

Attachment A

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**AGREEMENT BETWEEN THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT AND THE
COUNTY OF MONTEREY, A MUNICIPAL CORPORATION**

**FOR FUNDS FROM A PROPOSITION 1 ROUND 2 INTEGRATED REGIONAL
WATER MANAGEMENT (IRWM) GRANT TO THE MONTEREY PENINSULA,
CARMEL BAY, AND SOUTH MONTEREY BAY PLANNING REGION TO
COMPLETE**

**CARMEL RIVER FLOODPLAIN RESTORATION AND ENVIRONMENTAL
ENHANCEMENT PROJECT (CRFREE)**

Recitals

A. The Monterey Peninsula Water Management District (“MPWMD” or “District”) entered into Agreement Number 4600015397 (State Grant Agreement) with the Department of Water Resources of the State of California (“DWR” or “State”) pursuant to Chapter 7. Regional Water Security, Climate, and Drought Preparedness (Wat. Code, § 79740 et seq.). The State funding will assist in financing the projects identified in the Grant Agreement associated with the adopted Integrated Regional Water Management (IRWM) Plan for the Monterey Peninsula, Carmel Bay, and South Monterey Bay. The State Grant Agreement (**Exhibit A**), and any subsequent amendments thereto, are incorporated herein by reference.

B. The term Local Project Sponsor (LPS) refers to the implementing agency intended to receive grant funding pursuant to said State Grant Agreement for work to be completed by LPS as set forth in said State Grant Agreement. LPS shall be assigned in accordance with the participating agencies identified in the State Grant Agreement. All work to be completed by LPS is referred to in this Agreement as “Project” and is defined as a group of activities as set forth in the State Grant Agreement in the subsections in the Work Plan that describe Carmel River Floodplain Restoration and Environmental Enhancement Project (CRFREE); however, an individual LPS that enters into a Subgrantee Agreement with MPWMD for grant funds is responsible only for its portion of activities and not for activities proposed by any other LPS or by MPWMD.

C. The parties acknowledge that MPWMD will administer the distribution of grant funds to each LPS pursuant to the State Grant Agreement. The LPS agrees to act on behalf of MPWMD for the purposes of its individual Project management, oversight, compliance, and operations and maintenance. LPS is responsible for all other aspects of its Project in a manner to ensure MPWMD’s compliance with the State Grant Agreement. LPS is solely responsible for design, construction, and operation and maintenance of the Project it has proposed in State Grant Agreement. Review or approval of plans, specifications, bid documents, or other construction documents by MPWMD or the State is solely for the purpose of proper administration of funds by MPWMD or the State and shall not be deemed to relieve or restrict responsibilities of the LPS under this Agreement.

D. The term of this Agreement begins on the date this Agreement is fully executed by both MPWMD and the Local Project Sponsor and ends on the termination date specified in the State Grant Agreement.

E. The parties desire to set forth the terms and conditions under which the Local Project Sponsor is to receive grant funds from MPWMD.

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THIS AGREEMENT is entered into this ____ day of _____, by and between the County of Monterey (“Subgrantee” or “Local Project Sponsor”) and the Monterey Peninsula Water Management District (“MPWMD” or “District”) for the purposes of completing the Carmel River Floodplain Restoration and Environmental Enhancement Project (CRFREE) (Project) and receiving reimbursement from the State Grant for a portion of Project expenses.

SECTION I SCOPE OF SERVICES

MPWMD hereby engages Subgrantee to complete the Project as set forth in the subsections of the Work Plan in **Exhibit A**, State Grant Agreement specific to the Project, hereinafter referred to as the Work Plan, which is an integral part of the State Grant Agreement between the State of California Department of Water Resources, and the Monterey Peninsula Water Management District, Agreement Number 4600015397, pursuant to Chapter 7. Regional Water Security, Climate, and Drought Preparedness (Wat. Code, § 79740 et seq.), hereinafter referred to as State Grant Agreement and incorporated as **Exhibit A** to this Agreement.

SECTION II COMPENSATION

A. GRANT REIMBURSEMENT SCHEDULE

Grant reimbursements payable to Subgrantee for services specified herein shall be in accordance with the subsection of the Budget in the State Grant Agreement specific to the Project, hereinafter referred to as Budget. The cost of the Project is estimated to be \$898,451. Subgrantee agrees to be responsible for the Non-State Share and Other Cost Share of the Project as shown in the Budget. The Subgrantee’s cost share is estimated to be \$6,495,594. Costs incurred after May 5, 2023 will be eligible for grant reimbursement and costs incurred after January 1, 2015 can be used as required local cost share.

