

# Attachment G

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## Monterey County

### Board Order

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

#### Agreement No.: A-13085 & A-13086

Upon motion of Supervisor Potter, seconded by Supervisor Armenta and carried by those members present, the Board of Supervisors hereby:

- a. Approved a Professional Services Agreement with Whitson and Associates, Inc. dba Whitson Engineers (A-13085) for a total amount not to exceed \$1,113,987 to provide Final Design of the Carmel River Floodplain Restoration and Environmental Enhancement (CRFREE) Project, in Carmel, for a term of April 13, 2016 to December 31, 2017;
- b. Approved a Reimbursement Agreement with The Big Sur Land Trust (A-13086), a California nonprofit public benefit corporation, for a total amount not to exceed \$580,000 to allow reimbursement to Monterey County for costs incurred by Whitson and Associates, Inc. dba Whitson Engineers, to provide Final Design of the CRFREE Project, in Carmel, for a term effective upon latest date of signature until full reimbursement; and
- c. Authorized the Resource Management Agency Director to execute the Professional Services Agreement, Reimbursement Agreement and future amendments to the Agreements where the amendments do not significantly alter the scope of work or change the approved Agreement amounts.

PASSED AND ADOPTED on this 12th day of April 2016, by the following vote, to wit:

AYES: Supervisors Armenta, Phillips, Salinas, Parker and Potter  
NOES: None  
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 79 for the meeting on April 12, 2016.

Dated: April 13, 2016  
File ID: A 16-079

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By *Danise Hancock*  
Deputy

**REIMBURSEMENT AGREEMENT  
FOR  
CRFREE PROJECT DESIGN WORK**

**THIS REIMBURSEMENT AGREEMENT**, hereinafter, "AGREEMENT", is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter, "COUNTY", and The Big Sur Land Trust, a California nonprofit public benefit corporation, hereinafter, "BSLT", with reference to the following facts and circumstances:

**RECITALS**

A. WHEREAS, the Carmel River Floodplain Restoration and Environmental Enhancement (CRFREE) Project, referred to herein as "PROJECT", is located at the downstream end of the Carmel River Watershed, approximately half a mile from the river's mouth.

B. WHEREAS, the goal of the PROJECT is to improve flood control and to restore native riparian and floodplain habitat and hydrologic function to a portion of the lower floodplain along the Carmel River.

C. WHEREAS, BSLT is an implementing partner and co-sponsor with COUNTY on the PROJECT.

D. WHEREAS, BSLT and COUNTY have agreed that it is necessary and desirable for COUNTY to coordinate all planning, development, permitting, and construction activities associated with PROJECT.

E. WHEREAS, BSLT and COUNTY intend that PROJECT shall be grant funded to the greatest extent feasible and, except as otherwise specifically provided herein, parties shall not be obligated to fund any portion of the costs associated with the Project.

F. WHEREAS, BSLT currently holds a grant from the Wildlife Conservation Board, referred to herein as "WCB" to pay for a portion of the PROJECT design by Whitson Engineers, referred to herein as "WHITSON".

G. WHEREAS, the WCB grant cannot be transferred to the COUNTY.

H. WHEREAS, concurrently with the execution of this Reimbursement Agreement, COUNTY will enter into a contract with WHITSON, hereinafter "WHITSON CONTRACT", in the amount of \$1,113,987.00.

I. WHEREAS, BSLT has agreed to reimburse COUNTY for a portion of PROJECT design activities to be carried out under WHITSON CONTRACT from said WCB grant held by BSLT.

J. WHEREAS, COUNTY and BSLT make this AGREEMENT with full knowledge of the requirements of state and local law relevant to the PROJECT, including, but not limited to the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 et seq., hereafter "CEQA") and State CEQA Guidelines (14 California Code of Regulations Section 15000 et seq., hereafter "Guidelines") and the Monterey County Code.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, BSLT AND COUNTY AGREE AS FOLLOWS:**

1. Engagement of WHITSON. COUNTY shall engage WHITSON for design work in accordance with the WHITSON CONTRACT attached hereto and incorporated by this reference as "EXHIBIT 1". WHITSON shall be responsible only to COUNTY under said contract. Nothing in this AGREEMENT or the WHITSON CONTRACT shall impose upon WHITSON any obligation to BSLT nor shall it impose upon BSLT any obligation to WHITSON. The parties acknowledge that COUNTY shall provide all needed direction and guidance to WHITSON in respect to the WHITSON CONTRACT. BSLT shall not provide direction and/or guidance to WHITSON in respect to the WHITSON CONTRACT except as requested by COUNTY.

2. BSLT Approvals. COUNTY agrees that BSLT shall be consulted for its approval on the design of the restoration components of the PROJECT to occur on land to be held by BSLT, commonly known as Odello East, where BSLT will have long term management responsibilities pursuant to the WCB grant as well as other grant agreements in connection with CRFREE. BSLT approval shall not be unreasonably withheld, nor cause delay in PROJECT, nor increase cost of PROJECT.

3. Reimbursement

a. WHITSON'S Invoices

BSLT shall reimburse COUNTY for PROJECT design fees invoiced to COUNTY by WHITSON in accordance with the terms of WHITSON CONTRACT up to the Maximum Reimbursement amount allowed in this AGREEMENT. This AGREEMENT is not subject to the 10% retention included in the WCB Grant.

b. Maximum Reimbursement Under AGREEMENT

The maximum which BSLT will reimburse to COUNTY under this AGREEMENT is \$580,000.

c. Reimbursement Procedures

(1) COUNTY may submit an invoice to BSLT monthly and shall submit an invoice to BSLT not less frequently than on a quarterly basis, beginning upon execution of WHITSON Contract, and thereafter, not later than the last day of each following month. COUNTY invoices shall set forth the amount of compensation paid to WHITSON under the WHITSON CONTRACT, along with all other information and supporting or back-up documentation required by the terms of the WCB grant. COUNTY may choose to utilize the invoice template attached as Exhibit C to the WCB Grant Agreement referenced below in section d.(1).

(2) In its monthly invoices, COUNTY shall include a progress report detailing the activities accomplished under the WHITSON CONTRACT in that billing period.

(3) In its monthly invoices, COUNTY shall include a copy of the WHITSON invoice, a detailed breakdown of the time worked on each task, the person completing the work, the hourly rates, and expenses, receipts for all materials and supplies, , and any other further information required by the terms of the WCB grant. Upon request by BSLT, proof of Payment shall be provided by COUNTY to BSLT once WHITSON invoices have been processed.

(4) BSLT shall honor all invoices properly submitted by COUNTY as described above for services of WHITSON performed before the date of termination of AGREEMENT.

(5) BSLT shall process invoices and mail payment to the COUNTY within ten (10) business days of receipt of an invoice.

d. Grant Compliance

(1) BSLT's obligation to pay/reimburse COUNTY under this AGREEMENT is conditioned upon COUNTY, and invoiced work under the WHITSON CONTRACT, being in compliance with applicable terms of the WCB Grant Agreement attached hereto and incorporated by this reference as "EXHIBIT 2".

(2) BSLT and COUNTY will cooperate to ensure that COUNTY, BSLT and invoiced work under the WHITSON CONTRACT are in compliance with all WCB grant terms.

e. Grant Repayment Obligation

(1) BSLT and COUNTY will cooperate to: (a) Work with WCB grant funder to resolve any delay in or failure of disbursement/reimbursement by WCB grant funder due to noncompliance with grant terms; and (b) Work with the WCB grant funder to resolve any circumstances which have or may trigger grant reimbursement or repayment obligation, as described in section 6.1.6 of the WCB Grant Agreement.

(2) In the event that a repayment obligation is triggered due solely to COUNTY's noncompliance, then COUNTY shall reimburse BSLT for the amount BSLT is required to repay to WCB grant funder.

(3) In the event that a repayment obligation is triggered due solely to BSLT's noncompliance then BSLT shall solely pay the amount it is required to repay to WCB grant funder.

(4) In the event that a repayment obligation is triggered due to BSLT and COUNTY joint noncompliance then COUNTY and BSLT shall share the cost of the repayment obligation in proportion to their respective responsibility for noncompliance.

(5) BSLT and COUNTY agree to meet and confer in good faith when there is a disagreement as to which party caused the repayment obligation.

(6) In the event that a repayment obligation is triggered, but BSLT and COUNTY do not agree and there is no clear fault by either party, BSLT shall be solely responsible for the repayment obligation.

4. Term. AGREEMENT shall become effective upon latest date of signature, and continue until fully reimbursed pursuant to the terms of the AGREEMENT, unless terminated pursuant to Paragraph 5 of AGREEMENT.

5. Termination. AGREEMENT shall terminate upon full reimbursement pursuant to the terms of the AGREEMENT but may be terminated earlier by BSLT or COUNTY, by giving thirty (30) days' written notice to the other. Upon such early termination, BSLT shall pay COUNTY invoices for any WHITSON CONTRACT work performed by WHITSON through effective date of termination.

6. Entire Agreement. AGREEMENT and its attachments constitute the entire agreement between the BSLT and COUNTY respecting the matters set forth herein. COUNTY and BSLT each represent that neither has relied on any promise, inducement, representation, or other statement made in connection with AGREEMENT that is not expressly contained herein.

7. Negotiated Agreement. It is agreed and understood by BSLT and COUNTY that AGREEMENT has been arrived at through negotiations and that neither is deemed the party which prepared AGREEMENT within the meaning of Civil Code Section 1654.

8. Assignment. Neither COUNTY nor BSLT shall have the right to assign its respective rights and obligations hereunder without the written consent of the other party. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

9. Amendment. This AGREEMENT may be amended, modified or supplemented only in writing by both COUNTY and BSLT.

10. Contracting Officer. The contracting officer of COUNTY, and the only entity authorized by law to make or amend AGREEMENT on behalf of COUNTY, is the Monterey County Board of Supervisors.

11. Waiver. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term contained in this AGREEMENT

shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in any other instance or a waiver of any other condition or breach of any other term.

12. Governing Law. AGREEMENT shall be governed by, construed, interpreted and applied in accordance with the laws of the State of California.

13. Construction. The language in all parts of AGREEMENT shall be construed, in all cases, according to its fair meaning. The parties acknowledge that each party has reviewed and revised AGREEMENT and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of AGREEMENT.

14. Conflict with Professional Services Agreement between WHITSON and COUNTY. In the event of a conflict between the provisions of AGREEMENT and the Professional Services Agreement between COUNTY and WHITSON, the provisions of AGREEMENT shall govern.

15. Relationship of Parties. The parties agree that this AGREEMENT establishes only a reimbursement arrangement between the parties, and that, notwithstanding any terms to the contrary, the parties are not partners or joint venturers.

16. Indemnification. BSLT agrees to defend, indemnify and hold COUNTY harmless in any action brought by any third party in which the authority of the BSLT to enter into AGREEMENT is challenged.

17. Notices. Notice required under this AGREEMENT shall be delivered personally or by first class, postage pre-paid mail addressed as follows:

TO COUNTY:      Carl Holm  
Director, Monterey County Resource Management Agency  
The County of Monterey  
168 W. Alisal Street, 2<sup>nd</sup> Floor  
Salinas, CA 93901

TO BSLT:          Rachel Saunders, Director of Conservation  
The Big Sur Land Trust  
PO BOX 4071  
Monterey CA 93942

18. Authority. Any individual executing this AGREEMENT on behalf of the COUNTY or BSLT represents and warrants hereby that he or she has the requisite authority to enter into this AGREEMENT on behalf of such party and bind the party to the terms and conditions of this AGREEMENT.



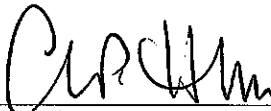
19. Counterparts. This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

20. Severability. If any provision of this AGREEMENT is deemed by a court of competent jurisdiction to be unenforceable under applicable law, the remaining provisions shall in no way be affected and shall remain in full force.

IN WITNESS WHEREOF, BSLT and COUNTY have executed AGREEMENT to be effective on the latest date written below.

THE COUNTY OF MONTEREY

By:



Carl Holm, AICP  
Director Monterey County Resource  
Management Agency

Date:

14 APRIL 2016

THE BIG SUR LAND TRUST

By:



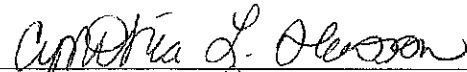
Jeannette D. Tuitele-Lewis  
President/CEO

Date:

3/11/2014

Approved as to Form

By:

  
County Counsel, Deputy

Date:

3-23-16

**EXHIBIT 1**  
**PROFESSIONAL SERVICES AGREEMENT**  
**BETWEEN**  
**WHITSON**  
**AND THE COUNTY OF MONTEREY**  
**FOR THE**  
**Carmel River Floodplain Restoration and**  
**Environmental Enhancement (CRFREE) Project**

**COUNTY OF MONTEREY AGREEMENT FOR PROFESSIONAL SERVICES  
WITH SURVEYORS, ARCHITECTS, ENGINEERS & DESIGN PROFESSIONALS  
(MORE THAN \$100,000)\***

This Professional Services Agreement ("Agreement") is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

Whitson and Associates, Inc. dba Whitson Engineers  
(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **SERVICES TO BE PROVIDED.** The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows:

Provide the Final Design of the Carmel River Floodplain Restoration and Environmental Enhancement (CRFREE) Project

2. **PAYMENTS BY COUNTY.** County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$ 1,113,987.

3. **TERM OF AGREEMENT.** The term of this Agreement is from April 13, 2016 to December 31, 2017, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

<b>Exhibit A</b>	<b>Scope of Services/Payment Provisions</b>
<b>Exhibit B</b>	<b>SAP Contract No. 4600010665</b>
<b>Exhibit C</b>	<b>Wildlife Conservation Board Grant Agreement WC-1059CF</b>
<b>Exhibit D</b>	<b>Monterey County Drug-Free Workplace Policy</b>

**5. PERFORMANCE STANDARDS.**

5.01. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.

5.02. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

\*Approved by County Board of Supervisors on \_\_\_\_\_

5.03. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

## 6. PAYMENT CONDITIONS.

6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to County. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the County may require. The Contract Administrator or his or her designee shall certify the invoice; either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.02. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

## 7. TERMINATION.

7.01. During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.02. The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

## 8. INDEMNIFICATION.

8.01 For purposes of the following indemnification provisions ("Indemnification Agreement"), "design professional" has the same meaning as set forth in California Civil Code section 2782.8. If any term, provision or application of this Indemnification Agreement is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of this Indemnification Agreement and such other terms and provisions shall continue in full force and effect. If there is any conflict between the terms, provisions or application of this Indemnification Agreement and the provisions of California Civil Code Sections 2782 or 2782.8, the broadest indemnity protection for the COUNTY under this Indemnity Agreement that is permitted by law shall be provided by CONTRACTOR.

#### 8.02 Indemnification for Design Professional Services Claims:

CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONTRACTOR, its employees, subcontractors, and agents in the performance of design professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or willful misconduct of the COUNTY, or defect in a design furnished by the COUNTY.

#### 8.03 Indemnification for All Other Claims or Loss:

For any claim, loss, injury, damage, expense or liability other than claims arising out of the CONTRACTOR's performance of design professional services under this Agreement, CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claim for loss, injury, damage, expense or liability resulting from or alleging injury to or death of any person or loss of use of or damage to property, arising from or related to the performance of services under this Agreement by CONTRACTOR, its employees, subcontractors or agents, excepting only liability arising from the sole negligence, active negligence or willful misconduct of the COUNTY, or defect in a design furnished by the COUNTY.

### **9.0 INSURANCE.**

#### 9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor 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 Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's, Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such, insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

#### 9.02 Qualifying Insurers:

All coverage's, 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 Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

#### 9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR 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, Broadform 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.

☐ Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

☐ Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR 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.

☐ Modification (Justification attached; subject to approval).

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 CONTRACTOR 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.

☐ Modification (Justification attached; subject to approval).

#### 9.04 Other Insurance 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 CONTRACTOR 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.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed

operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR 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.

CONTRACTOR shall at all times 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 and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

## 10. RECORDS AND CONFIDENTIALITY.

- 10.01 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.
11. **NON-DISCRIMINATION.** During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations, which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.
12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.
13. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability, which County may incur because of CONTRACTOR's failure to pay such taxes.



14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Dalia Mariscal-Martinez, Management Analyst II	Richard Weber, P.E., L.S., Principal
Name and Title	Name and Title
County of Monterey, Resource Management Agency 168 West Alisal Street, 2nd Floor Salinas, CA 93901	Whitson and Associates, Inc. dba Whitson Engineers 9699 Blue Larkspur Lane, Suite 105 Monterey, CA 93940
Address	Address
(831) 755-8966	(831) 649-5225
Phone	Phone

15. **MISCELLANEOUS PROVISIONS.**

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

This space is left blank, intentionally.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

**COUNTY OF MONTEREY**

By: \_\_\_\_\_  
Purchasing Officer

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

By: [Signature]  
Department Head (if applicable)

Date: 14 APRIL 2016

By: \_\_\_\_\_  
Board of Supervisors (if applicable)

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

Approved as to Form<sup>1</sup>

By: [Signature]  
County Counsel

Date: 3-25-16

Approved as to Fiscal Provisions<sup>2</sup>

By: [Signature]  
Auditor/Controller

Date: 3-28-16

Approved as to Liability Provisions<sup>3</sup>

By: \_\_\_\_\_  
Risk Management

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

**CONTRACTOR**

Whitson and Associates, Inc.  
dba Whitson Engineers

Contractor's Business Name\*

By: [Signature]  
(Signature of Chair, President, or Vice-President)\*

Reneas Weber, President  
Name and Title

Date: 3/22/16

By: [Signature]  
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)\*

Reneas Weber, CFO  
Name and Title

Date: 3/22/16

County Board of Supervisors' Agreement Number: \_\_\_\_\_.

\*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

<sup>1</sup>Approval by County Counsel is required for all Professional Service Agreements over \$100,000

<sup>2</sup>Approval by Auditor/Controller is required for all Professional Service Agreements

<sup>3</sup>Approval by Risk Management is required only if changes are made in paragraph 8 or 9

## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

**To Agreement by and between  
County of Monterey, hereinafter referred to as "County"  
and  
Whitson and Associates, Inc. dba Whitson Engineers,  
hereinafter referred to as "CONTRACTOR"**

### **A. SCOPE OF SERVICES**

- A.1** CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work to provide for the Final Design of the Carmel River Floodplain Restoration and Environmental Enhancement (CRFREE) Project (hereinafter, "Project"), as set forth below:

CONTRACTOR with Balance Hydrologics, Inc. (Balance), H. T. Harvey and Associates (HTH), Donna Meyers dba Conservation Collaborative (CC), Cornerstone Structural Engineering Group (Cornerstone), Kleinfelder, Inc. (Kleinfelder), Avila & Associates Consulting Engineers (Avila), Aurum Consulting Engineers Monterey Bay, Inc. (Aurum), Associated Right of Way Services, Inc. (ARWS) and Subtronic Corporation (Subtronic) as sub-consultants to CONTRACTOR will conduct all work, as described below and as necessary to complete the Project.

