

**MEASURE K GRANT AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO AND
SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT**

This Agreement is entered into this 9th day of November, 2021 by and between the County of San Mateo, a political subdivision of the State of California, hereinafter called "County," and San Mateo County Flood and Sea Level Rise Resiliency District ("FSLRRD"), hereinafter called "Grantee."

* * *

WHEREAS, Grantee was created by state law (AB 825) to address and help protect against the impacts of sea level rise in the County of San Mateo; and

WHEREAS, Grantee has applied to County seeking a grant for the purpose of funding its operational costs, as further described in Exhibit A (the "Grant"); and

WHEREAS, County has approved the grant of certain funds to Grantee for operational costs pursuant to the terms set forth in this Agreement;

NOW, THEREFORE, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Services
- Exhibit B—Payment Requirements

2. Grant

County hereby grants to Grantee a sum not to exceed ONE MILLION DOLLARS (\$1,000,000) in consideration of and on the condition that the sum be expended for operation costs in support of the Grantee's fulfillment of its objectives under AB 825, and in no event shall the County's total fiscal obligation under this Agreement exceed this amount. Grantee agrees to assume any obligation to secure and furnish any additional funds that may be necessary to carry out its objectives.

Funds granted under this Agreement shall not be disbursed until execution of this Agreement by County and Grantee.

County shall disburse grant funds to Grantee 30 calendar days after receipt of a satisfactory invoice. Invoices should be accompanied by backup documentation (i.e., operating expense report) and submittal of any required summary reports outlined in Exhibit B. The County reserves the right to change the disbursement method during the term of this Agreement.

The disbursement schedule is set forth in Exhibit B.

INVOICES: Requests for grant disbursement should be (1) on the organization's official letterhead, (2) completed in accordance with the above schedule and details in Exhibit B, (3) include the date of invoice, amount requested, and Agreement number, and (4) submitted to the attention of:

Carolyn Bloede, Director, Office of Sustainability
455 County Center, 4th Floor
Redwood City, CA 94063
(650) 400-0098
Email: cbloede@smcgov.org

3. Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall begin November 9, 2021, and continue through June 30, 2023. This Agreement will not automatically renew, nor shall it create any reliance on the possibility of future grants.

County may terminate this Agreement based upon the unavailability of Federal, State, or County funds by providing written notice to Grantee within a reasonable time after County learns of said unavailability of funding. Grantee acknowledges that this Agreement is subject to approval by the San Mateo County Board of Supervisors and assumes all risk of possible non-appropriation and non-approval of funds.

County may suspend and/or terminate this Agreement if Grantee materially breaches this Agreement and may, in the event of such material breach, in its sole discretion, withhold or cancel pending and future disbursements of grant funds and/or require Grantee to return some or all funds disbursed under this Agreement.

4. Relationship of Parties

Grantee understands and agrees that such projects and/or any other services performed by Grantee identified in this Agreement are not performed by Grantee as an independent contractor of the County nor as an employee of County and that neither Grantee nor its employees acquire any of the rights, privileges, powers, or advantages of County contractors or County employees. Grantee acknowledges and agrees that it is not, and will not hold itself out as, an agent, partner, or co-venturer of the County, and that this Agreement is not intended to and does not create an agency, partnership, or joint venture between the Parties.

5. Hold Harmless

Grantee shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services performed of Grantee in furtherance of the operations under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Grantee or its employees/officers/agents/volunteers;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Grantee's failure to comply with any applicable federal, state, or local laws or regulations; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Grantee's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Grantee to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

6. Insurance**a. General Requirements**

Prior to its receipt of any funds pursuant to this Grant Agreement, Grantee shall obtain all insurance required under this Section and such insurance shall be subject to the approval by County's Risk Management, and Grantee shall use diligence to obtain such insurance and to obtain such approval.

Grantee shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Grantee's coverage to include the contractual liability assumed by Grantee pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Grantee shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Grantee certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing or continuing the performance of work for which it would receive grant funds.

c. Liability Insurance

Grantee shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Grantee and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Grantee's operations under this Agreement, whether such operations be by Grantee, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

Comprehensive General Liability... \$1,000,000

(Applies to all agreements)

Motor Vehicle Liability Insurance... \$1,000,000

(To be checked if motor vehicle used in performing services)

Professional Liability..... \$1,000,000

(To be checked if Grantee is a licensed professional)

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend any further payment pursuant to this Agreement.

7. Assignability

Grantee shall not assign this Agreement or any portion of it to a third party. Any such assignment without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice and the County shall have the right to a refund of all funds disbursed under this Agreement.

8. Compliance With Laws

All services to be performed by Grantee identified in this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including, but not limited to, any laws related to payment of prevailing wages pursuant to the California Labor Code. Grantee bears the responsibility to obtain, at Grantee’s expense, any license, permit, or approval required from any agency.

9. Merger Clause; Amendments

This Agreement, including Exhibits, constitutes the sole Agreement of the parties regarding the Grant, and correctly states the rights, duties, and obligations of each party as of this document’s date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties concerning the Grant that are not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

10. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

11. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

<p>In the case of County, to: Carolyn Bloede, Director Office of Sustainability 455 County Center, 4th Floor Redwood City, CA 94063 (650) 400-0098 cbloede@smcgov.org</p>	<p>In the case of Grantee, to: Len Materman, CEO San Mateo County Flood and Sea Level Rise Resiliency District 1700 S. El Camino Real, Suite 502 San Mateo, CA 94402 len@oneshoreline.org</p>
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12. Electronic Signature

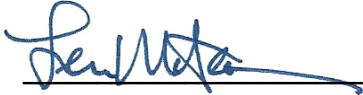
Both County and Grantee wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County’s Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

Agreement No. _____

Board Resolution No. _____

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Grantee: San Mateo County Flood and Sea Level Rise Resiliency District.



