

# Monterey County

*Monterey County Government Center  
Board of Supervisors Chambers  
168 W. Alisal St., 1st Floor  
Salinas, CA 93901*



## Meeting Agenda - Final

Tuesday, February 23, 2021

1:30 PM

**IMPORTANT COVID-19 NOTICE ON PAGE 2-4  
AVISO IMPORTANTE SOBRE COVID-19 EN LA PAGINA 2-4**

<https://montereycty.zoom.us/j/224397747>

**Special Joint Meeting of Monterey County Board of  
Supervisors and Board of Supervisors of the  
Monterey County Water Resources Agency**

**NOTE: All agenda titles related to numbered agenda items are live web links. Click on the title to be directed to the corresponding Board Report.**

**PUBLIC COMMENT: Members of the public may address comments to the Board concerning each agenda item. The timing of public comment shall be at the discretion of the Chair.**

**Please refer to the separate agenda for the Board of Supervisors**

**1:30 P.M. - Call to Order**

**Roll Call**

**1:30 P.M. - Scheduled Matters**

1. Consider:
  - a. Approving the Joint Exercise of Powers Agreement by and among the City of Watsonville, the County of Monterey, the County of Santa Cruz, the Monterey County Water Resources Agency, and Zone 7 of Santa Cruz County Flood Control and Water Conservation District, herein referred to as the "Member Agencies," to form the Pajaro Regional Flood Management Agency and authorize the Chair to sign the Joint Exercise of Powers Agreement; and
  - b. Approving the Indemnity Agreement regarding the Pajaro River Flood Risk Reduction Project by and among the Member Agencies and authorize the Chair to sign the Indemnity Agreement.

**Attachments:** [Board Report](#)  
[Draft Indemnity Agreement - Final Blackline](#)  
[Draft JPA Agreement - Final Blackline](#)

**Public Comment**

**Adjournment**



# Monterey County

Item No.1

## Board Report

Board of Supervisors  
Chambers  
168 W. Alisal St., 1st Floor  
Salinas, CA 93901

Legistar File Number: WRAG 21-045

February 23, 2021

Introduced: 2/9/2021

Current Status: Scheduled PM

Version: 1

Matter Type: WR General Agenda

Consider:

- a. Approving the Joint Exercise of Powers Agreement by and among the City of Watsonville, the County of Monterey, the County of Santa Cruz, the Monterey County Water Resources Agency, and Zone 7 of Santa Cruz County Flood Control and Water Conservation District, herein referred to as the "Member Agencies," to form the Pajaro Regional Flood Management Agency and authorize the Chair to sign the Joint Exercise of Powers Agreement; and
- b. Approving the Indemnity Agreement regarding the Pajaro River Flood Risk Reduction Project by and among the Member Agencies and authorize the Chair to sign the Indemnity Agreement.

### RECOMMENDATION:

It is recommended that the Monterey County Board of Supervisors and the Monterey County Water Resources Agency Board of Supervisors:

- a. Approve the Joint Exercise of Powers Agreement by and among the City of Watsonville, the County of Monterey, the County of Santa Cruz, the Monterey County Water Resources Agency, and Zone 7 of Santa Cruz County Flood Control and Water Conservation District, herein referred to as the "Member Agencies," to form the Pajaro Regional Flood Management Agency and authorize the Chair to sign the Joint Exercise of Powers Agreement; and
- b. Approve the Indemnity Agreement regarding the Pajaro River Flood Risk Reduction Project by and among the Member Agencies and authorize the Chair to sign the Indemnity Agreement.

### SUMMARY/DISCUSSION:

The formation of a Regional Flood Risk Management Joint Powers Authority ("JPA") has been identified as the most efficient and effective governance approach for reducing flood risk on the Lower Pajaro River. A single-purpose agency will be best positioned to support flood risk reduction project implementation and ensure consistent long-term operation, maintenance, repair, replacement, and rehabilitation ("OMRR&R") of the system.

### Background

The Pajaro River Federal Flood Control Project was built in 1949 by the United States Army Corps of Engineers ("Corps" or "USACE") and is maintained jointly by the Santa Cruz County Flood Control and Water Conservation District - Zone 7 ("District" or "Zone 7") and the Monterey County Water Resources Agency ("MCWRA"). Since the construction of the levee system in 1949, four major floods on the Pajaro River and its tributaries occurred in 1955, 1958, 1995, and 1998, resulting in significant inundation and damage caused by overtopping or breaching of the levees. Congress authorized the reconstruction of the Pajaro River levee system in 1966. Re-authorization

was granted by the Water Resources Development Act 1990. The USACE Headquarters signed a Director's Report on December 12, 2019, confirming the federal authorization to rebuild and enhance the existing flood risk reduction facilities on the Pajaro River and Salsipuedes Creek. MCWRA expects to execute a Design Funding Agreement with the USACE and a Subventions Funding Agreement with the State of California Department of Water Resources in spring of 2021.

In 2010, MCWRA, Monterey, Santa Cruz, Zone 7, and Watsonville (collectively "Member Agencies") initiated work to analyze the most effective and efficient way to govern, finance, and implement the authorized federal project and to address long-term OMRR&R. Delays to secure approval of the Director's Report by USACE resulted in a delay for implementation of a new governance structure. MCWRA staff has coordinated closely with the Member Agencies and the Finance and Governance Committee to secure input and inform key stakeholders within the community. A final recommendation was made to establish the Pajaro Regional Flood Management Agency (PRFMA) in 2019. Successful negotiation of a draft Joint Exercise of Powers Agreement was completed in November 2020.

#### Governance Analysis

The primary objective of implementing flood risk reduction projects, including the federal project, is establishing one or more governance entities that will fund, finance, and lead implementation. A secondary objective for any governance entity's consideration and function is the long-term OMRR&R of flood risk reduction features. A third objective is continued floodplain management of the basin in collaboration with land use agencies. Ultimately a governance entity needs to be flexible enough to plan for and manage the flood risk reduction project to address and adapt to changing conditions and evolving regulatory requirements over time. The following governance options were developed and analyzed:

- Cooperation by Memorandum of Understanding ("MOU")/Contract
- New Joint Powers Authority
- New Flood Control and Water Conservation District Zones

In September 2012, MIG completed a Memorandum titled "Potential Governance Structures for the Lower Pajaro Levee Reconstruction Project" that presented a preliminary assessment of potential governance structures for the future management of the Lower Pajaro Levee Reconstruction Project. The study presented initial results from stakeholders on the five criteria listed below:

- Fair, equitable, and responsive to all stakeholders
- Organizational capability and technical effectiveness
- Politically feasible
- Clear lines of authority
- Efficient use of resources

The study concluded that a new Joint Powers Authority should be formed. The MIG report and conclusions are an important backdrop and context for follow-on efforts.

In April 2019, Larsen Wurzel & Associates, Inc. ("LWA") completed a memorandum titled "Pajaro

River Flood Management Agency, Governance Options Analysis and Recommendation" that presented a final assessment of potential governance structures for the future management of the Lower Pajaro Levee Reconstruction Project. Specific criteria for evaluation were developed to evaluate the potential governance options. The major topic areas focused on implementing, funding, and financing flood risk reduction projects. However, the effectiveness of the governance option to carry out aspects of long-term OMRR&R and floodplain management activities was also considered.

Based on the evaluation completed by LWA and previous work completed by MIG, a JPA is best suited to accomplish the project's primary objective in the lower Pajaro River watershed. It could also be structured and empowered to carry out OMRR&R and basin-wide flood management.

Key findings that led the Member Agencies to recommend the formation of the PRFMA are summarized below:

1. The JPA aligns and focuses purpose and telegraphs the importance and priority of the long-term capital and O&M investment to the Federal and State governments and to the community;
2. Both the State and Federal Government prefer to sign agreements with a single project sponsor;
3. The Revolutionize USACE Initiative has identified strong interest in P3 (public-private partnership) and has identified JPAs as an ingredient to the P3 model;
4. A JPA whose geographic boundary encompasses the Pajaro River watershed within the Counties of Santa Cruz and Monterey reduce the number of benefit assessment district votes required to raise capital and/or O&M funds; and
5. Flood risk reduction JPAs are common in California. They are the tried and true model for financing, designing, and implementing flood risk reduction projects.