#### **TASK 1: DRAFT FINAL (60%) DESIGN**

##### **Task 1.1: Draft Final (60%) Design - Restoration**

##### **1.1.a: Draft Final (60%) Restoration Plans, Specifications and Estimate (PS&E)**

Prepare sixty percent (60%) Draft Restoration Plans (County Coastal Development Permit (CDP)/Grading Permit Set), building off the thirty-five percent (35%) Plans previously developed, and incorporating applicable clarifications, comments, etc., provided in the Initial Study/Mitigated Negative Declaration (IS/MND) and received during the outreach and technical and permitting meetings held after the thirty-five percent (35%) submittal.

At this time the sheet list is anticipated to include:

- Cover Sheet; Construction Details; Typical Sections; Grading and Drainage; Topsoil Management; Temporary Water Pollution Control; Utility Plan; Non-Native Plant Control; Planting Plan (Tier 1); Irrigation Plan (Tier 1); Seeding Plan and Palette; Landscape Notes, Schedules, and Details.

Submit a sixty percent (60%) design readiness review package to the County, and address any comments provided by the County prior to the sixty percent (60%) submittal.

## EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

The Restoration Management Plan will be updated based on the sixty percent (60%) design, if needed, based on the updated design.

Develop sixty percent (60%) Draft Restoration Project Specifications using the California Department of Transportation (Caltrans) Special Provisions format and the County's front-end specifications forms. Develop sixty percent (60%) Draft Restoration Quantities and Construction Cost Estimate using Caltrans Engineer's Estimate format and County's front-end bid forms. Both Project components (Restoration and Causeway) will be included in a single, combined specifications document, and the entire Project is planned to be bid as a whole, not separately.

### **1.1.b: Project Management and Regulatory Coordination - Restoration**

Develop sixty percent (60%) Draft Stormwater Pollution Prevention Plan (SWPPP) Intent Document for the overall Project. The SWPPP Intent Document will be developed for issuance of the County Grading Permit.

Support environmental document and permitting processes by responding to specific information requests from County's Environmental Consultant, Denise Duffy and Associates (DDA).

Participate in regular CRFREE technical and Project team meetings<sup>1</sup>, as necessary to complete this scope. Update Project Schedule as needed, including major engineering, permitting and construction tasks.

Participate in a half day Technical and Permitting Committee Meeting to discuss the entire Project (Causeway and Restoration). CONTRACTOR anticipates using this meeting to 1) review the current Project plans and specifications, focusing on environmental aspects, benefits, and mitigations; 2) obtain, discuss and resolve any final County comments; and 3) obtain verbal County approval. Participate in up to two (2) follow-up stakeholder or Public meetings, as requested.

Total cost to complete Task 1.1.a, Draft Final (60%) Restoration Plans, Specifications and Estimate, and Task 1.1.b, Project Management and Regulatory Coordination - Restoration is \$165,464, and is broken out as follows:

- Balance - \$35,020
- HTH - \$75,754
- CC - \$2,000
- CONTRACTOR - \$52,690 (personnel and expenses (including travel) \$41,520; direct cost administration at ten percent (10%) of subcontractors' labor costs \$11,170)

<sup>1</sup> All project meetings for the entire scope will split time and costs between the Restoration and Causeway elements of this project. No double billing will occur.

## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

### **1.1.c: Optional Task - Additional (60%) Restoration PS&E Work**

Due to the complex and multi-dimensional nature of this Project, there is the potential that the estimated scope in Sections 1.1.a and 1.1.b may be widened, at the discretion of County, during the terms of this Agreement to include additional or expanded reports, documentation, meetings, project management, or other Project related tasks of that nature.

Total estimated cost of Optional Task 1.1.c is \$13,000.

CONTRACTOR will not access the funds in this Optional Task without prior express written consent from County.

### **Task 1.2: Draft Final (60%) Design – Causeway**

#### **1.2.a: Draft Final (60%) Causeway (Highway) PS&E**

Perform supplemental geotechnical borings at four (4) locations to depths of 30' to 200' and complete the testing and analysis on these additional samples. Develop the Preliminary Foundation Report for the Project following Caltrans Load Resistance Factor Design (LRFD) guidelines and the revised Caltrans Foundation Report Preparation for Bridge Foundations (2009), which became effective January 1, 2010. Develop a separate Preliminary Geotechnical Design Report (GDR) to support the design of the Project roadway improvements and the larger floodplain restoration work.

Develop draft (sixty percent (60%)/unchecked) structure plans, details and calculations for the proposed cast in place post-tensioned box girder bridge on large-diameter cast-in-steel-shell pile foundation.

Prepare sixty percent (60%) Draft Causeway (Highway) Plans (Caltrans Encroachment Permit Set), building off the thirty-five percent (35%) Plans developed previously, and incorporating applicable clarifications, mitigations, comments, etc., provided in the IS/MND and Project Report, and received during the outreach and technical and permitting meetings held after thirty-five percent (35%) submittal.

At this time the sheet list is anticipated to include:

- Cover Sheet; Typical Sections; Layout; Profile and Super-elevation; Construction Details; Temporary Water Pollution Control; Contour Grading; Drainage Plans, Profiles, Details and Quantities; Utility Plan; Construction Area Signs; Stage Construction Plans; Detour Plan; Detour Profile and Superelevation; Pavement Delineation and Sign Plan; Landscape Notes, Schedules, and Details; Seeding Plan; Electrical Symbols, Schedules, Abbreviations and Notes; Electrical Details; Lighting Plan; Bridge General Plan; Deck Contours; Foundation Plan; Abutment Layout; Abutment Details No. 1; Abutment Details No. 2; Bent Layout; Bent

## EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

Details No. 1; Bent Details No. 2; Test Pile Details; Typical Section; Girder Layout No. 1; Girder Layout No. 2; Additional Reinforcement No. 1; Additional Reinforcement No. 2; Architectural Details; Bicycle Railing Layout and Details; Bridge Utility Layout and Details; Bridge Drainage Details; Structure Approach Slab Details; and Log of Test Borings

Submit a sixty percent (60%) design readiness review package to Caltrans and the County, and address any comments provided by Caltrans and the County prior to sixty percent (60%) submittal to Caltrans.

Develop sixty percent (60%) Draft Causeway (Highway) Project Specifications using Caltrans Special Provisions format and the County's front-end specifications forms. Develop sixty percent (60%) Draft Causeway Quantities and Construction Cost Estimate using Caltrans Engineer's Estimate format and County's front-end bid forms. Both Project components (Restoration and Causeway) will be included in a single, combined specifications document, and the entire Project is planned to be bid as a whole, not separately.

### **1.2.b: Project Management and Regulatory Coordination - Causeway**

Prepare and submit the Caltrans Encroachment Permit Application utilizing the sixty percent (60%) Draft PS&E. Other permits, including the County CDP and Grading Permit, will be handled by others.

Support environmental document and permitting processes by responding to specific information requests from County's Environmental Consultant, DDA.

Participate in regular Project technical and Project team meetings, as necessary to complete this scope. Update Project Schedule as needed, including major engineering, permitting and construction tasks.

Participate in a half day Technical and Permitting Committee Meeting. CONTRACTOR anticipates using this meeting to 1) review the current Project plans and specifications, focusing on environmental aspects, benefits, and mitigations; 2) obtain, discuss and resolve any final County comments; and 3) obtain verbal County approval. Participate in up to two (2) follow-up stakeholder or Public meetings, as requested.

## EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

Total cost to complete Task 1.2.a, Draft Final (60%) Causeway (Highway) PS&E, and Task 1.2.b, Project Management and Regulatory Coordination - Causeway is \$369,620<sup>2</sup>, and is broken out as follows:

- Cornerstone - \$154,500
- Kleinfelder - \$136,000
- Aurum - \$5,500
- CONTRACTOR \$73,620 (personnel and expenses (including travel) \$44,170; direct cost administration at ten percent (10%) of subcontractors' labor costs \$29,450)

### **1.2.c: Optional Task - Additional (60%) Causeway Design Work**

Due to the complex and multi-dimensional nature of this Project, there is the potential that the estimated scope in Sections 1.2.a and 1.2.b may be widened, at the discretion of County, during the terms of this Agreement to include additional or expanded reports, documentation, meetings, project management, or other Project related tasks of that nature.

Total estimated cost of Optional Task 1.2.c is \$24,800.

CONTRACTOR will not access the funds in this Optional Task without prior express written consent from County.

## **TASK 2: FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) CONDITIONAL LETTER OF MAP REVISION (CLOMR)**

Task 2 shall not commence prior to July 1, 2016 unless prior authorized in writing by the County.

### **Task 2.1: FEMA CLOMR**

Modeling will be completed using the HEC-RAS software package and completed in general conformance with the technical submittal requirements for a FEMA CLOMR. Hydraulic modeling will be completed using comparable methodologies to the currently effective flood study. Model results will be used to conditionally re-delineate the Zone AE of the FEMA Flood Zone boundaries (100-year floodplain) included on the impacted FEMA Flood Insurance Rate Map (FIRM) panel and adjust the associated Base Flood Elevations (BFEs). Zone X of the FEMA Flood Zone boundaries will also be re-delineated based on the 500-year flood model results.

<sup>2</sup> This scope includes a budget to address bridge aesthetics. CONTRACTOR has assumed that aesthetic treatments may include decorative barrier railing, decorative tubular railing, and the use of a formliner and staining on the bridge box girder. If more design / detailing is required for the bridge girders or soffits (e.g., custom or artistic reliefs), such work may not be able to be accommodated within the proposed budget. If based on community or stakeholder feedback custom or artistic treatments are desired, CONTRACTOR will provide the County with a written request with justification and cost estimate for the expanded scope. This additional work shall not be provided by CONTRACTOR unless authorized in writing by the County prior to work commencing.



## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

Prepare CLOMR package, and coordinate approval through the Monterey County Water Resources Agency (MCWRA) and FEMA. Meet with MCWRA staff to present the CLOMR and respond to one (1) set of review comments.

Balance will submit the CLOMR package to FEMA. A processing fee of \$6,500 required by FEMA is included as an expense. Budget has been allocated to prepare up to two (2) responses to comments from FEMA.

Total cost to complete Task 2: FEMA CLOMR is \$61,824, and is broken out as follows:

- Balance - \$56,040
- CONTRACTOR - \$5,784 (personnel and expenses (including travel) \$830; direct cost administration at ten percent (10%) of subcontractors' labor costs \$4,954)

### **TASK 3: CALTRANS PROJECT REPORT (PR) AND HYDRAULIC REPORT**

#### **Task 3.1: PR and Final Hydraulics Report (FHR) with Location Hydraulic Study/ Floodplain Encroachment Report (LHS/FER)**

Revise and resubmit Draft PR based on comments received from Caltrans and the County. Coordinate review, comments and responses directly with Caltrans.

Finalize and submit Final PR. The Final PR will be submitted after approval of the Project's Environmental Document (IS/MND), and will include the IS/MND as an attachment, in addition to the thirty-five percent (35%) plans and cost estimate as well as various background technical documents prepared as part of this Project.

Finalize and submit the FHR and LHS/FER based on Caltrans comments during preparation of the PR. If required, revise FHR and LHS/FER based on changes during final design.

Total cost to complete Task 3: CALTRANS PR AND HYDRAULIC REPORT is \$15,000, and is broken out as follows:

- Avila - \$8,000
- CONTRACTOR - \$7,000 (personnel and expenses (including travel) \$6,200; direct cost administration at ten percent (10%) of subcontractors' labor costs \$800)

## EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

### TASK 4: FINAL (90% & 100%) DESIGN

#### Task 4.1: Final Design (90% & 100%) Design – Restoration

##### 4.1.a: Draft Final (90% & 100%) Restorations PS&E

Update the Restoration Plan and Specifications based on comments received on the sixty (60%) submittal. Update the Restoration Cost Estimate based on ninety percent (90%) design. Update the Restoration and Management Plan (RMP) based on the ninety percent (90%) and one hundred percent (100%) designs, if necessary, based on design updates.

Submit ninety percent (90%) design readiness review package to the County and address any comments provided by the County prior to ninety percent (90%) submittal.

Respond to plan check comments received on the ninety percent (90%) submittal and develop Final one hundred percent (100%) Design package.

##### Task 4.1.b: Project Management and Regulatory Coordination - Restoration

Update the SWPPP Intent Document based on comments received on the sixty percent (60%) submittal. Submit the ninety percent (90%) Design Package to County for Grading Permit plan check, and to Caltrans for Encroachment Permit plan check.

Participate in regular CRFREE technical and Project team meetings, as necessary to complete this scope. Update Project Schedule as needed, including major engineering, permitting and construction tasks. Participate in up to one (1) Public/Stakeholder Meeting or Presentation, if requested.

Total cost to complete Task 4.1.a, Draft Final (90% & 100%) Restorations PS&E, and Task 4.1.b, Project Management and Regulatory Coordination – Restoration, is \$166,979, and is broken out as follows:

- Balance - \$44,890
- HTH - \$78,689
- CC - \$2,000
- CONTRACTOR \$41,400 - (personnel and expenses (including travel) \$28,930; direct cost administration at ten percent (10%) of subcontractors' labor costs \$12,470)

## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

### **4.1.c: Optional Task – Additional Final (90% & 100%) Restoration Design Work**

Due to the complex and multi-dimensional nature of this Project, there is the potential that the estimated scope in Sections 4.1.a and 4.1.b may be widened, at the discretion of County, during the terms of this Agreement to include additional or expanded reports, documentation, meetings, project management, or other Project related tasks of that nature.

Total estimated cost of Optional Task 4.1.c is \$12,000.

CONTRACTOR will not access the funds in this Optional Task without prior express written consent from County.

### **Task 4.2: Final Design (90% and 100%) Design – Causeway**

#### **Task 4.2.a: Final (90% & 100%) Design – Causeway**

Update the Highway Plans and Specifications based on comments received on the sixty percent (60%) submittal. Update Causeway Cost Estimate based on ninety percent (90%) design. Update the Foundation Report and GDR based on comments received on the sixty percent (60%) submittal.

Submit ninety percent (90%) design readiness review package to Caltrans and the County, and address any comments provided by Caltrans and the County prior to ninety percent (90%) submittal to Caltrans.

Perform independent in-house bridge design check. An independent engineer who was not involved in the design will re-analyze the bridge, verify member capacities and review the special provisions for the bridge. The checker will provide a list of comments and a set of “red-marked” plans that communicate issues uncovered during the preparation of the independent check. Issues raised by the checker will be discussed with and resolved by the designer and checker. The final design will reflect agreement between the two (2) engineers.

Respond to plan check comments received on the ninety percent (90%) submittal, and develop Final one hundred percent (100%) Design package.

#### **Task 4.2.b: Project Management and Regulatory Coordination – Causeway**

Submit the ninety percent (90%) Design Package to County for Grading Permit plan check, and to Caltrans for Encroachment Permit plan check.

Participate in regular CRFREE technical and Project team meetings, as necessary to complete this scope. Update Project Schedule, including major engineering, permitting and construction tasks, based on sixty percent (60%) designs. Participate in up to one (1) Public/Stakeholder Meeting or Presentation, if requested. Provide bid Package and Design Review Meeting with County, if requested.

## EXHIBIT A -- SCOPE OF SERVICES/PAYMENT PROVISIONS

Total cost to complete Task 4.2.a, Final (90% & 100%) Design -- Causeway, and Task 4.2.b, Project Management and Regulatory Coordination - Causeway is \$192,630, and is broken out as follows:

- Cornerstone - \$110,500
- Kleinfelder - \$20,600
- Aurum - \$3,300
- CONTRACTOR - \$58,230 (personnel and expenses (including travel) \$44,940; direct cost administration at ten percent (10%) of subcontractors' labor costs \$13,290)

### **4.2.c: Optional Task -- Additional Final (90% & 100%) Causeway Design Work**

Due to the complex and multi-dimensional nature of this Project, there is the potential that the estimated scope in Sections 4.1.a and 4.1.b may be widened, at the discretion of County, during the terms of this Agreement to include additional or expanded reports, documentation, meetings, project management, or other Project related tasks of that nature.

Total estimated cost of Optional Task 4.2.c is \$12,000.

CONTRACTOR will not access the funds in this Optional Task without prior express written consent from County.

## **TASK 5: RIGHT-OF-WAY**

### **Task 5.1: Right-of-Way**

General consultation including establishment of work process; attendance of meetings; coordination with County, Caltrans, and State Parks; and general assistance to County on right-of-way related issues.

Revise and finalize right-of-way cost estimates for one (1) Project alternative for up to two (2) parcels (State Parks parcel and the proposed adjusted Parcel "P"). The cost estimates will be in the Caltrans Right-of-Way Data Sheet format.

Prepare Acquisition Maps and Legal Descriptions for proposed right-of-way donation. Prepare legal description and plats in support of the Caltrans Right-of-Way Certification process<sup>3</sup>.

Prepare an Appraisal and Appraisal Review of right-of-way to be donated by Big Sur Land Trust (BSLT) (Adjusted Parcel "P"). Appraisal is for the "Fair Market Value" of the property as per California Code of Civil Procedure, Section 1263.320.

<sup>3</sup> Caltrans may require that monuments be set, and this would require that a Record of Survey be completed. CONTRACTOR anticipates this would occur sometime after construction, and so CONTRACTOR has not included it in this proposal. If required by Caltrans, CONTRACTOR will provide a proposal for this work as the Project nears the end of the Final Design stage. This additional work shall not be provided by CONTRACTOR unless authorized in writing prior to by the County.

## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

Prepare acquisition documents including Offer Letter, Summary Statement pertaining to the acquisition of real property or an interest therein, Purchase Agreement, Deed, Public Acquisition Brochure and Goodwill Information Sheet. Per Section 102 of the California Streets and Highways Code, a copy of the appraisal report will be provided to the property owner.

If needed and requested by the County, negotiate to acquire one (1) fee simple acquisition and one (1) temporary construction easement. CONTRACTOR has assumed there will be negotiations with only one (1) property owner and no lessees.

Provide Draft Right-of-Way Certification for approval by County, in accordance with the Caltrans Right-of-Way Manual. Supporting documentation will be submitted along with Right-of-Way Certification. Supporting documentation may include, but is not limited to, Right-of-Way Contracts; Agreements for Possession and Use; Orders for Prejudgment Possession; deeds, diary, notes; Certification of Utility Facilities; and Right-of-Way Sufficiency Forms. Coordinate processing of the Right-of-Way Certification with Caltrans.

Total cost to complete Task 5: Right-of-Way is \$46,690, and is broken out as follows:

- ARWS - \$25,500
- CONTRACTOR - \$21,190 (personnel and expenses (including travel) \$18,740; direct cost administration at 10% of subcontractors' labor costs \$2,450)

### **TASK 6: UTILITY COORDINATION**

#### **Task 6.1: Utility Relocation Coordination**

Identify actual conflicts and policy conflicts, and develop conflict plans.

Prepare and issue Relocation Claim Letter to Owner, requesting utility owners to develop Owners' Relocation Plans and furnish evidence of their occupancy rights (Owners' Claim of Liability).

Prepare a Report of Investigation, Draft Utility Agreement, and Notice to Owner for each utility. Coordinate approvals with Monterey County and Caltrans.

Prepare and issue a Utility Clearance Memo listing all conflicts, locations, and Notices to Owner, liability, and estimated completion dates. The Memo will be included in the Right-of-Way Certification.

Provide coordination between Monterey County, Caltrans, and utility owners.

## EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

Total cost to complete Task 6.1, Utility Relocation Coordination is \$10,980, and is broken out as follows:

- CONTRACTOR - \$10,980 (personnel and expenses \$10,980)

### **Task 6.2: Optional Task - Utility Potholing**

If potholing is deemed necessary, CONTRACTOR will provide to County a scope and cost estimate for this work after the need and scope for potholing has been evaluated. A budget of \$23,000 is included in the Agreement for potential potholing work, based on an assumed three (3) days of potholing under temporary traffic control, and associated surveying, engineering, and coordination.

Total cost to complete Task 6.2: Optional Task – Utility Potholing is \$23,000.

- Subtronic - \$16,364
- CONTRACTOR - \$6,636 (personnel and expenses (including travel) \$5,000; direct cost administration at ten percent (10%) of subcontractors' labor costs \$1,636)

CONTRACTOR will not access the funds in this Optional Task without prior express written consent from County. Substitution of subcontractor (Subtronic) is subject to approval of County, and such approval shall not be unreasonably withheld.

Total cost for the completion of this scope is a not to exceed amount of \$1,113,987. CONTRACTOR will be provided with a Notice to Proceed (NTP) by County to authorize work on Tasks 1.1.a, 1.1.b, 1.2.a, 1.2.b, 2, 3, 4.1.a, 4.1.b, 4.2.a, 4.2.b, 5 and 6.1 per conditions outlined above for a total not to exceed amount of \$1,029,187. CONTRACTOR is not authorized to begin work on the remaining Tasks 1.1.c, 1.2.c, 4.1.c, 4.2.c, and 6.2 for a total not to exceed amount of \$84,800. County written NTP for these tasks, if authorized, will be provided separately.

The effort anticipated to complete this work is based on the CONTRACTOR's team's experience for the quantity and nature of work that can reasonably be anticipated for the outlined scope. Cost estimates provided for tasks are best-estimates at the time of Agreement execution; actual invoiced task amounts may vary from the initial task estimates. An amendment to the Agreement is not required if the task allocated budget amount(s) do not exceed the overall Agreement not-to-exceed amount. In the event that the CONTRACTOR costs are to exceed the task allocated budget amount(s), CONTRACTOR shall notify County in advance and as soon as possible in writing and clearly describe how CONTRACTOR will achieve net fiscal neutrality.

CONTRACTOR and its sub-consultant team will provide the County with a written request with justification and cost estimate to request additional funding for unforeseen tasks that arise outside this scope of work and may exceed the allocated budget amount.

## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

Services detailed in Exhibit A – Scope of Services/Payment Provisions of the Agreement shall be provided as noted. Additional services shall not be provided until the additional work is presented to the County and with County approval, amended into the Agreement. Once the amendment to the Agreement is fully executed, CONTRACTOR will be authorized to proceed with the additional services.

Optional services detailed in Exhibit A – Scope of Services/Payment Provisions of the Agreement shall not be provided unless authorized in writing by the County's Project Manager prior to the optional services being provided.

- A.2** CONTRACTOR shall produce the following deliverables (written reports, installed products, etc.) by the proposed dates indicated below. Any necessary modifications to these proposed dates must be discussed and coordinated in advance with the County.

### **Task 1 – Draft Final (60%) Design Deliverables:**

- Restoration Plans
- Highway Plans
- Special Provisions (Restoration & Highway)
- Engineer's Estimate (Restoration & Highway)
- Bridge Design Calculations
- Project Schedule
- Preliminary Foundation Report
- Preliminary Geotechnical Design Report
- SWPPP Intent Document
- Update to Design Basis Memorandum, if required
- Update to Restoration Management Plan, if required
- Update to Location Hydraulic Study, if required

### **Directly Submitted to Caltrans:**

- Highway Plans
- Special Provisions (Causeway)
- Engineer's Estimate (Causeway)
- Bridge Design Calculations
- Preliminary Foundation Report
- Preliminary Geotechnical Design Report
- Update to Location Hydraulic Study, if required
- Caltrans Encroachment Permit Application Form
- Restoration Plans (for Reference Only)

**Delivery Date: July 2016**

## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

### **Task 2 – FEMA CLOMR Deliverables:**

#### **Directly Submitted to FEMA:**

- FEMA CLOMR Application

**Delivery Date: March 2017**

### **Task 3 – Caltrans PR & FHR / LHS/FER Deliverables**

#### **Directly Submitted to Caltrans (PR/Draft Environmental Document (DED) approval):**

- Draft Caltrans Project Report (copies as required by Caltrans)
- Final Caltrans Project Report (copies as required by Caltrans)
- Final Hydraulics Report with Location Hydraulic Study/Floodplain Encroachment Report included as an Appendix to Project Report (copies as required by Caltrans)

**Delivery Date: March 2017**

### **Task 4 – Final (90% - 100%) Designs Deliverables:**

- Comment Response Letter
- Highway Plans
- Restoration Plans
- Special Provisions
- Engineer's Estimate
- Project Schedule
- Final Foundation Report
- Final Geotechnical Design Report
- SWPPP Intent Document
- Update to Restoration Management Plan, if required

#### **Directly Submitted to Caltrans:**

- Plan Check Comment Response Letter
- Final Foundation Report
- Final Geotechnical Design Report
- Highway Plans
- Special Provisions
- Engineer's Estimate
- Revised Caltrans Encroachment Permit Application Form, if required
- Restoration Plans (for Reference Only)

**Delivery Date: October 2017**



## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

### **Task 5 – Right of Way Deliverables (deliverables to be provided in parallel with design):**

- Right-of-Way Data Sheet
- Acquisition Maps and Legal Descriptions
- Appraisal and Appraisal Review
- Acquisition documents including Offer Letter, Summary Statement, Purchase Agreement, Deed, Public Acquisition Brochure and Goodwill Information Sheet (if not addressed in Client brochure)
- Draft Right-of-Way Certification and Supporting Documentation

**Delivery Date: October 2017**

### **Task 6 – Utility Coordination Deliverables (deliverables to be provided in parallel with design):**

- Utility Verification Letter to Owner (one (1) for each utility)
- Positive Locating Plans (if required)
- Potholing Revised Scope of Work and Cost Estimate (if required)
- Conflict Plans
- Relocation Claim Letter to Owner (one (1) for each utility)
- Report of Investigation (one (1) for each utility)
- Draft Utility Agreement (one (1) for each utility)
- Notice to Owner (one (1) for each utility)
- Utility Clearance Memo (one (1) for each utility)

**Delivery Date: October 2017**

**Monthly Project Status Reports** shall be provided in an agreed upon format between CONTRACTOR and County, to include monthly updates to the Project status by task.

All written reports and deliverables required under this Agreement must be delivered electronically in PDF format, or if needed, in Microsoft Word or Excel, as applicable. For documents requiring County or Public distribution, such as technical studies that will be submitted to relevant agencies as hardcopy documents, if not explicitly stated in the task descriptions within the scope, CONTRACTOR will print and send up to three (3) hard copies, in addition to electronic copies of each deliverable to the following individual in accordance with the schedule above:

Melanie Beretti  
Resource Management Agency (RMA) Special Programs Manager  
County of Monterey, RMA  
168 West Alisal Street, 2<sup>nd</sup> Floor  
Salinas, California 93901

Email: [berettim@co.monterey.ca.us](mailto:berettim@co.monterey.ca.us)

## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

### **B. PAYMENT PROVISIONS**

#### **B.1 COMPENSATION/ PAYMENT**

County shall pay an amount not to exceed \$1,113,987 for or incidental to the performance of work as set forth in the Scope of Services. CONTRACTOR's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

According to CONTRACTOR's Budget for the Final Design of the CRFREE (attached).

County and CONTRACTOR agree that CONTRACTOR shall be reimbursed for travel expenses during this Agreement. CONTRACTOR shall receive compensation for travel expenses as per the "County Travel Policy". A copy of the policy is available online at [www.co.monterey.ca.us/auditor/policies.htm](http://www.co.monterey.ca.us/auditor/policies.htm). To receive reimbursement, CONTRACTOR must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

CONTRACTOR warrants that the cost charged for services under the terms of this Agreement are not in excess of those charged any other client for the same services performed by the same individuals.

#### **B.2 CONTRACTOR'S BILLING PROCEDURES**

Payment shall be based upon satisfactory acceptance of the work completed per tasks outlined in the CONTRACTOR's monthly invoice and activity report, which are due by the tenth (10<sup>th</sup>) day of each month for work performed during the prior month. CONTRACTOR shall include on all invoices a detailed breakdown of the time worked on each task, the individual completing the work, the hourly rates, and expenses, receipts for all materials and supplies, and any other further information required by the terms of Exhibit B, SAP Contract No. 4600010665, and Exhibit C, Wildlife Conservation Board Grant Agreement WC-1059CF, of this Agreement.

Invoices under this Agreement shall be submitted monthly and promptly, and in accordance with Paragraph 6.0, "Payment Conditions", of the Agreement. All invoices shall reference the Multi-Year Agreement (MYA) number, Project name and associated Purchase Order number, and an original hardcopy shall be sent to the following:

County of Monterey  
RMA – Finance Division  
168 West Alisal Street, 2<sup>nd</sup> Floor  
Salinas, California 93901

## EXHIBIT A -- SCOPE OF SERVICES/PAYMENT PROVISIONS

Any questions pertaining to invoices under this Agreement shall be directed to the RMA - Finance Division at (831) 755-4800.

County may, in its sole discretion, terminate the Agreement or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed. Claims for payment of services for any given fiscal year (July 1 to June 30) must be submitted to the County by July 31 and within twelve (12) months after the calendar month in which services were completed.

**DISALLOWED COSTS:** CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its sub-consultants.

**STATE OF CALIFORNIA  
THE NATURAL RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES  
AGREEMENT BETWEEN THE STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES AND  
MONTEREY COUNTY  
UNDER THE FLOOD CORRIDOR PROGRAM**

**THIS AGREEMENT**, made in quadruplicate and commencing this 13<sup>th</sup> day of June, 2014, is entered into by and between the Department of Water Resources of the State of California (hereinafter called the State, or DWR), and Monterey County, (hereinafter called the Grantee) for the Carmel River Floodplain Restoration and Environmental Enhancement Project.

The State and the Grantee agree as follows:

**SECTION 1 PURPOSE OF AGREEMENT**

This Agreement is made by and between the State and the Grantee to assist in financing a Flood Protection Project pursuant to the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Public Resources Code Section 5096.800 et seq, Division 5, Chapter 1.699, Article 4), specifically Public Resources Code 5096.825.

Grant funds may be used only as provided in this Agreement for such Eligible Project Costs as set forth in the Scope of Work and Budget, copies of which are incorporated herein by this reference and set forth in Exhibit B, Project Location, Exhibit C, Scope of Work, and Exhibit D, Budget, which describe tasks to be accomplished and costs associated with those tasks under this Agreement.

**SECTION 2 TERM OF AGREEMENT**

This Agreement shall remain in effect for four (4) years from the date of execution. The date of execution shall be the last date of the required signatures of the parties to the Agreement. Certain activities specified in this Agreement have a different term such as maintenance responsibilities of the grantee which continue in perpetuity and require annual reporting for five years after project completion.

**SECTION 3 PROJECT COSTS**

The Total Project Costs (identified in Exhibit D) are estimated to be \$16,137,800.

**SECTION 4 STATE GRANT**

Pursuant to the Disaster Preparedness and Flood Prevention Bond Act of 2006, and subject to the availability of funds, including any mandates from the Department of

Finance, the Pooled Money Investment Board, or any other State authority, the State will reimburse the Grantee, in accordance with the terms of this Agreement, an amount equal to the Grantee's eligible expenditures for this project not to exceed \$5,000,000.00, as the State Share, as identified in Exhibit D, Budget. The State will not make payments of any kind—advances or reimbursements—until funding is made available by the State Treasurer, after allocation decisions are made by the Pooled Money Investment Board and Department of Finance.

#### **SECTION 5 GRANTEE'S COST SHARE AMOUNT**

The Grantee agrees to fund the difference, if any, between the actual Project Cost and the State Grant (Section 4). The total cost of the project will be paid for from a variety of sources including, the County cost of permitting and managing the project, the cost of the property, State and Federal Grants, and participation by the California Department of Transportation. The rate of payment of State grant funds expressed as a percentage share of the State Grant cannot exceed the rate of payment of expenses by the grantee expressed as a percentage of the grantee's share of project costs without prior State authorization. If the grant is cancelled for any reason, the Grantee's obligation to provide the required 10% local match remains in effect for all FCP funds expended to that point.

#### **SECTION 6 INCORPORATION OF STANDARD TERMS AND GRANTEE COMMITMENTS**

In addition to Exhibits B, C, and D, this agreement by this reference incorporates Exhibit A, Standard Terms and Exhibit E, Planned Maintenance Activities. The Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations and statements made by the Grantee in the Application, documents, amendments and communications filed in support of its request for financing.

#### **SECTION 7 METHOD OF PAYMENT**

The Grantee shall submit invoices on a quarterly basis for non-capital costs and on an as-needed basis for capital costs, not to exceed one invoice per month. All payments will be made to the Grantee upon receipt of an original invoice by the State of California, Department of Water Resources, 3464 El Camino Avenue, Room 200, Sacramento, California 95821, to the attention of David Wright, Project Manager for the State. Invoices should include SAP contract number and work plan element identification.

The Grantee shall meet all conditions for disbursement of money under this Agreement, including the provisions of the Conditions for Disbursement which is located in Exhibit A.

Failure by Grantee to comply may, at the option of the State, result in termination of the Agreement.

#### **SECTION 8 PROGRESS REPORTS AND STATEMENT OF COSTS**

The Grantee shall submit quarterly progress reports, starting with the end of the first complete calendar quarter after date of execution, describing the status of the Project and containing a Statement of Costs to the State. The submittal and approval by the State of these reports is a requirement for continued disbursement of State Grant funds. Progress reports shall summarize the work completed during the reporting period, include a statement of progress toward completion compared to the Project schedule, and provide a comparison of costs to date compared to the approved scope of work and Project budget. Additionally, if the grantee is aware of any anticipated problems, obstacles, or issues that could affect the project budget, schedule, or scope of work, they should be discussed in the progress reports.

#### **SECTION 9 FINAL REPORTS**

Upon project completion or termination, the Grantee shall submit a Final Report describing project activities and a report of expenditures (Final Financial Report) for the State's review and comment. The Final Report and Final Financial Report shall both be submitted within sixty (60) days of the project completion or termination. The Final Report shall describe the results of the project's activities, and include photographs of pre-project conditions and of the work completed. The Grantee shall also submit a Post-Completion Annual Report of Maintenance Activities annually for five years following completion of the project, with the first report due 12 months after the project completion date.

For any construction activity undertaken pursuant to and funded by this agreement, upon completion of the project the Grantee shall provide for a final inspection and a written certification by a California Registered Civil Engineer that the project has been completed in accordance with final plans and specifications and any modifications thereto. Such certification shall be submitted to the State with a copy of the final report of project expenditures required in the paragraph below. The Grantee shall keep on file, for the useful life of the project, as built plans and specifications for the project. Such documents shall be made available for inspection by the State upon reasonable notice.

The Final Financial Report documenting total project expenditures shall be submitted by the Grantee at the same time as the Final Report.

#### **SECTION 10 RELATIONSHIPS OF PARTIES**

The Grantee, its contractors, subcontractors, and their respective agents and employees required for performing any work under this Agreement shall act in an independent capacity and not as officers, employees, or agents of the State. Grantee is solely responsible for planning, design, construction, maintenance, and operation of the

activity undertaken pursuant to and funded by this agreement. Any review or approval by the State is solely for the purpose of proper administration of State funding and shall not be deemed to relieve or restrict Grantee's responsibility for its work.

#### **SECTION 11 PERMITS, LICENSES, APPROVALS AND LEGAL OBLIGATIONS**

The Grantee shall be responsible for obtaining any and all permits, licenses and approvals required for performing any work under this Agreement, including those necessary for planning and implementing the Project. The Grantee shall be responsible for complying with all applicable federal, State and local laws, rules or regulations affecting any such work, specifically including, but not limited to, environmental, labor, procurement and safety laws, rules, regulations and ordinances.

Without limiting the foregoing, Grantee shall keep informed of and take all measures necessary to ensure compliance with the California Labor Code requirements, including but not limited to Section 1720 *et seq.* of the California Labor Code regarding public works, limitations on use of volunteer labor (California Labor Code Section 1720.4), labor compliance programs (California Labor Code Section 1771.5), and payment of prevailing wages for work done under this funding agreement.

Work that is subject to the California Environmental Quality Act (CEQA) and funded under this Agreement shall not proceed until documents that satisfy the CEQA process are received by the State Project Manager and the State has completed its CEQA compliance. Work funded under this Agreement that is subject to a CEQA document shall not proceed until and unless approved by the State Project Manager. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. Once CEQA documentation has been completed, the State will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation.

#### **SECTION 12 GRANTEE'S RESPONSIBILITIES FOR WORK**

The Grantee shall be responsible for any and all disputes arising out of its contracts for work on the Project; including but not limited to bid disputes and payment disputes with the Grantee's contractors and subcontractors. The State will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work.

#### **SECTION 13 PROJECT OFFICIALS AND NOTICES**

The State's Program Manager shall be the Chief, Division of Flood Management, Department of Water Resources. The State's Program Manager shall be the State's representative and shall have the authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment for work performed under the Funding Agreement. The State's Program Manager may delegate any task to the State's Project Manager.

The Project Manager for the State is David Wright.

The Grantee's Program Manager shall be Benny Young, Director Monterey County Resource Management Agency. The Grantee's Program Manager shall be the Grantee's representative and shall have the authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment of work performed under the Funding Agreement. The Grantee's Program Manager may delegate any task to the Grantee's Project Manager.

The Grantee Project Manager shall be John Ford, Management Analyst, Monterey County Resource Management Agency. The Grantee Project Manager shall be the Grantee's representative for the administration of the Agreement and shall have full authority to act on behalf of the Grantee, including authority to execute all payment requests. All communications given to the Project Manager shall be as binding as if given to the Grantee.

Either party may change its representative upon written notice to the other party. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Funding Agreement shall be in writing to the Project Manager.

Notices required to be given to the State in writing by the Grantee under this Agreement shall be sent to:

David Wright, P.E., Senior Engineer, Water Resources  
State of California  
Department of Water Resources  
Flood Corridor Program  
3464 El Camino Avenue, Suite 200  
Sacramento, CA 95821

Notices required to be given to the Grantee in writing by the State under this Agreement shall be sent to:

Benny Young, Director  
Monterey County Resource Management Agency  
168 W. Alisal Street, 2<sup>nd</sup> Floor  
Salinas, CA 93901

A change of address for delivery or notice may be made by either party by written notice of such change of address to the other party.

Notices may be sent by any of the following means: delivery in person, by certified U.S. Mail, postage prepaid, by "overnight" delivery service or, electronic transmission followed by submittal of a hard copy.

