

**LEASE AGREEMENT BETWEEN  
MONTEREY PENINSULA REGIONAL PARK DISTRICT  
AND  
CARMEL UNIFIED SCHOOL DISTRICT**

This Lease Agreement (“Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 2020, (“Effective Date”) by and between the Monterey Peninsula Regional Park District (“MPRPD”) and the Carmel Unified School District (“District”), and together with MPRPD, the “Parties”) on the terms and conditions which follow.

**RECITALS**

- A. **WHEREAS**, MPRPD is the owner of certain real property located in the unincorporated community of Cachagua in Monterey County, with a street address of 37320 Nason Road, Carmel Valley, CA 93924 (“Property”); and
- B. **WHEREAS**, on or about February 5, 2001, the Parties entered into a lease agreement (“Original Lease”) for a term of ten (10) years, for the District’s use of a portion of the Property (“Premises”) for the operation of the District’s Cachagua Children’s Center (“Center”); and
- C. **WHEREAS**, since expiration of the Original Lease on February 5, 2011, the District has continued to occupy the Premises on a month-to-month basis, subject to the terms and conditions of the expired Original Lease; and
- D. **WHEREAS**, pursuant to the terms and conditions of the Original Lease, the District was permitted to: (1) place a portable classroom building (“Center Building”) on the Premises in order to operate the Center; (2) install a water filtration and chlorination system for the water distribution system (“Water System”) that supplies water to the Center and to the rest of the Property; (3) construct a shed and pump house to house components of the Water System; and (4) make other improvements to the Premises for its permitted uses and for a parking lot for approximately fifteen (15) vehicles for Center staff and visitors; and
- E. **WHEREAS**, in or around August, 2002, MPRPD entered into a ground lease with the Cachagua Community Center for use of other portions of the Property for public recreation, park, and community purposes consistent with the January 1990 Cachagua Community Center Development Plan, which provides for use by community residents to foster youth development; and
- F. **WHEREAS**, on or about September 17, 2012, the Monterey County Health Department (“Health Department”) issued a Compliance Order finding the Water System out of compliance with applicable state and local water system requirements; and

**ATTACHMENT 1**

- G. **WHEREAS**, following issuance of the Health Department Compliance Order, the Parties contracted for a water system audit report that recommended a number of operational and equipment modifications and upgrades necessary to ensure the Water System's reliability and to otherwise bring it into compliance with state and local codes as required by the Health Department; and
- H. **WHEREAS**, in or around May 2018, the District, at its own expense, contracted with Fall Creek Engineering for the engineering and design of certain modifications and upgrades to the Water System ("Water System Upgrades") designed to bring it into compliance with state and local codes as required by the Health Department; and
- I. **WHEREAS**, MPRPD has reviewed and approved the plans and specifications prepared by Fall Creek Engineering for such Water System Upgrades; and
- J. **WHEREAS**, the Parties hereto agree that it is to their mutual benefit and to the benefit of the citizenry served by both Parties to enter into this Agreement providing for MPRPD to lease the Premises to the District for the operation of the Center and further providing for the installation and construction of certain Water System Upgrades, the allocation of costs for such Water System Upgrades, and the ongoing maintenance of the Water System, as described in this Agreement and any exhibits hereto, all subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the covenants and conditions of this Agreement, including the Recitals hereof, which are incorporated herein by this reference, the Parties agree as follows:

### **AGREEMENT**

1. **Term.** The initial term of this Agreement shall be for ten (10) years, commencing with the Effective Date, through \_\_\_\_\_, 20\_\_ ("Initial Term"), unless earlier terminated as provided herein. By mutual written agreement of the Parties, this Agreement may be renewed for two additional five (5) year terms (each a "Renewal Term").
2. **Grant of Lease.** In exchange for the consideration provided in this Agreement, MPRPD hereby leases the Premises to the District, subject to the terms and conditions set forth herein.
3. **Use of Premises and Center Building.** The District may use the Premises for the operation of the Center as a multi-purpose child development center which may include preschool, child care programs, an after-school child care program, and other programs and services for youth up to age 18. Other uses of the Premises by the District to serve children and youth in the surrounding communities shall be permitted with the prior written consent of MPRPD, which consent shall not be

unreasonably withheld, conditioned, or delayed. The Parties agree that the Center Building is owned and operated by the District and that no use of the Center Building or other District-owned facilities or equipment located on the Premises shall be permitted without the District's prior written consent.

