

OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND  
REHABILITATION ASSIGNMENT AGREEMENT BETWEEN  
The Pajaro Regional Flood Management Agency  
AND  
Monterey County Water Resources Agency  
FOR  
The Pajaro River Federal Flood Control Project

This Operation, Maintenance, Repair, Replacement, and Rehabilitation Assignment Agreement (this “OMRR&R Assignment Agreement”) is entered into by and between the Monterey County Water Resources Agency, a local public agency organized and operating under the Monterey County Water Resources Agency Act (California Water Code, Appendix 52) (the “MCWRA”), and the Pajaro Regional Flood Management Agency, a California joint powers agency organized and operating under the Joint Exercise of Powers Act (California Government Code section 6500 et seq.) (the “PRFMA”) on this \_\_\_\_\_ day of \_\_\_\_\_, 2023 in view of the following circumstances:

1. The Pajaro River Federal Flood Control Project was built in 1949 by the United States Army Corps of Engineers (“USACE”) and is maintained jointly by the Santa Cruz County Flood Control and Water Conservation District – Zone 7 (“Zone 7”) and the MCWRA. Since construction of the levee system in 1949, there have been four major floods on the Pajaro River and its tributaries in 1955, 1958, 1995, and 1998 that have resulted in significant inundation and damage caused by overtopping or breaching of the levees. A 1963 report by the USACE concluded that the levee system was “inadequate,” and Congress authorized reconstruction of the Pajaro River levee system in 1966 through the Flood Control Act of 1966 (Public Law 89-789). Reauthorization was granted by the Water Resources Development Act of 1990. In December 2019, the USACE authorized improvements (the “2019 Improvements”) to portions of the original project and sufficient FY20 and FY21 Work Plan appropriations to conduct the Preconstruction Engineering and Design (PED) phase. In March 2022, the USACE appropriated \$67 million as the first tranche of funds to be used to construct the Project, and in October 2022 the USACE appropriated an additional \$82 million towards construction. The original and unimproved segments of the Pajaro River Federal Flood Control Project and the 2019 Improvements are collectively referred to herein as the “Project”.
2. The PRFMA intends to become the Non-Federal Sponsor (“NFS”) for the Project, as defined below.
3. Zone 7 and the MCWRA have historically been designated as the NFSs for the Project.
4. The MCWRA collects property assessments in Zones 1 and 1A located within Monterey County to fund maintenance activities on the Pajaro Levee and in the Pajaro River channel.
5. PRFMA has successfully passed and begun collecting an additional assessment to be used towards funding the OMRR&R, as defined below, for the Project, in 2022.

6. A Cost-Sharing Agreement regarding contributions for operating expenses by and among the PRFMA and the “Maintaining Member Agencies” (MCWRA, Zone 7, and the City of Watsonville) will be fully executed before June 30, 2023, following budget adoption by the PRFMA, funds from which will also be used by the PRFMA towards funding OMRR&R and other expenses.
7. The PRFMA is in the process of re-assigning the NFS role from jointly Zone 7 and MCWRA to the PRFMA, to be formalized in amendments to any existing and forthcoming agreements related to the Project.
8. In order for the PRFMA to take over the OMRR&R responsibilities of the MCWRA and act as the NFS for the Project, the MCWRA must transfer any and all rights of access it currently has, which are transferrable and necessary to perform OMRR&R to the PRFMA. In exchange for the authority to access property, the PRFMA shall be responsible for OMRR&R.
9. This OMRR&R Assignment Agreement is intended by the parties to transfer all rights from the MCWRA to the PRFMA necessary and convenient for the PRFMA to undertake OMRR&R for that portion of the Project on properties owned or controlled by the MCWRA. This OMRR&R Assignment Agreement is also to establish a trigger by which the MCWRA will begin to transfer ownership in fee simple all of the land included within the Project that it owns, plus such land it currently owns as is necessary to easily access the Project, at no additional cost and with no additional consideration from the PRFMA.
10. This OMRR&R Assignment Agreement provides that the PRFMA will be responsible for construction and OMRR&R for the Project.
11. The PRFMA will assume the OMRR&R responsibility currently performed by the MCWRA for the Project, as well as any additional responsibilities the PRFMA is authorized to undertake and which relate to the Project, as set out in this OMRR&R Assignment Agreement, on the conditions that the MCWRA agrees to provide funding in accordance with the Cost Sharing Agreement, and provide the PRFMA sufficient rights to perform OMRR&R of the Project works located in Monterey County.
12. The MCWRA has agreed to enter into this OMRR&R Assignment Agreement on the condition that the PRFMA provides the MCWRA with the assurances specified in this OMRR&R Assignment Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED:

For purposes of this OMRR&R Assignment Agreement, the terms below are defined as indicated:

**“Cost Sharing Agreement:”** Agreement between the MCWRA, the PRFMA, and other parties to allocate MCWRA’s annual contributions funded by existing MCWRA property assessments to fund operations of the PRFMA, approved by the PRFMA Board of Directors on July 13, 2022 and the MCWRA Board of Directors on September 13, 2022, as amended, adopted, and/or readopted from time to time.