#### Joint Exercise of Powers Agreement

Included for your consideration is a Joint Exercise of Powers Agreement negotiated by the Member Agency staff, management, and legal counsel. The initial agreement was developed by leveraging existing flood management agency Joint Exercise of Powers agreements and then adapting it to the Member Agencies' needs. The Joint Exercise of Powers Agreement will form the Pajaro Regional Flood Management Agency, whose purpose is to reduce flood risk to lives and property. The Agreement allows the member agencies to independently exercise common powers or cooperate with the United States, the State of California, or any other entity. While authorization to execute the JPA Agreement would be provided through this Board action, formal execution may occur after all Member Agencies have authorized the execution of the JPA Agreement.

#### Indemnity Agreement

Also included for your consideration is an Indemnity Agreement negotiated by the Member Agency staff, management, and legal counsel. Some of the Member Agencies have existing contractual or existing obligations regarding facilities of the current flood risk reduction system, which could result in liability on the part of that agency in the event of flooding. Watsonville has minimal existing obligations of the current flood risk reduction system and therefore should not have any additional liability in the event of flooding related to those facilities. The Member Agencies recommend entering into the Indemnity Agreement so that, from the creation of the JPA until the completion of new facilities, Watsonville is not exposed to additional liability by the creation of or its participation in the JPA or any

other Member Agencies' maintenance or operation of any existing facilities of the current system.

### Next Steps

Most flood risk management JPAs are established before their member agencies fully fund independent general administration and oversight functions. During the initial startup phase, the JPA functions critical to the legal establishment of the JPA can be administered by member agency staff. Benefits of establishing the JPA include the ability to cleanly execute federal cost-share agreements and advance the Proposition 218 benefit assessment ballot proceeding process. The JPA formation will create a newsworthy event to launch public outreach efforts, sending a message to the community that flood risk reduction is important enough to warrant a dedicated agency. Upon formation, the JPA will need to address administrative and policy issues before initiating the benefit assessment formation process. The following lays out a high-level summary of the current JPA startup plan.

#### Step 1: Establish JPA (Current Step)

Member Agencies secure necessary approvals to execute the Joint Exercise of Powers and Indemnity Agreements. Send notice to Secretary of State, file with State's Roster of Public Agency, file with County Clerk Registry, and notify LAFCO.

#### Step 2: Interim JPA Staffing by Member Agencies

As needed and on an interim basis, Member Agencies staff provide support to complete the administrative processes required to establish the JPA and advance the Proposition 218 benefit assessment formation process. The interim staff support could be provided through a services agreement between the JPA and one or more of its Member Agencies. This agreement could include providing staff support for all services needed to startup the JPA.

#### Step 3: Implement Long-term Staffing Plan for JPA

Upon a successful Proposition 218 benefit assessment formation, the JPA Board of Directors decides how to permanently staff the JPA. Member agencies staff would support the JPA through this process and recommend a staffing plan reflective of the available assessment district budget.

#### Step 4: Transition OMRR&R to JPA (Can be completed in parallel with Step 3)

OMRR&R responsibilities will be transitioned from Zone 7 and MCWRA to the JPA.

### OTHER AGENCY INVOLVEMENT:

The Member Agencies' staff, management, and legal counsel worked collaboratively on the draft Joint Exercise of Powers Agreement and Indemnity Agreement.

### FINANCING:

No financial impact is immediately expected due to the initial formation of the JPA. Member agencies will continue to direct staff to support the agency's formation and startup on an interim basis until the JPA Board decides when and how to permanently staff and fund the agency.

Prepared by: Shaunna Murray, Senior Water Resources Engineer, (831) 755-4860

Approved by: \_\_\_\_\_

Brent Buche, General Manager, MCWRA (831) 755-4860

Randy Ishii, Director, Monterey County Department of Public Works,  
Facilities and Parks (831) 784-5647

Attachments:

1. Draft Pajaro Regional Flood Management Agency Joint Exercise of Powers Agreement
2. Draft Indemnity Agreement



# Monterey County

Item No.

## Board Report

Board of Supervisors  
Chambers  
168 W. Alisal St., 1st Floor  
Salinas, CA 93901

Legistar File Number: WRAG 21-045

February 23, 2021

Introduced: 2/9/2021

Current Status: Agenda Ready

Version: 1

Matter Type: WR General Agenda

Consider:

- a. Approving the Joint Exercise of Powers Agreement by and among the City of Watsonville, the County of Monterey, the County of Santa Cruz, the Monterey County Water Resources Agency, and Zone 7 of Santa Cruz County Flood Control and Water Conservation District, herein referred to as the "Member Agencies," to form the Pajaro Regional Flood Management Agency and authorize the Chair to sign the Joint Exercise of Powers Agreement; and
- b. Approving the Indemnity Agreement regarding the Pajaro River Flood Risk Reduction Project by and among the Member Agencies and authorize the Chair to sign the Indemnity Agreement.

### RECOMMENDATION:

It is recommended that the Monterey County Board of Supervisors and the Monterey County Water Resources Agency Board of Supervisors:

- a. Approve the Joint Exercise of Powers Agreement by and among the City of Watsonville, the County of Monterey, the County of Santa Cruz, the Monterey County Water Resources Agency, and Zone 7 of Santa Cruz County Flood Control and Water Conservation District, herein referred to as the "Member Agencies," to form the Pajaro Regional Flood Management Agency and authorize the Chair to sign the Joint Exercise of Powers Agreement; and
- b. Approve the Indemnity Agreement regarding the Pajaro River Flood Risk Reduction Project by and among the Member Agencies and authorize the Chair to sign the Indemnity Agreement.

### SUMMARY/DISCUSSION:

The formation of a Regional Flood Risk Management Joint Powers Authority ("JPA") has been identified as the most efficient and effective governance approach for reducing flood risk on the Lower Pajaro River. A single-purpose agency will be best positioned to support flood risk reduction project implementation and ensure consistent long-term operation, maintenance, repair, replacement, and rehabilitation ("OMRR&R") of the system.

### Background

The Pajaro River Federal Flood Control Project was built in 1949 by the United States Army Corps of Engineers ("Corps" or "USACE") and is maintained jointly by the Santa Cruz County Flood Control and Water Conservation District - Zone 7 ("District" or "Zone 7") and the Monterey County Water Resources Agency ("MCWRA"). Since the construction of the levee system in 1949, four major floods on the Pajaro River and its tributaries occurred in 1955, 1958, 1995, and 1998, resulting in significant inundation and damage caused by overtopping or breaching of the levees. Congress authorized the reconstruction of the Pajaro River levee system in 1966. Re-authorization



was granted by the Water Resources Development Act 1990. The USACE Headquarters signed a Director's Report on December 12, 2019, confirming the federal authorization to rebuild and enhance the existing flood risk reduction facilities on the Pajaro River and Salsipuedes Creek. MCWRA expects to execute a Design Funding Agreement with the USACE and a Subventions Funding Agreement with the State of California Department of Water Resources in spring of 2021.

In 2010, MCWRA, Monterey, Santa Cruz, Zone 7, and Watsonville (collectively "Member Agencies") initiated work to analyze the most effective and efficient way to govern, finance, and implement the authorized federal project and to address long-term OMRR&R. Delays to secure approval of the Director's Report by USACE resulted in a delay for implementation of a new governance structure. MCWRA staff has coordinated closely with the Member Agencies and the Finance and Governance Committee to secure input and inform key stakeholders within the community. A final recommendation was made to establish the Pajaro Regional Flood Management Agency (PRFMA) in 2019. Successful negotiation of a draft Joint Exercise of Powers Agreement was completed in November 2020.