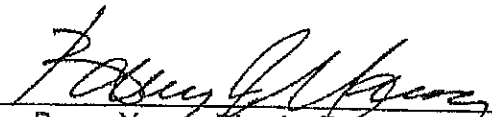


**SECTION 14 MAINTENANCE OF PROPERTY IMPROVED**

Grantee agrees to make provisions to insure that the property is used, managed, maintained, developed, rehabilitated, or restored with the grant funds provided in this Agreement consistent with the purposes of the program and is required to continue in perpetuity or until deemed no longer necessary by the State. Specific maintenance activities are outlined in Exhibit E, Planned Maintenance Activities. The Grantee or their successors may, with the approval of the State, transfer this responsibility to use, manage, and maintain the property as discussed in Exhibit A, Standard Terms: Easements.

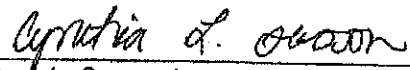
IN WITNESS HEREOF, the following authorized representatives have executed this Agreement as of the date first above written and approved as to Legal form and sufficiency.

**MONTEREY COUNTY**

By:   
Benny Young, Director Resource Management Agency

Date: 6/12/2014

Approved as to Legal Form and Sufficiency

By:   
Deputy County Counsel Cynthia L. Hasson

Date: 6-12-14

SAP Contract No. 4600010665

STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES

By: Keith E. Swanson  
Keith E. Swanson, Chief, Division of Flood Management

Date: 6/18/14

Approved as to Legal Form and Sufficiency

By: Robin E. Brewer  
Robin E. Brewer, Assistant Chief Counsel

Date: 6-13-14

**EXHIBIT B – SAP CONTRACT NO. 4600010665**

SAP Contract No. 4600010665

**Attachments**

**List of Exhibits:**

**Exhibit A – Standard Terms**

**Exhibit B – Project Location**

**Exhibit C – Scope of Work**

**Exhibit D – Budget**

**Exhibit E – Planned Maintenance Activities**

STANDARD TERMS

1. ACCOUNTING AND DEPOSIT OF GRANT DISBURSEMENT:

- a) Separate Accounting of State Grant Disbursements and Interest Records: The Grantee shall account for the money disbursed pursuant to this Agreement separately from all other Grantee's funds. The Grantee shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. The Grantee shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds. The Grantee shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by the State at any and all reasonable times.
- b) Disposition of Money Disbursed: All money disbursed pursuant to this Agreement shall be deposited, administered, and accounted for pursuant to the provisions of applicable law.
- c) Remittance of Unexpended Funds: The Grantee, within a period of sixty (60) days from the final disbursement from the State to the Grantee of State Grant funds, shall remit to the State any unexpended funds that were disbursed to the Grantee under this Agreement and were not needed to pay Eligible Project Costs.
- d) Interim and Final Audits: The State reserves the right to conduct an audit at any time between the execution of this Agreement and the completion of the Project, with the costs of such audit borne by the State. After completion of the Project, the State may require the Grantee to conduct a final audit, at the State's expense.

Pursuant to Government Code Section 8546.7, the contracting parties shall be subject to the examination and audit of the State for a period of five (5) years after project completion. All Grantee's records and those of the Grantee's subcontractors related to this Agreement shall be retained for at least five (5) years after Project completion.

- 2. **ACKNOWLEDGEMENT OF CREDIT:** The Grantee shall include appropriate acknowledgement of credit to the State and to all cost-sharing partners for their support when promoting the Project, erecting signs at the project site, or using any data and/or information developed under the Agreement.
- 3. **AMENDMENT:** This Agreement may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in

any way contrary to applicable law. Requests by the Grantee for amendments must be in writing stating the amendment request and the reason for the request.

4. **AMERICANS WITH DISABILITIES ACT:** By signing this Agreement, Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
5. **ANTITRUST CLAIMS:** Grantee shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in Grantee's contracts with other entities for acquisition of goods, and services and construction of public works with funds provided by the State under this Agreement.
6. **APPROVAL:** This Agreement is of no force or effect until signed by all parties to the agreement. Grantee may not submit invoices or receive payment until has all required signatures have been obtained.
7. **AVAILABILITY OF FUNDS:** Work to be performed under this Agreement is subject to availability of funds through the State's normal budget process.
8. **CALIFORNIA CONSERVATION CORPS:** As required in Water Code Section 79038(b), Grantee shall examine the feasibility of using the California Conservation Corps or community conservation corps to accomplish the habitat restoration, enhancement and protection activities listed in the Scope of Work (Exhibit C), and shall use the services of one of these organizations whenever feasible.
9. **CLAIMS DISPUTE:** Any claim that the Grantee may have regarding the performance of this agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the Project Manager, Department of Water Resources, within thirty (30) days of the Grantee's knowledge of the claim. Project Manager and Grantee shall then attempt to negotiate a resolution of such claim and process an amendment to this Agreement to implement the terms of any such resolution.
10. **COMPETITIVE BIDDING AND PROCUREMENTS:** Grantee shall comply with all applicable laws and regulations securing competitive bids and undertaking competitive negotiations in Funding Recipient's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by State under this Funding Agreement.

EXHIBIT B – SAP CONTRACT NO. 4600010665

EXHIBIT A  
SAP Contract No. 4600010665

11. CONDITIONS FOR DISBURSEMENT: The State shall have no obligation to disburse money under this Agreement unless and until the Grantee has satisfied the State that the disbursement is in accordance with the requirements of the legislation creating the funding source for the grant funds. Before engaging in site modifications to be paid for from State funds, the Grantee must complete the following:

- a) For Construction Projects, the Grantee must submit to the State, final plans and specifications certified by a California Registered Civil Engineer or equivalent documentation as to compliance with the approved Project.
- b) The Grantee must submit a written statement by an authorized representative that it has obtained all necessary permits, easements, rights-of-way and approvals as may be required by other State, federal, and/or local agencies, as specified in Section 11 of this Agreement.
- c) The Grantee must demonstrate compliance with the California Environmental Quality Act and if applicable the National Environmental Policy Act by submitting copies of any environmental documents, including environmental impact reports, environmental impact statements, negative declarations, mitigation agreements, legal notices and environmental permits as may be required prior to modifying the Project site.
- d) The Grantee must demonstrate continuing availability of sufficient funds to complete the Project.
- e) The Grantee shall develop, and submit for State approval, a plan to minimize the impacts to adjacent landowners (California Water Code Section 79041, Division 26, Chapter 5, Article 2.5). This plan may require completion of a hydrologic and hydraulic study, and if so the specifications will be included in Exhibit C, the project Scope of Work.

12. CONFLICT OF INTEREST:

- a) Current State Employees:  
No state officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.  
  
No state officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
- b) Former State Employees:

For the two year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Agreement while employed in any capacity by any state agency.

For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed Agreement within the twelve-month period prior to his or her leaving state service.

c) City/County/Non Profit Employees:

No employee, officer, employer or agency of the City/County/Non Profit shall participate in the selection or in the award or administration of a contract supported by State Funds if a conflict of interest, real or apparent, would be involved. The City/County/Non Profit shall comply with all applicable laws on conflict of interest including, but not limited to the following: Public Contract Code (PCC) Sections 10335.5 et seq., PCC Sections 10365.5 et seq., PCC Sections 10410 et seq., and Government Code Sections 1090 et seq., and 8100 et seq.

13. **DRUG-FREE WORKPLACE CERTIFICATION:** By signing this contract, the Grantee hereby certifies under penalty of perjury under the laws of the State of California that the Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees, contractors and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors or subcontractors for violations.
- b) Establish a Drug-Free Awareness Program to inform employees, contractors and subcontractors about all of the following:
  - 1. The dangers of drug abuse in the workplace,
  - 2. The Grantee's policy of maintaining a drug-free workplace,
  - 3. Any available counseling, rehabilitation and employee assistance programs, and
  - 4. Penalties that may be imposed upon employees, contractors or subcontractors for drug abuse violations.
- c) Every employee, contractor and subcontractor who works under this Agreement:

1. Will receive a copy of the Grantee's drug-free policy statement, and
  2. Will agree to abide by terms of the Grantee's statement as a condition of employment, contract or subcontract.
14. **EASEMENTS:** Where the Grantee acquires property in fee title or funds improvements to property already owned in fee by the Grantee using grant funds provided through this Agreement, or proposes that property be conserved as open space and such conserved property is used in determining the benefits score for the project, an appropriate easement or other title restriction providing for floodplain preservation and agricultural and/or wildlife habitat conservation for the subject property in perpetuity, approved by the State, shall be conveyed to a regulatory or trustee agency or conservation group acceptable to the State. Any easement or other title restriction applied to any portion of the project area as part of the project must be in first position ahead of any recorded mortgage or lien on the property unless this requirement is waived by the State.
- Where the Grantee acquires an easement under this Agreement, the Grantee agrees to monitor and enforce the terms of the easement, unless the easement is subsequently transferred to another land management or conservation organization or entity with State permission, at which time monitoring and enforcement responsibilities will transfer to new easement owner.
- Failure to provide an easement acceptable to the State can result in termination of this Agreement.
15. **ELIGIBLE PROJECT COSTS:** Grantee shall apply State Grant funds received only to eligible project costs, as identified in Exhibit D - Budget.
16. **GOVERNING LAW:** This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
17. **INDEMNIFICATION:** Grantee shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement, including, but not limited to any claims or damages arising from the planning, design, construction, maintenance and/or operation of levee rehabilitation measures for this Project and any breach of this Agreement. Grantee shall require its contractors to name the State, its officers, agents, and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement.
18. **INSPECTIONS OF PROJECT BY STATE:** The State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Agreement. This right shall extend to any subcontracts, and the



**EXHIBIT B – SAP CONTRACT NO. 4600010665**

EXHIBIT A  
SAP Contract No. 4600010665

Grantee shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Agreement with the State.

19. **INSPECTIONS OF BOOKS, RECORDS AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Funding Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Funding Agreement. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Funding Agreement, and the State may withhold disbursements to Grantee or take any other action it deems necessary to protect its interests as provided in the Funding Agreement.
20. **LABOR COMPLIANCE PLAN:** Prior to awarding a contract for public works projects funded in whole or in part from Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, or any other source of funding so requiring, the Grantee shall comply with Public Resources Code Section 75075, which requires adoption and enforcement of a labor compliance program pursuant to subdivision (b) of Labor Code Section 1771.5 for application to the funded public works project. At the State's request, Grantee must promptly submit written evidence of its compliance with Labor Compliance Program requirements.
21. **NONDISCRIMINATION:** During the performance of this Agreement, the Grantee, its contractors, and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Grantee and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Govt. Code § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et. seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code § 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Grantee and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Funding Agreement.

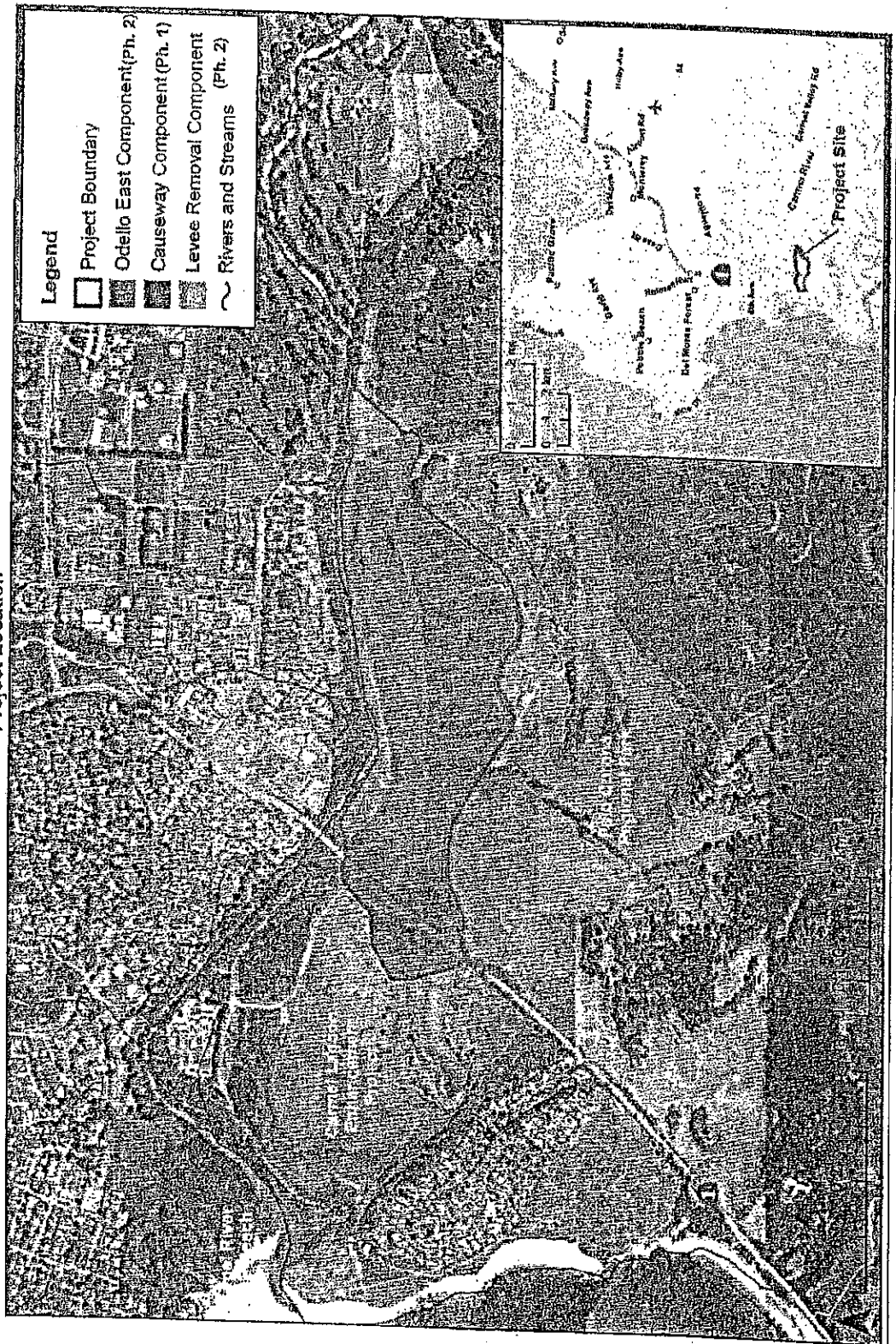
22. **PROHIBITION AGAINST DISPOSAL OF PROPERTY WITHOUT STATE PERMISSION:** The Grantee shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, without prior permission of the State. The Grantee shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of the Grantee to meet its obligations under this Agreement, without prior written permission of the State. The State may require that the proceeds from the disposition of any real or personal property be remitted to the State, up to the value of the State funds disbursed to the Grantee for improvements to the property under this Agreement.
23. **REIMBURSEMENT CLAUSE:** If applicable, travel and per diem expenses to be reimbursed under this contract shall be the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations.
24. **SEVERABILITY:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
25. **SUCCESSOR AND ASSIGNS:** This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto. No assignment or transfer of this Agreement or any part thereof, rights hereunder, or interest herein by the Grantee shall be valid unless and until it is approved by the State and made subject to such reasonable terms and conditions as the State may impose.
26. **TERMINATION WITHOUT CAUSE:** The State may terminate this Agreement without cause on thirty (30) days advance written notice. The Grantee shall be reimbursed for all reasonable expenses incurred up to the date of termination.
27. **TERMINATION FOR CAUSE:** The State may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner herein provided including but not limited to reasons of default under Standard Term 28 -- Termination By Grantee.
28. **TERMINATION BY GRANTEE:** Subject to State approval which may be reasonably withheld, Grantee may terminate this Agreement and be relieved of contractual obligations. In doing so, Grantee must provide a reason(s) for termination. Grantee must submit all progress reports summarizing accomplishments up until termination date. If the grant is cancelled, the Grantee obligation to provide the required 10% local funding remains in effect.

for all Flood Corridor Program funds expended to that point.

29. **THIRD PARTY BENEFICIARIES:** The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.
30. **TIMELINESS:** Time is of the essence in this Agreement.
31. **WITHHOLDING OF GRANT FUNDS BY STATE:**
- a) **Withholding Clause:** The State, at its discretion, may withhold ten percent (10%) of the funds requested by the Grantee for reimbursement of Eligible Project Costs until applicable milestones are completed or until the Project is completed and Final Report is received. Withheld funds may be released upon completion of milestones identified in Exhibit C, the project Scope of Work.
  - b) **Additional Conditions for Withholding:** If the State determines that the Project is not being completed substantially in accordance with the provisions of this Agreement or that the Grantee has failed in any other respect to comply substantially with the provisions of this Agreement, and if the Grantee does not remedy any such failure to the State's satisfaction, the State may withhold from the Grantee all or any portion of the State Grant commitment and take any other action that it deems necessary to protect its interests.
32. **WORKERS' COMPENSATION:** The Grantee affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that code, and the Grantee affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.

EXHIBIT B  
SAP Contract No. 4600010665

Carmel River Floodplain Restoration and Environmental Enhancement Project  
Project Location



## SCOPE OF WORK

MONTEREY COUNTY  
Carmel River Floodplain Restoration and  
Environmental Enhancement Project**I. Project Goals and Objectives**

The Carmel River Floodplain Restoration and Environmental Enhancement Project (Project) is a multi-objective project that combines flood protection, wildlife corridor and habitat enhancement, agricultural land protection, storm water detention, and public recreation on a 130-acre site in the lower Carmel River floodplain.

**Project Objectives**

- A. Reduce Flood Flows in Urban Areas: County Services Area 50 (CSA-50) is a developed area located along the north side of the lower Carmel River and includes the highest number of repetitive loss properties in Monterey County. Of the 147 acres of developed land in CSA-50, approximately 105 acres flood during the 50-year flood event and all 147 acres flood during the 100-year event. The Project will reconnect the historic floodplain on the south side of the River, by removal of levees and excavation of material in the floodplain. This expanded floodplain will receive the floodwaters moving water away from the developed areas of the floodplain and reduce the water surface elevations by an estimated 0.5-1.0 foot during a 100-year storm event. This is expected to reduce potential liabilities for flood damage costs for up to 50 repetitive loss structures in Monterey County and reduce the number of structures needing coverage under the federal Flood Insurance Program.
- B. Increase Riparian and Wetland Habitat: The Project will restore approximately 90 acres of riparian and wetland habitat in the historic floodplain, providing increased habitat acreage for sensitive species including steelhead trout, California red-legged frog, and western pond turtle, as well as six additional state species of concern. The project will provide increased quantity and quality of breeding and/or foraging habitat for 27 avian species that have been identified by one or more bird conservation plans as species of concern.
- C. Provide Habitat Connection Across the Floodplain: The Project includes a flood conveyance by-pass or causeway under Highway 1. This causeway will be sized such that large animals can migrate between the open space area connecting to the Carmel Lagoon on the west with the recreated wetlands on the east side of Highway 1. This will provide a connection under Highway 1 for wildlife species utilizing over 25,000 acres of protected habitat areas in the immediate project vicinity.
- D. Protect Agricultural Land from Flooding: The Project will establish a permanent 36-acre organic farm above the level of the 100-year floodplain. The material removed

from the reconstituted floodplain will be used to fill the farm land to the south. The resulting farm land would then not be subject to inundation in a flood event.