**“OMRR&R:”** Operation, maintenance, repair, replacement, and rehabilitation of the Project in accordance with Federal law, including without limitation, compliance with operations and

maintenance requirements in Code of Federal Regulations, title 33, section 208.10; Federal guidance such as ER 1110-2-401; applicable Federal Operation and Maintenance Manual, any revised or updated version of the Federal Operation and Maintenance Manual, or any supplement to the Federal Operation and Maintenance Manual; and any applicable Stream Maintenance Program and Plan, including the permits and regulatory agency approvals required to perform said operations, maintenance, repair, replacement, and rehabilitation.

Repair, replacement, and rehabilitation does not include reconstruction of a project or project segment that has reached the end of its designed service life or is deficient due to a design or construction defect.

**“Project:”** All of the flood facilities authorized by the Federal government by the Flood Control Act (FCA) of 1944 (Public Law No. 534, 78th Congress, Ch. 665, 2nd Session) and by the Flood Control Act of 1966 (Public Law 89-789) within PRFMA’s boundaries. Figure 1 of this OMRR&R Assignment Agreement shows those features of the Project that have been maintained by MCWRA.

## **SECTION I: OBLIGATIONS OF PRFMA/MCWRA**

### **A. General Obligations.**

1. The MCWRA hereby assigns to the PRFMA all rights and responsibilities necessary to perform OMRR&R for the Project (the “Assignment”). The MCWRA and PRFMA shall take any and all steps necessary to complete the Assignment to the PRFMA, including, without limitation, execution and delivery of all documents necessary or convenient to complete the Assignment, transfer of all documents currently in MCWRA’s possession related to the Project and not subject to any privilege, and obtaining authorization, consent, or approval of the Assignment from the MCWRA legislative body and any necessary third parties or their legislative bodies.
2. The PRFMA shall perform OMRR&R for the Project in accordance with the Project design specifications, environmental permits, environmental impact reports, regulations, and directions prescribed by the USACE, the State, and other regulatory bodies with jurisdiction over the Project.

### **B. Specific Obligations to Operate, Maintain, Repair, Replace, and Rehabilitate**

1. The PRFMA hereby accepts responsibility for OMRR&R of the Project. The PRFMA agrees that it will be responsible for OMRR&R of the Project as further explained in: (1) the Federal Operation and Maintenance Manual for the Project; and (2) any applicable supplement to, revision of, or replacement for the Federal Operation and Maintenance Manual for the Project. The Federal Operation and Maintenance Manual for the Project and any supplements, revisions, or replacements thereto are incorporated herein by this reference.
2. The PRFMA acknowledges that changes to the Federal Operation and Maintenance Manual may be made by the USACE before the document becomes final. The PRFMA shall be responsible for OMRR&R in accordance with any revised version of the Federal Operation and Maintenance Manual for the Project or any supplement to the Federal Operation and Maintenance Manual.

3. The MCWRA hereby grants the PRFMA (and any of the PRFMA's contractors, agents, licensees, successors, and assigns) an irrevocable license to enter, at reasonable times and in a reasonable manner, upon the sites and locations of the Project, and land which the MCWRA owns or controls now and in the future, for access to the Project for the purpose of OMRR&R for any part of the Project. This irrevocable license shall remain in effect until any title to any MCWRA land covered by this OMRR&R Agreement is transferred to the PRFMA.

4. The MCWRA shall repair that portion of the levee identified on Figure 2 hereto and fully incorporated herein by this reference in compliance with the responsibilities and performance standards of the original 1949 Federal Operation and Maintenance Manual. In lieu of undertaking the repairs required by this subparagraph, the MCWRA may pay to the PRFMA eight hundred fifty-nine thousand, two hundred twenty-eight dollars (\$859,228) in full satisfaction of its obligations under this subparagraph. The due date of any such payment shall be December 31, 2022 or the effective date of this agreement, whichever comes later. If payment is made after the due date, the dollar amount stated herein shall increase by the change in the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-Hayward area between December 31, 2022 and the date of payment, unless it is mutually agreed in writing between the PRFMA and MCWRA that no escalation in the payment is warranted.

