

**MONTEREY PENINSULA REGIONAL PARK DISTRICT
BOARD OF DIRECTORS MEETING**

DATE: February 07, 2018
TO: Board of Directors
FROM: Rafael Payan, General Manager
SUBJECT: Consider Approval of Grant Agreement Between MPRPD and California Department of Fish and Wildlife, and Resolution #2018-04, Approving the Application for Grant Funds for the Watershed Restoration Grant Program

RECOMMENDED ACTION:

Staff recommends the Board consider approval of Resolution #2018-04 (**ATTACHMENT 1**), and the grant agreement between MPRPD and California Department of Fish and Wildlife (**ATTACHMENT 2**), thereby approving acceptance, and authorizing expenditure, of the grant funds awarded by the California Department of Fish and Wildlife to MPRPD for the acquisition of approximately 185-acres of the Rancho Canada-Hatton properties. Staff also requests the Board provide direction to Staff and Legal Counsel.

FISCAL IMPACT:

\$1,450,000 grant award to MPRPD.

FUNDING SOURCE:

Watershed Restoration Grant Program (Proposition 1)

FUNDING BALANCE:

\$1,450,000.

DISCUSSION:

The California Department of Fish and Wildlife is awarding a sum not to exceed \$1,450,000 to MPRPD. These grant funds shall be used to acquire the real properties respectively known as the Hatton and Iceberg properties, totaling approximately 185-acres. The real property shall be used for wildlife preservation, habitat restoration and management, reduced water diversion, and compatible public or private uses consistent with wildlife habitat preservation and protection of sensitive biological resources. Two adjustments to the real property are authorized, as conditioned by this Grant Agreement:

- A. An educational easement over the approximately 30-acres of the real property in favor of the Santa Lucia Conservancy; and,
- B. An easement, approximately 5-acres in size, may be granted to the Rancho Canada Village's developer for storm-water drainage and retention, and to provide access to a groundwater well.

A Final Report summarizing the life of the Agreement must be submitted by MPRPD to California Department of Fish and Wildlife no later than November 30, 2018.

ATTACHMENTS:

Attachment 1: Resolution #2018-04

Attachment 2: Grant Agreement between MPRPD and California Department of Fish and Wildlife

**MONTEREY PENINSULA REGIONAL PARK DISTRICT
RESOLUTION #2018-04
February 7, 2018**

**A RESOLUTION OF THE MONTEREY PENINSULA REGIONAL PARK DISTRICT
AUTHORIZING ENTERING INTO A GRANT AGREEMENT WITH THE CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE AND AUTHORIZING THE ACQUISITION OF ALL
OR A PORTION OF ASSESSOR'S PARCEL NUMBERS 157-181-004, 015-162-033, 015-
162-041, 015-162-042, 015-162-043, 015-162-044, 015-162-045, 015-162-046 AND 015-
162-047 TOTALING APPROXIMATELY 185 ACRES IN MONTEREY COUNTY**

WHEREAS, the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) provides funding to implement the three objectives of the California Water Action Plan: more reliable water supplies, the restoration of important species and habitat, and a more resilient, sustainably managed water resources system (e.g., water supply, water quality, flood protection, environment) that can better withstand inevitable and unforeseen pressures in the coming decades; and

WHEREAS, Proposition 1 authorizes the Legislature to appropriate money to fund multi-benefit ecosystem and watershed protection and restoration; and

WHEREAS, the Rancho Cañada Carmel River Protection and Instream Flow Enhancement Project acquisition qualifies for Proposition 1 funding; and

WHEREAS, the District applied for grant funds which will be used toward the Rancho Cañada Carmel River Protection and Instream Flow Enhancement Project; and

WHEREAS, the California Department of Fish and Wildlife approved a grant to the District for a sum not to exceed One Million Four Hundred Fifty Thousand Dollars (\$1,450,000) for the acquisition;

NOW, THEREFORE, BE IT RESOLVED that the Monterey Peninsula Regional Park District Board of Directors hereby:

1. Finds that acquisition of the identified property is exempt from the provisions of the California Environmental Quality Act; and
2. Finds that the identified property possesses high ecological and habitat value;
3. Finds that the use of referenced grant funds for acquisition of the identified property is an appropriate expenditure;
4. Adopts the staff report and recommendation for this item;
5. Authorizes the execution of California Department of Fish and Wildlife Grant Agreement for Acquisition of Fee Interest Number P1796028 and the acceptance of grant funds from the listed agencies for the purpose of acquisition of the identified property;

6. Authorizes the acceptance of fee title to the identified property; and
7. Authorizes the General Manager to do any and all acts necessary to carry out this resolution and any recommendations made by the governing body, to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, payment requests and so on, which may be necessary for the completion of the aforementioned project.

APPROVED AND ADOPTED the 7th day of February 2018. I, the undersigned, hereby certify that the foregoing Resolution Number 2018-04 was duly adopted by the Monterey Peninsula Regional Park District by the following vote:

AYES:

NOES:

ABSENT:

Kelly Sorenson, President
Board of Directors

Shane Anderson, Secretary/Treasurer
Board of Directors



State of California - Natural Resources Agency
Governor
 DEPARTMENT OF FISH AND WILDLIFE
 1416 9th Street
 Sacramento, CA 95814
 www.wildlife.ca.gov

EDMUND G. BROWN JR.

CHARLTON H. BONHAM, Director



WATERSHED RESTORATION GRANT PROGRAM
GRANT AGREEMENT NUMBER P1796XXX
 FOR
ACQUISITION OF FEE INTEREST

GRANTOR: State of California, acting by and through (Grantor)
 the California Department of Fish and Wildlife,
 P.O. Box 944209
 Sacramento, CA 94244-2090

GRANTEE: Monterey Peninsula Regional Park District (Grantee)
 60 Garden Court #325
 Monterey, CA 93940

SECTION 1 – LEGAL BASIS OF AWARD

The California Department of Fish and Wildlife (CDFW) developed the Watershed Restoration Grant Program in response to the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1). Proposition 1 amended the California Water Code to add, among other articles, Section 79737, authorizing the Legislature to appropriate funds to the CDFW to fund multi-benefit ecosystem and watershed restoration and protection projects.

Pursuant to California Water Code Section 79737 and Fish and Game Code Section 1501.5(b), the CDFW as Grantor is authorized to enter into this Grant Agreement (Agreement) and to make an award to Grantee for the purposes set forth herein. Grantor and Grantee (Parties) accept the grant on the terms and conditions of this Agreement.