- E. Improve Water Quality: The Project will provide additional filtration for sediment and nutrients through the creation of a functioning floodplain and associated riparian habitat and wetlands, resulting in improved water quality in the surface and groundwater flows entering the Carmel River Lagoon, the Carmel Bay (State-designated Area of Special Biological Significance, Marine Protected Area, and Critical Coastal Area) and the Monterey Bay National Marine Sanctuary.
- F. Recharge Groundwater and Base Flows to the Carmel River: The Project will address one of the watershed's most critical environmental concerns - very low or no flow in the Lower Carmel River and Carmel Lagoon during the dry season. The restored floodplain will expose storm water to a greater surface area which will provide for a greater degree of water infiltration to the aquifer. Groundwater monitoring wells established on the project site in 2009 documented that groundwater recharge from the Carmel River establishes a base level in the aquifer underlying the Project site. Sedimentary interbedding on the floodplain provide additional capacity for infiltration and recharge to the aquifer above this base level. Due to these conditions, opportunities exist on the parcel to enhance groundwater recharge.
- G. Public Trails and Recreation: The Project will include a public trail along the southern edge of the farm field and will link to over 5000 acres of public land (Palo Corona Regional Park) immediately adjacent to the project site.

## II. Project Description

The project consists of two interrelated phases. Each phase is an integral component of the overall project, but they are differentiated because each has a set of constraints which may result in one phase moving along faster than the other phase. The phases are described as follows:

### Phase One – Causeway

Phase One includes reconstruction of Highway 1 south of the Carmel River Bridge in including a 520-foot long flood by-pass or conveyance causeway under State Route 1 and contouring the embankments along the Highway consistent with current California Department of Transportation standards. The causeway will allow floodwaters from the Carmel River to flow into the south branch of the Carmel River channel which was dammed with installation of State Route 1. Excess material taken from the road bed for the causeway will be placed in the "fill" area for the agricultural preserve.

### Phase Two – Levee Removal, Agricultural Preserve, Restoration of Floodplain Habitat

Phase Two will include; removal of approximately 2,400 linear feet of the levee along the south side of the Carmel River, grading of approximately 55 acres of existing farmland to create restored floodplain habitat and filling approximately 36 acres of land to create an agricultural preserve above the 100-year floodplain. The grading on the existing 55 acres of farmland area will result in 36 acres of farmland above the 100 year floodplain, and 19 acres

of land restored to floodplain. The floodplain restoration grading will be designed for the re-establishment of riparian vegetation and grading for a public trail. The soil excavated from the levee removal and floodplain restoration will be used to fill the new agricultural preserve area. The ability to retain fill material on site will result in significant cost savings. Upon completion of grading, the restored floodplain will be planted with native species and invasive species control will occur as part of the restoration plan.

### III. Tasks and Deliverables

Subtasks in bold indicate project elements funded under this Agreement.

#### Task 1: Administration

##### **Subtask 1.1 Quarterly Progress Reports**

Progress reports will be submitted to DWR on a quarterly basis in accordance with Section 8 of this Agreement.

- Deliverable: Quarterly Progress Reports

##### **Subtask 1.2 Final Report**

The final report will be submitted in accordance with Section 9 of this Agreement. It will include a description of results of project activities, as well as photographs of pre-project conditions and work completed.

- Deliverable: Final Report

##### **Subtask 1.3 Written Certification by California Registered Civil Engineer**

Per Section 9 of this Agreement, the completed construction will be inspected and written certification of conformance with final approved contract documents, including project plans and specifications will be provided by a registered Civil Engineer.

- Deliverable: Wet-stamped certification by a registered Civil Engineer on final record drawings and appropriate contract documents.

##### **Subtask 1.4 Final Financial Report**

The final financial report will be submitted in accordance with Section 9 of this Agreement. It will be submitted concurrently with the final report.

- Deliverable: Final Financial Report

##### **Subtask 1.5 Post Completion Reports**

This subtask includes the delivery of an annual report of maintenance activities on an annual basis in accordance with Section 9 of this Agreement and Exhibit E: Planned Maintenance Activities.

- Deliverable: Annual Maintenance Summary Report

Task 2: Design

**Subtask 2.1 Causeway Design**

This subtask includes work associated with advancing the design of the causeway. This work includes updates to the Hydrologic and Hydraulic Study.

- Deliverable: Updated Hydrologic and Hydraulic Study

**Subtask 2.2 Project Study Report for Caltrans**

**Subtask 2.3 Restoration Plan**

A restoration plan including planting ratios, success criteria for monitoring, and a monitoring plan will be developed as part of this subtask.

- Deliverable: Final Restoration Plan

**Subtask 2.4 Finalize Plans**

**Subtask 2.5 Prepare Stormwater Pollution Prevention Plan (SWPPP)**

This subtask includes preparation of a Storm Water Pollution Prevention Program in accordance with State and Federal requirements to protect water quality during construction and implementation of the project.

- Deliverable: SWPPP

**Subtask 2.6 Construction Staking, Management, and Testing**

This subtask includes construction staking services performed under the direction of a licensed Land Surveyor, project management, and soils testing.

- Deliverable: Completed Highway 1 Plans, Restoration Plans, and SWPPP.

Task 3: Property Acquisition

**Subtask 3.1 Acquisition of Easements for construction of Causeway.**

**Subtask 3.2 Property Tenure/Acquisition**

- Deliverables: Phase 1: Construction Easements, Phase 2: Property Title.

Task 4: Permitting and Environmental Review

**Subtask 4.1 Preparation and Public Review of Negative Declaration**

A subsequent Initial Study and Mitigated Negative Declaration/Environmental Assessment or Finding of No Significant Impact will be prepared to address the work within the Caltrans Right of Way. The County of Monterey will function as Lead agency for the CEQA document and Caltrans will coordinate the NEPA document.

- Deliverable: Mitigated Negative Declaration and public comment letters



## EXHIBIT B – SAP CONTRACT NO. 4600010665

EXHIBIT C  
SAP Contract No. 4600010665

- Subtask 4.2 Coastal Development Permit from California Coastal Commission**
- Deliverable: Coastal Development Permit
- Subtask 4.3 Encroachment Permit**
- Deliverable: Encroachment Permit from California Department of Transportation
- Subtask 4.4 Section 401 National Pollutant Discharge Elimination Systems (NPDES) Permit**
- Deliverable: Section 401 NPDES Permit from Central Coast Regional Water Quality Control Board
- Subtask 4.5 Section 404 Permit**
- Deliverable: Clean Water Act Section 404 Permit
- Subtask 4.6 Streambed Alteration Agreement**
- Deliverable: Section 1603 Streambed Alteration Agreement from California Department of Fish and Wildlife
- Subtask 4.7 Section 4(f) Compliance with US Department of Transportation**
- Deliverable: Documentation of compliance.

### Task 5: Project Implementation

#### **Subtask 5.1: Project Administration**

This subtask includes cost associated with administration of the project implementation and grant administration, including staff labor and project-related overhead costs. In addition, a Plan to Minimize Impacts to Adjacent Landowners will be drafted and submitted to the satisfaction of DWR in accordance with Water Code Section 79041.

- Deliverable: Invoices, Labor charges, overhead costs, receipts, and backup documentation.
- Deliverable: Plan to Minimize Impacts to Adjacent Landowners

#### **Subtask 5.2: Contractor Procurement**

##### **5.2.1: Bidding Period**

- Send out Request for Proposals
- Pre-bid meeting
- Answer questions from prospective contractors

##### **5.2.2 Bid opening and contract award**

- Receive Proposals and bids

- Evaluate proposals
- Negotiate final contract
- 5.2.3 Notice to proceed
  - Issue notice to proceed
- Subtask 5.3: Construction Activities
  - Deliverables: Project status reports
- 5.3.1 Existing Utility Removal and Replacement

This task involves the removal and temporary relocation of existing overhead utilities along Highway 1. The utilities along Highway 1 will be installed underground as part of the causeway improvements.
- 5.3.2 Temporary Detour Construction

This subtask includes construction of a temporary detour on east side of State Route 1.
- 5.3.3 Embankment Removal and Causeway Construction

Remove and replace existing State Route 1 to include new slope embankments and a new 520-foot long causeway under State Route 1. Remove temporary detour and restore topography.
- 5.3.4 Utility removal Along Existing Levee

This task involves the removal and relocation of existing overhead utilities along the Levee along the south side of the Carmel River. The utilities along Highway 1 will be installed underground as part of the causeway improvements.
- 5.3.5 Levee and Debris Removal

Removal of approximately 2,400 feet of existing levee and debris along the south side of the Carmel River and placement of fill in an area designated to be organic farmland elevated out of the floodplain.
- 5.3.6 Initial Grading

This subtask includes the grading and re-contouring of the east edge of the Odello property to allow flood flows to access the floodplain via the south bank of the Carmel River.
- 5.3.7 Finish Grading

This subtask includes activities to restore area within restored floodplain to support a riparian environment and creation of agricultural preserve area outside of the floodplain. It includes top soil installation.
- 5.3.8 Planting of Vegetation (Seeding)

This subtask includes planting of vegetation in the floodplain area. Application methods include hydro seeding.
- 5.3.9 Construction Biological Monitoring

This subtask includes the biologist being on site to conduct pre-construction surveys, and ongoing site monitoring as required by the Mitigation Measures contained in the CEQA/NEPA document. The Biologist will provide reports of their findings and recommendations in the event that unexpected biological resources are potentially impacted.

**5.3.10 Storm Water Pollution Prevention Program**

This subtask includes implementation of a Storm Water Pollution Prevention Program to protect water quality during construction and during implementation of the project.

Subtask 5.4 Notice of Completion

**Task 6: Construction Implementation**

Subtask 6.1 As-Built Engineering Documentation

- Deliverable: As-Built Engineering Documentation (Plans and Specifications)

Subtask 6.2 Post Construction Mitigation Monitoring

Maintenance and monitoring will be conducted in accordance with Section 9 of this Agreement and Exhibit E: Planned maintenance activities.

- Deliverable: Annual Maintenance Summary Report

**EXHIBIT B - SAP CONTRACT NO. 4600010665**

#### IV. Schedule

EXHIBIT C  
GAP Contract No. 4500010800

[illegible]

EXHIBIT C  
EAP Contract No. 460001065

[illegible]

## V. Benefits

### Flood Benefits

The Lower Carmel River Floodplain Restoration and Enhancement Project will be completed on the 130-acre historic floodplain located just upstream of the Carmel River Lagoon and east of Highway One on land known as the Odello fields. The land is part of the historic floodplain along the Carmel River but has not been available for a typical flooding regime for almost 100 years due to agricultural production on the land. In the early 1900s, earthen levees were built on the south side of the river by the farmer-landowner to constrain the river and the entire expanse of wetlands and riparian forest surrounding the Carmel River Lagoon and Odello East was put into agricultural production for artichokes. Downstream of the present day Highway One, the levee and agricultural production narrowed the riparian forest and wetlands on the south side of the river for nearly ¼-mile at their widest to a narrow strip along the river. Upstream of Highway One, the riparian forest on the south side of the main stem was reduced from a maximum of about 1400 feet wide to a narrow strip.

The levees kept flood events out of the fields except during larger flows (10-year storms and larger), which spread into the floodplain and caused damages to residential and commercial properties. The existing levees are not adequate to hold the 1% annual chance flood.<sup>1</sup> The construction of Highway One in the early 1930s further diminished the ecological condition of the entire coastal ecosystem by placing a physical barrier between the Carmel River Lagoon and the larger floodplain thereby preventing hydrologic connectivity across the floodplain. Highway One created a north-south barrier to flood flows as well, resulting in flood waters flowing to the north side of the river, which affects areas such as Mission Fields, the Crossroads Shopping Center and Rio Road/Val Verde Road. Today the lower Carmel River is confined by levees on both sides, beginning near the river's mouth and running 1.2 miles upstream.<sup>2</sup> Recent major floods include January and March 1995 events and the February 1998 event. These events resulted in approximately \$10,520,000 (2009 dollars) in damages and affected 220 residences and the Highway One Bridge over the river had to be completely replaced.

The project focuses on restoring a more frequent flooding regimen to 90-acres of the Odello East property and provides a flood conveyance by-pass or causeway to both reconnect the west and east sides of the floodplain hydrologically and for habitat connectivity and wildlife movement. The remaining 36 acres of the Odello property will be retained as an agricultural preserve with an organic farming operation and native plant nursery with public access. The ecological goals of the project are to restore connectivity, increase riparian and wetland habitat and natural ecological function to a critical section of the Carmel River watershed. The flood benefit goal of the project is to reduce flood damages to the north overbank areas which historically have sustained damages and are repetitive loss properties.

The project is subsequent to a series of habitat conservation and restoration activities occurring in the lower floodplain and lagoon since the 1990s including the Carmel River Lagoon Riparian

<sup>1</sup>Monterey County Water Resources Agency. Monterey County Flood Management Plan, pp. 20. Update 2008. Prepared for Monterey County.

<sup>2</sup>Balance Hydrologics, Inc., 2007. Design Alternatives Analysis for Floodplain Restoration at the Odello Property.

**EXHIBIT B -- SAP CONTRACT NO. 4600010665**

EXHIBIT C  
SAP Contract No. 4600010665

Restoration Project completed in 2000 and the Carmel River Lagoon South Arm Restoration Project completed in 2004. Both of these projects were completed by California State Parks in partnership with the State Department of Transportation and the Big Sur Land Trust. Partners in this Project include California State Parks, Coastal Conservancy, Monterey County Water Resources Agency, Monterey County Public Works, Monterey Peninsula Water Management District and the Big Sur Land Trust.

**Wildlife and/or Agricultural Benefits**

The key wildlife objectives associated with this project are to restore important habitat for several wildlife species by establishing the type of vegetation typical of river corridor environments and to provide a more dense and diverse riparian corridor. This would create important habitat for sensitive species including California red-legged frogs and western pond turtles. In addition the project will increase flow conveyance and habitat connectivity between the project site and the Carmel River Lagoon benefiting habitat for the south/central California Coast Steelhead.

The project will also maintain an active organic agricultural operation on a portion of the Project site in order to preserve historically important agricultural operations.

EXHIBIT B - SAP CONTRACT NO. 4600010665

EXHIBIT D  
SAP Contract No. 4600010665

BUDGET

MONTEREY COUNTY

CARMEL RIVER FLOODPLAIN RESTORATION AND ENVIRONMENTAL ENHANCEMENT PROJECT

Task	DWR Funds (Phase 1)	DWR Funds (Phase 2)	DWR Funds (Total)	Monterey County Funds	Other Grant Funds	Total
1. Administration	\$2,500	\$2,500	\$5,000			\$5,000
1.1 Quarterly Progress Reports	\$1,000	\$1,000	\$2,000			\$2,000
1.2 Final Report	\$750	\$750	\$1,500			\$1,500
1.3 Written Certification	\$250	\$250	\$500			\$500
1.4 Final Financial Report	\$250	\$250	\$500			\$500
1.5 Post Completion Reports	\$250	\$250	\$500			\$500
2. Design	\$247,200	\$225,000	\$472,200		\$1,827,800	\$2,300,000
2.1 Causeway Design					\$1,000,000	\$1,000,000
2.2 Project Study Report						
2.3 Restoration Plan		\$200,000	\$200,000			\$200,000
2.4 Finalize Plans						
2.5 SWPPP Preparation	\$25,000	\$25,000	\$50,000		\$100,000	\$150,000
2.6 Construction Staking, Management, and Testing	\$222,200		\$222,200		\$727,800	\$950,000

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EXHIBIT B - SAP CONTRACT NO. 4600010665

EXHIBIT D  
SAP Contract No. 4600010665

Task	DWR Funds (Phase 1)	DWR Funds (Phase 2)	DWR Funds (Total)	Monterey County Funds	Other Grant Funds	Total
<b>3. Property Acquisition</b>				\$1,810,000		\$1,810,000
3.1 Acquisition of Basements						
3.2 Property Tenure				\$1,810,000		\$1,810,000
<b>4. Permitting and Environmental Review</b>	\$157,800	\$100,000	\$257,800			\$257,800
4.1 Preparation and Public Review of Negative Declaration	\$137,800	\$95,000	\$232,800			\$232,800
4.2 Coastal Development Permit	\$5,000		\$5,000			\$5,000
4.3 Encroachment Permit	\$5,000		\$5,000			\$5,000
4.4 Section 401 (NPDES) Permit	\$5,000		\$5,000			\$5,000
4.5 Section 404 Permit	\$5,000		\$5,000			\$5,000
4.6 Streambed Alteration Agreement		\$5,000	\$5,000			\$5,000
4.7 Section 4(f) Compliance with State Parks						
<b>5. Project Implementation</b>	\$2,092,500	\$2,152,500	\$4,245,000		\$7,370,000	\$14,615,000
5.1 Project Administration	\$25,000	\$25,000	\$50,000		\$190,000	240,000
5.2 Contractor Procurement						
5.2.1 Bidding Period						
5.2.2 Bid opening and contract award						
5.2.3 Notice to proceed						

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**EXHIBIT B - SAP CONTRACT NO. 4600010665**

EXHIBIT D  
SAP Contract No. 4600010665

Task	DWR Funds (Phase 1)	DWR Funds (Phase 2)	DWR Funds (Total)	Monterey County Funds	Other Grant Funds	Total
5.3 Construction Activities						
5.3.1 Existing Utility Removal and Replacement	\$500,000		\$500,000		\$100,000	\$600,000
5.3.2 Temporary Detour Construction	\$500,000		\$500,000		\$250,000	\$750,000
5.3.3 Embankment Removal and Causeway Construction	\$1,042,500	\$377,500	\$1,420,000		\$6,530,000	\$7,950,000
5.3.4 Utility Removal Along Existing Levee		\$125,000	\$125,000			\$125,000
5.3.5 Levee and Debris Removal		\$200,000	\$200,000		\$30,000	\$230,000
5.3.6 Initial Grading		\$600,000	\$600,000		\$40,000	\$640,000
5.3.7 Finish Grading		\$300,000	\$300,000		\$30,000	\$330,000
5.3.8 Planting of Vegetation (Seeding)		\$300,000	\$300,000			\$300,000
5.3.9 Construction Biological Monitoring		\$200,000	\$200,000		\$100,000	\$300,000
5.3.10 SWPPP Implementation	\$25,000	\$25,000	\$50,000		\$100,000	\$150,000
5.4 Notice of Completion						
6 Construction Implementation		\$20,000	\$20,000		\$130,000	\$150,000
6.1 As-Built Engineering Documentation						
6.2 Post Construction Mitigation Monitoring		\$20,000	\$20,000		\$130,000	\$150,000
<b>Total</b>	<b>\$2,500,000</b>	<b>\$2,500,000</b>	<b>\$5,000,000</b>	<b>\$1,310,000</b>	<b>\$9,327,000</b>	<b>\$16,137,000</b>

1. \$500,000 used as 10% local match for DWR Grant.

PLANNED MAINTENANCE ACTIVITIES  
COUNTY OF MONTEREY  
CARMEL RIVER FLOODPLAIN RESTORATION AND  
ENVIRONMENTAL ENHANCEMENT PROJECT

***Facilities to be Maintained***

Causeway – A roadway structure will be constructed on State Highway 1 that will be elevated over the Carmel Lagoon to provide for water to flow under. The structure will be approximately 520 feet in length and will consist of two 12 foot wide travel lanes and 8 foot wide shoulders.