C. Obligation to Transfer Land to the PRFMA

1. No later than six months after the effective date of this OMRR&R Assignment Agreement, the MCWRA will transfer title to the PRFMA in fee simple all of the land included within the Project that it owns, plus such land it owns as is necessary to easily access the Project, as listed in Figure 3. Such a transfer will be pursuant to a separate agreement at no additional cost and with no additional consideration from the PRFMA.

D. Ownership of Improvements Constructed as Part of the Project

1. Until title to all of the land pursuant to subsection C above is transferred from the MCWRA to the PRFMA, ownership of the improvements constructed as part of the Project will remain with the MCWRA. Once title to the land is transferred, ownership of said improvements will transfer to the PRFMA.

**SECTION II: AUTHORIZATION FOR DELEGATION OR SUBCONTRACTING**

The PRFMA may delegate, assign, contract, or subcontract its responsibilities under this OMRR&R Assignment Agreement. The PRFMA shall be responsible for all work to be performed under this agreement, including any delegated, assigned, contracted, or subcontracted work.

Payment for services rendered by contractor(s) and/or subcontractor(s) shall be made entirely by the PRFMA. The MCWRA shall not have any responsibility for making any payments to the contractor(s) and/or subcontractor(s) for any services they may render in connection with this OMRR&R Assignment Agreement.

### **SECTION III: DISPUTES AND INDEMNIFICATION**

Before any party to this OMRR&R Assignment Agreement may bring suit in any court concerning an issue relating to this OMRR&R Assignment Agreement, that party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to all parties.

The PRFMA shall, to the fullest extent allowable under applicable law, indemnify and hold harmless MCWRA for and against any claim, action, liability, penalty, or other imposition whatsoever upon MCWRA by reason of the activities of PRFMA under this OMRR&R Assignment Agreement, including any failure to act under the duties established by this OMRR&R Assignment Agreement.

### **SECTION IV: TERM OF AGREEMENT; AMENDMENT**

The effective date of this OMRR&R Assignment Agreement is the date of the last signature hereto. This OMRR&R Assignment Agreement will continue in full force and effect unless terminated or amended upon written consent of all parties.

The parties acknowledge that in order to obtain federal credits or reimbursement for this Project, it may be necessary to amend this OMRR&R Assignment Agreement. The parties agree that they will not unreasonably withhold consent for any amendments necessary to obtain federal credits or reimbursement.

### **SECTION V: NOTICES**

All notices, requests, demands, and other communications required or permitted to be given under this OMRR&R Assignment Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by first class (postage pre-paid), registered, or certified mail, as follows:

If to the PRFMA:  
Pajaro Regional Flood Management Agency  
ATTN: Executive Director  
701 Ocean Street, Room 410  
Santa Cruz, CA 95060

If to the MCWRA:  
Monterey County Water Resource Agency (MCWRA)  
ATTN: General Manager  
1441 Schilling Pl., North Bldg.  
Salinas, CA 93901

A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this section.

Any notice, request, demand, or other communication made pursuant to this section shall be deemed to have been received by the addressee at such time as it is personally delivered or seven (7) calendar days after it is mailed, as the case may be.

## **SECTION VI: STANDARD CONDITIONS**

1. **GOVERNING LAW:** This OMRR&R Assignment Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
2. **TIMELINESS:** Time is of the essence in this OMRR&R Assignment Agreement.
3. **AMENDMENT:** This OMRR&R Assignment Agreement may only be amended by mutual written agreement of the parties.
4. **SUCCESSORS AND ASSIGNS:** This OMRR&R Assignment Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this OMRR&R Assignment Agreement or any part thereof, rights hereunder, or interest herein shall be valid unless and until it is approved in writing signed by the non-assigning party and made subject to such reasonable terms and conditions as the non-assigning party may impose.
5. **NO THIRD PARTY RIGHTS:** The parties to this OMRR&R Assignment Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this OMRR&R Assignment Agreement, or of any duty, covenant, obligation or undertaking established herein.
6. **OPINIONS AND DETERMINATIONS:** Where the terms of this OMRR&R Assignment Agreement provide for action to be based upon judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
7. **SEVERABILITY:** Should any portion of this OMRR&R Assignment Agreement be determined to be void or unenforceable, such shall be severed from the whole and the OMRR&R Assignment Agreement shall continue as modified.
8. **WAIVER OF RIGHTS:** None of the provisions of this OMRR&R Assignment Agreement shall be deemed waived unless expressly waived in writing. Any waiver by either party of rights arising in connection with the OMRR&R Assignment Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

## **SECTION VII: AUTHORITY**

The PRFMA and the MCWRA have each provided a copy of a resolution adopted by its governing body designating a representative to execute this OMRR&R Assignment Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this OMRR&R Assignment Agreement.