B. METHOD OF PAYMENT

Reimbursement of funds expended by Subgrantee shall be based on work described in the Work Plan. In order to receive disbursement of grant funds, Local Project Sponsor shall submit to MPWMD quarterly invoices for eligible project costs as defined in the State Grant Agreement Item 7 (Eligible Project Cost) in a form required by MPWMD. Supporting documentation as described in the State Grant Agreement Item 8 (Method of Payment) shall accompany each invoice. The documentation required by this paragraph shall be sent electronically to:

Maureen Hamilton, Water Resources Engineer
Monterey Peninsula Water Management District
mhamilton@mpwmd.net

MPWMD shall request reimbursement from the State for Subgrantee's costs, subject to a finding by MPWMD that the invoice and supporting documentation are consistent with the requirements of the State Grant Agreement. Where MPWMD finds the invoice and supporting documentation for work to be unsatisfactory, MPWMD shall describe deficiencies in writing or by electronic mail (e-mail) to Subgrantee within ten (10) days. Subgrantee shall have the option of revising the invoice and supporting documentation to delete reimbursement requests for invoices that are deemed unsatisfactory or revising unsatisfactory invoices and resubmitting a reimbursement request. Payments to Subgrantee are due and payable within thirty (30) days after receipt of grant funds from the State. As specified in State Grant Agreement, Exhibit D.36, ten percent (10%) of the maximum payment shall be retained by State until such time as State releases retention to MPWMD. The final invoice for work performed shall be submitted by Subgrantee to MPWMD not later than 30 days after completion of Project work as set forth in the Schedule in the State Grant Agreement. MPWMD shall submit such invoice to the State with request for release of retention(s) not later than 60 days after receipt of invoice.

C. MAXIMUM PAYMENT

Payments to Subgrantee for Project expenses incurred under this Agreement **shall not exceed \$898,451 provided, however, that this amount may be increased in writing by mutual agreement of the Parties in the event Project costs exceed projections and more grant funds are made available by the Department of Water Resources.** This amount may be reduced as per the Paragraph 5.A.ii. of the State Grant Agreement.

SECTION III INSPECTION OF WORK

Authorized representatives of MPWMD shall have access to Subgrantee's offices or other work location during normal business hours for the purpose of review and inspection of work activities undertaken pursuant to this Agreement.

SECTION IV OWNERSHIP OF PROJECT REPORT

For the purposes of retaining records for any future audits, Subgrantee shall provide MPWMD electronic copies of all original documents, explanations of methods, maps, tables, computer programs, reports and other documents prepared under this Agreement and described as deliverables in the State Grant Agreement.

Subgrantee may be required to provide additional documents to the State. MPWMD shall forward to the State all such requested documents.

SECTION V
TIME OF PERFORMANCE

Subgrantee shall complete all tasks described herein according to the schedule shown in the State Grant Agreement. Time is of the essence to this Agreement, and late performance may result in a termination of this Agreement pursuant to Section IX, Termination.

SECTION VI
RESPONSIBILITIES

- A. Subgrantee shall act as an independent Subgrantee and not as an agent or employee of MPWMD. Subgrantee shall have exclusive and complete control over Subgrantee's employees and subcontractors and shall determine the method of performing the services hereunder.
- B. MPWMD shall provide Subgrantee with all data and documents in its possession related to the State Grant.
- C. Subgrantee shall perform the work and provide the documentation required of MPWMD or pertinent to Local Project Sponsor's Project in a timely manner as set forth, without limitation, in the Work Plan. Notwithstanding the foregoing, any documents or information required to be submitted to the State, Department of Water Resources, agents of the Department of Water Resources, agents of the State, shall be submitted by Subgrantee to MPWMD for submittal by MPWMD to the appropriate party designated in the State Grant Agreement.
- D. Subgrantee agrees to provide all required reports as specified in the State Grant Agreement, Item 14 (Submission of Reports), according to a format and schedule as specified by MPWMD. This pertains to the quarterly Progress Report, quarterly Accountability Report (applicable to advance funds), Final Report, and Post-Performance Report.
- E. Subgrantee shall coordinate and arrange for all meetings required to be held with other agencies or persons hereunder for the Project work specified in the Work Plan. Subgrantee shall be responsible for the reproduction of work produced by Subgrantee hereunder.
- F. MPWMD is to provide administrative services for the benefit of the Local Project Sponsor and other local project sponsors, in the administration of this Agreement and the State Grant Agreement. MPWMD is to receive compensation via grant reimbursement for these services as set forth in the Budget in the State Grant Agreement.

MPWMD agrees to provide grant administrative services for the term specified in the State Grant Agreement. In the event the terms or conditions of the State Grant Agreement are

changed to accommodate the Local Project Sponsor, MPWMD shall be reimbursed by the Subgrantee for any additional administrative costs that are solely attributable to grant administration occurring beyond the original scope of work described in the State Grant Agreement.

- G. Subgrantee acknowledges that the State Grant Agreement, Item 5 (Basic Conditions), establishes the State shall have no obligation to disburse money for the Project under this Agreement until MPWMD, and as applicable the Subgrantee, has satisfied all the applicable conditions specified in Item 5.
- H. Subgrantee acknowledges its responsibility to comply with the applicable provisions of the State Grant Agreement Exhibit D., Standard Conditions. Special attention is directed to State Grant Agreement Section D5 "Audits." Subgrantee may be required to share in expenses associated with an audit and shall be required to maintain records for at least three (3) years after Project completion.
- I. The Subgrantee agrees to indemnify, defend and hold harmless MPWMD, its officers, agents and employees, from any and all claims and losses accruing or resulting to any and all subcontractors, material suppliers, laborers and any other person, firm or corporation who may be injured or damaged by the negligent acts, errors, and/or omissions of the Subgrantee, Subgrantee's employees, or Subgrantee's subcontractors or sub-subcontractors in the performance of this Agreement.
- J. Subgrantee agrees to perform all work for the Project under this Agreement in compliance with the terms and conditions of the State Grant Agreement.

SECTION VII EVIDENCE OF SELF-INSURANCE

Prior to the execution of the agreement, the Subgrantee shall provide a letter of self-insurance that meets the insurance requirements set forth in Exhibit B, at its expense and maintain in full force and effect such insurance as will protect it from claims, damages, losses, liability, costs, and expenses as set forth herein which may arise out of or result from or in any way connected with the Subgrantee's activities, work, services, and/or operations performed by the Subgrantee under this Agreement, whether such activities or operations be by itself or by any subcontractor or by any sub-subcontractor or by anyone directly or indirectly employed by any of them, or by anyone else for whose acts the Subgrantee or any of them is or may be liable. The procurement and maintenance by the Subgrantee of policies required under this Agreement shall not relieve, limit or satisfy Subgrantee's obligation to indemnify, defend and save harmless MPWMD, its officers, directors, agents and employees.

- A. Subgrantee shall obtain and keep in full force and effect insurance policies and in appropriate limits as specified by the Insurance Requirements (**Exhibit B**) and shall require any subcontractor or sub-subcontractor to provide evidence of similar liability insurance coverages.
- D. Subgrantee shall, on all policies or coverages required to be carried by Subgrantee pursuant

to this Agreement, give to MPWMD forty-five (45) days prior written notice by certified mail, return receipt requested, to the address shown below notification of any limitations, reductions or material change in coverage or in limits available.

F. All insurance policies carried by or available to Subgrantee shall be primary and not excess nor contributing with any insurance issued to or available to MPWMD. Any insurance or self-insurance maintained or carried by MPWMD shall be excess of the Subgrantee's insurance and shall not participate in nor contribute with such insurance carried by or available to Subgrantee. MPWMD will not be responsible for any payment of premiums due as a result of compliance with the terms and conditions of the insurance requirements. The cost of such insurance shall be borne solely by the Subgrantee.

H. MPWMD shall be under no duty either to ascertain the existence of or to examine such insurance policies or to advise Subgrantee in the event such insurance coverage does not comply with the requirements hereof. However, MPWMD may, at any time, and from time to time, inspect and copy any and all insurance policies, endorsements, certificates and correspondence required to be carried by Subgrantee pursuant to this Agreement.

SECTION VIII CHANGES AND CHANGED CONDITIONS

If, during the course of the work herein contemplated, the need to change the Project Work Plan or the time schedule should arise, for whatever reasons, whichever party first identifies such need to change shall notify the other party in writing. The representatives of the parties shall meet within seven (7) working days of the date of such notice, to discuss the need for change so identified and to set the proposed action to be taken by the parties. A change in the Project Work Plan may also result in a change in the compensation amount. Any changes to the Work Plan or Budget for the Project shall be documented by duly executed amendments to this Agreement and to the State Grant Agreement.