Levee Removal/Enhancement Area – The Enhancement Area, after the levee is removed, will consist of areas planted with native plants and maintained with irrigation for the first three years as needed. The Enhancement Area will also be designed for self-recruitment of native plants and shrubs with inundation by annual flood flows. The objective of the grading and planting will be to create a natural floodplain environment that does not require ongoing management of either vegetation or sedimentation.

***Maintenance Goals***

Maintenance activities will be based on the preservation of land, protection of wildlife habitat and maintaining transitory storage capacity for reducing flood risk, consistent with the purposes of the Flood Corridor Program.

***Maintenance Framework***

The Causeway Project is to be located on State Route 1, will be constructed by the County of Monterey, but will be a Caltrans facility after construction. As such, it will be owned and maintained by Caltrans as part of the state highway system. The County of Monterey and Caltrans will enter into a Cooperative Agreement prior to construction that will provide for maintenance.

The Levee Removal/Enhancement Area Project will be constructed/installed by the County of Monterey. The agricultural preserve will be owned and maintained by the Big Sur Land Trust after construction while the floodplain area will be dedicated to the County of Monterey.

***Maintenance of Restoration Area***

Maintenance activities will be performed in accordance with the following descriptions:

The Enhancement Area will be documented as to type, location and number of native plants and shrubs installed in each planting area via flagging system and planting plan. Primary maintenance will be to conduct weeding and/or mowing for Years 1-3 along with maintaining irrigation to each planting area and plant. The planting area will be checked as needed for irrigation, plant condition, target planting density, and considerations for target roughness values (i.e., Manning's n) for floodwater conveyance, if applicable. Plant replacement or thinning will be

determined based on likelihood of failure and condition of plants, native and invasive nonnative plant recruitment and, if applicable (i.e., if the floodplain hydrologic and hydraulic modeling indicate a need for continued maintenance of the channel to keep roughness sufficiently low), maintenance of floodwater conveyance capacity. Replacement plants will be noted in planting plan as needed. The ongoing collection of litter on the site will be accomplished under the same programs for all County owned and maintained property.

***Maintaining Agency***

Causeway - Caltrans  
Enhancement Area – Big Sur Land Trust

***Maintenance Funding***

Causeway – State Highway Funding  
Enhancement Area – Stewardship funds from Big Sur Land Trust

***Maintenance Reporting***

The County of Monterey will submit an Annual Report of Maintenance Activities for the Causeway Project and the Levee Removal/Enhancement Area Project to the Department of Water Resources for a period of 5 years following the completion the project. The cooperative agreements with Caltrans and the Big Sur Land trust will require that those entities submit reporting information to the County of Monterey as required to complete the Annual Reports. The Annual Reports will include photos and will describe the maintenance inspections and activities performed during the year and any outstanding maintenance items.

***Long Term Maintenance Plan***

Causeway – Caltrans will be responsible for the long term maintenance of the Causeway as part of their maintenance responsibilities for the State highway system.

Levee Removal/Enhancement Area - The Big Sur Land Trust will incorporate the maintenance of the Restoration Area into its annual stewardship program for all properties in ownership by the Big Sur Land Trust. Annual activities for land stewardship include non-native plant species management, irrigation management if appropriate, plant condition assessment and replacement, and volunteer stewardship crews. BSLT Land Stewardship staff will oversee the long term maintenance of the Restoration Area.

**WILDLIFE CONSERVATION BOARD**

**GRANT AGREEMENT**

**WC-1059CF**

**Between**

**STATE OF CALIFORNIA/WILDLIFE CONSERVATION BOARD**

**and**

**BIG SUR LAND TRUST**

**for**

**CARMEL RIVER RIPARIAN RESTORATION**

**MONTEREY COUNTY**

**State of California  
Natural Resources Agency  
Wildlife Conservation Board  
Department of Fish and Game**

EXHIBIT C - WILDLIFE CONSERVATION BOARD GRANT AGREEMENT WC-1059CF

Carmel River Riparian Restoration, Monterey County  
Grant Agreement Number WC-1059CF  
Project ID 2010174

Page 1

**GRANTEE:** Big Sur Land Trust  
**Project Director:** Donna Meyers, Director of Conservation  
509 Hartnell Street  
Monterey, California 95060  
(831) 625-5523 ext. 105

**GRANTOR:** State of California, Wildlife Conservation Board  
**State Project Manager:** Chad Fien  
Wildlife Conservation Board  
1807 13<sup>th</sup> Street, Suite 103  
Sacramento, California 95811  
(916) 323-8979  
Facsimile (916) 323-0280  
Email [cfien@dfg.ca.gov](mailto:cfien@dfg.ca.gov)

**LANDOWNER:** Clinton and Margaret Eastwood  
7145 Carmel Valley Rd  
Carmel, California 93923

**Grant Agreement No.:** WC-1059CF  
**Terms of Agreement:**  
**Board Approval Date:** June 2, 2011  
**Capital Improvements:** Date of Notice to Proceed through December 31, 2014  
**Management:** Completion of Capital Improvements to June 1, 2036  
**Project Life:** Twenty-five years  
**Project ID:** 2010174

**FUNDING CERTIFICATION**

I hereby certify that (a) the following funds will be encumbered on behalf of Grantor; and  
(b) Grant Funds shall not be disbursed unless and until sufficient proceeds from the  
source identified below become available to Grantor to disburse.

*Kexame Woodward*  
Fiscal Officer (WCB)

4-20-11  
Date:

**Grant Amount:** \$2,500,000.00  
**Fund Source:** California Clean Water, Clean Air, Safe Neighborhood Parks and  
Coastal Protection Fund, (P-40), (Section 5096.650(a)(1))  
**Appropriation Item:** Chapter 875, Statutes of 2001  
**Line Item:** 3640-801-6029  
**Expenditure Code:** 1000-841-73000

EXHIBIT C - WILDLIFE CONSERVATION BOARD GRANT AGREEMENT WC-1059CF

AMENDMENT NO. 1 TO GRANT AGREEMENT WC-1059CF  
BETWEEN THE  
STATE OF CALIFORNIA/WILDLIFE CONSERVATION BOARD  
AND  
BIG SUR LAND TRUST  
FOR  
CARMEL RIVER RIPARIAN RESTORATION, MONTEREY COUNTY  
Project ID: 2010174

THIS AMENDMENT TO AGREEMENT is made and entered into this 4th day of November, 2014, by and between the State of California, acting by and through the WILDLIFE CONSERVATION BOARD, hereinafter called GRANTOR and BIG SUR LANDTRUST, hereinafter called GRANTEE.

WHEREAS, the parties hereto entered into Grant Agreement WC-1059CF, dated July 13, 2011, and expiring December 31, 2014, to implement Carmel River Riparian Restoration project on the Odello Property in Monterey County, and

WHEREAS, due to circumstances beyond the Grantee's control, work cannot be completed by the Grant expiration date, and

WHEREAS, the Grantor finds a grant extension to December 31, 2018 is reasonable and appropriate.

NOW THEREFORE, the expiration date of said agreement December 31, 2014, as shown on Page 2 and Page 3, is hereby changed to December 31, 2018.

Except as amended herein, all terms and conditions of said agreement will remain unchanged and in full force and effect.

State of California  
Wildlife Conservation Board

By: [Signature]  
John P. Donnelly, Executive Director

Date: 12/23/14

Grantee  
BIG SUR LANDTRUST

By: [Signature]  
Jeannette Tullate-Lewis, President

Date: 12/11/2014

I certify that (a) budgeted funds are available for the extended period stated above; and (b) Grant Funds shall not be disbursed unless and until sufficient proceeds become available to Grantor to disburse.

[Signature]  
Fiscal Officer

11/18/14  
Date:

Grant Amount: \$2,500,000.00  
Fund Source: California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Fund, Section 5098.650(a)(1)  
Appropriation Item: Chapter 875, Statutes of 2001  
Line Item: 3640-801-6029  
Expenditure Code: 14-1000-841-73000

*Carmel River Riparian Restoration, Monterey County  
Grant Agreement Number WC-1059CF  
Project ID – 2010174*

Page 1

## **1. SCOPE OF THE AGREEMENT**

Pursuant to Chapter 4.1 of Division 2, (commencing with Section 1385) of the California Fish and Game Code, and the approval granted by the Wildlife Conservation Board on June 2, 2011, the Wildlife Conservation Board (Grantor) hereby grants to Big Sur Land Trust (Grantee) a sum not to exceed two million five hundred thousand dollars (\$2,500,000.00), subject to the terms and conditions of this Grant (Agreement).

## **2. PURPOSE OF THE GRANT**

The purpose of this Agreement is to restore the lower floodplain of the Carmel River, located in Monterey County, as shown on the attached Exhibit A - LOCATION MAP, using funds allocated under Section 5096.650(a)(1) of the California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Fund pursuant to the Wildlife Conservation Law of 1947, for the protection of habitat to protect rare and endangered species, wildlife corridors and significant natural landscapes and ecosystems.

## **3. AMOUNT AND PROCEDURE FOR PAYMENT**

- 3.1 In consideration for the satisfactory completion of the services described herein, the Grantor agrees to pay the Grantee, in arrears, upon receipt of an invoice in triplicate, including backup subcontractor invoices, for services rendered under this Agreement. The amount payable under this Agreement shall be for approved budgeted items and shall not exceed \$2,500,000.00. Payments shall be made not more frequently than monthly in arrears. Payment shall be contingent upon receipt of an invoice received and approved by the Grantor's representative. The invoice must be submitted on Grantee's letterhead, signed by the authorized representative and include a written description of the work completed during the period of the invoice.
- 3.2 Invoices must be itemized using the same categories included in the attached budget entitled Exhibit B - BUDGET, which is incorporated herein and made a part hereof by reference. Exhibit C – INVOICE TEMPLATE, provides the format to use for submitting invoices to the Grantor for payment. Each invoice shall contain supporting or back-up documentation for all charges on the invoice, including receipts for all materials and supplies, all Grantee staff time shown by number of hours worked and hourly rate, and all sub-contractor services. The Grantor may withhold ten percent (10%) from each payment until the Grantor has approved the acceptance of the project.



Carmel River Riparian Restoration, Monterey County  
Grant Agreement Number WC-1059CF  
Project ID - 2010174

Page 2

- 3.3 Upon completion of the work and responsibilities included within this Agreement as outlined under "Statement of Work/Grantee's Responsibility," and upon approval of all work by the State Project Manager, the Grantee may submit an invoice requesting the ten percent (10%) retention. Invoices should be sent to:

Wildlife Conservation Board  
1807 13<sup>th</sup> Street, Suite 103  
Sacramento, California 95811  
Attn: Chad Fien

- 3.4 The Grantee agrees to submit all final billings within thirty (30) days after completion of the project.

#### 4. BUDGET

Prior to approval of the Agreement by the Grantor, Grantee shall disclose all funding sources for the project and shall include all amounts applied for/or obtained for the project. These amounts shall be reflected in the BUDGET by BUDGET categories. If the Grantee determines during the project term that funds from other sources cannot be obtained or will not be used, the Grantee will notify the Grantor immediately.

Should the Grantor become aware through any means that the Grantee did not disclose all funding sources for the project, the grant will be referred to the Department of Finance for a project audit.

The attached BUDGET is an estimate of the Grantee's anticipated costs of performance. When actual project costs indicate that the costs of certain budget categories are higher than estimated, and these higher costs are offset by lower actual costs in other budget categories, the Grantee shall submit a written request to shift funds between approved budget categories. Contingencies shall be used only upon written request by the Grantee. The Grantor shall approve or deny the requested budget revision or use of contingencies in writing within 10 days of receipt of the Grantee's written request. The total reimbursement to the Grantee shall not exceed the total grant amount without written amendments, approved in writing by the Grantor.

#### 5. COMMENCEMENT OF PROJECT AND DISBURSEMENT

No funds shall be obligated or disbursed under this Agreement for any portion of the project funded by the Grantor until this grant proposal and Agreement have been approved by the Wildlife Conservation Board at a public meeting, and the Grantee has received a "Notice to Proceed" from the Grantor. The approval of the grant proposal and Agreement by the Grantor on June 2, 2011, if such approval is given, does not constitute authorization for the expenditure of project funds. No work items initiated prior to receipt of a Notice to Proceed will be reimbursed by the Grantor.

Carmel River Riparian Restoration, Monterey County  
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## 6. STATEMENT OF WORK

### 6.1 Grantee Responsibility:

- 6.1.1. Based upon the attached design and specifications entitled Exhibit D - WORK PLAN, which is incorporated herein and made a part hereof by reference, the Grantee shall be responsible for all restoration and construction activities. The Grantee agrees to complete all construction and restoration activities specified herein and in the WORK PLAN by December 31, 2014.
- 6.1.2 The Grantee is responsible for recognizing the cooperative nature of this project and shall provide credit to the Grantor on signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared by the Grantee referencing this project. Any sign that is installed for this project shall be subject to the mutual agreement of the Grantor and Grantee regarding text, design and location, and shall display the logo of the Grantor which is available on the Grantor's website: [www.wcb.ca.gov](http://www.wcb.ca.gov).
- 6.1.3 The Grantee is responsible for obtaining all necessary permissions and approvals, and complying with all regulations, ordinances and statutes that apply to the project, including any and all approvals from the State Water Resources Control Board, and any work performed pursuant to this Grant Agreement.
- 6.1.4 The Grantee agrees that within thirty (30) days following completion of the restoration and construction the Grantee will submit either five hard copies or one hard copy and one digital copy of a final report of accomplishments, including pre and post project photographs and a final design or site plan of the project pursuant to the Grant Agreement, to the Grantor.
- 6.1.5 The Grantee agrees to work and consult with the Department of Fish and Game on implementing the construction and restoration effort. Further, the Grantee agrees that all final inspections will be made in consultation with the Department of Fish and Game and the WCB.
- 6.1.6 If any of the terms and conditions of this Agreement are violated by the Grantee, the Grantor shall be reimbursed in an amount equal to that of the remaining portion of the grant. The reimbursement shall be determined by the following Payback Formula:

Carmel River Riparian Restoration, Monterey County  
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"Payback Formula"

Formula: Dollar amount of grant divided by the life of the project (Project Life), times the number of years remaining in the project.

Example: A \$50,000.00 grant is awarded for the restoration and enhancement of wetland and riparian habitat, and the Project Life is 25 years. With ten years remaining on the Project Life, if the Grantee is not able to carry out the provisions of the agreement, the following payback calculations would be made:  
$$(\$50,000.00 \div 25 \text{ years}) \times 10 \text{ years} = \$20,000$$

Using this example, the Grantee would owe the Grantor \$20,000.

**6.2 Landowner Responsibility**

Upon completion of Capital Improvements, the Landowner shall refrain from activities that would compromise the values of the restored habitats. The Landowner shall permit employees of the Grantor and/or the Grantee access to the subject property for purposes of project development, inspections and project monitoring during the life the project. Such access shall be mutually agreed to by the Landowner and the requesting agency and shall be preceded with a written or verbal request to the Landowner.

**7. TERMS OF GRANT AGREEMENT**

**7.1 Use of Subcontractors**

The Grantee is fully responsible for all work performed under this Agreement, including subcontracted work. Grantee shall submit subcontracts over \$10,000 to the Grantor prior to commencing work. All agreements between the Grantee and subcontractors must be in writing. The grantee is responsible for ensuring this agreement contains language that establishes the right of the auditors of the State of California to examine the records of the subcontractor relative to the services and materials provided under this agreement.

**7.2 Liability**

The Grantee shall indemnify, protect, hold harmless, and defend the Wildlife Conservation Board and the State of California, and their respective officers,

Carmel River Riparian Restoration, Monterey County  
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agents, and employees, against any and all claims, demands, damages, losses, costs, expenses, or liability arising out of the performance or failure to observe or perform any obligation of the Grantee under this agreement.

### **7.3 Indemnification By Grantee For Landowner**

Reasonable precautions shall be exercised by Grantee to avoid damage to persons and property. Grantee shall indemnify, protect, hold harmless and defend Landowner and their respective officers, agents, representatives and employees against any and all claims, demands, damages, losses, costs, expenses, or liability arising out of the performance or failure to observe or perform any obligation of the Grantee under this agreement, or otherwise proximately caused by Grantee.

### **7.4 Amendments**

This Grant Agreement may be modified only upon written approval of the Executive Director of the Wildlife Conservation Board, the Grantee, and the Landowner. No oral understanding or agreement not incorporated in this document shall be binding on any of the parties.

### **7.5 Accounting/Records/Audits**

The Grantee shall maintain financial accounts, documents, and records relating to the Grant Agreement. The accounting information must accurately reflect fiscal transactions so that the total cost of the project can be readily determined and records readily available upon demand. The Grantee must retain all project records for three years after final payment is made by the Grantor. The documents may be subject to examination and audit by the Wildlife Conservation Board or the State of California during this period.

### **7.6 Use of Grant Funds to Secure Additional Funding**

The Grantee agrees that the funding provided under this agreement shall not be used as matching funds for other grants, or to secure loans or other monetary awards without written approval from the Executive Director, Wildlife Conservation Board. Such approval shall not be unreasonably withheld as long as the purpose for which the grant was awarded is maintained.

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Grant Agreement Number WC-1059CF  
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#### **7.7 Cancellation of Grant Agreement**

All parties, including the Grantor, Grantee, or Landowner may terminate the agreement for any reason by providing the other parties with 30 days written notice. If the Grantor elects or agrees to terminate this agreement as provided herein, the Grantee shall take all reasonable measures to prevent further costs to the Grantor under this agreement. The Grantor shall be responsible for non-refundable obligations or expenses incurred by the Grantee in the performance of this agreement prior to the date of the notice to terminate, but only up to the unpaid balance of funding authorized in this agreement.

#### **7.8 Resolution of Grant Agreement Disputes**

The State Project Manager has initial jurisdiction over each controversy arising under or in connection with the interpretation, performance or payment under this agreement. The Grantee will diligently pursue with the State Project Manager a mutually agreeable settlement of any such controversy.

If the controversy cannot be resolved at this stage, the Grantee and/or Landowner must direct the grievance together with any evidence, in writing, to the Executive Director of the Wildlife Conservation Board. The grievance must state the issues in the dispute, the legal authority or other basis for the Grantee's and/or Landowner's position and the remedy sought.

The Executive Director or designee shall meet with the Grantee and/or Landowner to review the issues. A written decision signed by the Executive Director or designee shall be returned to the Grantee and/or Landowner within twenty (20) working days of receipt of the Grantee's and/or Landowner's letter.

#### **7.9 Drug-Free Workplace Certification**

By signing this grant agreement, the contractor or grantee hereby certifies under penalty of perjury under the laws of the State of California that the contractor or grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

7.9.1 Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).

7.9.2 Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:

*Carmel River Riparian Restoration, Monterey County  
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- a) the dangers of drug abuse in the workplace;
- b) the person's or organization's policy of maintaining a drug-free workplace;
- c) any available counseling, rehabilitation and employee assistance programs; and,
- d) penalties that may be imposed upon employees for drug abuse violations.