Pajaro Regional Flood Management Agency

Monterey County Water Resources Agency

By

\_\_\_\_\_  
Zach Friend,  
Chairperson

By

\_\_\_\_\_  
Luis Alejo,  
Chairperson

Date: \_\_\_\_\_

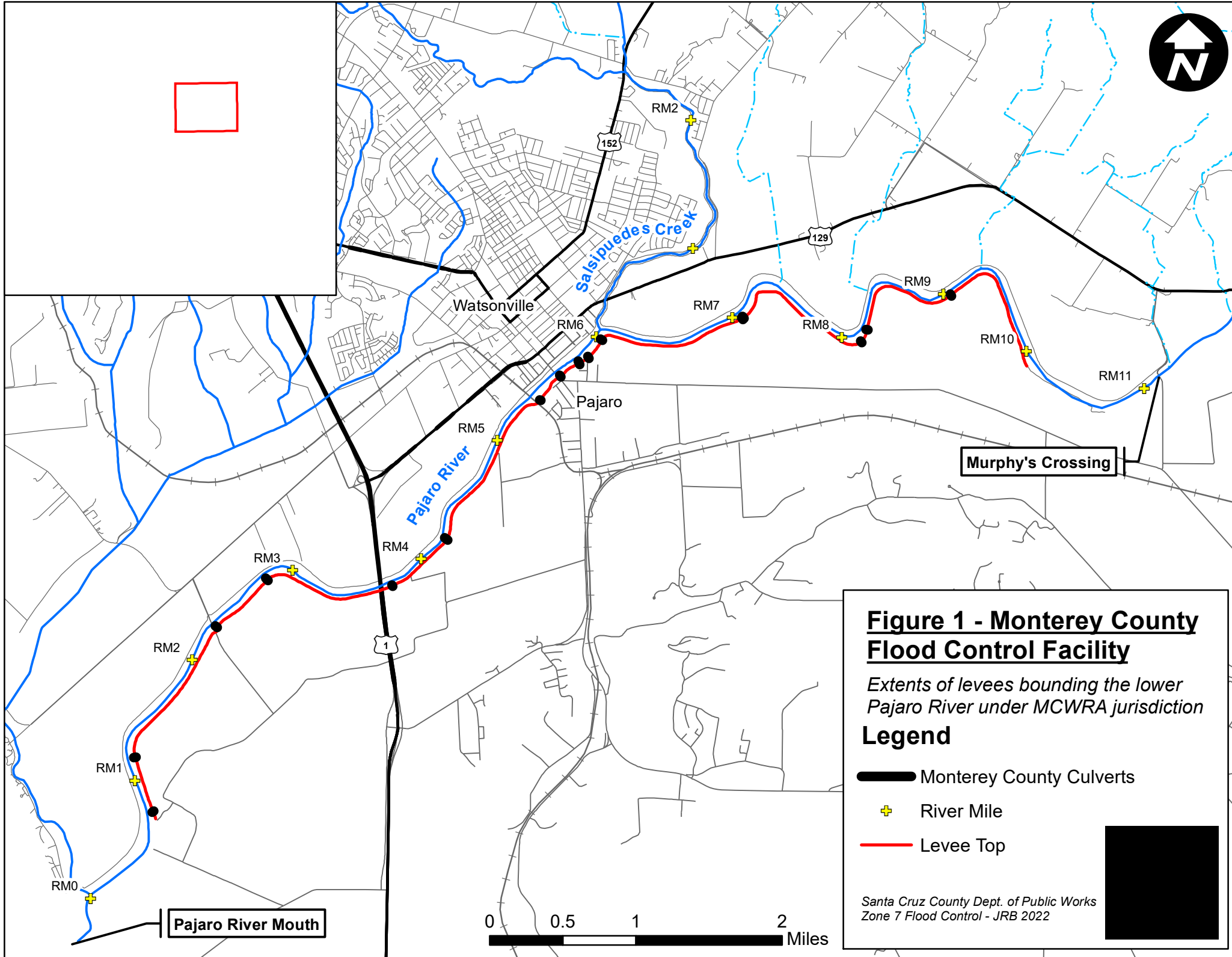
Date: \_\_\_\_\_

Approved as to Legal Form  
and Sufficiency:

Approved as to Legal Form  
and Sufficiency:

\_\_\_\_\_  
Gary Bell,  
Board Counsel

\_\_\_\_\_  
Kelly Donlon,  
Board Counsel



## Figure 1 - Monterey County Flood Control Facility

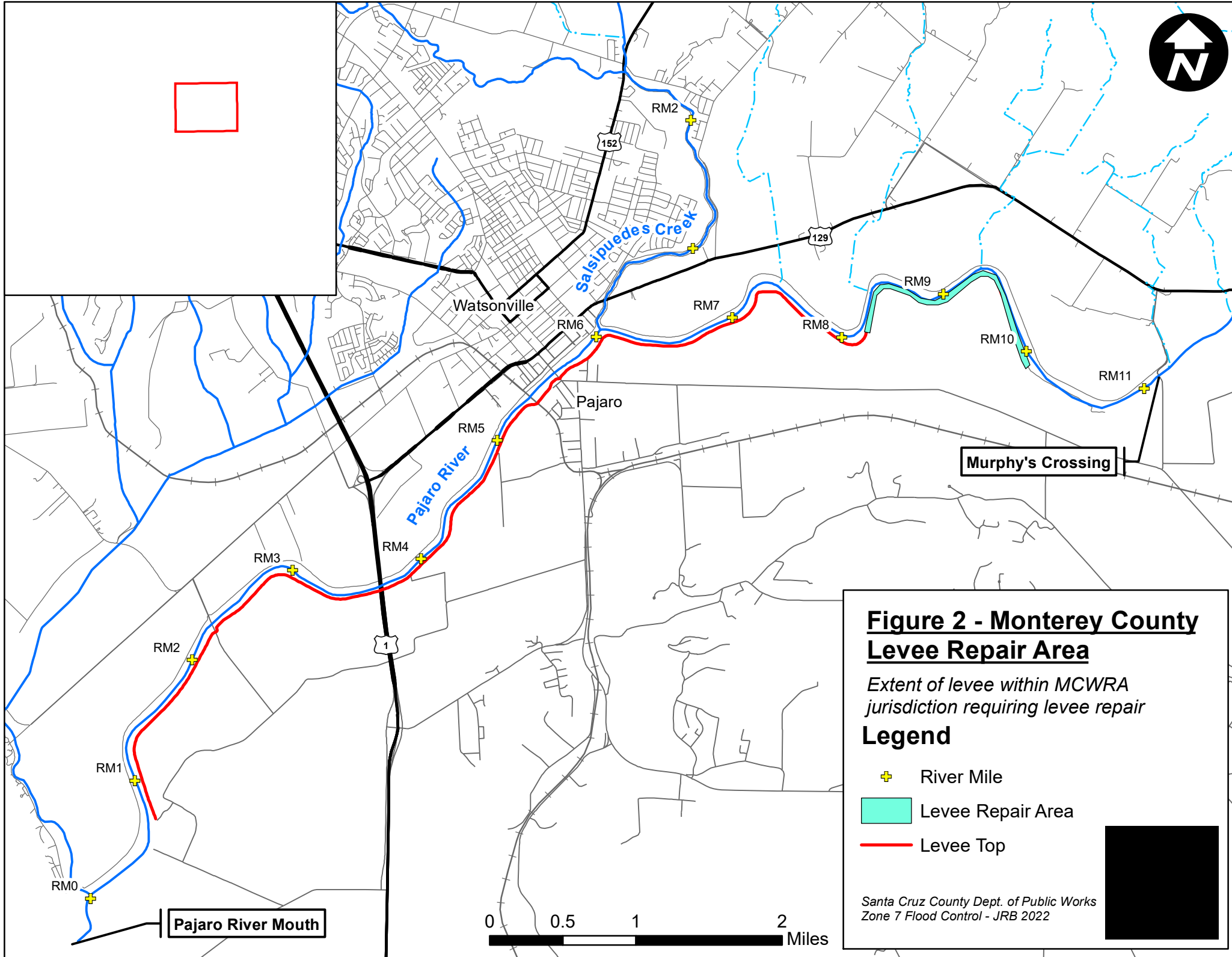
*Extents of levees bounding the lower Pajaro River under MCWRA jurisdiction*

### Legend

- Monterey County Culverts
- River Mile
- Levee Top

Santa Cruz County Dept. of Public Works  
Zone 7 Flood Control - JRB 2022





## Figure 2 - Monterey County Levee Repair Area

*Extent of levee within MCWRA  
jurisdiction requiring levee repair*

### Legend

-  River Mile
-  Levee Repair Area
-  Levee Top

Santa Cruz County Dept. of Public Works  
Zone 7 Flood Control - JRB 2022

