

**FORM OF
GRANT AGREEMENT BETWEEN
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
AND
THE CITY OF MONTEREY
FOR LOCAL WATER PROJECT DEVELOPMENT EXPENSES**

THIS AGREEMENT is entered into this 1 day of ^{January} ~~December~~, 2016, by and between the Monterey Peninsula Water Management District (MPWMD) and the City of Monterey.

FACTS

A. MPWMD was created by the California Legislature in 1977 for the purpose of "conserving and augmenting the supplies by integrated management of ground and surface water supplies, for control and conservation of storm and wastewater, and for the promotion of the reuse and reclamation of water." The MPWMD's specific functions are "management and regulation of the use, reuse, reclamation, conservation of water and bond financing of public works projects." It is authorized to issue bonds, assess charges for groundwater enhancement facilities, levy assessments on real property and improvements, and "fix, revise and collect rates and charges for the services, facilities, or water furnished by it."

B. The City of Monterey through its City Council and other officials, has all powers necessary or appropriate to a municipal corporation and the general welfare of its inhabitants, which are not prohibited by the Constitution of the State.

C. In an effort to improve the local water supply by encouraging independent public works projects with matching financial assistance, MPWMD solicited applications from local jurisdictions and other interested parties.

D. At its June 2015 meeting, the MPWMD Board of Directors adopted a budget that included expenditures for development expenses for local water projects.

E. The City of Monterey submitted an amended grant application to MPWMD in October 2015. The application was approved by MPWMD's Board of Directors on November 16, 2015.

NOW, THEREFORE, in consideration of the facts recited above and the mutual goals and objectives contained herein, the parties agree as follows:

1. Purpose of Agreement.

The purpose of this Agreement is for MPWMD to advance up to \$85,000 to The City of Monterey, to be paid beginning in MPWMD Fiscal Year 2015/16 and to be used by The City of Monterey for

development expenses associated with the Monterey Regional Water Recovery Study (Project).

2. The Project.

The City of Monterey's Monterey Regional Water Recovery Study is described in Attachment A, hereto. (NOTE: The District has conditioned its grant approval on shifting expenditures from Task D to Task E)

3. Term of Agreement.

The term of this Agreement begins on the date set forth above and shall remain in effect until June 30, 2018. Invoices received by MPWMD after this date for Project costs incurred up to June 30, 2018, shall be paid unless MPWMD's maximum commitment of \$85,000 has been reached.

4. Grants and Loans.

MPWMD and City of Monterey may each pursue and receive grants, state revolving fund loans, or other forms of reimbursement from local, state, or federal sources. All receipts will be delivered to the City of Monterey and credited to the Project as received. Such receipts will be deemed to offset Project costs.

5. Reimbursement.

The City of Monterey shall invoice MPWMD on a quarterly basis and MPWMD shall pay, subject to the conditions described in Section 8 below.

6. Limited Obligations.

The parties agree MPWMD's financial obligations are limited obligations payable from its Water Supply Charge. MPWMD will periodically report to the City of Monterey indicating the status of available funds.

7. Invoices.

The City of Monterey shall pay for consultants, contractors, and other Project costs in accordance with the terms of this Agreement. The City of Monterey shall submit quarterly invoices to MPWMD for Project costs which will include back-up documentation substantiating said Project costs incurred by the City of Monterey.

8. Payment of Invoices.

MPWMD shall have the right to review and confirm that the invoices submitted by the City of

Monterey are in conformance with the terms of this Agreement. Where MPWMD finds the invoice and supporting documentation for work to be unsatisfactory, MPWMD shall describe the deficiencies in writing or by electronic mail to the City of Monterey within ten (10) days. The City of Monterey 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 the City of Monterey are due and payable within thirty (30) days of receipt of invoice. MPWMD shall treat as privileged and confidential any invoice that the City of Monterey transmits under such label, and shall not disclose the content of that document to any third party.

9. Event of Default.

The failure of a party to comply with any provision of this Agreement that has a material and adverse effect on the other party, except to the extent caused by a breach of this Agreement by the other party, shall constitute an Event of Default under this Agreement; provided, however, that the defaulting party shall first have a period of thirty (30) days following receipt of notice from the other party of such failure to comply to cure such failure, or if such cure cannot be effected within such thirty (30) day period, such period shall extend for a total of one hundred eighty (180) days, so long as the defaulting party is diligently trying to cure such failure throughout such period.

10. Dispute Resolution.

Both parties shall meet and use their best efforts to settle any dispute, claim, question or disagreement (Dispute) arising from or relating to this Agreement. To that end, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If the parties do not reach such a solution within a period of thirty (30) days after the first meeting regarding the Dispute, then the parties shall pursue non-binding mediation to be completed within sixty (60) days after the first meeting regarding the Dispute. If the parties do not settle the Dispute within the sixty (60) day period, either Party may pursue any and all available legal and equitable remedies.