7.9.3 Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed contract:

- a) will receive a copy of the company's drug-free policy statement; and,
- b) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

Failure to comply with these requirements may result in suspension of payments under the contract or termination of the contract or both and the contractor or grantee may be ineligible for award of any future state contracts if the department determines that any of the following has occurred: (1) the contractor or grantee has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

#### 7.10 Union Organizing

The Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this Agreement. Furthermore, the Grantee, by signing this Agreement, hereby certifies that:

- 7.10.1 No state funds disbursed by this Grant will be used to assist, promote or deter union organizing.
- 7.10.2 The Grantee shall account for state funds disbursed for a specific expenditure by this Grant, to show those funds were allocated to that expenditure.
- 7.10.3 The Grantee shall, where state funds are not designated as described in 7.9.2 above, allocate, on a pro-rata basis, all disbursements that support the grant program.
- 7.10.4 If the Grantee makes expenditures to assist, promote or deter union organizing, the Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that the Grantee shall provide those records to the Attorney General upon request.

*Carmel River Riparian Restoration, Monterey County  
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#### **7.11 California Code Regulations**

State grants may be subject to California Labor Code requirements, which include prevailing wage provisions. Certain State grants administered by the California Wildlife Conservation Board and the California Department of Fish and Game are not subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code. For more details, please refer to California Fish and Game Code Section 1501.5 and to the Department of Industrial Relations (DIR) website at <http://www.dir.ca.gov>.

#### **7.12 Data Storage**

All informational products (e.g. data, studies, findings, management plans, manuals, photos etc.) relating to California's natural environment and produced with the use of public funds shall be cataloged in the California Environmental Information Catalog (<http://gis.ca.gov/catalog>) maintained by the CERES Program ([www.ceres.ca.gov](http://www.ceres.ca.gov)).

#### **7.13 Constructive Notice**

The terms, conditions and restrictions of this agreement and the provisions of the project shall be binding upon, and inure to, the benefit of the parties hereto and their personal representatives, heirs, successors, and assigns and shall continue as a servitude running with the land for the Project Life, until June 1, 2036. A separate document, in a form substantially as shown in Exhibit F, Notice of Unrecorded Grant Agreement, providing constructive notice of this agreement, shall be signed by the Grantee and the Landowner and recorded with the appropriate County Recorder's Office.

Carmel River Riparian Restoration, Monterey County  
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**8. AUTHORIZATION**

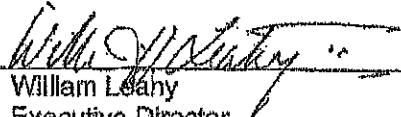
The signature of the Executive Director certifies that at a meeting of the Wildlife Conservation Board held on June 2, 2011, the Board authorized the expenditure of up to \$2,500,000.00 for the purpose of awarding a grant to the Big Sur Land Trust. The Agreement shall be deemed executed and effective when signed by all parties, received in the office of the Wildlife Conservation Board and the Grantee has received a Notice to Proceed from the Board. The Wildlife Conservation Board, the Grantee and the Landowner do hereby agree to the terms and conditions referenced herein.

**Non-Availability of Funds.** Grantor shall not be obligated to disburse any Grant Funds under this Agreement unless and until the bond cash proceeds identified for allocation to the Project (as further specified in the Funding Certification attached to this Agreement) are released by the State Treasurer's Office to Grantor for expenditure for this grant. Despite any contrary provision of this Agreement, no request for disbursement submitted prior to the release of such bond cash proceeds to Grantor shall be effective.

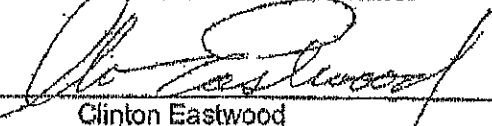
**STATE OF CALIFORNIA  
 WILDLIFE CONSERVATION BOARD**

By:  Date: 7/13/11  
 John P. Donnelly  
 Executive Director

**GRANTEE  
 BIG SUR LAND TRUST**

By:  Date: 5/18/11  
 William Leamy  
 Executive Director

**SIGNATURES OF LANDOWNERS**

 Date: 5/20/11  
 Clinton Eastwood

Signed in Counterpart Date: \_\_\_\_\_  
 Margaret Eastwood



Carmel River Riparian Restoration, Monterey County  
 Grant Agreement Number WC-1059CF  
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## 8. AUTHORIZATION

The signature of the Executive Director certifies that at a meeting of the Wildlife Conservation Board held on June 2, 2011, the Board authorized the expenditure of up to \$2,500,000.00 for the purpose of awarding a grant to the Big Sur Land Trust. The Agreement shall be deemed executed and effective when signed by all parties, received in the office of the Wildlife Conservation Board and the Grantee has received a Notice to Proceed from the Board. The Wildlife Conservation Board, the Grantee and the Landowner do hereby agree to the terms and conditions referenced herein.

**Non-Availability of Funds.** Grantor shall not be obligated to disburse any Grant Funds under this Agreement unless and until the bond cash proceeds identified for allocation to the Project (as further specified in the Funding Certification attached to this Agreement) are released by the State Treasurer's Office to Grantor for expenditure for this grant. Despite any contrary provision of this Agreement, no request for disbursement submitted prior to the release of such bond cash proceeds to Grantor shall be effective.

### STATE OF CALIFORNIA WILDLIFE CONSERVATION BOARD

By: John P. Donnelly Date: \_\_\_\_\_  
 Executive Director

### GRANTEE BIG SUR LAND TRUST

By: William Leahy Date: 5/18/11  
 Executive Director

### SIGNATURES OF LANDOWNERS

Clinton Eastwood Date: 5/20/11  
 Clinton Eastwood

Margaret Eastwood Date: 5/24/11  
 Margaret Eastwood

EXHIBIT C - WILDLIFE CONSERVATION BOARD GRANT AGREEMENT WC-1059CF

Carmel River Riparian Restoration, Monterey County  
Grant Agreement Number WC-1059CF  
Project ID 2010174

EXHIBIT A

LOCATION

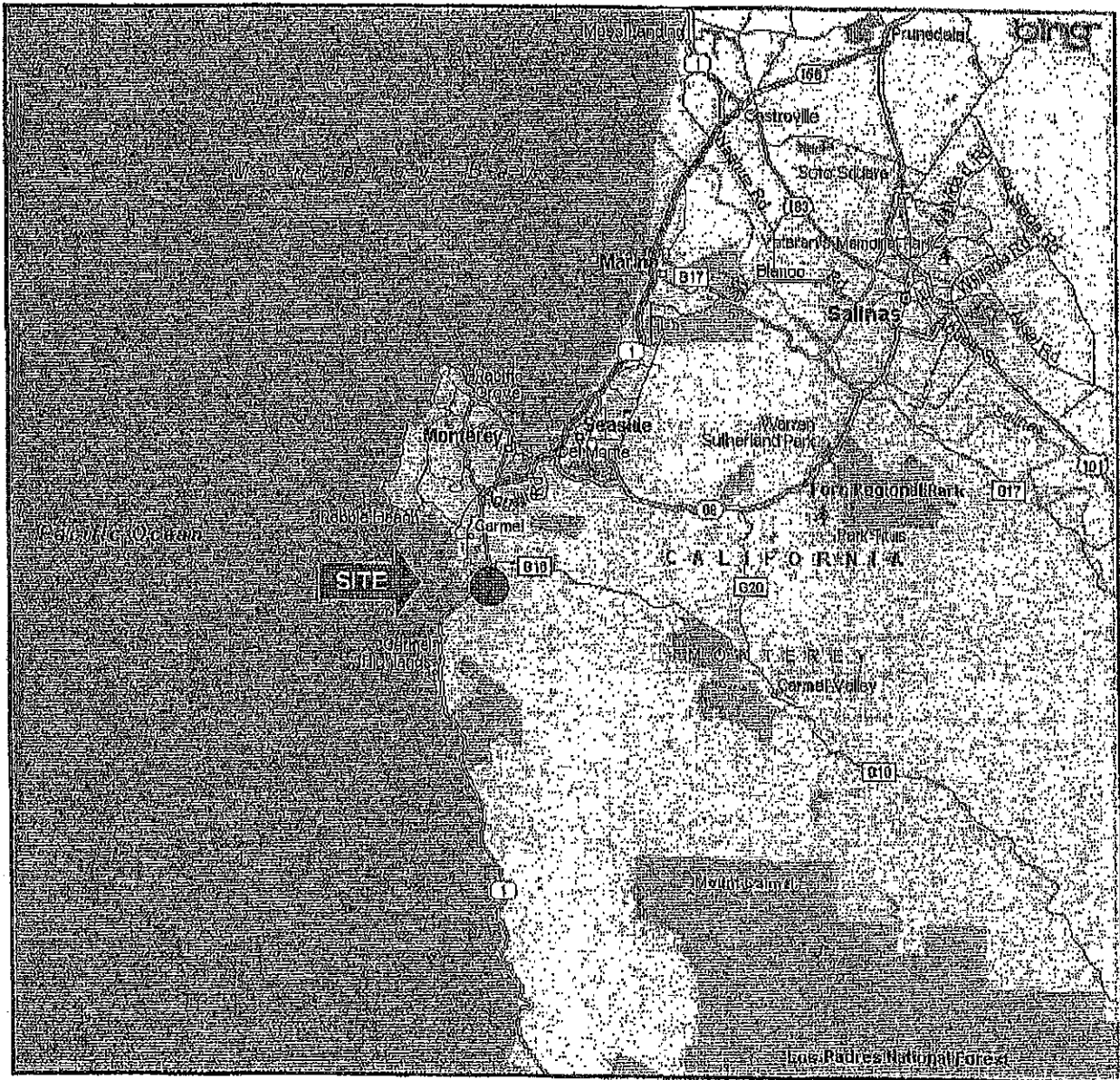


EXHIBIT B

Camel River Riparian Restoration, Monterey County  
Grant Agreement Number WC-1059CF  
Project ID 2010174

## Project Budget

Project Elements	Unit Price	Units	Quant.	Total Project Costs	WCB Grant Request	Local Sources (BSLT/ Mon. County)	Other Sources Secured: EPA [1] SCC [2] USFWS [3] CalTrans [4]	Other Sources Not yet secured* Urban Streams 84 - IRWMP Prop 1E
Project Man. & Admin. - not Construction CM					\$50,000	\$10,000	\$40,000 [1,2,4]	\$100,000
Start Time				\$200,000				
Overhead				\$20,000	\$0	\$20,000	\$0	\$0
Subtotal				\$220,000	\$50,000	\$30,000	\$40,000	\$100,000
Engineering, Design & Permitting								
Consultants (civil, bridge, food, ecological)				\$1,100,000	\$900,000	\$0	\$0	\$200,000
Permit Costs				\$15,000	\$0	\$0	\$0	\$15,000
Subtotal				\$1,115,000	\$900,000	\$0	\$0	\$215,000
Environmental Compliance								
Consultants				\$100,000	\$20,000	\$0	\$10,000 [4]	\$70,000
Permits				\$10,000	\$0	\$0	\$10,000 [4]	\$0
Subtotal				\$110,000	\$20,000	\$0	\$20,000	\$70,000
Subtotal PM, Design, Permitting Costs				\$1,445,000	\$970,000	\$30,000	\$60,000	\$385,000
Implementation/Construction								
1. Flood Conveyance Structure (Causeway)								
ITEM: Earthwork								
Roadway Excavation	\$50.00	CY	11,400	\$570,000				
Roadway Excavation (AC Removal)	\$60.00	CY	550	\$32,886				
Clearing & Grubbing	\$10,000	acre	3.0	\$30,000				
Place & Compact Embankment	\$40.00	CY	4,000	\$160,000				
Subtotal Earthwork				\$792,886				
ITEM: Pavement Structural Section								
Asphalt Concrete	\$120.00	Ton	1,370	\$164,450				
Aggregate Base	\$60.00	CY	1,701	\$102,089				
Cold Plan Asphalt Concrete	\$30.00	SY	364	\$10,928				
Subtotal Pavement Structural Section				\$277,466				
ITEM: Project Drainage								
Subtotal Drainage	\$19,000	LS	\$19,000	\$19,000				
ITEM: Specialty Items								
Water Pollution Control	\$25,000	LS	1	\$25,000				
ESA Fencing	\$10	LF	2,500	\$25,000				
Transition Railing	\$4,000	EA	4	\$16,000				
Terminal System	\$3,000	EA	4	\$12,000				
Rock Slope Protection	150	CY	1,250	\$187,500				

EXHIBIT B

Temporary Bypass Road	\$1,057,145	LS	\$1,057,145	\$1,057,145			
Subtotal Specialty Items				\$1,322,645			
ITEM: Traffic Items							
Subtotal Traffic Items		LS		\$75,000			
ITEM: Erosion Control							
Subtotal Erosion Control		LS		\$26,000			
ITEM: Roadway Mobilization							
Subtotal Mobilization		LS		\$263,980			
ITEM: Contingencies							
Subtotal Contingencies		LS		\$177,545			
ITEM: Structure (Slab Bridge)							
Subtotal Slab Bridge		LS		\$4,236,564			
ITEM: Utility Relocation							
Subtotal Relocation		LS		\$1,500,360			
Subtotal Flood Conveyance Structure				\$9,237,636	\$1,120,000	\$200,000	\$3,500,000 [2.4]
Subtotal Flood Conveyance Structure							\$4,411,636
2. Floodplain Restoration & Revegetation							
ITEM: Site Preparation							
Clear & Grub	3000	ac	20	\$66,000			
Demolition	800000	LS	1	\$800,000			
Utility Work	200000	LS	1	\$200,000			
Subtotal Site Preparation				\$1,066,000			
ITEM: Floodplain Grading							
Excavation	\$3.00	CY	\$400,000	\$1,200,000			
Place and compact fill material	\$4.00	CY	\$400,000	\$1,600,000			
Detailed feature grading	\$2.50	SY	\$60,000	\$150,000			
Subtotal Floodplain Grading				\$2,950,000			
ITEM: Erosion Control							
Hauling and stockpiling rock	20	CY	2000	\$40,000			
Placing rock	80	CY	2000	\$160,000			
Subtotal Erosion Control				\$200,000			
ITEM: Restoration Revegetation							
Trees and Shrubs	\$7.50	ea	4000	\$30,000			
Irrigation	\$30,000	LS	1	\$30,000			
Supplies	\$5,000	LS	1	\$5,000			
Subtotal Restoration Revegetation				\$65,000			
Subtotal Fipin Rest. & Reveg.				\$4,287,000	\$410,000	\$160,000	\$1,690,000 [1.3]
ITEM: Required Funding Signs	\$550	ea	2	\$1,100	\$0	\$0	\$0
GRAND TOTAL:				\$14,968,735	\$2,500,000	\$330,000	\$5,251,100 [12.3.4]
							\$6,877,636

[illegible]

44-38861-1000

4/7 6/3 0

11. A detailed statement of services for the period covered by the invoice (photos may also be included if appropriate).
12. Supporting or back-up documentation for all charges on the invoice, including receipts for all materials and supplies, all Grants staff time shown by number of hours worked and hourly rate, and all sub-contractor services.
13. Clearly reconcile all supporting documents and identify them with the charges reflected in the invoice. If the attached supporting document includes a charge that will be reimbursed in part by the WVCB and another funding source, clearly indicate the portion being paid by the WVCB, and reconcile this amount with the invoice.

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## WORKPLAN

The project is a second phase in a series of habitat conservation and restoration activities occurring in the lower floodplain and lagoon since the 1990s including the Carmel River Lagoon Riparian Restoration Project completed in 2000 and the Carmel River Lagoon South Arm Restoration Project completed in 2004. Both of these projects were completed by California State Parks in partnership with the State Department of Transportation and the Big Sur Land Trust. Partners in this phase of restoring the floodplain and associated riparian and wetland habitats include California State Parks, State Coastal Conservancy, Department of Transportation, Monterey County Water Resources Agency, Monterey County Public Works, Monterey Peninsula Water Management District, Big Sur Land Trust, US Environmental Protection Agency, US Fish and Wildlife Service, and WCB.

The Carmel River Riparian Restoration Project will be completed on the 131-acre historic floodplain located just upstream of the Carmel River Lagoon and east of Highway One on land known as the Odello East property. The land is the floodplain for the Carmel River but has not been available for a typical flooding regime for over 75-years due to agricultural production on the land. Prior to the 1930s, earthen levees were built by the farmer-landowner and the entire expanse of land surrounding the Carmel River Lagoon and Odello East was put into agricultural production for artichokes. The levees kept flood events out of the fields in most years with only larger flows (20-year storms and larger) spreading onto the floodplain. The construction of Highway One in the later 1930s further diminished the ecological condition of the entire coastal ecosystem by placing a physical barrier between the Carmel River Lagoon and the larger floodplain thereby preventing hydrologic connectivity across the floodplain. Today the lower Carmel River is confined by levees on both sides, beginning near the river's mouth and running 1.2 miles upstream.

The purpose of this project is to restore a more regular flooding regimen to approximately 90-acres of the Odello East property and provide a causeway by which to reconnect the west and east sides of the floodplain both hydrologically and for habitat connectivity and wildlife movement. The remaining 41 acres of the property will remain as an agricultural preserve for an organic farming operation and native plant nursery and a public trail will be located along the southern edge of the agricultural preserve. The overall environmental goal is to restore cohesiveness and natural ecological function to the lower floodplain/estuary system.

The main project actions will include the following:

- Completion of 100% design and engineering plans to result in a biddable set of plans and specifications for project construction.
- Restoration of approximately 90 acres of historic floodplain to riparian and wetland habitat. The width of the restoration area is approximately 600 feet. Expected habitat types within the 90 acres include palustrine forested, palustrine

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scrub-shrub, and palustrine emergent wetlands totally 80 acres and approximately 10 acres of riverine wetlands.

- Retention of approximately 36 acres of active agricultural land for organic operations. This agricultural preserve will utilize soils from floodplain grading and shaping resulting from the project.
- Removal of one half mile of levee along the south side of the Carmel River to allow flood flows to access the restoration area.
- Grading for a trail along the south edge of the farm field adjacent to Palo Corona Regional Park. This area will be approximately 5 acres in total.
- Replace 500 feet of earthen fill under State Route 1 with a causeway which will connect the east side of the floodplain to Carmel River State Beach on the west side of Highway One. The causeway specifically will allow wildlife traveling down from Palo Corona Regional Park to safely go under the highway to Carmel River State Beach and the lagoon and estuary.

The riparian habitat and wetland habitats restored on the project site will provide habitat favorable for California red legged frog which has been documented on both Carmel River State Beach and Palo Corona Regional Park. The expansion of riparian forest species will be very beneficial to avian species that are both residents and visitors to the lagoon, estuary and riparian areas of the parklands surrounding the project site.

Restoration activities will involve grading to restore the land to a more naturally functioning floodplain, along with some native seeding and planting. As noted, approximately 36 acres of land will be graded and retained as active agricultural land restricted to organic farming. This 36-acre agricultural preserve will be raised approximately 3 feet above the restored floodplain/riparian area immediately to the north. Several off channel seasonal wetlands will be constructed at the east edge of the project site to accommodate sediment deposition during large flood events. The remaining portion of the floodplain will be graded to historic elevations with the assumption that off channel wetlands will re-establish with annual flood events. Riparian and wetland plantings will be used to encourage scour and floodplain depressions so that small wetlands can re-establish with hydrologic function.