4. Annual Lease Payment. The District agrees to pay MPRPD as payment for lease of the Premises, the sum of One Dollar (\$1.00) per year, payable in advance to MPRPD on execution of this Agreement.
5. Premises Provided in "As Is" Condition. The Premises are provided to the District in an "as is" condition. MPRPD shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises, except as set forth in this Agreement and any exhibits hereto. By using and occupying the Premises pursuant to this Agreement, the District accepts the Premises in "as is" condition. The District acknowledges that neither MPRPD nor MPRPD's officers, employees or agents have made any representation or warranty as to the suitability of the Premises for the operation of the Center or other permitted programming and services.
6. Parking. Parking of cars by District employees, agents, volunteers, licensees and invitees shall be confined to those parking areas designated for the District's exclusive use by MPRPD.
7. Compliance with Law. The District shall comply with all applicable federal, state, and local laws, codes, ordinances, policies, rules and regulations regarding use of the Premises as presently enacted or hereafter amended or issued ("Law").
8. Maintenance and Protection of Premises. In maintaining and protecting the Premises at all times, the District agrees to the following obligations:
  - a. The District shall keep the Premises as clean and sanitary as conditions permit.
  - b. The District shall dispose of all refuse, garbage, and other waste in a clean and sanitary manner. No waste materials or refuse shall be dumped upon or permitted to remain on any portion of the Premises except in trash containers designated for that purpose.
  - c. The District shall not willfully or wantonly destroy, deface, damage, or impair the Premises, or permit any of the District's employees, agents, volunteers, licensees or invitees to commit such acts.
  - d. The District shall not disturb, annoy, or interfere with other MPRPD lessees on the Property or occupants of neighboring properties.

- e. The District shall not use, permit, or allow the Premises to be used, occupied, or improved in any manner or for any purpose that is in any way in violation of any Law.
  - f. The District shall not permit the possession or consumption of alcohol or the use of tobacco, cannabis or vaping products by its employees, agents, volunteers, licensees or invitees on the Premises.
9. Utilities. Except as otherwise set forth in this Agreement, the District shall be responsible for the payment of all utilities serving the Premises and the Center Building, including gas, electricity, garbage, and internet and telephone service. Cachagua Community Center and other MPRPD lessees shall pay the cost of all utilities necessary to serve their own facilities and structures.
10. No Assignment, Subletting or Third Party Use. The District may not assign, sublet, or permit any third party use of the whole or any part of the Premises except that the District may permit third parties to use the Premises under District supervision, to hold workshops or conduct appropriate educational programming for youth and families of children enrolled at the Center.
11. Shared Use of Property. The District understands and acknowledges that it does not have exclusive use of those portions of the Property not expressly included within the Premises. The District further understands and acknowledges that the use and occupation of those portions of the Property and the facilities located thereon not expressly included within the Premises, may be subject to separate agreements between MPRPD and other agencies and users, including but not limited to the Cachagua Community Center, and that such agreements may be controlling with regard to use of those portions of the Property.
12. Maintenance and Repair. Except as otherwise specifically set forth herein:
- a. The District shall at all times, at its own cost and expense, maintain and repair the Premises in a condition similar to that which exists at the time of execution of this Agreement. The term “maintain and repair” shall be defined as routine, regular or necessary maintenance, such as watering, weeding, and mowing the Premises.
  - b. The District shall be solely responsible, at its own cost and expense, for any maintenance, repair, replacement, and upkeep for the interior and exterior of the Center Building, including exterior stairs and lighting, for any District-owned playground equipment, furniture, equipment, or other articles of personal property placed on the Premises, and all facilities and improvements used by the District on the Premises, including the allocated parking area.
  - c. MPRPD shall be responsible for maintaining the remainder of the Property; however, MPRPD shall not be responsible for extraordinary items of

maintenance and repair directly serving the Center Building or otherwise solely related to the District's use of the Premises, such as repair of the septic system should it become clogged, damaged or broken, and repair of damaged walkways and driveways.

- d. The District and MPRPD shall each do all acts required to comply with all applicable laws, ordinances, regulations, and rules of any public authority relating to their respective maintenance obligations as set forth herein.