SECTION 2 – GRANT AWARD

2.01 Grant: In accordance with the terms and conditions of this Agreement, including the attached **Exhibit 1.a** (Public Entities General Grant Provisions), Grantor shall provide Grantee with a maximum of **\$1,450,000** (Grant Funds) to financially support and assist Grantee’s implementation of the Rancho Cañada Carmel River Protection and Instream Flow Enhancement Project (Project).

2.02 Term:

2.02.1 The term of this Agreement will commence upon Grantor approval, and, unless terminated as provided in Section 2.02.3, will expire on December 31, 2018.

2.02.2 This Agreement shall be deemed executed and effective when signed by an authorized representative of both Parties.

[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

2.02.3 Prior to Grantee's close of escrow for acquisition of the Rancho Canada-Hatton and -Iceberg properties (the "Properties"), either party may terminate this Agreement for any reason or for no reason, by providing the other party with not less than 15 days written notice of such termination. If this Agreement is terminated after Grantor's deposit of the Grant Funds into escrow but before close of escrow for Grantee's acquisition of the Properties, Grantee shall cause the escrow holder to immediately return all Grant Funds to Grantor and Grantee shall bear all costs and expenses of such termination. This subsection 2.02.3 supersedes and replaces Section 13 (Right to Terminate) of **Exhibit 1.a**.

2.02.4 The provisions of this Agreement that are not fully performed as of the close of escrow, including but not limited to Section 5.02 (Purposes of Grant), Section 9 (Grantee's Covenants), and Section 16 (Reports), shall survive the close of escrow for Grantee's acquisition of the Properties and remain in full force and effect.

2.02.5 Title to the real property may be encumbered by an educational easement over approximately 30 acres of the real property in favor of the Santa Lucia Conservancy provided that the terms of the easement are consistent with the terms of this Grant Agreement and are approved in writing by CDFW prior to Grantee's acquisition of the real property.

2.02.6 An approximately 5-acre easement may be granted to the Rancho Canada Village developer for a stormwater drainage area and access to a groundwater well provided that the terms of the easement are consistent with the acquisition purposes and are approved in writing by CDFW prior to recordation of the easement.

Formatted: Space After: 12 pt

SECTION 3 – USES OF GRANT

Grantee's use of the Grant Funds is limited to those expenditures necessary to implement the Project and that are eligible under applicable federal and State of California law. Grantee's expenditure of Grant Funds must accord with Section 5.02 (Purposes of Grant) and Section 6 (Budget) set forth within this Agreement.

SECTION 4 – GRANTEE'S REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants to Grantor as follows:

- 4.01** **Existence and Power:** Grantee is a public entity, validly existing, and in good standing under the laws of California. Grantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver on this Agreement and incur and perform its obligations hereunder.
- 4.02** **Binding Obligation:** This Agreement has been duly authorized, executed, and delivered on behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.

[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

SECTION 5 – PROJECT STATEMENT

5.01 Introduction: To further the goals of Proposition 1, Grantor is entering into this Agreement and the Grant Funds must be used for the Project. The Project will result in Grantee’s acquisition of fee title to approximately 185 acres of land known as the Rancho Canada-Hatton and -Iceberg properties, located in Monterey County, California, with corresponding ecosystem and watershed protection benefits.

Grantee will complete the Project as outlined and as proposed during the Fiscal Year 2016-17 Proposition 1 Restoration Grant Program solicitation process. The complete proposal package is located with Grantor’s Watershed Restoration Grants Branch staff at 1700 Ninth Street, Sacramento, CA 95814.

5.02 Purposes of Grant: Grantee covenants and agrees that if Grantor deposits the Grant Funds into escrow and Grantee acquires the Properties, the Properties shall be held and used for the purposes of wildlife habitat preservation, restoration and management, reduced water diversion, and for compatible public or private uses, all as may be consistent with wildlife habitat preservation and protection of sensitive biological resources (individually and collectively, the “Purposes of Grant”).

5.03 Project Description:

5.03.1 Location and Property Legal Description: The Properties are approximately 185 acres in size and are located west and south of Carmel Valley Road in Carmel, California. The Properties are more particularly described in **Exhibit 2** attached to this Agreement.

Latitude/Longitude coordinates (NAD83) for the Properties (approximate centroid) are: 36.541033, -121.889322.

5.04 Contacts:

The points of contact for Parties during the term of this Agreement are:

| <u>CDFW Grant Manager:</u> | <u>Monterey Peninsula Regional Park District Project Manager:</u> |
|--|---|
| Name: Erin Aquino-Carhart Address: P.O. Box 944209 Sacramento, CA 94244-20904416 Ninth St., 12th Floor Sacramento, CA 95814 Phone: (916) 445-1287 Email: erin.aquino-carhart@wildlife.ca.gov | Name: Rafael Payan Address: 60 Garden Ct., Suite 325 Monterey, CA 93940 Phone: (831) 372-3196 Email: payan@mprpd.org |

[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

Direct all administrative inquiries to:

| <u>CDFW Grant Coordinator:</u> | <u>Monterey Peninsula Regional Park District Project Director:</u> |
|---|---|
| Name: Keng Saefong Address: <u>P.O. Box 944209</u> <u>Sacramento, CA 94244-20904416</u> <u>Ninth St., 12th Floor</u> <u>Sacramento, CA 95814</u> Phone: (916) 445-5350 Email: keng.saefong@wildlife.ca.gov | Name: Rafael Payan Address: 60 Garden Ct., Suite 325 Monterey, CA 93940 Phone: (831) 372-3196 Email: payan@mprpd.org |

A point of contact may be changed at any time by either party by providing written notice to the other party at least 10 days in advance of the change. Notice to a party shall be deemed given when personally delivered or three days after being deposited either in the United States Mail, postage prepaid, or with a reliable over-night courier, and addressed to the party's point or points of contact identified in this section.

SECTION 6 – BUDGET

6.01 Expenditure Summary: Grantor will provide an amount not to exceed \$1,450,000 as shown below in this Budget. Funds authorized to be used for purchase money of the Properties are identified in Budget line item E (Acquisition Funds). Grantee or its partners will provide up to \$8,800,000 in funds or in-kind services as cost share to complete the acquisition of fee title. Accurate records of in-kind funds or services will be provided to Grantor with the Final Report.

Line Item Budget Detail

| Rancho Cañada Carmel River Protection and Instream Flow Enhancement Project | |
|--|--------------------|
| A. PERSONNEL SERVICES | \$ 0 |
| B. OPERATING EXPENSES: GENERAL | \$ 0 |
| C. OPERATING EXPENSES: SUBCONTRACTORS | \$ 0 |
| D. OPERATING EXPENSES: EQUIPMENT | \$ 0 |
| E. OPERATING EXPENSES: ACQUISITION | |
| <i>Funds to Escrow Account</i> | \$1,450,000 |
| F. GRAND TOTAL | \$1,450,000 |

[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

Table of Funding Sources and Cost Share

| Source of Funds | Cash | In-Kind | Total |
|--------------------------------------|---------------------|------------|---------------------|
| CDFW Proposition 1 Grant Program | \$1,450,000 | \$0 | \$1,450,000 |
| Wildlife Conservation Board | \$4,500,000 | \$0 | \$4,500,000 |
| California State Coastal Conservancy | \$2,000,000 | \$0 | \$2,000,000 |
| California Natural Resources Agency | \$1,500,000 | \$0 | \$1,500,000 |
| The Trust for Public Land | \$800,000 | \$0 | \$800,000 |
| Total Project Cost | \$10,250,000 | \$0 | \$10,250,000 |

Note: Any changes or modifications to a fund source indicated above must be promptly reported to the CDFW Grant Manager.

6.02 Prior Approval Requirements: The following changes require prior approval of the CDFW Grant Manager, whether or not the change has a budgetary impact:

1. Change in Project Description
2. Inclusion of restricted use data or copyrighted works in Deliverables
3. Travel not included in the approved Budget
4. Computer (or theft sensitive equipment) not included in the approved Budget
5. Equipment not included in the approved Budget

6.03 Budget Flexibility: Budget revisions between identified budget categories that are within the total grant amount, comply with the Prior Approval Requirements, above and do not change the Scope of Work or substitute Key Personnel, as defined in this Agreement, are allowed as described below:

1. Subject to the prior review and approval of the CDFW Grant Manager, line item shifts of up to \$25,000 or ten percent (10%) of the Grant total, whichever is less, are permitted. Line item shifts must be requested by the Grantee in writing.
2. Exceeding 10% or \$25,000, whichever is less, of the last approved budget requires the CDFW Grant Manager prior approval and a formal amendment to this Agreement. The Grantee will submit a revised budget to the CDFW Grant Manager for approval.

Budget transfers that would cause any portion of the funds to be used for purposes other than those consistent with the original intent of this grant are not allowed.

Notwithstanding the above provision, the State may proceed with a formal amendment to this Agreement for budget revisions.

[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

SECTION 7 – DISBURSEMENT OF ACQUISITION FUNDS

7.01 Conditions of Disbursement: Grantor's obligation to disburse Acquisition Funds under this Agreement is conditioned upon and subject to the satisfaction of all of the following conditions precedent (individually and collectively, the "Conditions of Grant"):

7.01.1 Grantor shall have reviewed and approved all documents pertaining to Grantee's acquisition of the Properties, including, without limitation, appraisals, preliminary title reports and items referenced therein, options, agreements for purchase and sale, escrow instructions, and instruments of conveyance. Such review and approval by Grantor shall not be unreasonably withheld or delayed. Grantee shall have removed or caused to be removed, or otherwise addressed to the satisfaction of Grantor, any encumbrances or defects of title that Grantor determines are inconsistent, or could interfere, with the Purposes of Grant. Any outstanding security interests or monetary encumbrances affecting the Properties shall have been terminated.

7.01.2 Grantee shall acquire the Properties from a willing seller for a purchase price that does not exceed the fair market value of the Properties, as established by an appraisal that is conducted by an appraiser who is licensed pursuant to Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code. The appraisal shall be prepared pursuant to the Uniform Standards of Professional Appraisal Practice (USPAP) and approved by the Department of General Services. The appraisal shall become part of the project file maintained by Grantor and shall be retained for no less than three years from the date of Property acquisition.

7.01.3 Grantor shall have reviewed and approved a certified resolution or other appropriate action of the governing board or governing body of Grantee, authorizing the execution and performance of this Agreement and the acquisition of the Properties by Grantee. Upon approval by Grantor, the authorizing resolution or other action shall be attached to this Agreement as **Exhibit 3**.

7.01.4 Grantee shall have deposited, or caused to be deposited, into escrow all funds beyond those granted under this Agreement that are needed for Grantee to complete the Project.

7.01.5 Grantee may acquire the Properties for less than the approved, appraised fair market value. If Grantee acquires the Properties for less than fair market value, the difference between the purchase price and the appraised value is considered a landowner donation.

7.02 Disbursement Procedure: Except as provided in **Exhibit 1.a**, upon satisfaction of all of the above Conditions of Grant and in accordance with the Budget described in Section 6 (Budget), Grantor shall disburse the Acquisition Funds directly into an escrow account established for the Project according to the following procedure:

[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

7.02.1 Grantee shall request disbursement of the Acquisition Funds by sending a letter (Disbursement Request) to the CDFW Grant Manager. The Disbursement Request shall be signed by an authorized representative of Grantee and shall contain all of the following:

- a. Name and address of Grantee;
- b. Project Name and Grant Agreement Number;
- c. Dollar amount and purpose of disbursement;
- d. Name, address and telephone number of the title company or escrow holder;
- e. Name of the escrow officer;
- f. Escrow account number to which the Acquisition Funds will be disbursed; and
- g. A certification by Grantee that all funds (exclusive of the Acquisition Funds to be provided under this Agreement) needed to complete the Project have been secured and have been or will be deposited to escrow prior to or at the same time as the requested Acquisition Funds.

7.02.2 After receipt of the Disbursement Request, Grantor will promptly and timely (estimated to be 45 working days from the date Grantor receives the Disbursement Request) disburse the Acquisition Funds into the designated escrow account.

SECTION 8 – GRANTEE’S COVENANTS

In consideration of Grantor’s disbursement of the Grant Funds, Grantee hereby covenants and agrees as follows:

- 8.01** The Properties must be, and Grantee will ensure the Properties are, held, used, operated, managed and maintained consistent with the Purposes of Grant.
- 8.02** The Acquisition Funds shall be used as purchase money only, which excludes escrow and title fees and any other fees and costs incurred to accomplish the transaction and the conveyance and acquisition of the Properties.
- 8.03** If Grantor deposits the Acquisition Funds into escrow and Grantee acquires the Properties, the Properties shall be held, used, operated, managed and maintained only in a manner that is consistent with this Agreement, including the Purposes of Grant.
- 8.04** Grantee shall recognize the cooperative nature of the Project and shall provide credit

[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

to Proposition 1 and Grantor on signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared or approved by Grantee referencing the Project. Subject to the mutual agreement of Grantor and Grantee regarding text, design, and location, Grantee shall post one or more sign(s) on the Properties to indicate the participation of Grantor, using funds from Proposition 1, in Grantee's purchase of the Properties. The sign(s) shall display the Proposition 1 and Grantor's logos, as shown in **Exhibit 4**.

- 8.05** Grantee shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Properties by competent authority (collectively Taxes), and shall furnish Grantor with satisfactory evidence of payment upon request. Grantee shall keep the Properties free from any liens including, without limitation, those arising out of any obligations incurred by Grantee for any labor or materials furnished or alleged to have been furnished to or for Grantee at or for use on the Properties.
- 8.06** The Properties (including any portion of them or any interest in them) shall not be sold, transferred, exchanged or otherwise conveyed without the written approval of the State of California, acting through the Director of the California Department of Fish and Wildlife, or its successor. Such approval shall not be unreasonably withheld as long as the Properties shall continue to be held and used only in a manner consistent with this Agreement, including the Purposes of Grant, and each successor-in-interest assumes and agrees in writing to be bound by the terms, covenants and conditions of this Agreement.
- 8.07** "Mitigation" as used in this Agreement means to satisfy any requirement or condition imposed by any permit, agreement, authorization or entitlement for use, including but not limited to any requirement to compensate for or otherwise offset impacts of any activity. The Properties may not be used for Mitigation without the prior written approval of the State of California, acting through the Director of the California Department of Fish and Wildlife or its successor. Provided, however, that under no circumstances shall the Properties be used for any Mitigation that is: (a) inconsistent with this Agreement or Proposition 1, or (b) based upon (i) the protection of the Properties resulting from their acquisition or ownership by Grantee, or (ii) any activity on the Properties (including but not limited to restoration) to cure, correct or otherwise remedy any breach or default of this Agreement. If the State approves any Mitigation under this section, such approval shall be for the purposes of this Agreement only. Actual Mitigation requirements and conditions will be established and enforced by the authorities imposing them.
- 8.08** The Properties (including any portion of them or interest in them) may not be used as security for any debt without the written approval of the State of California, acting through the Director of the California Department of Fish and Wildlife, or its successor.
- 8.09** Grantee shall record or cause to be recorded, concurrently with close of escrow for the purchase of the Properties, a Notice of Unrecorded Grant Agreement (Notice), incorporating by reference this Agreement and giving public notice that Grantee

[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

received funds under this Agreement in order to assist Grantee in acquiring the Properties and that, in consideration for the receipt of the Grant Funds, Grantee has agreed to the terms of this Agreement. The Notice shall be in the form of **Exhibit 5**.

- 8.10** Grantee shall provide to Grantor, promptly following the close of escrow, a conformed copy of the recorded deed(s) and Notice, with all recording information, as well as a copy of the final closing or settlement statement and the title insurance policy insuring Grantee as the owner of fee simple title to the Properties subject only to those matters approved by Grantor under Section 7.01.1 (Conditions of Disbursement) of this Agreement. Grantee shall also provide copies of such other documents related to the closing of the above transaction as requested by Grantor. These documents shall become part of the project file maintained by Grantor.
- 8.11** At the request of Grantor, not less than once every 12 months from the start date of the Agreement for a period of 25 years, Grantee shall allow Grantor to access the Properties to assess compliance with the terms, covenants, and conditions of this Agreement.
- 8.12** Grantee agrees to ensure that the terms and conditions of this Agreement shall be taken into account when calculating the baseline/business as usual of the Property for purposes of establishing carbon credits or other emissions offsets proposed to be authorized, created, sold, exchanged or transferred. Grantee agrees to notify CDFW prior to any such proposed establishment.
- 8.13** Grantee shall submit reports as provided in Section 16 (Reports). Failure to submit timely and accurate reports shall be considered evidence of non-compliance with this Agreement and shall permit termination of the Agreement by the Grantor.
- 8.14** Grantee shall ensure that Grantee's use of Grant Funds complies with the California Environmental Quality Act, Public Resource Code section 21000 et seq., as applicable.

SECTION 9 – BREACH AND DEFAULT

- 9.01** In the event of a breach of any of the terms, covenants or conditions of this Agreement, Grantor shall give written notice to Grantee describing the breach.
- 9.02** If Grantee does not cure the breach within 90 days of the date a notice of breach is given or, if the breach is not curable within said 90-day period, Grantee does not commence the cure within the 90-day period and diligently pursue it to completion, then Grantee shall be in default (Default) under this Agreement.
- 9.03** Grantee shall also be in Default under this Agreement upon the discovery that information given to Grantor by or on behalf of Grantee under or in connection with obtaining this Agreement was materially false, incomplete or misleading. Notice of a Default must be given in accordance with Section 5.04 (Contacts).

[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

SECTION 10 – REMEDIES

In the event of a Default under this Agreement, in addition to any and all remedies available at law or in equity, Grantor shall have the following remedies:

- 10.01** Grantor may seek specific performance of this Agreement. Grantee agrees that payment by Grantee to Grantor of an amount equal to the Grant Funds disbursed under this Agreement would be inadequate compensation to Grantor for any Default because the benefit to be derived by Grantor from full compliance by Grantee with the terms of this Agreement are the Purposes of Grant and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by Grantor by way of Grant Funds under this Agreement.
- 10.02** Grantor may require Grantee to convey a conservation easement over the Properties in favor of Grantor (or, at the election of Grantor, another entity or organization authorized by California law to acquire and hold conservation easements and that is willing and financially able to assume all of the obligations of Grantee), and to pay a sum to Grantor which, when combined with the fair market value of the conservation easement, equals the sum granted to Grantee pursuant to this Agreement, together with interest compounded semi-annually starting from the date of this Agreement to and including the date of payment, at a rate equivalent to that which is being earned at the time of Default on deposits in the State of California's Pooled Money Investment Account. The conservation easement shall be for the Purposes of Grant. The value of the conservation easement shall be determined by a fair market value appraisal that is conducted by an appraiser who is licensed pursuant to Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code and acceptable to Grantor. The appraisal shall be prepared pursuant to USPAP and, if required by law, approved by the Department of General Services.
- 10.03** Despite the contrary provisions of Section 10 (Breach and Default) of this Agreement, if Grantor determines that circumstances require immediate action to prevent or mitigate interference with the Purposes of Grant arising from a breach of this Agreement, then Grantor may pursue its remedies without waiting for the period provided for cure to expire.

SECTION 11 – ENFORCEMENT; INTERPRETATION

- 11.01** All references herein to "Grantee" are intended to refer to Grantee or its designee, successor or assignee as may be approved by Grantor. All references herein to "Grantor" are intended to refer to Grantor or its designated employees, officers, agents, or representatives.
- 11.02** Any costs incurred by Grantor, where Grantor is the prevailing party, in enforcing the terms of this Agreement against Grantee, including but not limited to costs of suit, attorneys' and experts' fees, at trial and on appeal, and costs of enforcing any judgment, shall be borne by Grantee.
- 11.03** Enforcement of the terms of this Agreement by Grantor shall be at the discretion of Grantor, and any forbearance by Grantor to exercise its rights under this Agreement

[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Agreement or any of the rights of Grantor under this Agreement.

11.04 Grantor will notify Grantee as promptly as possible following Grantor's receipt of any request for information related to the Project under the California Public Records Act (Government Code Section 6250 *et seq.*).

SECTION 12 – CONDEMNATION

If the Properties are, or is under threat of being, taken by exercise of eminent domain, Grantee shall promptly notify Grantor in writing. If all or any part of the Properties is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, Grantor and Grantee shall act jointly to recover from the condemning authority the full value of the Properties so taken or purchased, and all direct or incidental damages resulting therefrom. Grantor shall be entitled to the share of the Award (as defined below) which equals the ratio of the Grant Funds provided by Grantor to the purchase price Grantee paid to acquire the Properties (*e.g.*, if Grantor provided \$50,000.00 of Grant Funds and the purchase price was \$75,000.00, then Grantor would be entitled to two-thirds of the Award). For purposes of this Agreement, the "Award" shall mean all compensation awarded, paid or received on account of the Properties so taken or purchased, and all direct or incidental damages resulting from the taking or purchase, less all out-of-pocket expenses reasonably incurred by Grantee in connection with the taking or purchase.

SECTION 13 – UNION ORGANIZING

By signing this Agreement, Grantee hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement and certifies that:

- 13.01** No state funds disbursed by this grant will be used to assist, promote, or deter union organizing;
- 13.02** Grantee shall account for state funds disbursed for a specific expenditure by this grant to show those funds were allocated to that expenditure;
- 13.03** Grantee shall, where state funds are not designated as described in Section 15.02 above, allocate, on a pro-rata basis, all disbursements that support the grant program; and
- 13.04** If Grantee makes expenditures to assist, promote, or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and Grantee shall provide those records to the Attorney General upon request.

SECTION 14 – REPORTS

14.01 Quarterly Progress Reports: Grantee must provide Grantor with **Quarterly Progress Reports**. These reports should be delivered to the CDFW Grant Manager in the manner and format identified in Requirements, below. A sample Quarterly

[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

Progress Report will be provided to Grantee by the CDFW Grant Manager.

Requirements:

- 1) A Quarterly Progress Report must be submitted within thirty (30) days following each quarterly month after Agreement execution until Grantee's close of escrow.
- 2) Grantee shall provide all of the following in each Quarterly Progress Report:
 - List of activities and Tasks performed and/or completed;
 - Costs incurred during the subject period;
 - List of problems encountered while performing the Task(s) and proposed solution(s), timeline for resolution, and status of previously unresolved problems;
 - Brief outline of proposed activities and Tasks for the following quarter; and
 - An evaluation of the performance measures contained in **Exhibit 6**.
- 3) Quarterly Progress Reports must be submitted electronically in a PDF or Microsoft Word compatible format.

14.02 Final Report: Grantee must submit a Final Report that summarizes the life of the Agreement no later than **November 30, 2018**. The Final Report shall include a discussion of the extent to which the Project achieved the Purposes of Grant, taking into account the Project's performance measures (Exhibit 6), and findings, conclusions, or recommendations for ongoing or future actions. A Draft Final Report shall be due 30 days prior to delivery of the Final Report. A sample Final Report template will be provided by the CDFW Grant Manager.

SECTION 15 – EXHIBITS

Each of the Exhibits attached to and referenced in this Agreement is incorporated by reference as though set forth in full herein. In the event of actual conflict between this document and an Exhibit, this document will prevail. The following Exhibits are attached to this Agreement:

- Exhibit 1.a** – Public Entities General Grant Provisions
- Exhibit 2** – Legal Description
- Exhibit 3** – Certified Resolution or Other Action of Governing Body of Grantee
- Exhibit 4** – Water Quality, Supply, and Infrastructure Improvement Act of 2014 and Grantor's Logos
- Exhibit 5** – Form of Notice of Unrecorded Grant Agreement
- Exhibit 6** – Performance Measures

[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

WITNESS WHEREOF, Parties hereto have caused this Agreement to be duly executed as of the dates set forth below their respective signatures.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

By:
Signature: _____
Printed Name: Tyrone Williams
Title: Chief, Business Management Branch
Date: _____

AUTHORIZED AGENT FOR GRANTEE

By:
Signature: _____
Printed Name: Kelly Sorenson
Title: Board President
Date: _____

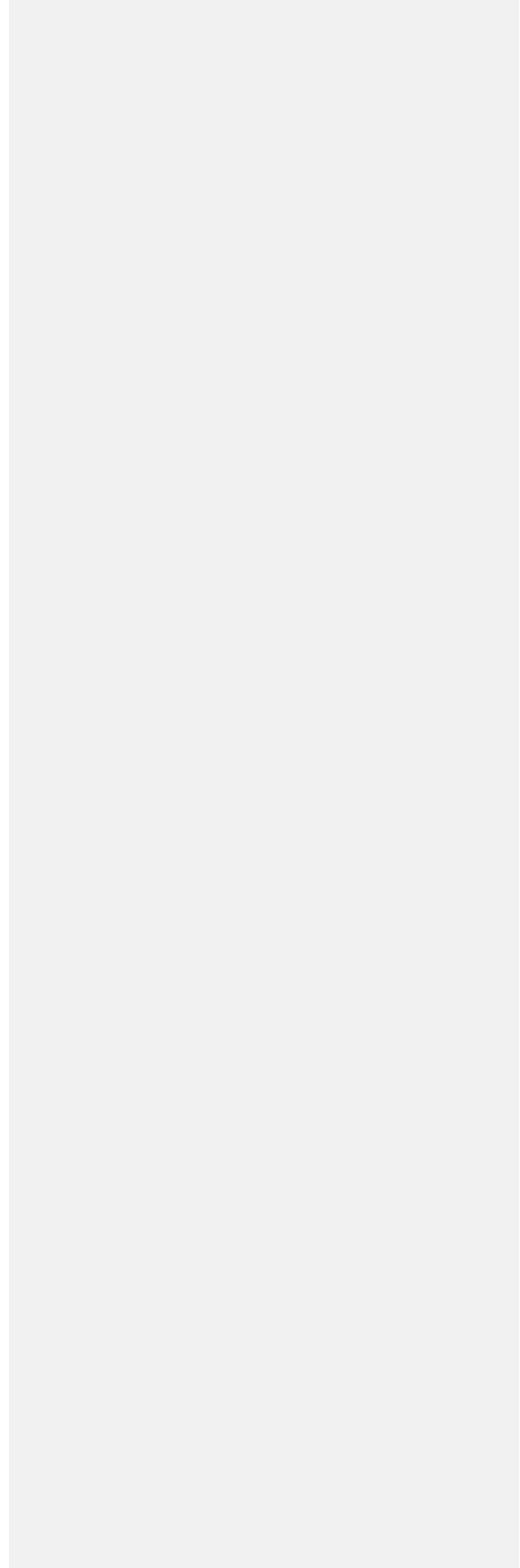
This agreement is exempt from DGS-OLS approval, per SCM 4.06.