The project will achieve the following key objectives:

- Increase habitat: The project will restore riparian and wetland habitat on the historic floodplain, providing important habitat for sensitive species including steelhead trout, California red-legged frog, and western pond turtle, as well as six additional state species of concern. The project will provide increased quantity and quality of breeding and/or foraging habitat for an additional 27 avian species that have been identified by one or more bird conservation plans as species of concern.

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- Recharge groundwater and base flows to the Carmel River: The project will address one of the watershed's most critical environmental problems by enabling increased recharge of groundwater on the restored floodplain
- Improve water quality: The project will provide additional filtration for sediment and nutrients through a functioning floodplain and associated riparian habitat and wetlands, resulting in increased water quality entering the Carmel River Lagoon, the Carmel Bay (state-designated Area of Special Biological Significance, Marine Protected Area, and Critical Coastal Area) and the Monterey Bay National Marine Sanctuary.
- Reduce flood flows in urban areas: County Services Area 50 (CSA-50) is a developed area located along the north side of the lower Carmel River. Of the 147 acres of developed land in CSA-50, approximately 105 acres flood during the 50-year flood event and all 147 acres flood during the 100-year event. The project will significantly reduce flood flows and help protect private property from flood damage.



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## MANAGEMENT PLAN

The Project is expected to achieve the following objectives:

1. Increase riparian and wetland habitat
2. Recharge groundwater and base flows to the Carmel River
3. Provide habitat connection across the floodplain
4. Protect agricultural land from flooding
5. Reduce flood flows in urban areas
6. Improve water quality
7. Create Public trails and recreation

Existing conditions for flood elevations, habitat conditions, and agricultural operations have been documented and monitored through the following studies and analyses:

- Philip Williams and Associates and California Coastal Conservancy, Carmel River Reach 2: (Eastwood/Big Sur Land trust Property): Conceptual Enhancement Plan, 2000. Prepared for Big Sur Land Trust and California Coastal Conservancy.
- Big Sur Land Trust, Carmel River Parkway Vision Plan, 2005.
- Balance Hydrologics, Inc., Design Alternatives Analysis for Floodplain Restoration at the Odello Property, 2007. Prepared for Big Sur Land Trust.
- Balance Hydrologics Inc., Supplemental Analysis for Floodplain Restoration at the Odello Property, 2008. Prepared for Big Sur Land Trust.
- Whitson Engineers, Project Study Report to request Conceptual Approval, 2010. Prepared for Big Sur Land Trust, County of Monterey and Cal Trans.
- Balance Hydrologics, Inc., Groundwater Investigation and Initial Results of Monitoring at the Odello East Property, Carmel River Valley, June 2, 2010.
- Nikki Nedeff, Wetland Delineation for Odello East Property, 2010. Prepared for the Big Sur Land Trust.

These reports provide a baseline for conditions associated with pre-project conditions at the Project site and associated quantitative outcomes with regards to habitat restoration, groundwater recharge, flood protection, and water quality. These four project objectives are most appropriately used for quantified performance measures as "pre-project" conditions are documented to compare against "post-project" conditions. The following assessment and performance criteria will be used for these Project Objectives. BSLT will provide WCB with annual reports for the first three years of the project and will then provide a five year summary report.

**Habitat Restoration (riparian and wetland habitats):** Restoration plantings will be monitored and managed by BSLT following installation. Irrigation utilizing the existing well on site will be provided for the plantings until establishment is successful. Plants will be protected by appropriate deer and gopher protection and BSLT will mow the site for invasive weed control seasonally. Prior to installation BSLT will be conducting test plots to ascertain the seed bank associated with the existing agricultural soils and will

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plan grading activities accordingly to accommodate as weed free soil as possible for plantings. BSLT monitoring activities will include review of the amount of acreage converted to native wetland and riparian species compared against existing land conditions (now primarily agricultural fields). Additional success will be measured by ratio of survival versus failure of plantings as well as assessment of recruitment of natives through invasive species control. USFWS, BSLT's partners in the project, will assist in monitoring also by conducting surveys for songbirds, amphibians, and bats as the site reestablishes to riparian and wetland habitats.

**Groundwater Recharge:** Implement a monitoring network of groundwater monitoring devices as available to identify appropriate design for restoration and storage features on floodplain. Utilize remnant monitoring wells to assess potential infiltration and recharge post-project. BSLT will be working with academic partners to provide this assessment in the future.

**Water Quality:** Through funding provided by the EPA, the Project site will be monitored for water quality parameters related to sediment and nutrients (see Table 6 for actual parameters). A water quality monitoring plan has been developed for the project and will be implemented by a qualified laboratory beginning in 2011. This work will document pre-project water quality conditions on the Project site. Sampling will also occur post-project according to the same monitoring plan. BSLT will provide this data to WCB.

The remaining Project objectives are more qualitative in nature and performance reporting will be whether the project was actually built and how it is being used or changes related to morphology or actual use of an area.

**Connection Across the Floodplain:** Results for this objective are expected in wildlife use and possible re-habitation of wetland areas in the Project area especially by California red-legged frogs. This performance assessment approach will be done for the causeway for use by wildlife through installing a wildlife camera at the causeway if approval is secured from Cal Trans for such monitoring. Use of wetland areas by new populations of species such as the California red-legged frog will be done by onsite wildlife monitoring and surveys by BSLT and our partners. An additional measure of success for the connectivity will be scour of the lagoon restoration area completed in 2004. This can be measured through monitoring conducted by California State Parks and Monterey Peninsula Water Management District for the lagoon restoration project.

**Protect Agricultural Land from Flooding:** This objective can be reported based on flood events.

**Public Trails and Recreation:** This objective can be reported once construction of trail is complete and public use is estimated or quantified.

Monitoring and assessment of Project success will largely be completed by the Big Sur Land Trust with partner agencies including Monterey County Water Resources Agency,

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Monterey Peninsula Water Management District, Monterey Peninsula Regional Park  
District, California State Parks, and Cal Trans.

Objectives	Desired Outcome	Output Indicators	Outcome Indicator	Tools & Measurement Methods	Targets	Target Units & Timeline
Reduce flood flows in urban areas	Reduce public and private property damages from flood flows greater than a 20-year event	Complete flood protection capital improvements: (1) flood conveyance causeway; (2) levee removal and regrading	Flood damage costs and FEMA repetitive loss reports	Review of annual flood repetitive loss reports at Monterey County Water Resources Agency; review of gauging for flood flow events	Average 0.5 foot reduction in flood elevations for 100-year event	flood elevations and gauge data initiated after 2013
Increase riparian and wetland habitat	Restore 90 acres of riparian and wetland habitats	100% design plans indicating restoration features and locations for plantings and habitat features such as recharge wetlands	% of native riparian and wetland species present on site	Vegetation mapping	85% success for restoration planting	number of plants surviving initiated after 2013
Provide habitat connection across the floodplain	Provide 500 feet of additional clearance under Highway One to connect the east side of floodplain with the west side of floodplain	500 foot causeway is constructed at Highway One	Movement of species such as California red-legged frog to East Odello	Annual red-legged frog surveys	Occupation of 1 wetland area in Odello East by California red-legged frog	1 population initiated after 2015
Protect Agricultural Land from Flooding	Remove 36 acres of Agricultural land from the 100-year floodplain	Agricultural land on south edge of Odello east is raised out of 100-year floodplain with fill from levees	Crop damages are reduced to \$0	Post flood event assessments and observations	\$0 in damages to crop values	Initiated 2011
Recharge groundwater and base flows to the Carmel River	Restoration actions result in areas for establishing storage areas for recharge of groundwater	Floodplain restoration design includes areas for storage and recharge to the aquifer	Recharge estimated utilizing existing monitoring wells in the floodplain	Monitoring wells and pit percolation tests correlating with restoration design for storage and recharge wetlands	Groundwater elevations at NGVD29 minimum at 4.5 feet and maximum at 20 feet	Measured groundwater elevations initiated after 2015

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Improve water quality	Restored floodplain provides area for sediment and nutrients to deposit in flood events thus preventing deposition in lagoon habitat	Riparian and wetland habitats are created in 90+ acres of floodplain	Sediment and nutrient levels are monitored and reported for floodplain area	EPA approved water quality monitoring program to be conducted beginning 2011/2012 through and post project construction	Measurement of pre-project and post-project for the following parameters: nitrate and nitrite, total phosphate, turbidity, total suspended sediments	Measured water quality parameters initiated 2011
Public Trails and Recreation	Provide a new 1.2 mile trail along the south edge of the floodplain and trail connections to Palo Corona Regional Park	Public trail is constructed	Public use of trail	NA	15 users monthly	2015

EXHIBIT C - WILDLIFE CONSERVATION BOARD GRANT AGREEMENT WC-1059CF

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When recorded mail to:

STATE OF CALIFORNIA  
Department of Fish and Game  
Wildlife Conservation Board  
1807 13<sup>th</sup> Street, Suite 103  
Sacramento, California 95811

Space above this line for Recorder's Use

Project: NAME

County:

Project ID:

NOTICE OF UNRECORDED GRANT AGREEMENT

A Grant Agreement titled for reference purposes as NAME (Agreement No. XXXX), was entered into by and between the State of California, by and through the Wildlife Conservation Board (Board), NAME (Grantee) and NAME (Landowner).

The Board, Grantee and Landowner entered into said Grant Agreement (No. WC-XXXX), pursuant to which the Board granted funds to Grantee to perform certain activities on the certain real property in XXXX County owned by the Landowner, to BRIEF PROJECT DESCRIPTION, E.G., RESTORE WETLAND HABITAT. The Grant Agreement term runs from DATE, through DATE, for capital improvements and restoration activities and from DATE, through DATE, for management practices. The terms, conditions and restrictions of the Grant Agreement are binding upon and inure to the benefit of the Landowner, and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running for the project life span of the project on the subject lands as described in Exhibit "A" attached hereto and incorporated herein by this reference. For additional terms and conditions of the Grant, reference should be made to the Grant Agreement which is on file with the Wildlife Conservation Board, 1807 13<sup>th</sup> Street, Suite 103, Sacramento, California 95811.

SIGNATURE OF WILDLIFE CONSERVATION BOARD

\_\_\_\_\_  
John P. Donnelly, Executive Director

DATE \_\_\_\_\_

SIGNATURE OF GRANTEE (NAME)

\_\_\_\_\_  
NAME, TITLE

DATE \_\_\_\_\_

SIGNATURE OF LANDOWNER (NAME)

\_\_\_\_\_  
(This is an EXAMPLE ONLY - Do Not sign this copy)  
NAME, TITLE

DATE \_\_\_\_\_

**EXHIBIT C – WILDLIFE CONSERVATION BOARD GRANT AGREEMENT WC-1059CF**

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**EXHIBIT A**

**LEGAL DESCRIPTION**

All that certain real property situate in the County of XXXX, State of California,  
described as follows;

EXHIBIT D -- MONTEREY COUNTY DRUG-FREE WORKPLACE POLICY

*Before the Board of Supervisors in and for the  
County of Monterey, State of California*

Resolution No. 91-384 --- }  
Establishing the "Monterey }  
County Drug-Free Workplace }  
Policy". . . . . }

WHEREAS, the County of Monterey is desirous of providing and maintaining a safe workplace for all its employees; and

WHEREAS, the County of Monterey desires to protect the health, safety and well-being of employees and of the public,

BE IT RESOLVED THAT, the County does hereby establishes the following policy for all its employees and volunteers, which shall be known as the "Monterey County Drug-Free Workplace Policy."

POLICY

1. The unlawful manufacture, sale or distribution, dispensing, possession, use or being under the influence of a controlled substance is prohibited while on County property, at a County location, or while on duty as a County employee or volunteer.
2. In the case of any County employee or volunteer found to have violated any of the prohibitions contained in Section 1, appropriate disciplinary action consistent with any applicable collective bargaining agreement covering that employee and/or consistent with the current Monterey County Personnel Resolution, as amended, will be taken.
3. In addition to compliance with Section 1 of this policy, any County employee or volunteer engaged in the performance of duties or services pursuant to a federal grant or contract must as a condition of employment, notify the appointing authority (or his/her designee) of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction. If the violation occurred at a work site where work is/was being done in connection with a specific federal grant or contract, the appointing authority shall inform the grant administrator and the granting agency within ten (10) days of such notification.
4. If any appointing authority (or his/her designee) becomes aware of any criminal drug statute conviction for a violation occurring in the workplace through some means other than Section 3 of this policy, and if the violation occurred at a work site where work is/was being done with a specific federal grant or contract, the appointing authority (or his/her designee) shall inform the granting agency within ten (10) days.
5. If the appointing authority (or his/her designee) becomes aware of any criminal drug statute conviction for a violation occurring in the workplace, it will take appropriate disciplinary action against such employee, up to and including

EXHIBIT D - MONTEREY COUNTY DRUG-FREE WORKPLACE POLICY

termination, as provided for in any applicable collective bargaining agreement covering the employee and/or the Monterey County personnel Resolution, as amended and/or will require that the convicted employee participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement or other appropriate agency.

6. In order to assure employee drug-free awareness and policy, the County shall provide the following program for all County employees and volunteers: distribution to each County employee and volunteer of (1) a brochure on the dangers of drug abuse; (2) distribution to all County employees and volunteers of a copy of this policy, and (3) dissemination of information regarding the County Employee Assistance program, in order to provide counseling and/or referral for extended counseling and/or treatment of drug-related problems. In addition, copies of applicable Monterey County collective bargaining agreements and of the current Monterey County Personnel Resolution, as amended, shall be available at each department work site for County employee and volunteer review.
7. The County will make good faith efforts to continue to maintain a drug-free workplace as described above.

PASSED AND ADOPTED on this 23rd day of July, 1991, upon motion of Supervisor Del Piero, seconded by Supervisor Strasser Kauffman, by the following vote, to-wit:

AYES: Supervisors Del Piero, Shipnuck, Perkins, Karas & Strasser Kauffman.

NOES: None.

ABSENT: None.

I, ERNEST K. MORISHITA, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page \_\_\_ of Minute Book 65, on July 23, 1991  
Dated: July 23, 1991

ERNEST K. MORISHITA, Clerk of the Board  
of Supervisors, County of Monterey,  
State of California.

By Whitson and Associates, Inc. dba Whitson Engineers  
Final Design of CRFREE Project  
Deputy RMA



**EXHIBIT 2**  
**WCB GRANT AGREEMENT APPLICABLE**  
**TERMS**  
**FOR THE**  
**Carmel River Floodplain Restoration and**  
**Environmental Enhancement (CRFREE) Project**

## 6. STATEMENT OF WORK

### 6.1 Grantee Responsibility:

- 6.1.1. Based upon the attached design and specifications entitled Exhibit D - WORK PLAN, which is incorporated herein and made a part hereof by reference, the Grantee shall be responsible for all restoration and construction activities. The Grantee agrees to complete all construction and restoration activities specified herein and in the WORK PLAN by December 31, 2014.
- 6.1.2 The Grantee is responsible for recognizing the cooperative nature of this project and shall provide credit to the Grantor on signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared by the Grantee referencing this project. Any sign that is installed for this project shall be subject to the mutual agreement of the Grantor and Grantee regarding text, design and location, and shall display the logo of the Grantor which is available on the Grantor's website: [www.wcb.ca.gov](http://www.wcb.ca.gov).
- 6.1.3 The Grantee is responsible for obtaining all necessary permissions and approvals, and complying with all regulations, ordinances and statutes that apply to the project, including any and all approvals from the State Water Resources Control Board, and any work performed pursuant to this Grant Agreement.
- 6.1.4 The Grantee agrees that within thirty (30) days following completion of the restoration and construction the Grantee will submit either five hard copies or one hard copy and one digital copy of a final report of accomplishments, including pre and post project photographs and a final design or site plan of the project pursuant to the Grant Agreement, to the Grantor.
- 6.1.5 The Grantee agrees to work and consult with the Department of Fish and Game on implementing the construction and restoration effort. Further, the Grantee agrees that all final inspections will be made in consultation with the Department of Fish and Game and the WCB.
- 6.1.6 If any of the terms and conditions of this Agreement are violated by the Grantee, the Grantor shall be reimbursed in an amount equal to that of the remaining portion of the grant. The reimbursement shall be determined by the following Payback Formula:

### "Payback Formula"

Formula: Dollar amount of grant divided by the life of the project (Project Life), times the number of years remaining in the project.

Example: A \$50,000.00 grant is awarded for the restoration and enhancement of wetland and riparian habitat, and the Project Life is 25 years. With ten years remaining on the Project Life, if the Grantee is not able to carry out the provisions of the agreement, the following payback calculations would be made:

$$(\$50,000.00 \div 25 \text{ years}) \times 10 \text{ years} = \$20,000$$

Using this example, the Grantee would owe the Grantor \$20,000.

## **6.2 Landowner Responsibility**

Upon completion of Capital Improvements, the Landowner shall refrain from activities that would compromise the values of the restored habitats. The Landowner shall permit employees of the Grantor and/or the Grantee access to the subject property for purposes of project development, inspections and project monitoring during the life the project. Such access shall be mutually agreed to by the Landowner and the requesting agency and shall be preceded with a written or verbal request to the Landowner.

## **7. TERMS OF GRANT AGREEMENT**

### **7.1 Use of Subcontractors**

The Grantee is fully responsible for all work performed under this Agreement, including subcontracted work. Grantee shall submit subcontracts over \$10,000 to the Grantor prior to commencing work. All agreements between the Grantee and subcontractors must be in writing. The grantee is responsible for ensuring this agreement contains language that establishes the right of the auditors of the State of California to examine the records of the subcontractor relative to the services and materials provided under this agreement.

### **7.2 Liability**

The Grantee shall indemnify, protect, hold harmless, and defend the Wildlife Conservation Board and the State of California, and their respective officers,

### **7.7 Cancellation of Grant Agreement**

All parties, including the Grantor, Grantee, or Landowner may terminate the agreement for any reason by providing the other parties with 30 days written notice. If the Grantor elects or agrees to terminate this agreement as provided herein, the Grantee shall take all reasonable measures to prevent further costs to the Grantor under this agreement. The Grantor shall be responsible for non-refundable obligations or expenses incurred by the Grantee in the performance of this agreement prior to the date of the notice to terminate, but only up to the unpaid balance of funding authorized in this agreement.

### **7.8 Resolution of Grant Agreement Disputes**

The State Project Manager has initial jurisdiction over each controversy arising under or in connection with the interpretation, performance or payment under this agreement. The Grantee will diligently pursue with the State Project Manager a mutually agreeable settlement of any such controversy.

If the controversy cannot be resolved at this stage, the Grantee and/or Landowner must direct the grievance together with any evidence, in writing, to the Executive Director of the Wildlife Conservation Board. The grievance must state the issues in the dispute, the legal authority or other basis for the Grantee's and/or Landowner's position and the remedy sought.

The Executive Director or designee shall meet with the Grantee and/or Landowner to review the issues. A written decision signed by the Executive Director or designee shall be returned to the Grantee and/or Landowner within twenty (20) working days of receipt of the Grantee's and/or Landowner's letter.

### **7.9 Drug-Free Workplace Certification**

By signing this grant agreement, the contractor or grantee hereby certifies under penalty of perjury under the laws of the State of California that the contractor or grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- 7.9.1 Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- 7.9.2 Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following: