installing any Protective Measures that benefit the Property (the "Owner Match"). Such Protective Measures may be installed on the Property or on adjacent property. County shall inform Owner of the estimated Owner Match, which shall be based upon the DSR and the approved plans and specifications for the Protective Measures, at such time as County is able to determine the total cost of installing the Protective Measures. County shall undertake to install the Protective Measures, and Owner agrees to reimburse County for the Owner Match upon such terms and conditions as shall be negotiated by Owner and County following the installation of the Protective Measures. The Parties shall negotiate in good faith for such reimbursement within a reasonable time after the installation of the Protective Measures, but in no event later than 60 days following such installation. Owner agrees that any agreed upon reimbursement shall occur in full no later than 6 months following installation of the Protective Measures. If the Parties fail to reach agreement on the terms and conditions of any reimbursement, reimbursement shall be due and payable immediately upon demand by County. County shall endeavor to obtain additional grant or other funding to offset the County Match and reduce the Owner Match; however, unless County is successful in obtaining such offsetting funds, Owner shall remain responsible for the Owner Match.

B. Non Reimbursed Expenses. In addition to the Owner Match, Owner shall be responsible for a proportionate share of any other expenses associated with the installation, maintenance, repair, or removal of the Protective Measures that are not reimbursed to County through the EWP (the "Other Owner Expenses"). Owner agrees to reimburse County for the Other Owner Expenses upon such terms and conditions as shall

be negotiated by Owner and County following the installation of the Protective Measures. The Parties shall negotiate in good faith for such reimbursement within a reasonable time after the installation of the Protective Measures, but in no event later than 60 days following such installation. Owner agrees that any agreed upon reimbursement shall occur periodically, but no less frequently than every six (6) months. If the Parties fail to reach agreement on the terms and conditions of any reimbursement, reimbursement shall be due and payable immediately upon demand by County. County shall endeavor to obtain additional grant or other funding to offset the Other Owner Expenses; however, unless County is successful in obtaining such offsetting funds, Owner shall remain responsible for the Other Owner Expenses.

9. Waiver of Claims and Indemnity. Owner hereby waives and irrevocably releases, and shall indemnify, defend and hold harmless, the County, its officers, employees, and agents, and the Other Property Owners and each of them, 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 gross negligence or willful misconduct of the County, its officers, employees or agents. Nothing in this section shall affect the rights of Owner against any independent contractor retained or hired by County to install, repair, maintain, or remove the Protective Measures, and such independent contractors, if any, shall not be agents of County or the Other Property Owners for purposes of this section. 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 PWFP
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 to insist upon the strict performance of any term or condition of this Agreement or to exercise any right or remedy available to 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

LESLIE J. GIRARD, County Counsel

By _____

Mary Grace Perry,
Deputy County Counsel