#### Governance Analysis

The primary objective of implementing flood risk reduction projects, including the federal project, is establishing one or more governance entities that will fund, finance, and lead implementation. A secondary objective for any governance entity's consideration and function is the long-term OMRR&R of flood risk reduction features. A third objective is continued floodplain management of the basin in collaboration with land use agencies. Ultimately a governance entity needs to be flexible enough to plan for and manage the flood risk reduction project to address and adapt to changing conditions and evolving regulatory requirements over time. The following governance options were developed and analyzed:

- Cooperation by Memorandum of Understanding ("MOU")/Contract
- New Joint Powers Authority
- New Flood Control and Water Conservation District Zones

In September 2012, MIG completed a Memorandum titled "Potential Governance Structures for the Lower Pajaro Levee Reconstruction Project" that presented a preliminary assessment of potential governance structures for the future management of the Lower Pajaro Levee Reconstruction Project. The study presented initial results from stakeholders on the five criteria listed below:

- Fair, equitable, and responsive to all stakeholders
- Organizational capability and technical effectiveness
- Politically feasible
- Clear lines of authority
- Efficient use of resources

The study concluded that a new Joint Powers Authority should be formed. The MIG report and conclusions are an important backdrop and context for follow-on efforts.

In April 2019, Larsen Wurzel & Associates, Inc. ("LWA") completed a memorandum titled "Pajaro

River Flood Management Agency, Governance Options Analysis and Recommendation" that presented a final assessment of potential governance structures for the future management of the Lower Pajaro Levee Reconstruction Project. Specific criteria for evaluation were developed to evaluate the potential governance options. The major topic areas focused on implementing, funding, and financing flood risk reduction projects. However, the effectiveness of the governance option to carry out aspects of long-term OMRR&R and floodplain management activities was also considered.

Based on the evaluation completed by LWA and previous work completed by MIG, a JPA is best suited to accomplish the project's primary objective in the lower Pajaro River watershed. It could also be structured and empowered to carry out OMRR&R and basin-wide flood management.

Key findings that led the Member Agencies to recommend the formation of the PRFMA are summarized below:

1. The JPA aligns and focuses purpose and telegraphs the importance and priority of the long-term capital and O&M investment to the Federal and State governments and to the community;
2. Both the State and Federal Government prefer to sign agreements with a single project sponsor;
3. The Revolutionize USACE Initiative has identified strong interest in P3 (public-private partnership) and has identified JPAs as an ingredient to the P3 model;
4. A JPA whose geographic boundary encompasses the Pajaro River watershed within the Counties of Santa Cruz and Monterey reduce the number of benefit assessment district votes required to raise capital and/or O&M funds; and
5. Flood risk reduction JPAs are common in California. They are the tried and true model for financing, designing, and implementing flood risk reduction projects.

#### Joint Exercise of Powers Agreement

Included for your consideration is a Joint Exercise of Powers Agreement negotiated by the Member Agency staff, management, and legal counsel. The initial agreement was developed by leveraging existing flood management agency Joint Exercise of Powers agreements and then adapting it to the Member Agencies' needs. The Joint Exercise of Powers Agreement will form the Pajaro Regional Flood Management Agency, whose purpose is to reduce flood risk to lives and property. The Agreement allows the member agencies to independently exercise common powers or cooperate with the United States, the State of California, or any other entity. While authorization to execute the JPA Agreement would be provided through this Board action, formal execution may occur after all Member Agencies have authorized the execution of the JPA Agreement.

#### Indemnity Agreement

Also included for your consideration is an Indemnity Agreement negotiated by the Member Agency staff, management, and legal counsel. Some of the Member Agencies have existing contractual or existing obligations regarding facilities of the current flood risk reduction system, which could result in liability on the part of that agency in the event of flooding. Watsonville has minimal existing obligations of the current flood risk reduction system and therefore should not have any additional liability in the event of flooding related to those facilities. The Member Agencies recommend entering into the Indemnity Agreement so that, from the creation of the JPA until the completion of new facilities, Watsonville is not exposed to additional liability by the creation of or its participation in the JPA or any

other Member Agencies' maintenance or operation of any existing facilities of the current system.

#### Next Steps

Most flood risk management JPAs are established before their member agencies fully fund independent general administration and oversight functions. During the initial startup phase, the JPA functions critical to the legal establishment of the JPA can be administered by member agency staff. Benefits of establishing the JPA include the ability to cleanly execute federal cost-share agreements and advance the Proposition 218 benefit assessment ballot proceeding process. The JPA formation will create a newsworthy event to launch public outreach efforts, sending a message to the community that flood risk reduction is important enough to warrant a dedicated agency. Upon formation, the JPA will need to address administrative and policy issues before initiating the benefit assessment formation process. The following lays out a high-level summary of the current JPA startup plan.

#### Step 1: Establish JPA (Current Step)

Member Agencies secure necessary approvals to execute the Joint Exercise of Powers and Indemnity Agreements. Send notice to Secretary of State, file with State's Roster of Public Agency, file with County Clerk Registry, and notify LAFCO.

#### Step 2: Interim JPA Staffing by Member Agencies

As needed and on an interim basis, Member Agencies staff provide support to complete the administrative processes required to establish the JPA and advance the Proposition 218 benefit assessment formation process. The interim staff support could be provided through a services agreement between the JPA and one or more of its Member Agencies. This agreement could include providing staff support for all services needed to startup the JPA.

#### Step 3: Implement Long-term Staffing Plan for JPA

Upon a successful Proposition 218 benefit assessment formation, the JPA Board of Directors decides how to permanently staff the JPA. Member agencies staff would support the JPA through this process and recommend a staffing plan reflective of the available assessment district budget.

#### Step 4: Transition OMRR&R to JPA (Can be completed in parallel with Step 3)

OMRR&R responsibilities will be transitioned from Zone 7 and MCWRA to the JPA.

#### OTHER AGENCY INVOLVEMENT:

The Member Agencies' staff, management, and legal counsel worked collaboratively on the draft Joint Exercise of Powers Agreement and Indemnity Agreement.

#### FINANCING:

No financial impact is immediately expected due to the initial formation of the JPA. Member agencies will continue to direct staff to support the agency's formation and startup on an interim basis until the JPA Board decides when and how to permanently staff and fund the agency.

Prepared by: Shaunna Murray, Senior Water Resources Engineer, (831) 755-4860

Approved by:



\_\_\_\_\_  
Brent Buche, General Manager, MCWRA (831) 755-4860  
Randy Ishii, Director, Monterey County Department of Public Works,  
Facilities and Parks (831) 784-5647

Attachments:

1. Draft Pajaro Regional Flood Management Agency Joint Exercise of Powers Agreement
2. Draft Indemnity Agreement

**Indemnity Agreement  
Regarding a Pajaro River Flood Risk Management Project  
By and Among the City of Watsonville, the County of Monterey,  
the County of Santa Cruz, the Monterey County Water Resources Agency,  
and Zone 7 of Santa Cruz County Flood Control and Water Conservation District**

This Indemnity Agreement (“Agreement”) is made and entered into by and among the City of Watsonville (“Watsonville”), the County of Monterey (“Monterey”), the County of Santa Cruz (“Santa Cruz”), the Monterey County Water Resources Agency (“MCWRA”), and Zone 7 of Santa Cruz County Flood Control and Water Conservation District (“Zone 7”). A signatory to this Agreement is referred to herein as a Party, and collectively they are referred to as the Parties.

**RECITALS**

**WHEREAS**, there is a need to develop a regional water control plan (“Plan”) for coordinated and regional efforts to plan, design, finance, construct, operate, and maintain facilities and works necessary to enhance flood protection in areas of Santa Cruz and Monterey Counties within the Pajaro River watershed which are designated for residential, commercial, agricultural, or industrial uses.

**WHEREAS**, the Parties wish to form a joint powers agency to plan, design, finance, construct, operate, and maintain such a regional water control plan (hereinafter “Joint Powers Agency”).

**WHEREAS**, some of the Parties have existing contractual or other obligations regarding certain facilities of the current system of flood risk reduction (“Current System”) which could result in liability on the part of that Party in the event of flooding related to those certain facilities (“Existing Obligations”).

**WHEREAS**, Watsonville does not have these Existing Obligations as to facilities of the Current System and therefore should not have any liability in the event of flooding related to those facilities.

**WHEREAS**, after creation of the Joint Powers Agency, it is expected that the Joint Powers Agency will assume operation and maintenance of the Current System until new facilities can be planned, designed, and constructed.

**WHEREAS**, because the Joint Power Agency will operate and maintain certain facilities of the Current System, it is possible the Joint Powers Agency could be held responsible for damages for such operation and control.

**WHEREAS**, if the Joint Powers Agency is found liable for damages associated with the operation and maintenance of the Current System, it is also possible that a court could find liability on the part of its member agencies, including those who would not have otherwise been liable, even though the Parties understand the law to be otherwise.

**WHEREAS**, until such time as the Plan is implemented, the Parties do not intend to burden Watsonville with liability it would not otherwise have had absent its agreement to participate in the creation of the Joint Powers Agency for maintaining and operating the Current System's facilities and pursuing the Plan.

**WHEREAS**, the Parties desire to enter into this Agreement so that, from the creation of the Joint Powers Agency until the completion of each facility in the Plan, Watsonville is not exposed to liability by the creation of or its participation in the Joint Powers Agency or that agency's maintenance or operation of any existing facilities of the Current System.

## **AGREEMENT**

In consideration of the mutual promises and covenants herein contained, the Parties hereto agree as follows:

1. **Incorporation of Recitals.** The above recitals are incorporated in this Agreement by reference.
2. **Condition Precedent.** This Agreement shall have no force and effect unless and until the Parties execute a Joint Exercise of Powers Agreement to create the Joint Powers Agency. This condition is for the benefit of all Parties.
3. **Term.** This Agreement shall be effective upon the effective date of a Joint Exercise of Powers Agreement as referenced in Section 2. This Agreement shall remain in effect so long as a Covered Claim, as defined below, exists.
4. **Indemnity, Defense, and Hold Harmless.**
  - (a) In addition to the definitions described in the Recitals, the following definitions apply to this agreement:
    - (1) "Covered Claim" means an occurrence as to which an injured third-party files a written claim or lawsuit against the Joint Powers Agency and/or Watsonville claiming damage from flooding caused by the design, construction, operation, or maintenance of a facility existing on the date of this Agreement that is part of the Current System for which the Joint Power Agency assumed operation or maintenance or some related role. A Covered Claim does not include claims related to any facility which the Joint Powers Agency constructs or improves.
    - (3) "Indemnifying Party" means a Party that has Existing Obligations as to a facility that gave rise to a Covered Claim.
    - (4) "Losses" means all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses Watsonville incurs of whatever kind, including reasonable attorney fees, expert and consulting fees, other fees, and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers.

(5) “Operation and Maintenance Milestone or O&M Milestone” includes the following:

- (i) As to a facility that is part of a Project Partnership Agreement with the USACE, when the USACE adopts a new, or changes to an existing, USACE O&M Manual reflecting work on the facility;
- (ii) As to a facility that is not part of a Project Partnership Agreement but for which the State of California has required an Operation, Maintenance, Repair, Replacement, and Rehabilitation (“OMRR&R”) Agreement, when the work has been completed on a facility such that the obligations to operate and maintain the facility are in effect under an OMRR&R Agreement; or
- (iii) As to any facility with no federal or state government funding, when the Parties agree by a separate agreement that an O&M Milestone has occurred as to that facility.

(b) Should a court of competent jurisdiction assign liability to Watsonville for a Covered Claim, then Watsonville shall be entitled to indemnification under this Agreement from all Indemnifying Parties.

(c) Consistent with Section 4(b), and subject to the terms and conditions of this Agreement, an Indemnifying Party shall indemnify, defend, and hold harmless Watsonville and its officers, employees, agents, successors, and permitted assigns against any and all Losses arising out of or relating to any Covered Claim of a third party to the extent such Losses are caused by or related to a facility or component of the Current System for which the Indemnifying Party has Existing Obligations.

(d) Notwithstanding anything to the contrary in this Agreement, an Indemnifying Party is not obligated to indemnify or defend Watsonville against:

- (1) Those portions of a Covered Claim (whether direct or indirect) or corresponding Losses arising out of or resulting from specific actions by Watsonville leading to a finding of liability by a court of competent jurisdiction; or
- (2) Any Covered Claim which arises from a Loss which occurred after an O&M Milestone with respect to the facility alleged to have caused that Loss.

5. **Notices.** Notice to be provided to any Party to this Agreement arising out of matters pertaining to this Agreement shall be addressed as follows:

For Santa Cruz County:

Carlos Palacios, County Administrative Officer  
701 Ocean Street, Rm. 520  
Santa Cruz, CA 95060  
[carlos.palacios@santacruzcounty.us](mailto:carlos.palacios@santacruzcounty.us)

(831) 454-2100

For Monterey County:

Charles J. McKee, County Administrative Officer  
168 West Alisal Street, Third Floor  
Salinas, CA 93901  
[McKeeCJ@co.monterey.ca.us](mailto:McKeeCJ@co.monterey.ca.us)  
(831) 755-5115

For Monterey County Water Resources Agency:

Brent Buche, General Manager  
1441 Schilling Place, North Building  
Salinas, CA 93901  
[bucheb@co.monterey.ca.us](mailto:bucheb@co.monterey.ca.us)  
(831) 755-8982

For City of Watsonville:

City Clerk's Office  
275 Main St., Suite 400 (4th Floor)  
Watsonville, CA 95076  
[cityclerk@cityofwatsonville.org](mailto:cityclerk@cityofwatsonville.org)  
831-768-3040

For Santa Cruz County Flood Control and Water Conservation District Zone 7:

Matt Machado, District Engineer  
701 Ocean Street, Rm. 410  
Santa Cruz, CA 95060  
[matt.machado@santacruzcounty.us](mailto:matt.machado@santacruzcounty.us)  
(831) 454-2368

Any party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other Parties, which shall be effective upon receipt.

6. **Modifications.** This Agreement contains the entire understanding of the Parties and no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by all Parties. Waiver by any Party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

7. **Governing Laws and Jurisdiction.** This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed



by the internal laws of the State of California.

8. **Assignment; Binding on Successors.** The rights and duties of the Parties may not be assigned or delegated without the written consent of all other Parties. Any attempt to assign or delegate such rights or duties absent such consent shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties hereto. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Joint Powers Agency then in effect.

9. **Interpretation.** This Agreement shall be deemed to have been prepared equally by all of the Parties and shall not be construed or interpreted more favorably for one Party on the basis that another Party prepared it.

10. **Entire Agreement.** This Agreement constitutes the entire contract among the Parties regarding indemnity for operation and maintenance of flood risk reduction facilities providing protection for the parties and their residents on the date of this Agreement.

11. **Severability.** Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any applicable law, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby and, to that end, the Parties hereby declare the provisions of this Agreement to be severable.

12. **Duplicate Counterparts; Electronic Signatures.** This Agreement may be executed in duplicate counterparts each of which shall constitute the original agreement. Signatures may be given by emailed pdf or other electronic means with the same force as original, wet signatures.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed on the day and year indicated below.