[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

EXHIBIT 1.A

PUBLIC ENTITIES GENERAL GRANT PROVISIONS



[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

EXHIBIT 2

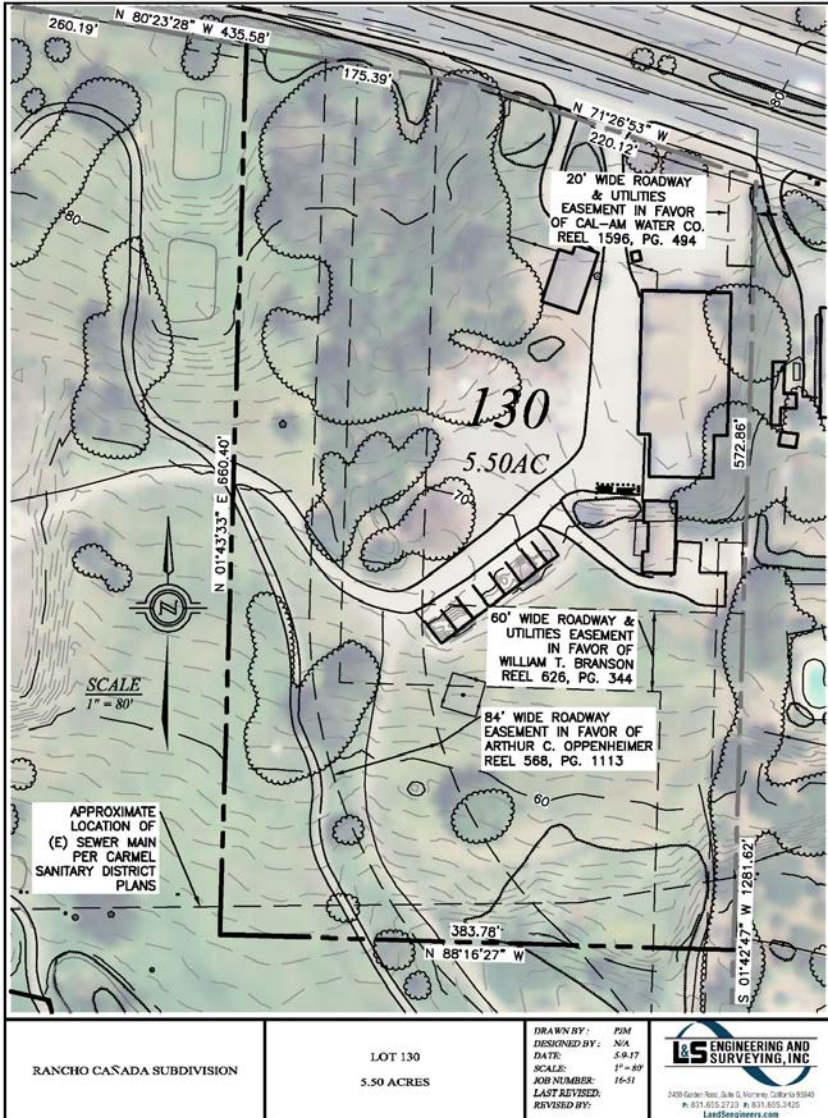
LEGAL DESCRIPTION

The Properties are identified as Assessor Parcel Numbers (APNs) 015-162-033, 015-162-041, 015-162-042, 015-162-043, 015-162-044, 015-162-045, 015-162-046, 015-162-047 (Hatton Property); and 157-181-004 (Iceberg Property). The current USGS topographic map indicates that the site is at an elevation of about 65 feet above mean sea level with topography sloping gradually to the south towards Carmel River.

Excepting therefrom that certain 5.5-acre portion described as "Lot 130" in the following map and subject to the lot-line adjustment pursuant to that Second Amendment to Right of Way Transfer and Remainder Parcel Agreement made effective June 28, 2016 by and between ACLS, LLC; LOMBARDO LAND GROUP I, L.P.; RANCHO CANADA DE LA SEGUNDA, INC; and THE TRUST FOR PUBLIC LAND.

[GRANT AGREEMENT NO.]

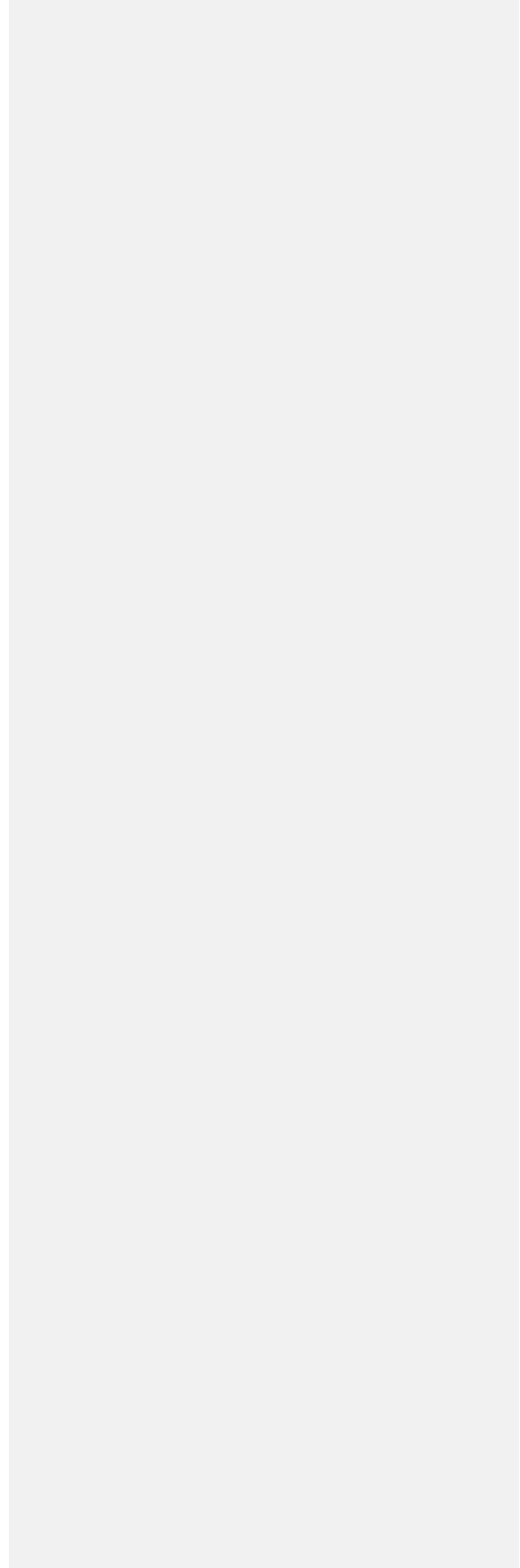
MONTEREY PENINSULA REGIONAL PARK DISTRICT