13. Surrender of Premises. The Parties agree that the Center Building, and any and all playground equipment, furniture, equipment or other articles of personal property owned by or installed by the District at its expense on the Premises shall be and remain the property of the District and may be removed by the District upon expiration or termination of the Agreement, unless otherwise agreed by the Parties. By mutual agreement of the Parties, MPRPD shall have the option to purchase the Center Building at its then-current fair market value, or as otherwise agreed by the Parties ("Option") upon expiration or termination of the Agreement. Prior to surrendering possession of the Premises to MPRPD, the District agrees to repair any damage to the Premises caused by or in connection with the removal of the Center Building and any District-owned playground equipment, furniture, equipment or other articles of personal property from the Premises at the District's sole cost and expense.

14. Improvements.

- a. The District shall have the right to make all reasonably necessary alterations, renovations or improvements ("Improvements") to the interior or exterior of the Center Building in order to meet local, state and federal requirements for the operation of the Center at its own cost and expense and without consent of MPRPD. The District shall not expand the Center Building or add any additional facilities without prior written consent of MPRPD, which consent shall not be unreasonably withheld, conditioned, or delayed.
- b. Except as set forth herein, all other Improvements to the Premises are subject to review and consent of MPRPD, which consent shall not be unreasonably withheld. With the exception of those certain Water System Upgrades as set forth in this Agreement and any exhibits hereto, all Improvements made to the Premises by the District shall remain the property of the District, which shall have the right to remove such Improvements upon termination or expiration of this Agreement. The District may, with MPRPD's prior approval, elect not to remove any or all Improvements from the Premises, in which case such Improvements shall become the property of MPRPD.

15. Water System Upgrades. The Parties have agreed that the District shall oversee and manage the installation and construction of certain Water System Upgrades, and that MPRPD shall advance to the District the total costs of such Water System Upgrades,

all in accordance with the provisions of **Exhibit A**, attached hereto and incorporated herein by reference up to an amount not to exceed \$398,718.06, unless agreed to in writing otherwise by MPRPD.

16. Maintenance of Water System. The Parties have agreed that responsibility for the ongoing maintenance of the Water System shall be allocated in accordance with the provisions of **Exhibit A**.
17. Holding Over. Should the District hold over at the Premises after this Agreement has terminated without extension or execution of a new lease agreement by the Parties, such holding over shall be deemed a tenancy from month to month on the same terms and conditions set forth herein.
18. Damage to Premises. If by no fault of the District, the Premises are totally or partially damaged or destroyed by flood, fire, earthquake, accident or other casualty, such that the Premises are no longer usable for the District's purposes as set forth in this Agreement, the District may terminate this Agreement by fifteen (15) days written notice to MPRPD.
19. Termination. Either Party may terminate this Agreement at any time upon one hundred eighty (180) days' written notice to the other Party. Such termination automatically shall take effect on the 181st day following such notice, or on such later date as specified in the notice, or as the Parties may agree in writing. Upon termination of this Agreement for any reason, or at the expiration of the term hereof, the District shall, within ninety (90) days, remove the Center Building and all District-owned playground equipment, furniture, equipment and personal property from the Premises, except as provided in Section 13, and shall restore the Premises to the condition existing upon the Effective Date of this Agreement, excepting normal wear and tear.
20. Hazardous Materials. MPRPD and the District agree as follows with respect to the existence or use of Hazardous Materials on the Premises.
  - a. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCBs, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, Section 66261.30 *et seq.*, (ii) defined as a "hazardous waste" pursuant to Section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.* (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to Section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance,

or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, the California Department of Toxic Substance Control and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

- b. The District and MPRPD shall at all times and in all respects comply with all Hazardous Materials Laws relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal, or transportation of any Hazardous Materials on, about or across the Premises.
  - c. The District shall not use, maintain, or keep any Hazardous Materials on the Premises except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Hazardous Materials Laws) on or about the Premises without MPRPD's prior written approval.
  - d. Each Party shall promptly give notice to the other Party of any Hazardous Materials dispersal or spill, or Hazardous Materials claim, of which it is aware.
  - e. Each Party shall indemnify, defend, and hold harmless the other Party and its trustees, agents and employees from and against any liabilities, losses, claims, damages, lost profits, consequential damages, interest, penalties, fines, monetary sanctions, attorneys' fees, experts' fees, court costs, remediation costs, investigation costs, and other expenses which result from or arise in any manner whatsoever out of the indemnifying Party's use, storage, treatment, transportation, release, disposal, or presence from any cause or source whatsoever of Hazardous Materials on or about the Premises. The foregoing indemnification obligation shall survive the expiration or earlier termination of this Agreement.
21. **Default.** Either Party may terminate this Agreement upon sixty (60) days' written notice to the other Party if the other Party is in default and fails within such 60-day period to cure such default. A Party will be deemed to be in default under this Agreement if it fails to comply with any obligation, term, or covenant herein. Termination of this Agreement will not affect or diminish the rights, claims, or remedies available to the non-defaulting Party arising by reason of any default.
22. **Insurance.** Without limiting its indemnification obligations set forth in Section 23 hereof, the District shall secure and maintain in force at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to MPRPD.
- a. **General Liability insurance.** The District shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office