GENERAL PROVISIONS

11. Force Majeure.

Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations (other than payment obligations) under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, actions of legislative, judicial, executive or regulatory government bodies or other cause, without fault and beyond the reasonable control of such party. If any such events shall occur, the time for performance by either party of any of its obligations hereunder shall be extended by the parties for the period of time that such events prevented such performance. Upon the occurrence of an event of Force Majeure, the affected party shall: (i) promptly notify the other party of

such Force Majeure event, (ii) provide reasonable details relating to such Force Majeure event and (iii) implement mitigation measures to the extent commercially reasonable.

12. Indemnities.

- a. **MPWMD Indemnity.** MPWMD shall fully indemnify the City of Monterey and its respective directors, employees and agents against, and hold completely free and harmless from, any cost, expense, claim, demand, judgment, loss, injury and/or liability of any kind or nature, including personal or bodily injury, death or property damage (Losses), that may arise from any grossly negligent act or omission of MPWMD related to the Project.
- b. **City of Monterey Indemnity.** The City of Monterey shall fully indemnify MPWMD and its respective directors, employees and agents against, and hold completely free and harmless from, any Losses, that may arise from (i) any grossly negligent act or omission of the City of Monterey related to the Project construction, management, operation, maintenance or repair, except for costs, expenses, claims, demands, judgments, losses, injuries and/or liability arising from any grossly negligent act or omission of MPWMD related to the Project development activities or (ii) any claim made by a City of Monterey employee specifically retained to provide services with respect to the Project development activities.

13. Insurance/Self Insurance.

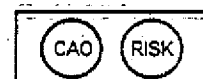
The parties are either insured or self-insured as to any requirements under this Agreement. No policies or bonds are required of either party as to any provisions of this Agreement.

14. Notices.

All notices to MPWMD required or permitted under this Agreement shall be in writing and shall be deemed delivered (i) when delivered in person; (ii) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); or (iii) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery. In each case the parties shall use the following addresses or such addresses as may be furnished in writing by one party to the other:

Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 93940
Attention: General Manager

All notices to the City of Monterey required or permitted under this Agreement shall be in writing and shall be deemed delivered (i) when delivered in person; (ii) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); or (iii) on the day after mailing



if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery. In each case the parties shall use the following addresses or such addresses as may be furnished in writing by one party to the other:

City of Monterey
Plans and Public Works
City of Monterey
580 Pacific St, Rm 7
Monterey, CA 93940
Attention: Jeff Krebs, P.E.

15. Successors and Assigns.

The terms and conditions of this Agreement shall inure to the benefit of and are binding upon the parties hereto and their respective successors in interest and permitted assigns.

16. No Third-Party Beneficiaries.

Nothing in this Agreement is intended to create any third-party beneficiaries to the Agreement, and no person or entity other than the parties, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Agreement.

17. Further Acts and Assurances.

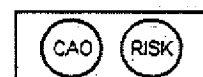
The Parties agree to execute, acknowledge and deliver any and all additional papers, documents and other assurances, and shall perform any and all acts and things reasonably necessary, in connection with the performance of the obligations hereunder and to carry out the intent of the parties.

18. Opinions and Determinations.

Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable.

19. Captions.

The captions in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement. Words of any gender in this Agreement shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense so requires.



20. Severability.

Should it be found that any part of this Agreement is illegal or unenforceable, such part or parts of this Agreement shall be of no force nor effect and this Agreement shall be treated as if such part or parts had not been inserted.

21. Entire Agreement.

All previous negotiations had between the parties hereto and/or their agents or representatives with respect to this Agreement are merged herein and this Agreement alone fully and completely expresses the parties' rights and obligations.

22. Modifications in Writing.

This Agreement shall not be changed, altered or modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

23. Assignment.

Neither Party may assign its interest in this Agreement without the prior written consent of the other Party.

24. Drafting Ambiguities.

This Agreement is the product of negotiation and preparation between the parties. Both sides and their counsel have had the opportunity to revise this Agreement. The parties waive the provisions of Section 1654 of the Civil Code of California and any other rule of construction to the effect that ambiguities are to be resolved against the drafting party, and the parties warrant and agree that the language of this Agreement shall neither be construed against nor in favor of any party unless otherwise specifically indicated.

25. Governing Law.

This Agreement and the rights and obligations of the parties shall be governed, controlled and interpreted in accordance with the laws of the State of California.

26. Venue.

The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of Monterey, State of California.

27. Signing Authority.

The representative of each party signing this Agreement hereby declares that authority has been obtained to sign on behalf of the City of Monterey and MPWMD.

28. Inspection of Books and Records.

The proper officers or agents of MPWMD shall have full and free access at all reasonable times to the account books and official records of the City of Monterey insofar as the same pertain to the matters and things provided for in this Agreement, with the right at any time during office hours to make copies thereof at MPWMD's expense.

29. Representations and Warranties.

No representations or warranties are made or have been relied upon by either party other than those expressly set forth herein, if any.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

By: Jeane C. Byrne
Jeane Byrne, Chair

ATTEST:

David J. Stoldt
DAVID J. STOLDT, Board Secretary

City of Monterey

By: [Signature]

[Name and Title]

City Manager

ATTEST:

CB Klein, Sr. Asst. City Clerk
[Name and Title]

APPROVED AS TO FORM:

[Signature]
[Name of Attorney and Title]

Attachment A

Scope of Work

Task A-1: Examine the feasibility of Peninsula-wide water recovery and reclamation system and possibilities for sources, including finding uses of storm and non-storm water flows. Utilizing storm and non-storm water flows will reduce the Peninsula's dependence on the Carmel River aquifer, a river that supports the local steel head salmon population, as well as reduce the dependence on, and the recovery of, local aquifers.

This project will examine the feasibility of Peninsula-wide water recovery and reclamation system, impacting the cities of Pacific Grove, Monterey, and Seaside, Presidio of Monterey, Naval Post Graduate School, Monterey Peninsula Regional Parks District, Monterey County, and the PCA. This is the first step toward implementing capital improvements to accomplish the task of providing a reliable local source of water and regional storm water management and is consistent with the new Storm Water Resource Plan Guidelines as outlined in SB-985.

The study will explore many possibilities for sources, including the capture of water at the Peninsula's major drainages at El Estero, Laguna Grande (Roberts Lake), David Ave Reservoir, and Del Monte (Navy) Lakes, capture and diversion of waters that flow into the Pacific Grove Area of Special Biological Significance (PGASBS), as well as the possible integration of all sources to optimize yield. Additionally, the study seeks to determine which sources of urban runoff can be feasibly harvested; which surface reservoirs are economically feasible; and identify water quality challenges associated with each source.

Task A-2: Coordinate outreach to multiple jurisdictions to determine stakeholder involvement.

Task B: Focus on how best to transport, treat, and store the water

Finding possible sources of water is but one critical aspect; this study will also focus on how best to transport, treat, and store the water. Possibilities include a bi-directional reclaimed water main that could transport non-potable water to and from the Peninsula area; smaller local treatment systems; larger regional systems, such as transport to Marina treatment works with integration into the California American (CalAm) system; and treatment and injection into local aquifers including aquifers currently containing non-potable water, such as can be found within the cities.

Task C: Develop conceptual design for the preferred project and at least one feasible alternative.

Task C-1: Work with a Technical Advisory Committee during development of concept design

Task C-2: Prepare conceptual design plans with sufficient detail of project facilities for environmental review of the preferred project and at least one feasible alternative

Task D: Identify the need for drainage basin water rights permits from the State Water Resources Control Board. **(NOTE: The District has conditioned its grant approval on shifting expenditures from Task D to Task E)**

Task E: Prepare the CEQA/NEPA environmental review document

Task E-1: Prepare an initial study (IS) in conformance with the California Environmental Quality Act (CEQA) of 1970, Section 21000 et. seq. of the CEQA Guidelines (California Administrative Code Section 15000) for the proposed project. The IS will provide an analysis describing potential environmental impacts associated with the proposed project, and determine if MND/EIR is required.

The proposed IS will include the following sections:

- **CEQA Determination Page**
- **Table of Contents**
- **Introduction:** This section will cite the environmental review requirements of the proposed project, pursuant to CEQA.
- **Project Description:** This section will describe the proposed project. A brief description of the project's location, environmental setting, and existing uses within the area affected will be included. Text and exhibits will be used to describe and illustrate the characteristics of the proposed project. The environmental document will include a maximum of four (4) exhibits to enhance the written text and clarify the project and potential environmental impacts. Exhibits are anticipated to include: Regional Vicinity Map, Local Vicinity Map, Site Plan, and details and sections.
- **Evaluation of Environmental Impact:** Use the environmental checklist in Appendix G of the CEQA Guidelines to address the environmental topics of CEQA. This section will describe the potential impacts and mitigation measures for the proposed project.

Task E-2: At the time of grant submittal, the city lacks available funding to complete the CEQA process; however, the City will actively pursue the additional funding to complete the environmental review. Should this funding become available, the City will prepare the Public Review Draft IS/MND or EIR, as determined to be required.

Task F: Develop project implementation work plan

Task F-1: Identify additional permitting and regulatory requirements,

Task F-2: Develop project timeline/schedule

Task F-3: Prepare project work plan