[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

**EXHIBIT 3
RESOLUTION**

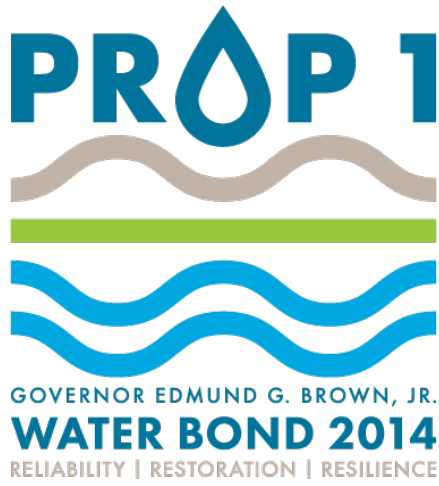


[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

EXHIBIT 4

WATER QUALITY, SUPPLY, AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014
AND GRANTOR LOGOS



[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

EXHIBIT 5

NOTICE OF UNRECORDED GRANT AGREEMENT

RECORDING REQUESTED BY:

Monterey Peninsula Regional Park)
District)
Attn: Rafael Payan)
60 Garden Court #325)
Monterey, California 93940)

WHEN RECORDED, RETURN TO:

State of California)
California Department of Fish and Wildlife)
Attn: Director)
1416 9th Street, 12th Floor)
Sacramento, CA 95814)

Space above line for Recorder's use

Project Name: Rancho Cañada Carmel River Protection and Instream Flow Enhancement Project
County: Monterey

**NOTICE OF UNRECORDED GRANT AGREEMENT
(WITH COVENANTS AFFECTING REAL PROPERTY)**

This Notice of Unrecorded Grant Agreement ("Notice"), dated as of _____, 20____, is made by Monterey Peninsula Regional Park District ("Grantee") and recorded concurrently with the Deed described below, to provide notice of an agreement between Grantee and the California Department of Fish and Wildlife ("Grantor" or "CDFW"), a subdivision of the State of California, affecting the real property described below.

1. The CDFW and Grantee have entered into the California Department of Fish and Wildlife Watershed Restoration Grant Program Grant Agreement for Acquisition of Fee Interest, Grant Agreement No. **P1796XXX** ("Grant" or "Agreement"), pursuant to which the CDFW grants to Grantee certain funds for Grantee's acquisition of fee title to approximately 185 acres of real property located in the County of Monterey, California (the "Properties"), by Grant Deed (the "Deed") from The Trust for Public Land. The Properties is legally described in **Exhibit A** attached to this Notice and incorporated in it by this reference. Initial-capitalized terms used in this Notice and not otherwise defined shall have the meaning set forth in the Grant.

2. Grantee agrees under the terms of the Grant to execute this Notice to give notice that Grantee received funds under the Agreement to assist Grantee in acquiring the Properties and that, in consideration of the Grant Funds, Grantee has agreed to the terms of the Grant. The Grant is incorporated by reference into this -Notice.

[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

3. Grantee covenants and agrees in Section 9 (Grantee's Covenants) of the Agreement as follows:

3.1. The Properties shall be held, used, operated, managed and maintained only in a manner that is consistent with the Agreement, including the following "Purposes of Grant" set forth in Section 5.02 of the Agreement:

Grantee covenants and agrees that if Grantor deposits the Grant Funds into escrow and Grantee acquires the Properties, the Properties shall be held and used for the purposes of wildlife habitat preservation, restoration and management, reduced water diversion, and for compatible public or private uses, all as may be consistent with wildlife habitat preservation and protection of sensitive biological resources (individually and collectively, the "Purposes of Grant").

3.2. Grantee shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Properties by competent authority (collectively "Taxes"), and shall furnish Grantor with satisfactory evidence of payment upon request. Grantee shall keep the Properties free from any liens including, without limitation, those arising out of any obligations incurred by Grantee for any labor or materials furnished or alleged to have been furnished to or for Grantee at or for use on the Properties.

3.3. The Properties (including any portion of it or any interest in it) shall not be sold, transferred, exchanged or otherwise conveyed without the written approval of the State of California, acting through the Director of the CDFW or its successor.

3.4. The Properties may not be used to satisfy any requirement or condition imposed by any permit, agreement, authorization or entitlement for use ("Mitigation"), including but not limited to any requirement to compensate for or otherwise offset impacts of an activity, without the written approval of the State of California, acting through the Director of the CDFW or its successor.

3.5. The Properties (including any portion of it or any interest in it) may not be used as security for any debt without the written approval of the State of California, acting through the Director of the CDFW or its successor.

3.6. At the request of Grantor, not less than once every 12 months from the start date of the Agreement for a period of 25 years, Grantee shall allow Grantor to access the Properties to assess compliance with the terms, covenants, and conditions of this Agreement.

3.7. Grantee agrees to ensure that the terms and conditions of this Agreement shall be taken into account when calculating the baseline/business as usual of the Property for purposes of establishing carbon credits or other emissions offsets proposed to be authorized, created, sold, exchanged or transferred. Grantee agrees to notify Grantor prior to any such proposed establishment.

4. Pursuant to Section 11 (Remedies) of the Agreement, in the event of a Default under the Agreement, in addition to any and all remedies available at law or in

[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

equity, Grantor may seek specific performance of the Grant and may require Grantee to convey a conservation easement over the Properties in favor of Grantor (or, at the election of Grantor, another entity or organization authorized by California law to acquire and hold conservation easements and that is willing and financially able to assume all of the obligations and responsibilities of Grantee), and to pay a sum to Grantor which, when combined with the fair market value of the conservation easement, equals the sum granted to Grantee pursuant to the Agreement, together with interest thereon as provided in the Agreement.

5. Pursuant to Section 12 (Nonprofit Organization Grantee) of the Agreement, if Grantee is a nonprofit organization and the existence of Grantee is terminated for any reason, title to all interest in real property acquired with state funds shall immediately vest in the State of California. However, prior to that termination, upon approval of Grantor, another public agency or nonprofit organization may receive title to all or a portion of that interest in real property by recording its acceptance of title in writing. Any deed or other instrument of conveyance whereby real property is being acquired by a nonprofit organization pursuant to this section shall be recorded and shall set forth the executory interest and right of entry on the part of the State of California.

6. Pursuant to Section 2.02 (Term) of the Agreement, the Grant shall remain in full force and effect from and after the close of escrow for the acquisition of the Properties.

7. Pursuant to Section 13 (Enforcement; Interpretation) of the Agreement, the Grant shall be binding upon Grantee and all designees, successors and assigns of Grantee.

8. Pursuant to Section 14 (Condemnation) of the Agreement, if all or any part of the Properties are taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, Grantor and Grantee shall act jointly to recover from the condemning authority the full value of the Properties so taken or purchased, and all direct or incidental damages resulting therefrom. Grantor shall be entitled to the share of the Award which equals the ratio of the Grant Funds provided by Grantor to the purchase price Grantee paid to acquire the Properties.

9. This Notice is solely for the purpose of recording and in no way modifies the provisions of the Agreement. Grantee and the CDFW each have rights, duties and obligations under the Agreement which are not set forth in this Notice. To the extent the terms of this Notice conflict with the Agreement, the terms of the Agreement shall govern and control.

10. For additional terms and conditions of the Agreement, reference should be made to the California Department of Fish and Wildlife Proposition 1 Restoration Grant Program Grant Agreement for Acquisition of Fee Interest by and between the CDFW and Grantee that commenced [redacted], [Year], and is on file with the California Department of Fish and Wildlife, Watershed Restoration Grants Branch, 1700 9th Street, 2nd Floor, Sacramento, California; *mailing address*: California Department of Fish and Wildlife, WFD – Watershed Restoration Grants Branch, 1416 9th Street, 12th Floor, Sacramento, CA 95814.

GRANTEE:

[GRANT AGREEMENT NO.]

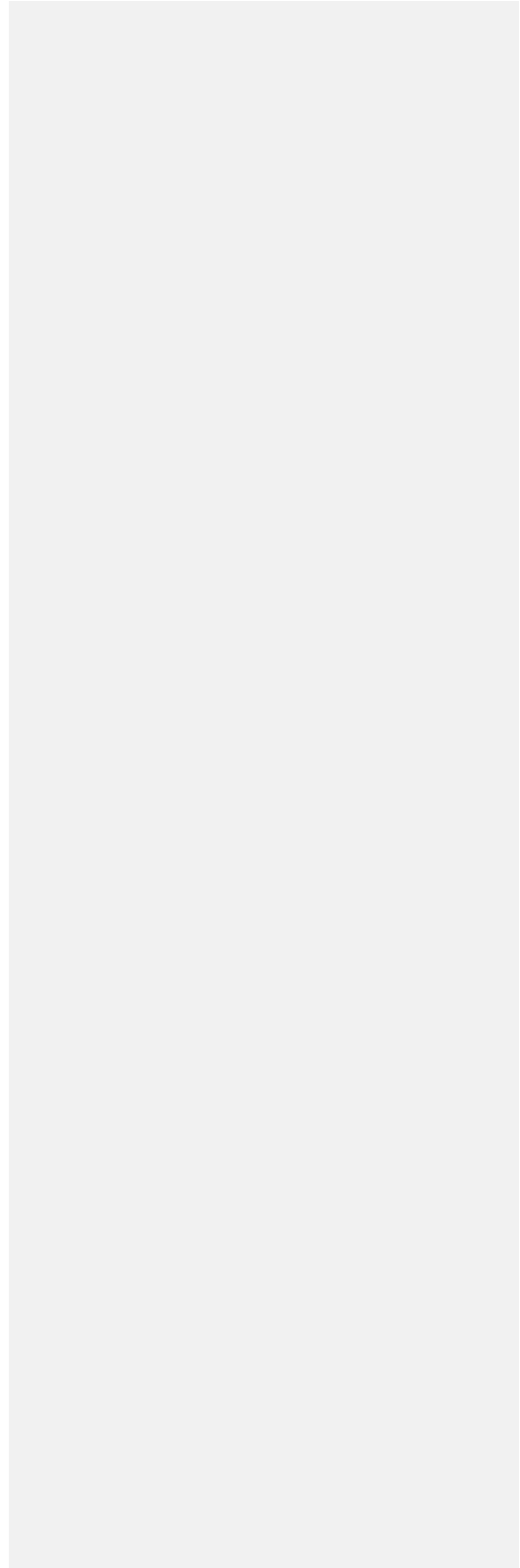
MONTEREY PENINSULA REGIONAL PARK DISTRICT

By: _____

Print Name: Kelly Sorenson_____

Title: Board President_____

[Notary Acknowledgment]



[GRANT AGREEMENT NO.]

MONTEREY PENINSULA REGIONAL PARK DISTRICT

**EXHIBIT 6
PERFORMANCE MEASURES**

Performance Measures

| Project Objectives | Project Output Performance Measures | Project Outcome Performance Measures | Metrics |
|---|---|---|--|
| 1. Increased river flow | PM 1A. Cease golf course irrigation by the end of 2017 and therefore forbear the use of 170-190 acre-feet annually | PM 1B. Aquifer and surface flows improve by measurable amounts in accordance with golf course retirement schedule | - MPWMD groundwater well monitoring data - Annual photo report - Statements of diversion and use - Streamflow gage report |
| 2. Expanded protection of critical coastal watershed land | PM 2A. Permanently protect 170-190 acres of riparian watershed | | - Grant deed |
| 3. Listed species habitat protection | PM 3A. Incorporate 170-190 acres into MPRPD's park management plan | PM 3B. Riparian vegetation recovery signifies improvement of the water table | - Annual photo report - Creation of MPRPD park management plan |
| 4. Enabling future restoration | PM 4A. Permanently protect 170-190 acres of riparian watershed | | - Grant deed |
| 5. Enhanced wildlife connectivity | PM 5A. Establish habitat restrictions in the 1000' wildlife corridor from Jack's Peak County Park PM 5B. Permanently protect 170-190 acres of watershed, thereby ensuring connection to adjacent protected lands | | - Grant deed - Deed restrictions |
| 6. Improved public access | PM 6A. Open new park to public by the end of 2017-2018 | | - MPRPD's park management plan |