form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted.

- b. Automobile Liability insurance. The District shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the District arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.
- c. Workers’ Compensation insurance. The District shall maintain workers’ compensation insurance (Statutory Limits) and employer’s liability insurance (with limits of at least \$1,000,000).
- d. Commercial Property insurance. Upon commencement of construction of tenant improvements and betterments, or installation of equipment, with approval of MPRPD, District shall obtain and maintain insurance on District and any improvements. Coverage shall be at least as broad as the Insurance Services Office broad causes of loss form CP 10 20, and approved of in writing by MPRPD. Coverage shall be sufficient to insure 100% of the replacement value and there shall be no coinsurance provisions. The policy shall include an inflation guard endorsement, 100% rents coverage, contents coverage, coverage for personal property of others, ordinance or law and increased cost of construction coverage. MPRPD shall be included as an insured and as loss payee on any such insurance. MPRPD shall not be liable for any business income or other consequential loss sustained by District. MPRPD shall not be liable for any loss of District’s personal property even if such loss is caused by negligence of MPRPD, MPRPD’s employees or agents.
- e. Other Insurance Provisions or Requirements
  - i. Proof of insurance. The District shall provide certificates of insurance to MPRPD as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by MPRPD’s risk manager prior to commencement of performance. Current certification of insurance shall be kept on file with MPRPD at all times during the term of this Agreement. MPRPD reserves the right to require complete, certified copies of all required insurance policies, at any time.
  - ii. Duration of coverage. The District shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the



performance of the work hereunder by District, its agents, representatives, employees, or subconsultants.

- iii. Primary/Noncontributing. Coverages provided by the District shall be primary and any insurance or self-insurance procured or maintained by MPRPD shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of MPRPD before MPRPD's own insurance or self-insurance shall be called upon to protect it as a named insured.
- iv. MPRPD's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, MPRPD has the right but not the duty to obtain the insurance it deems necessary and any premium paid by MPRPD shall be promptly reimbursed by the District. In the alternative, MPRPD may cancel this Agreement.
- v. Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by MPRPD's risk manager.
- vi. Enforcement of contract provisions (non-estoppel). The District acknowledges and agrees that any actual or alleged failure on the part of MPRPD to inform the District of non-compliance with any requirement imposes no additional obligations on MPRPD nor does it waive any rights hereunder.
- vii. Requirements not limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the District maintains higher limits than the minimums shown above, MPRPD requires and shall be entitled to coverage for the higher limits maintained by the District. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to MPRPD.

- viii. Notice of cancellation. The District agrees to oblige its insurance agent or broker and insurers to provide MPRPD with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. Proof of such obligation shall be in the form a special endorsement.
- ix. Additional insured status. General liability policies shall provide, or be endorsed to provide, that MPRPD and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall include endorsement covering liabilities arising out of the District's "operations" in the leased space. This provision shall also apply to any excess/umbrella liability policies.
- x. Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to MPRPD and approved of in writing.
- xi. Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that District insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.
- xii. Pass through clause. The District agrees to ensure that its contractors, subcontractors, and any other party involved with the project who is brought onto or involved in the project by the District to carry general liability insurance in the amount of \$4,000,000 aggregate, and \$2,000,000 per occurrence for bodily, personal injury and property damage and automobile liability insurance in the amount of \$2,000,000 per accident for bodily injury and property damage combined single limit. District agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Subsection 22.xii. District agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to MPRPD for review.
- xiii. MPRPD's right to revise specifications. MPRPD reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving District ninety (90) days advance written notice of such change.
- xiv. Self-insurance retentions. Any self-insured retentions must be declared to and approved by MPRPD. MPRPD reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications

unless approved by MPRPD.