COUNTY OF SANTA CRUZ

By: \_\_\_\_\_  
CHAIRPERSON

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

ATTEST:

\_\_\_\_\_  
CLERK OF THE BOARD

APPROVED AS TO FORM:

\_\_\_\_\_  
COUNTY COUNSEL

SANTA CRUZ COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
CHAIRPERSON

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

ATTEST:

\_\_\_\_\_  
CLERK OF THE BOARD

APPROVED AS TO FORM:

\_\_\_\_\_  
DISTRICT COUNSEL

COUNTY OF MONTEREY

By: \_\_\_\_\_  
CHAIRPERSON

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

ATTEST:

\_\_\_\_\_  
CLERK OF THE BOARD

APPROVED AS TO FORM:

\_\_\_\_\_  
COUNTY COUNSEL

MONTEREY COUNTY WATER RESOURCES  
AGENCY

By: \_\_\_\_\_  
CHAIRPERSON

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

ATTEST:

\_\_\_\_\_  
CLERK OF THE BOARD

APPROVED AS TO FORM:

\_\_\_\_\_  
AGENCY COUNSEL

CITY OF WATSONVILLE

By: \_\_\_\_\_  
MAYOR

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

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

**DRAFT**

**JOINT EXERCISE OF POWERS AGREEMENT**

**BY AND AMONG THE**

**COUNTY OF SANTA CRUZ,**

**CITY OF WATSONVILLE,**

**COUNTY OF MONTEREY,**

**SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

**AND**

**MONTEREY COUNTY WATER RESOURCES AGENCY**

**CREATING THE**

**PAJARO REGIONAL FLOOD MANAGEMENT AGENCY  
(PRFMA)**

## TABLE OF CONTENTS

<b>ARTICLE I. DEFINITIONS</b> .....	<b>2</b>
Section 1.01 Definitions .....	2
Section 1.02 Statutory References .....	2
<b>ARTICLE II. GENERAL PROVISIONS</b> .....	<b>3</b>
Section 2.01 Purpose .....	3
Section 2.02 Creation of Public Agency as Separate Legal Entity .....	3
Section 2.03 Effective Date .....	3
<b>ARTICLE III. POWERS</b> .....	<b>3</b>
Section 3.01 General Powers .....	3
Section 3.02 Power to Issue Bonds .....	3
Section 3.03 Specific Powers .....	3
Section 3.04 Restriction on Exercise of Powers .....	4
Section 3.05 Obligations of Agency .....	4
Section 3.06 Non-Liability for Obligations, Activities, or Operation of the Agency .....	5
Section 3.07 Indemnification of Parties .....	5
<b>ARTICLE IV. ORGANIZATION AND GOVERNANCE</b> .....	<b>5</b>
Section 4.01 Governing Body of the Agency .....	5
Section 4.02 Principal Office .....	6
Section 4.03 Board Meetings .....	6
Section 4.04 Quorum, Required Votes, and Approvals .....	6
Section 4.05 Minutes .....	6
Section 4.06 Rules, Bylaws, and Regulations .....	6
Section 4.07 Vote or Assent of Parties .....	6
Section 4.08 Officers .....	6
Section 4.09 Executive Director .....	7
Section 4.10 Privileges and Immunities .....	7
Section 4.11 Bonding .....	8
<b>ARTICLE V. PLANNING AND PROJECTS</b> .....	<b>8</b>
Section 5.01 Planning .....	8
Section 5.02 Projects .....	8
<b>ARTICLE VI. BUDGETS AND PAYMENTS</b> .....	<b>9</b>
Section 6.01 Budget .....	9
Section 6.02 Contributions for Operating Expenses .....	9
<b>ARTICLE VII. ACCOUNTING AND AUDITS</b> .....	<b>9</b>
Section 7.01 Accounts and Reports .....	9
Section 7.02 Audit .....	9
<b>ARTICLE VIII. MAINTENANCE AND OPERATION OF INFRASTRUCTURE</b> .....	<b>9</b>
Section 8.01 Project Commitments .....	10
<b>ARTICLE IX. LIABILITY OF BOARD</b> .....	<b>10</b>
Section 9.01 Liabilities .....	10
Section 9.02 Liability of Boardmembers .....	10
Section 9.03 Pension Liability .....	10
<b>ARTICLE X. RESCISSION, TERMINATION, WITHDRAWAL, ASSIGNMENT</b> .....	<b>11</b>
Section 10.01 Term .....	11
Section 10.02 Rescission or Termination .....	11

Section 10.03	Disposition of Assets .....	11
Section 10.04	Withdrawal.....	11
Section 10.05	Admission of New Parties .....	12
Section 10.06	Amendment .....	12
Section 10.07	Assignment; Binding on Successors .....	12
Section 10.08	Notice of Agreement or Amendment .....	12
Section 10.09	Notice.....	12
Section 10.10	Severability.....	12
Section 10.11	Successors .....	12
Section 10.12	Counterparts; Electronic Signatures .....	13
Section 10.13	Integration .....	13
Section 10.14	Execution; Warrantee .....	13

# PAJARO REGIONAL FLOOD MANAGEMENT AGENCY

## JOINT EXERCISE OF POWERS AGREEMENT

This Joint Exercise of Powers Agreement (“Agreement”) is made by and among:

- a. County of Santa Cruz, a political subdivision of the State of California organized and existing under the laws of the State of California;
- b. County of Santa Cruz Flood Control and Water Conservation District, created by resolutions of the Santa Cruz County Flood Control and Water Conservation District pursuant to Chapter 77 of the Water Code Appendix (West’s Annotated California Codes);
- c. County of Monterey, a political subdivision of the State of California organized and existing under the laws of the State of California;
- d. City of Watsonville, a municipal corporation (herein called “Watsonville”); and
- e. Monterey County Water Resources Agency, a special act agency of the State of California with duties and responsibilities set forth in Chapter 52 of the California Water Code Appendix.

These parties are referenced herein as Member Agencies or, individually, as a Member Agency.

WHEREAS, agencies formed under the Joint Exercise of Powers Act, Government Code sections 6500 et seq. (the “JPA Law”) may finance, construct, and operate public capital improvements and provide services to serve territory within the jurisdictions of the agencies which form the joint powers entity.

WHEREAS, the Member Agencies are authorized to acquire, construct, improve, operate, and maintain infrastructure to control, manage, and conserve waters for the protection of life and property.

WHEREAS, a need exists for coordinated planning to control waters within, or flowing into, the boundaries of the Member Agencies for the protection of private and public property.

WHEREAS, a need exists to develop a regional water control plan for coordinated and regional efforts to finance, provide, and maintain infrastructure to promote flood protection in the areas described herein.

WHEREAS, a joint powers agency is appropriate to provide local assurances to, and participate in cost sharing for, flood control work with the State of California and the United States Army Corps of Engineers.

WHEREAS, such a regional water control plan can best be achieved through the cooperative action of the Parties by creating a joint powers agency.

WHEREAS, the Member agencies wish to form a joint powers agency to manage the risk of flooding of lands in Santa Cruz and Monterey Counties, and for other purposes authorized under the JPA Law and this Agreement.

# AGREEMENT

Now, therefore, in consideration of the above premises and of the mutual promises contained herein, the Parties do hereby agree as follows:

## Article I. DEFINITIONS

### Section 1.01 Definitions

- “Agreement” means this Joint Exercise of Powers Agreement, as amended from time to time.
- “Agency” means the Pajaro Regional Flood Management Agency established by this Agreement or the territory it serves, as the context may require. The territory the Agency serves is the portion of the Pajaro River watershed within the jurisdiction of the Member Agencies.
- “Board” or “Board of Directors” means the governing Board of the Agency.
- “Budget” means an approved budget appropriating funding for the expenses of the Agency.
- “Director” or “Directors” means one or more members of the Board.
- “Fiscal Year” means the period from July 1 in any calendar year to and including June 30 in the succeeding calendar year unless the Board should adopt another fiscal year by resolution.
- “Infrastructure” means watercourses, drainage channels, conduits, ditches, canals, water storage facilities, pumping plants, levees, buildings and structures or other capital facilities for the management and disposal of waters within the Agency, or outside and running into the Agency, to persons or property or to conserve any waters for beneficial use within the Agency. “Infrastructure” shall also include easements and rights-of-way for any purpose of the Agency.
- “JPA Law” means the Joint Exercise of Powers Act, Government Code section 6500 et seq. as it now exists or may hereafter be amended.
- “Member Agencies” means the parties to this Agreement identified above or which become party, accepting the rights and obligations of a Member Agency pursuant to an amendment to this Agreement.
- “Project Commitments” means written agreements between or among the Agency, the State of California, the federal government or other public agencies to: (i) operate and maintain Infrastructure, (ii) indemnify one another, one or more Member Agencies, or other public entities for liabilities arising out of such operation and maintenance or the failure of such operation and maintenance; and/or (iii) indemnify one another, one or more Member Agencies, or other public or private entities for design or construction of Infrastructure designed or constructed by the Agency.

### Section 1.02 Statutory References

Any reference in this agreement to a statute shall mean that statute as it now exists or may hereafter be amended.