Grantee Signature

October 25, 2021
Date

Len Materman
Grantee Name (please print)

COUNTY OF SAN MATEO

By:
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:
Clerk of Said Board

Exhibit A

County and Grantee agree that the Measure K grant funds received by Grantee ("Funds") shall only be used for the purposes described below and in the November 9, 2021 Board transmittal and resolution, attached hereto:

Grantee was created by state law (AB 825) to address and help protect against the impacts of sea level rise and provide for the control and comprehensive management of the floodwaters and stormwaters in the County of San Mateo, and all funds provided to Grantee pursuant to this Agreement shall be used to further that purpose by paying for the actual operating expenses of the Grantee, including, for example, staff salaries and benefits, rent, and information technology services. Moreover, at the discretion of Grantee, up to \$50,000 of the funds may be used to pay for a long-term resilience study along Pacific Coast (number 4 below).

Current sea level rise/resiliency projects in the County of San Mateo and anticipated milestones include the following items, which must be detailed in the 2-3 page reports demonstrating the progress of the four items below and provided to County every six months by Grantee:

1. Complete construction of, and maintain, the Grantee's Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration Project ("Bayfront Canal Project"), funded in part by the County pursuant to the Memorandum of Understanding Among the San Mateo County Flood and Sea Level Rise Resiliency District, City of Redwood City, City of Menlo Park, Town of Atherton, and County of San Mateo to prepare for construction, construct, operate, and maintain the Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration Project ("MOU"), as approved by the Board of Supervisors in Resolution No. 077852. The funds granted under this Agreement shall not duplicate County funds previously allocated to the Bayfront Canal Project (i.e., Grantee shall not bill County under the MOU for Grantee's staff time and/or operations reimbursed under this Agreement). County reserves the right to audit Grantee's financial records in connection with the Bayfront Canal Project as provided in, and consistent with, Section 6 of the MOU.
 - a. Six Month Milestone: Complete project construction.
 - b. Eighteen Month Milestone: Maintain project following construction in accordance with regulatory permits.
2. Manage the countywide flood early warning system and create Flood Emergency Action Plans in three areas: Colma and San Bruno Creek Watersheds, Belmont Creek Watershed, and Bayfront Canal and Atherton Channel area; install steam gauge monitors in south coast area of San Mateo County.
 - a. Twelve Month Milestone: Installation and upgrade of Bayside stream monitoring stations; installation of stream condition monitoring webcam; complete the flood early warning web portal.
 - b. Eighteen Month Milestone: Complete Emergency Action Plans; expand stream monitoring network to south coast area.
3. Develop multi-jurisdictional projects to protect multiple cities along the Bay shoreline of San Mateo County from creek and Bay flooding under a future condition with sea level rise. Includes identifying project areas, hiring consultants, developing designs, and making progress toward environmental documentation and design for projects that reduce the risks from creek and Bay flooding, and sea level rise.
 - a. Six Month Milestone: Complete the process to hire consultant(s) to close data gaps, develop designs, and begin environmental documentation for at least one multi-jurisdictional Bayside shoreline project.
 - b. Eighteen Month Milestone: Measurable progress toward design for at least one multi-jurisdictional Bayside shoreline project.

Agreement No. _____

Board Resolution No. _____

4. Identify long-term solutions to reduce substantial sea level rise and erosion impacts facing three miles of shoreline along the Pacific Coast from Mavericks Beach to the Mirada Road bridge, including the County area of Princeton, state and federal assets, and the Pillar Point Harbor.
 - a. Six Month Milestone: Complete the process to hire consultant(s).
 - b. Twelve Month Milestone: Complete report of alternatives to mitigate impacts of erosion and sea level rise facing the key areas listed above.

In no event shall the County's fiscal obligation under this agreement exceed \$1,000,000.

Exhibit B

In consideration of the services provided by Grantee described in Exhibit A and subject to the terms of the Agreement, County shall pay Grantee for one payment of \$100,000 upon signing of the contract and the remainder on a semi-annual basis upon receipt of an invoice, progress report detailing work completed relative to the milestones listed in Exhibit A, and an expense report documenting expenditures on items funded by the grant (see example below).

Invoices shall be on Grantee letterhead and include:

- Invoice date
- Invoice number
- Address payment should be remitted
- Period of service that the invoice covers
- A line-item description of services provided by cost
- Total
- Budget report showing staff person name and hours worked, and list of specific charges for rent, utilities, and services and supplies.
- Copies invoices or receipts for operational expenses

The disbursement schedule is as follows:

- **Payment 1-** “Initial Payment” – Invoice for up to 10% of grant (\$100,000), upon receipt of invoice after execution of the grant agreement.
- **Payment 2-** “Six Month Milestone” – Invoice for up to 30% of grant (\$300,000) after first 6 months of Agreement term, upon receipt of a 2-3 page report demonstrating progress on items funded by the grant (listed in Exhibit A), as well as documentation of initial payment expenses.
- **Payment 3-** “Twelve Month Milestone” – Invoice for up to 30% of grant (\$300,000) after first 12 months of Agreement term, upon receipt of a 2-3 page report demonstrating progress on items funded by the grant (listed in Exhibit A).
- **Payment 4-** “Eighteen Month Milestone” – Invoice for remaining 30% of grant (\$300,000) after first 18 months of Agreement term, upon receipt of a 2-3 page report demonstrating progress on items funded by the grant (listed in Exhibit A).
- **Payment 5 (if needed)-** Invoice for any remaining funds upon receipt of a 2-3 page report demonstrating progress on items funded by the grant (listed in Exhibit A).

Performance Measure	Target
Provide documentation of completion of milestones, with explanation if any milestones could not be met completely	Documentation provided for all milestones