- xv. Timely notice of claims. The District shall give MPRPD prompt and timely notice of claims made or suits instituted that arise out of or result from District's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.
- xvi. Additional insurance. The District shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection.
- xvii. District property not insured. The District's personal property, fixtures, equipment, inventory and vehicles are not insured by MPRPD against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause.

23. Indemnification.

- a. Except for the sole negligence of MPRPD, the District shall defend, indemnify and keep and hold MPRPD, including MPRPD's officers, employees and agents, their successors and assigns, harmless from any and all costs, liability, damage or expense (including costs of suit and fees and expenses of legal services) claimed by anyone by reason of injury to or death of persons, or damage to or destruction of property, including property of the District, sustained in, on or about the demised Premises or arising out of District's use or occupancy thereof, as a proximate result of the acts or omissions of District, its employees and agents, or its contractors, licensees, invitees or subtenants, their successors and assigns or arising out of the condition of the Property. MPRPD shall, by appropriate, written notice to District, advise the District as soon as practicable regarding any potential liability of the District under this Section.
- b. Except for the sole negligence of District, MPRPD shall defend, indemnify and keep and hold District, including District's officers, employees and agents, their successors and assigns, harmless from any and all costs, liability, damage or expense (including costs of suit and fees and expenses of legal services) claimed by anyone by reason of injury to or death of persons, or damage to or destruction of property, including property of the MPRPD, sustained in, on or about the demised Premises or arising out of MPRPD's use or occupancy thereof, as a proximate result of the acts or omissions of MPRPD, its employees and agents, or its contractors, licensees, invitees or subtenants, their successors and assigns or arising out of the condition of the Property. District shall, by appropriate, written notice to MPRPD, advise the MPRPD as soon as practicable regarding any potential liability of the MPRPD under this Section.

24. Governing Law/Venue. This Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships exclusively within the State of California. Any action or proceeding seeking any relief under or with respect to this Lease shall be brought solely in the Superior Court of the State of California for Monterey County, subject to any transfer of venue as required by law.
25. Notices. Any notice, demand, approval, consent, or other communication between the Parties will be provided to the following addressees:

MPRPD:

Monterey Peninsula Regional Park District  
P.O. Box 223340  
4860 Carmel Valley Road  
Carmel, California 93922  
Attn.: Rafael Payan, PhD., General Manager

DISTRICT:

Carmel Unified School District  
4380 Carmel Valley Road  
P.O. Box 222700  
Carmel, CA 93922  
Attn.: Chief Business Official

Notice may be provided by personal service, regular mail, certified mail, overnight mail with proof of delivery, facsimile with proof of transmission, or by email provided receipt is acknowledged. By written notice to the other, either Party may change its mailing address or correspondence information.

26. Severability. If any provision or any part of this Agreement is for any reason held to be invalid and/or unenforceable or contrary to public policy, law, statute, or ordinance by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.
27. Assignment. Neither Party may assign or transfer any of its obligations, rights, or duties under this Agreement. Any such purported assignment or transfer shall be void, and shall constitute a breach of this Agreement.
28. Amendment. Each of the Parties acknowledges and agrees that this Agreement may be amended only by a writing signed by both the Parties and approved or ratified by each Party's governing board.

29. Entire Agreement. This Agreement and its Exhibit A constitute the entire agreement between the Parties with respect to the subject matter herein and there are no other promises or conditions in any other agreement whether oral or written.
30. Waiver. The failure of either Party to enforce any provision of this Agreement will not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
31. Future Assurances. Each of the Parties agrees to execute such further documents and take such further actions as may be reasonably necessary or appropriate to effectuate the terms of this Agreement.
32. Execution by Facsimile or in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Facsimile signature pages transmitted to other Parties to this Agreement shall be deemed equivalent to original signatures on counterparts.
33. Warrant of Authority. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the Party indicated, and each of the Parties by signing this Agreement warrants and represents that such Party is legally authorized and entitled to enter into this Agreement.
34. Ratification/Approval. This Agreement shall not be effective unless and until ratified and approved by the District's Board of Trustees.