SECTION IX TERMINATION

MPWMD may terminate this Agreement by written notice to Subgrantee at any time prior to completion of work described in the Work Plan, at the option of MPWMD, upon violation by the Subgrantee of any material provision after such violation has been called to the attention of the Subgrantee and after failure by the Subgrantee to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by MPWMD. In the event of such termination, the Subgrantee agrees, upon demand, to immediately repay to MPWMD an amount equal to the amount of grant funds disbursed to the Subgrantee prior to such termination if such a demand is made by the State. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Subgrantee to the date of full repayment by the Subgrantee. In addition, Subgrantee agrees to pay all costs incurred by MPWMD to recover such funds.

SECTION X SUBCONTRACTING

Subgrantee agrees that all provisions in the State Grant Agreement applying to Subgrantee shall also apply to its subcontractors.

SECTION XI NONDISCRIMINATION AND FAIR EMPLOYMENT

During the performance of this Agreement, the Subgrantee and its contractors shall comply with the requirements in State Grant Agreement.

SECTION XII

DRUG-FREE WORKPLACE CERTIFICATION

Certification of Compliance: Subgrantee, its contractors or subcontractors shall certify, under penalty of perjury under the laws of the State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace. Prior to commencement of work pursuant to this agreement, the Subgrantee, and all sub-subgrantees and subcontractors performing any portion of the work, shall complete and submit to MPWMD a Drug-Free Workplace Certification (Exhibit C).

SECTION XIII INTEREST OF SUBGRANTEE

During the performance of this Agreement, the Subgrantee and its contractors shall comply with the requirements in the State Grant Agreement.

SECTION XIV CONTINGENT FEES

Subgrantee warrants that Subgrantee has not employed or retained any company or person, other than a bona fide employee working solely for the Subgrantee, to solicit or secure this Agreement, and that Subgrantee has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Subgrantee, any fee, commission, percentage, brokerage fee, gifts, or other consideration contingent upon or resulting from the award or making of this Agreement. For breach of violation of this warranty, MPWMD shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage, gift, or contingent fee.

SECTION XV DISPUTES

In the event of a dispute arising out of the performance of this Agreement, either party shall, as soon as a conflict is identified, submit a written statement of the conflict to the other party. Within five (5) working days of receipt of such a statement of conflict, the second party will respond, and a meeting will be arranged not more than five (5) working days thereafter to arrive at a negotiated settlement or procedure for settlement. If, within twenty (20) working days from the initial filing of a statement of conflict an agreement cannot be reached, it is agreed that the dispute may be resolved in a court of law competent to hear this matter. This Agreement shall be construed in accord with California law, and it is agreed that venue shall be in the County of Monterey. The prevailing party shall be awarded costs of suit and attorneys' fees.

SECTION XVI
NOTICES

All communications to either party by the other shall be deemed given when made in writing and delivered or mailed to such party at its respective address as follows:

MPWMD: Monterey Peninsula Water Management District
5 Harris Court, Building G
P. O. Box 85
Monterey, CA 93942-0085
Attention: Dave Stoldt, General Manager

SUBGRANTEE: County of Monterey
1441 Schilling Pl, 2nd Floor
Salinas, CA 93901-4543
Attention: Craig Spencer, Acting Director

SECTION XVII
AMENDMENTS

This Agreement together with **Exhibits A through C** sets forth the entire understanding of the parties with respect to the subject matter herein. There are no other agreements expressed or implied, oral or written, except as set forth herein. This Agreement may not be amended except upon written amendment, executed by both parties hereto.

SECTION XVIII
ATTACHMENTS

The following exhibits attached hereto and referred to in the preceding sections are, by reference, incorporated herein and made an integral part of this Agreement:

Exhibit A. Grant Agreement between the State of California Department of Water Resources and the Monterey Peninsula Water Management District, Agreement Number 4600015397, Proposition 1 Round 2 Integrated Regional Water Management (IRWM) Implementation Grant