## **Article II. GENERAL PROVISIONS**

### **Section 2.01 Purpose**

The purpose of the Agency is to exercise the common powers of the Member Agencies addressed by this Agreement to reduce flood risk to lives and property. Each Member Agency has common authority to study, plan for, develop, finance, acquire, design, construct, maintain, repair, replace, rehabilitate, manage, operate and control Infrastructure to protect lives and property independently or in cooperation with the United States, the State of California, or other entities. The Agency may exercise any of those powers independently or in cooperation with the United States, the State of California, or any other entity. The Agency may serve as the non-federal sponsor and make Project Commitments with respect to Infrastructure.

### **Section 2.02 Creation of Public Agency as Separate Legal Entity**

There is hereby created a public authority known as the “Pajaro Regional Flood Management Agency.” It is the intent of the Parties that the Agency shall be a legal entity separate from the Parties pursuant to Government Code section 6507. Its liabilities shall be its own as provided in Article XI of this Agreement.

### **Section 2.03 Effective Date**

This amended Agreement shall be effective on the date it is signed by the last Member Agency to do so.

## **Article III. POWERS**

### **Section 3.01 General Powers**

The Agency may exercise the powers granted to it under the JPA Law, including but not limited to the powers of each of the Member Agencies as may be necessary to the accomplishment of the purposes of this Agreement.

### **Section 3.02 Power to Issue Bonds**

The Agency shall have all the powers provided in the JPA Law, including the power to issue bonds.

### **Section 3.03 Specific Powers**

The Agency is hereby authorized, in its own name, to do all acts necessary or convenient to the accomplishment of the purposes of this Agreement, including but not limited to:

- a. To study, plan, and implement ways and means to provide a reasonable program and plan of operation for the control of waters within or flowing into the boundaries of the Agency;
- b. To participate in financing or re-financing any Infrastructure, in accordance with any terms and conditions imposed by the JPA Law;
- c. To make and enter into contracts necessary to the accomplishment of the purposes of this Agreement;
- d. To contract for the services of engineers, attorneys, planners, financial consultants, and other contractors and consultants as needed;
- e. To employ such persons as it deems necessary;

- f. To enter into agreements with the United States of America, the State of California, or any other public or private person to provide a portion or all of the local contribution which may be required for Infrastructure constructed by the State or Federal governments or one or more Member Agencies;
- g. To acquire, construct, manage, control, maintain, improve, repair, replace, and/or operate any Infrastructure; provided, however, that the Agency shall not do so as to Infrastructure within the boundaries of a Member Agency without its prior written agreement;
- h. To acquire by eminent domain or otherwise, and to hold and dispose of, any interest in real or personal property necessary to the accomplishment of the purposes of this Agreement;
- i. To receive gifts, contributions, and donations of property, funds, services, and other forms of financial or other assistance from any persons, firms, corporations, or governmental entities;
- j. To sue and be sued in its own name;
- k. To adopt rules, regulations, policies, bylaws, and procedures governing the operation of the Agency;
- l. To incur debts, liabilities, or obligations;
- m. To levy and collect assessments and/or special taxes and to participate in other financing districts;
- n. To establish, revise, and collect fees as a condition of development of land or otherwise;
- o. To apply for, accept, and receive state, federal, or local licenses, permits, grants, loans, and other aid from any agency of the United States of America, or of the State of California, or from any other public or private entity necessary for the accomplishment of the purposes of this Agreement;
- p. To perform all acts necessary or proper to carry out fully the purpose of this Agreement and not inconsistent with the JPA Law;
- q. To invest money not required for the immediate necessities of the Agency pursuant to Government Code sections 6505.5 and 53601;
- r. To refinance indebtedness incurred by one of more Member Agencies in connection with any of the purposes of this Agreement;
- s. To apply for letters of credit or other form of financial guarantees to secure the repayment of bonds and enter into agreements in connection therewith;
- t. To carry out and enforce this Agreement; and
- u. To exercise all other powers not specified here but common to the Member Agencies and authorized by Government Code section 6508.

### **Section 3.04 Restriction on Exercise of Powers**

The powers of the Agency shall be exercised in the manner provided in the JPA Law, and, except for those powers set forth in the JPA Law, shall be subject (in accordance with Section 6509 of the JPA Law) to the restrictions upon the manner of exercising such powers that are imposed upon the County of Santa Cruz in the exercise of similar powers.

### **Section 3.05 Obligations of Agency**

The debts, liabilities and obligations of the Agency shall not be the debts, liabilities and obligations of any Member Agency or any other Public Agency.

### **Section 3.06 Non-Liability for Obligations, Activities, or Operation of the Agency**

No Member Agency, Director, officer, agent, consultant, or employee of the Agency shall be individually or personally liable for the payment of the principal or premium or interest on any obligation of the Agency; but nothing herein contained shall relieve any such Member Agency, Director, officer, agent, or employee from the performance of any official duty provided by law or by the instruments authorizing the issuance of any obligation of the Agency.

### **Section 3.07 Indemnification of Parties**

The Agency shall, to the fullest extent allowable under applicable law, indemnify and hold harmless each of the Member Agencies for and against any claim, action, liability, penalty, or other imposition whatsoever upon such Member Agency by reason of (a) the activities of the Agency or (b) such Member Agency's status as party to this Agreement.

## **Article IV. ORGANIZATION AND GOVERNANCE**

### **Section 4.01 Governing Body of the Agency**

- a. The Agency shall be governed by a Board of Directors comprising five persons selected by the Member Agencies as set forth in this section below. All voting power of the Agency shall reside in the Board.
- b. The Board shall comprise the following:
  - i. One Boardmember selected by the Santa Cruz County Board of Supervisors from among its members, who shall be the representative for Supervisorial District Two or Four;
  - ii. One Boardmember selected by the Santa Cruz County Flood Control and Water Conservation District – Zone No. 7 Board of Directors from among its members, who shall be the representative for either Supervisorial District Two or Four;
  - iii. One Boardmember selected by the Watsonville City Council;
  - iv. One Boardmember selected by the Monterey County Water Resources Agency Board of Supervisors from among its members; and
  - v. One Boardmember who shall be the Monterey County Supervisor for Supervisorial District Two.
- c. References to supervisorial districts in this section mean those districts as presently numbered and such successor districts as include the territory of the respective County within the Agency.
- d. Each appointing authority shall also appoint an Alternate from among the appointing authority's members. The Alternates shall serve in the absence of recusal of the Member for whom they are the Alternate but shall not otherwise sit with or deliberate with the Board.
- e. Except for Supervisors appointed by virtue of service as Monterey County Supervisor representing District Two, Boardmembers and Alternates serve at the pleasure of their appointing authorities and shall hold office until a successor takes the oath of office as an officer of the Agency.
- f. Each appointing authority shall promptly appoint a successor to a Boardmember or Alternate who ceases, for any reason, to be a Boardmember or Alternate or qualified to serve on the Board under the standards of subsection b above.
- g. The Agency may compensate Boardmembers and/or Alternates for service to the Agency as the Board may determine. A Board member or Alternate may be reimbursed for expenses he or she

reasonably incurs in the conduct of the Agency's business pursuant to a written policy of the Agency.

#### **Section 4.02 Principal Office**

The Board shall designate the Agency's principal office at a place convenient to the work of the Agency within or without the Agency. The Secretary shall note any change in that designation in the minutes of a Board meeting and notify each Member Agency of that change in writing.

#### **Section 4.03 Board Meetings**

The Board shall meet at the Agency's principal office or at such other place as it may be designated. The Board shall establish the time and place of its regular meetings by resolution furnished to each Member Agency. Regular, adjourned, and special meetings shall be called and held as specified in the Ralph M. Brown Act, Government Code section 54950 et seq.

#### **Section 4.04 Quorum, Required Votes, and Approvals**

Three-fifths of Boardmembers then in office shall constitute a quorum for the transaction of business. Except as this Agreement of applicable law otherwise requires, the vote of a majority of a quorum is sufficient to carry an action. Boardmembers may not cast proxy or absentee votes. Each Boardmember shall have an equal vote.

#### **Section 4.05 Minutes**

The Secretary shall keep minutes of Board meetings, and provide them to each Boardmember, Alternate, and Member Agency or, alternatively, maintain them on the Agency's website.