**IN WITNESS WHEREOF**, the Parties have, by their duly authorized representatives, executed this Agreement:

**MONTEREY PENINSULA REGIONAL PARK DISTRICT**

By: \_\_\_\_\_  
 Name: Shane Anderson  
 Title: President, MPRPD Board of Directors  
 Date: \_\_\_\_\_

**CARMEL UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
 Name: Barb Dill-Varga  
 Title: Superintendent  
 Date: \_\_\_\_\_

## EXHIBIT A

### CACHAGUA COMMUNITY CENTER WATER SYSTEM UPGRADES ALLOCATION OF PROJECT RESPONSIBILITIES & COSTS AND MAINTENANCE OBLIGATIONS

A. Water System Upgrades. Pursuant to the Agreement, the Parties have agreed that the District shall solely be responsible for overseeing and managing installation and construction of the Water System Upgrades (the “Project”) in accordance with the engineering and design plans and specifications prepared by Fall Creek Engineering (“Plans and Specifications”), the Agreement between Owner and Contractor and related contract documents included in the Project Manual. Project responsibilities and costs shall be allocated as follows:

1. The District shall procure all installation and construction work and services for the Project in compliance with applicable law and provide MPRPD with copies of all proposals and bids submitted for the construction of the Project, or any portion thereof.
2. The District shall furnish, or cause to be furnished, all labor, equipment and materials, including tools, implements, and appliances required, and to perform, or cause to be performed the Project in a good and workmanlike manner.
3. All of the District’s contractors, subcontractors, and vendors shall be required to procure insurance in accordance with the District’s policies and procedures, and be required to name the District as an additional insured.
4. The District shall make its best efforts to complete construction of the Project within One Hundred and Twenty (120) days from issuance of a Notice to Proceed (“NTP”) for performance of the work.
5. The District shall be solely responsible for timely securing and maintaining all necessary permits, licenses, and approvals from any and all applicable State, local or other regulatory agencies related to construction of the Project, including, without limitation, zoning approvals, conditional use permits, and building permits (collectively, “Governmental Approvals”). MPRPD shall reasonably cooperate with District in timely securing and maintaining all such Governmental Approvals.
6. In its capacity as “lead agency” for required compliance with the California Environmental Quality Act (Pub. Resources Code, §§ 21000, *et seq.*, Cal. Code Regs., tit. 14, §§ 15000, *et seq.* (“CEQA”), the District has determined that construction of the Project under the terms and conditions set forth in the Agreement and this Exhibit C qualifies for an exemption from CEQA, and accordingly, has filed a Notice of Exemption (“NOE”) with the County of Monterey. (Pub. Resources Code, § 21167, subd. (d); Cal. Code Regs., tit. 14, § 15062, subd. (d).) The District

as “lead agency”, shall also be responsible for compliance with the requirements of Public Resources Code section 21080.3.1, which sets forth a process for consultation with California Native American tribes culturally affiliated with the geographic area of the Project, upon request of the tribe(s).

7. The Parties have agreed on an estimated total Project cost of \$398,718.06 (“Project Cost”), which amount includes a 10% contingency fund, to fund the costs of engineering and design, installation, construction, and all other costs incurred by the District with respect to construction and completion of the Project.
8. As soon as feasible following approval of this Agreement by the governing boards of the Parties, but in any event no later than April 15, 2020, MPRPD shall advance the total estimated Project Cost to the District by check or wire transfer. MPRPD shall contact the District’s Chief Business Official at 831-624-1546 x2050, prior to April 15, 2020 to finalize arrangements and process for advancement of Project Cost.
9. Upon commencement of the work, the District shall provide MPRPD with monthly reports listing the costs for work or services completed during that month with respect to the Project, and including: (i) copies of all contracts for services; (ii) vendors’ payment invoices or applications for payment; and (iii) evidence of payment to the vendors.
10. The Parties understand and agree that due to circumstances outside of the control of either Party, the District may incur additional costs over and above the estimated total Project Cost. All Additional Costs shall be approved in advance in writing by MPRPD. In such event, MPRPD agrees to reimburse the District for all such additional costs (“Additional Costs”) within sixty (60) days of receipt of a detailed report from the District that includes all of the information set out at Section 9 of this **Exhibit A**.
11. In the event that total Project Costs are less than the estimated total Project Cost, the District shall, within ninety (90) days of completion of the Project, as defined by section 7107 of the Public Contract Code, reimburse to MPRPD any unexpended funds transferred to the District by MPRPD pursuant to the Agreement and this **Exhibit A**.
12. If, for any reason, the District is unable to complete the Project, the District shall notify MPRPD in writing and within sixty (60) days of such notice, reimburse to MPRPD all unexpended Project funds, as well a final report that includes all of the information listed in Section 9 of this **Exhibit A** for all expended funds.