Exhibit B. Insurance Requirements

Exhibit C. Drug-Free Workplace Policy and Certification

EXHIBIT B

INSURANCE REQUIREMENTS

- I. Subgrantee shall provide evidence of valid and collectible insurance carried for those exposures indicated by an "X".
- A. X Professional Liability Errors & Omissions
 - B. X Workers Compensation and Employers Liability
 - C. X Automobile Liability - "Any Auto - Symbol 1"
 - D. X Comprehensive General Liability, including Bodily Injury, Property Damage and Personal Injury
 - E. X Owners & Contractors Protective
 - F. Protection & Indemnity (Marine/Aviation)
- II. The minimum limit of protection provided by insurance policies for each of the coverages listed above shall be not less than \$2,000,000. The procurement and maintenance by the Subgrantee of the policies required to be obtained and maintained by Subgrantee under this Agreement shall not relieve or satisfy Subgrantee's obligation to indemnify, defend and save harmless the District or the State, its officers, agents and employees.
- III. All policies shall contain a provision that the insurance company shall give the District at least forty-five (45) days prior written notice mailed to the address shown below prior to any cancellation, lapse or non-renewal. The 45-day written notice must be shown on all certificates of insurance.
- IV. All insurance correspondence, certificates, binders, etc., shall be mailed to:
- Monterey Peninsula Water Management District
Attn: Simona Mossbacher
5 Harris Court, Building G
P.O. Box 85
Monterey, CA 93942-0085
- V. All policies carried by the Subgrantee shall be primary coverage to any and all other policies that may be in force. The District shall not be responsible for payment of premiums due as a result of compliance with the terms and conditions of the insurance requirements.
- VI. All such policies of insurance shall be issued by domestic United States insurance companies with general policy holders' rating of not less than "B" and admitted to do business in the State of California. The policies of insurance so carried shall be carried and maintained throughout the term of this Agreement.

EXHIBIT C

DRUG-FREE WORKPLACE POLICY CERTIFICATION

The District is committed to maintaining a work environment free from the influence of alcohol and drugs in keeping with the spirit and intent of the Drug-Free Workplace Acts of 1988 and 1990. Illegal drugs in the workplace are a danger to all of us. They impair health, promote crime, lower productivity and quality, and undermine public confidence in the work we do. The use of any controlled substances is inconsistent with the behavior expected of our employees, contractors, and subcontractors. It subjects all employees, contractors, and subcontractors, as well as visitors to our facilities and work site, to unacceptable safety risks and undermines the District's ability to operate effectively and efficiently. In this connection, any location at which Monterey Peninsula Water Management District business is conducted, whether on District property or at any other site, is declared to be a drug-free workplace. This means that:

1. All employees, contractors, and subcontractors are absolutely prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, sale, or use of a controlled substance in the workplace or while engaged in District business off our premises. Any employee violating the policy is subject to discipline, up to and including termination for first offense. Violation of this policy by contractors or subcontractors could result in termination of the contract for their services.
2. Should you be required to take any kind of prescription or nonprescription medication which could affect your job performance, you are required to report this to your supervisor. Your supervisor will determine if it necessary to temporarily place you on another work assignment or to take other action as appropriate.
3. Employees, contractors, and subcontractors have the right to know the dangers of drug abuse in the workplace, the Monterey Peninsula Water Management District's policy about it, and what help is available to combat drug problems.
4. We will provide educational material and conduct training for all employees on this subject. The District also recognizes that substance abuse is treatable and is willing to provide referral assistance to those who want to understand and correct their problem before it impairs their performance and jeopardizes their employment. One source of treatment for drug/alcohol dependency is provided to District employees through their coverage under the Blue Cross Employee Assistance Program.
5. Any employee, contractor, or subcontractor convicted of violating a criminal drug statute in this agency's workplace must inform the District of such conviction (including pleas of guilty and nolo contendere) within five (5) days of its occurrence. Failure to do so will subject the employee to disciplinary action, up to and including immediate termination. Failure to do so by a contractor or subcontractor could result in termination of the contract for their services. By law, the District will notify the federal contracting officer within ten (10) days of receiving any notice of such a conviction.
6. The District reserves the right to offer employees convicted of violating a criminal drug

statute in the workplace participation in an approved rehabilitation or drug abuse assistance program as an alternative to discipline. If such a program is offered, and accepted by the employee, then the employee must satisfactorily participate in the program as a condition of continued employment.

ALL EMPLOYEES, CONTRACTORS, AND SUBCONTRACTORS ARE ASKED TO ACKNOWLEDGE THAT THEY HAVE READ THE ABOVE POLICY AND AGREE TO ABIDE BY IT IN ALL RESPECTS. BY LAW, THIS ACKNOWLEDGEMENT AND AGREEMENT ARE REQUIRED OF YOU AS A CONDITION OF CONTINUED EMPLOYMENT.

Signature of responsible party

Name and title of responsible party

Date signed