#### **Section 4.06 Rules, Bylaws, and Regulations**

The Agency may adopt and amend from time to time such rules, bylaws, and regulations for the conduct of its affairs as may be necessary or advisable and as are consistent with this Agreement and applicable law.

#### **Section 4.07 Vote or Assent of Parties**

Any agreement, vote, assent, or approval of a Member Agency required by this Agreement or applicable law shall be filed with the Secretary and be evidenced by a resolution or approved meeting minutes of the governing board of the Member Agency.

#### **Section 4.08 Officers**

Unless the Board determines otherwise by resolution, the Agency officers designated in this section shall hold office for one year commencing with the first Board meeting of each calendar year provided, however, that the first Chairperson, Vice Chairperson, and Secretary appointed shall hold office from the date of their appointment to the second January 1st thereafter to avoid initial terms of less than a year. The Board shall also have the power to appoint such additional officers as it deems necessary and appropriate. The Treasurer and Auditor hereby designated may be changed only by the consent of all Board members then in office and shall not be members of the Board.

- a. Chairperson and Vice-Chairperson. The Board shall select from among its members a Chairperson and a Vice-Chairperson who shall cease to serve in that role upon ending service on the Board or upon election of a new Chairperson/Vice-Chairperson, whichever occurs first.
- b. Secretary. The Board shall appoint a Secretary who may also be a Director; the Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Agency. The Secretary shall have charge of, handle, and have access to all other records of the Agency.
- c. Treasurer. The Santa Cruz County Treasurer shall be the Treasurer of the Agency and shall be the depository and shall have custody of all money of the Agency, from whatever source, and shall have the duties and obligations of the Treasurer as set forth in Sections 6505 and 6505.5 of the JPA Law. The Treasurer shall be responsible for providing quarterly reports and verifying the balance of such reports as maintained by the records of the Auditor.
- d. Auditor. The Santa Cruz County Auditor-Controller shall be the Auditor of the Agency and shall have the duties and obligations of the Auditor as set forth in sections 6505 and 6505.6 of the JPA Law, including the audit obligation stated in section 8.02 of this Agreement.
- e. General Counsel. The Board shall appoint an attorney licensed to practice in California who shall serve at the pleasure of the Board. The Board may, but need not, appoint the County Counsel of either Santa Cruz or Monterey Counties to serve in this role. General Counsel shall work cooperatively with the Executive Director, but shall report to the Board.

#### **Section 4.09 Executive Director**

Until the Board otherwise directs, the Executive Director shall be an employee of the Santa Cruz County Flood Control and Water Conservation District – Zone 7 (“Zone 7”) designated by Zone 7. Should Zone 7 decline to continue to provide an employee to serve in that role, the Board shall promptly appoint another to serve as Executive Director. The Executive Director shall be appointed by, and serve at the pleasure of, the Board. The Executive Director shall be responsible to the Board for the proper and efficient administration of the Agency as is or hereafter may be placed in his or her charge pursuant to this Agreement, or of any Board ordinance, resolution, or order. In addition to other powers and duties herein provided, the Executive Director is authorized:

- a. Under policy direction of the Board, to plan, organize, and direct all activities of the Agency;
- b. To appoint and to remove all Agency employees, all of whom shall serve at the pleasure of the Executive Director, except as is otherwise provided by law or by this Agreement including, but not limited to, section 4.08 above;
- c. To authorize expenditures authorized by an approved Budget;
- d. To make recommendations to, and requests of, the Board concerning all of the matters and things which are to be performed, done, or carried out by the Agency; and
- e. To call meetings of the Board.

#### **Section 4.10 Privileges and Immunities**

As provided in Government Code section 6513, all the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers’ compensation and other benefits which apply to the activities of officers, agents, or employees of a public agency when performing their

respective functions shall apply to the officers, agents, and/or employees of the Agency to the same degree and extent while engaged in the performance of any of the functions and other duties of such officers, agents, or employees under this Agreement.

None of the officers, agents, or employees of the Agency shall be deemed, solely by reason of their employment by the Agency, to be employed by any Member Agency or, by reason of their employment by the Agency, to be subject to any of the requirements of any Member Agency.

#### **Section 4.11 Bonding**

Any person who has charge of any funds or securities of the Agency shall be bonded in amounts fixed by Board resolution.

#### **Section 4.12 Conflicts of Interest**

- a. POLITICAL REFORM ACT. Board members are “public officials” within the meaning of the Political Reform Act of 1974, as amended, and its regulations, for purposes of financial disclosure, conflict of interest, and other requirements of such Act and regulations, subject to a contrary opinion or written advice of the California Fair Political Practices Commission. The Agency shall adopt a conflicts of interest code in compliance with the Political Reform Act.
- b. LEVINE ACT. Board members are “officials” within the meaning of Government Code Section 84308 et seq., commonly known as the “Levine Act,” and subject to its restrictions on the acceptance, solicitation, or direction of contributions.

### **Article V. PLANNING AND PROJECTS**

#### **Section 5.01 Planning**

The Agency shall undertake and/or participate in such studies and planning as necessary to reduce flood damage within the Agency, as part of a larger integrated water resources program or otherwise. Such studies and planning may include, but need not be limited to, proposals for the construction of an upstream storage or detention dam, the rehabilitation or elevation or construction of levees, and assumption and/or maintenance of Infrastructure constructed or owned by one or more Member Agencies. Such studies and planning shall identify financing methods for such proposals and may allocate capital as well as maintenance and operating costs among the Member Agencies.

#### **Section 5.02 Projects**

The Agency shall develop, design, acquire, and construct Infrastructure and necessary funding (including local cost shares of federal projects), to reduce flooding within the Agency, potentially as part of a larger integrated water resources program or otherwise. The Agency may construct, rehabilitate, or fund all or part of projects independently or in cooperation with the United States, the State of California, or another public entity or entities.

## **Article VI. BUDGETS AND PAYMENTS**

### **Section 6.01 Budget**

Within 90 days after the first meeting of the Board, and before the start of each subsequent fiscal year, the Board shall adopt a Budget for the ensuing Fiscal Year which it may amend from time to time. Approval of a Budget or Budget requires a unanimous vote of Directors (or Alternates voting in the absence or recusal of a Director) then in office.

### **Section 6.02 Contributions for Operating Expenses**

- a. Upon its formation, the Agency is not expected to have any assets to allocate to Infrastructure. The Agency will nevertheless undertake planning and administrative work before adoption of an initial Budget and securing funding. The Member Agencies agree to fund this work in the shares established through a separate agreement.
- b. The Agency shall allocate overhead costs consistently with financing methods for proposals approved by the Board pursuant to section 5.01 of this Agreement. The Agency shall allow Member Agencies a reasonable opportunity to review and comment on any proposed allocation or reallocation of overhead.
- c. In accordance with Section 6512.1 of the JPA Law, the Board may direct repayment or return to the Member Agencies of all or part of any contributions made by the Member Agencies upon such terms as may be consistent with the JPA Law and other applicable law. The Agency shall hold title to all it acquires during the term of this Agreement, including but not limited to Infrastructure.

## **Article VII. ACCOUNTING AND AUDITS**

### **Section 7.01 Accounts and Reports**

The Agency shall maintain books and accounts consistently with standards adopted by the Controller of the State of California for special districts.

### **Section 7.02 Audit**

The Auditor shall cause to be conducted an audit compliant with generally accepted audit standards of the records and the accounts of the Agency and file such audit reports with the State Controller and each Member Agency within six months of the end of each fiscal year or by such other deadline as is imposed by law or a grant or loan agreement.

## **Article VIII. MAINTENANCE AND OPERATION OF INFRASTRUCTURE**

The Board shall determine before acquiring or constructing any Infrastructure whether or not the Agency will maintain and/or operate it. If the Agency is to maintain and/or operate particular Infrastructure, it shall do so efficiently, economically, and in a manner not detrimental to the Member Agencies. If the Board determines that one or more Member Agencies will maintain and/or operate particular Infrastructure, that Member Agency or those Member Agencies shall accept that responsibility in writing before the Agency agrees to or does acquire or construct that Infrastructure.