B. Water System Maintenance. The Parties have agreed that, following completion of the Project, as defined by section 7107 of the Public Contract Code, responsibility for the ongoing maintenance of the Water System shall be allocated as follows:

1. Filtration System Maintenance and Electric Meter

- a. The MPRPD is the registered owner of the filtration system from the raw water tank to the finish water tank (“Filtration System”). The District shall solely be responsible for contracting with a water system operator (“Water System Operator”) for annual repairs and maintenance of the Filtration System. Payment of Water System Operator and costs for repairs and maintenance of the Filtration System shall be allocated between the Parties as set forth in Section B.1.b., below.
- b. The Filtration System requires power and is currently on a meter for electricity usage from PG&E with the District as the sole account holder. However, MPRPD acknowledges and agrees that MPRPD is already connected to and utilizing the Filtration System for the benefit of its own facilities and tenant(s). Accordingly, the District and MPRPD will share in the cost of the annual maintenance and repairs to the Filtration System, including but not limited to payment of the Water System Operator and related electrical usage, with the District responsible for 50% of such costs and MPRPD responsible for the remaining 50% of cost. In the event either Party causes a material intensification of use of the Filtration System, such as the construction or installation of additional facilities, or any expansion of use of the Property or Premises, the Parties agree to meet and re-negotiate the allocation of payment responsibilities. In the event MPRPD installs another meter serving only its facilities, MPRPD shall no longer be responsible for such costs.
- c. District shall send MPRPD a semi-annual statement for the cost of the maintenance and repairs to the Filtration System, including but not limited to payment of the Water System Operator and related electrical usage, on or about December 15 and June 15 of each fiscal year (July to June) during the Term of the Agreement. MPRPD will reimburse District 50% of all such costs within sixty (60) days of receipt of the semi-annual statement.
- d. The District will be solely responsible for maintenance of the Filtration System in emergency and normal breakdown situations, with all costs for maintenance and repairs being allocated between the Parties as set forth in B.1.b., above.

## 2. Raw Water Intake Maintenance

- a. The Parties understand and agree that the raw water intake pipe (“Raw Water Intake Pipe”) can be damaged during storms or high water levels of the Carmel River. The District and MPRPD will share in the annual cost of maintenance and repairs to the Raw Water Intake Pipe, with the District responsible for 50% of such costs and MPRPD responsible for the remaining 50% of costs.



- b. District shall send a semi-annual statement of the costs incurred to maintain and repair any damage to the Raw Water Intake Pipe to MPRPD on December 15 and June 15 of each fiscal year (July to June) during the Term of the Agreement. MPRPD will reimburse District 50% of the total costs of such maintenance and repairs within thirty sixty (60) days of receipt of the semi-annual statement and invoice.
- c. The District will provide MPRPD a school year calendar by July 1 of each fiscal year (July to June) during the term of the Agreement indicating approximately 185 days of yearly use, and documenting all days not reflected on the school year calendar.
- d. The District will assume maintenance responsibility of the Raw Water Intake Pipe in emergency and normal breakdown situations based on the school year calendar of operation. MPRPD will assume maintenance responsibility of the Raw Water Intake Pipe in emergency and normal breakdown situations for all days not reflected on the school year calendar. All costs for maintenance and repairs of the Raw Water Intake Pipe shall be allocated between the Parties as set forth in B.2.a., above. For example, if the District incurs repair or maintenance costs for the Raw Water Intake Pipe during the period designated on the school year calendar, the District shall be responsible for 50% of those costs and MPRPD shall be responsible for 50% of those costs. MPRPD shall timely submit invoices for all such repairs and maintenance to the Raw Water Intake Pipe to District for inclusion on the semi-annual statement referenced in B.2.b., above.

3. Point of Connection Maintenance.

- a. The District will be solely responsible for all required maintenance, 365 days a year, from the point of connection at the finished water tanks to the District's building and facilities.
- b. MPRPD will be solely responsible for all required maintenance, 365 days a year, from the point of connection at the finished water tanks to MPRPD's buildings and irrigation systems, and to the buildings and facilities of all other MPRPD tenants.