## **Section 8.01 Project Commitments**

This Agreement may not be rescinded or terminated, the Agency dissolved, and no Member Agency may withdraw from the Agency while the Agency has outstanding Project Commitments unless another public agency has provided such reasonable written assurances to perform those Project Commitments as the State, the Federal government, or other contracting parties as to those Project Commitments may request.

The Agency may assume Project Commitments of a Member Agency by resolution of the Board and in no other fashion.

## **Article IX. LIABILITY OF BOARD**

### **Section 9.01 Liabilities**

Except as provided in Section 9.03, the debts, liabilities, and obligations of the Agency shall be the debts, liabilities, or obligations of the Agency alone and not of the Member Agencies as provided in Government Code section 6508.1. Any financial dealings between the Agency and one or more Member Agencies shall be by written contract.

### **Section 9.02 Liability of Boardmembers; Defense & Indemnity**

Except as otherwise provided in this Agreement, the funds of the Agency may be used to defend, indemnify, and hold harmless the Agency and any Director, officer, or employee for their actions taken within the course and scope of their work for the Agency. The Agency may self-insure, participate in pooled self-insurance, or purchase insurance to provide such coverage. The Agency shall defend and indemnify its officers and employees if and as required by Government Code sections 825 and 995.

### **Section 9.03 Pension Liability**

- a. The Agency may contract with the California Public Employees Retirement System (PERS) or any other public entity to provide pension benefits to its employees with such consent and assurances of the Member Agencies as may then be required by applicable law.
- b. Each Member Agency's conditional share of pension liability, defined in paragraph (c) below, shall be provided by a written agreement made when the benefits are contracted for and, in the absence of such an agreement, the Agency may not contract for such pension services. Such agreement shall conditionally allocate 100 percent of the Agency's pension liabilities among the Member Agencies, leaving no portion of that liability unassigned.
- c. A Member's conditional share of pension liability means liability due under Government Code section 6508.2 to fund payments to CalPERS or another public entity with which the Agency contracts to provide pension benefits to the Agency's employees ("Pension Provider") which liability the Agency does not pay because this Agreement is terminated, the Agency becomes insolvent, or the Agency's agreement with the Pension Provider is terminated.



## **Article X. RESCISSION, TERMINATION, WITHDRAWAL, ASSIGNMENT**

### **Section 10.01 Term**

The Agency shall continue until this Agreement is rescinded or terminated as herein provided and as provided in section 8.01 of this Agreement.

### **Section 10.02 Rescission or Termination**

A Member Agency may withdraw from this Agreement pursuant to section 10.04. The Agency shall wind up its affairs and dissolve upon withdrawal by the second-to-last Member Agency to do so. The Agency may wind up its affairs and dissolve, and the Agency terminated, by unanimous written consent of the Member Agencies. Any such dissolution shall be consistent with section 8.01. This Agreement shall terminate with dissolution of the Agency except as respects insurance and indemnities which the Board may identify to survive that dissolution.

### **Section 10.03 Disposition of Assets**

Upon termination of this Agreement, the Agency's remaining assets shall be returned to the Member Agencies then participating in the Agency in proportion to their contributions to the Agency's funding. The Board shall first offer any Infrastructure and other illiquid assets of the Agency to the Member Agencies for good and adequate consideration. If no such sale is consummated, the Board shall offer such illiquid assets to any public or private entity for good and adequate consideration. The net proceeds from any sale or the illiquid assets if no sale occurs shall be distributed as provided in the first sentence of this section.

### **Section 10.04 Withdrawal**

- a. Subject to section 10.02 of this Agreement, no Member Agency may withdraw from the Agency without the unanimous consent of the other Member Agencies after: (1) the withdrawing Member Agency provides written notice to the other Member Agencies of intent to withdraw, and (2) the withdrawing Member Agency honors any unmet obligations under this Agreement. Any withdrawal shall be effective on the last day of the fiscal year in which the withdrawal is agreed unless all Member Agencies agree otherwise in writing.
- b. If a withdrawing Member Agency has any rights in any Infrastructure or responsibility for obligations of the Agency, except by a written agreement of all Member Agencies, the withdrawing Member Agency may not sell, lease, or transfer those rights or be relieved of those obligations, except an obligation to pay its share of operation and maintenance costs of Infrastructure.
- c. The Agency shall not refund or repay a withdrawing Member Agency's initial commitment of funds to the Agency absent unanimous agreement of the initial Member Agencies. The Agency may refund or repay any subsequent contribution in accordance with any written terms and conditions upon which the contribution was made.

**Section 10.05 Admission of New Parties**

Additional public entities may become Member Agencies upon such terms and conditions as the Board may provide with the unanimous consent of all Member Agencies, evidenced by a written addendum to this Agreement signed by all of Member Agencies, including the new Member Agency.

**Section 10.06 Amendment**

This Agreement may be amended only by the unanimous agreement of the Member Agencies.

**Section 10.07 Assignment; Binding on Successors**

Except as otherwise provided in this Agreement, the rights and duties of the Member Agencies may not be assigned or delegated without the written consent of all other Member Agencies. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void and confer no rights on any third party. Any approved assignment or delegation shall be consistent with the terms of any then extant Project Commitments or other obligations of the Agency.

**Section 10.08 Notice of Agreement or Amendment**

- a. Within 30 days of the effective date of this Agreement or any amendment to it and pursuant to the JPA Law, the Agency shall give notice to the Secretary of State. The Agency shall give any other notice required by applicable law upon the approval, termination, or any amendment of this Agreement.
- b. Within 10 days after the effective date of this Agreement, the Agency shall cause a statement of the information, required by California Government Code Section 53051, to be filed with the office of the California Secretary of State and with the County Clerk.

**Section 10.09 Notice**

Any notice or instrument required to be given or delivered by depositing the same in any United States mail, registered or certified, postage prepaid, addressed to the Member Agency or the Agency, shall be deemed to have been received by addressee 72 hours after such deposit. Notice may be given by such other means as the Agency or a Member Agency specifies in writing.

**Section 10.10 Severability**

Should a court of competent jurisdiction decide any part, term, or provision of this Agreement conflicts with law or is otherwise unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected and, to that end, the Member Agencies declare the parts, terms, and provisions of this Agreement to be severable.

**Section 10.11 Successors**

This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Member Agencies.

**Section 10.12 Counterparts; Electronic Signatures**

This Agreement may be executed in counterparts, all of which together shall constitute a single agreement, and each of which shall be an original for all purposes. Signatures may be given by emailed pdf or other equivalent means with the same force as original wet signatures.

**Section 10.13 Integration**

This Agreement represents the full and entire Agreement among the Members with respect to the matters covered herein.

**Section 10.14 Execution; Warrantee**

The legislative bodies of the Member Agencies have each authorized execution of this Agreement, as evidenced by the respective signatures attested below. The persons signing below warrant for the benefit of the Member Agencies for which they do not sign that they have actual authority to bind their respective principals to this Agreement.

IN WITNESS WHEREOF, the Member Agencies have caused this Agreement to be executed on the day indicated below.

COUNTY OF SANTA CRUZ

COUNTY OF MONTEREY

By: \_\_\_\_\_  
CHAIRPERSON

By: \_\_\_\_\_  
CHAIRPERSON

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

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

ATTEST:

ATTEST:

\_\_\_\_\_  
CLERK OF THE BOARD

\_\_\_\_\_  
CLERK OF THE BOARD

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
COUNTY COUNSEL

\_\_\_\_\_  
COUNTY COUNSEL

CITY OF WATSONVILLE

By: \_\_\_\_\_  
MAYOR

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

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

MONTEREY COUNTY WATER RESOURCES  
AGENCY

By: \_\_\_\_\_  
CHAIRPERSON

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

ATTEST:

\_\_\_\_\_  
CLERK OF THE BOARD

APPROVED AS TO FORM:

\_\_\_\_\_  
AGENCY COUNSEL

SANTA CRUZ COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
CHAIRPERSON

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

ATTEST:

\_\_\_\_\_  
CLERK OF THE BOARD

APPROVED AS TO FORM:

\_\_\_\_\_  
DISTRICT COUNSEL