

## **EXHIBIT 4-A**

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

**THIS AGREEMENT** is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the Monterey Peninsula Water Management District (MPWMD) and the City of Monterey.

#### **FACTS**

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

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

C. At its June 20, 2022 meeting, the MPWMD Board of Directors adopted a budget that included expenditures up to \$157,000 for development expenses for local water projects.

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

1. Purpose of Agreement.

The purpose of this Agreement is for MPWMD to advance up to \$25,000 to the City of Monterey, to be paid beginning in MPWMD Fiscal Year 2022/23 and to be used by the City of Monterey for development expenses associated with the Olivier Dry Weather Diversion Project (Project), also known as the Lighthouse Tunnel Diversion Project.

2. The Project.

The Project would divert flows from the downtown Tunnel and Oliver Street storm drain gravity pipe to the sanitary sewer instead of discharging it into Monterey Bay. This would remove dry weather flows that are currently discharged to Monterey Bay, thereby partially restoring natural drainage patterns and

treating any urban pollutants that are associated with the diverted flows. The project is estimated to achieve from 10 to 20 ac-ft/yr of water supply from the approximately 150-acre tributary drainage area. The project will provide benefits to the community as it provides a source of alternative water supply during the dry season.

Development expenses funded by this grant include developing a survey plan and report identifying property and utility details, easements, and ownership along the proposed (new) storm water diversion pipe. The information provided in this report will inform alignment design, CEQA, and necessary easements.

3. Term of Agreement.

The term of this Agreement begins on the date set forth above and shall remain in effect until June 30, 2023. Invoices received by MPWMD after this date for Project costs incurred up to June 30, 2024, shall be paid unless MPWMD's maximum commitment of \$25,000 has been reached.

4. Reimbursement.

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

5. Limited Obligations.

The parties agree MPWMD's financial obligations are limited obligations payable from its Water Supply Charge.

6. Invoices.

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

7. Payment of Invoices.

MPWMD shall have the right to review and confirm that the invoices submitted by the City of Monterey are in conformance with the terms of this Agreement. Where MPWMD finds the invoice and supporting documentation for work to be unsatisfactory, MPWMD shall describe the deficiencies in writing or by electronic mail to the City of Monterey within ten (10) days. The City of Monterey shall have the option of revising the invoice and supporting documentation to delete reimbursement requests for invoices that are deemed unsatisfactory or revising unsatisfactory invoices and resubmitting a reimbursement request. Payments to the City of Monterey are due and payable within thirty (30) days of receipt of invoice.

8. Event of Default.

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

9. Dispute Resolution.

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

**GENERAL PROVISIONS**

10. Force Majeure.

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

11. Indemnities.

- a. **MPWMD Indemnity.** MPWMD shall fully indemnify the City of Monterey and its respective directors, employees and agents against, and hold completely free and harmless from, any cost, expense, claim, demand, judgment, loss, injury and/or liability of any kind or nature, including personal or bodily injury, death or property damage (Losses), that may arise from any grossly negligent act or omission of MPWMD related to the Project.
- b. **City of Monterey Indemnity.** The City of Monterey shall fully indemnify MPWMD and its respective directors, employees and agents against, and hold completely free and harmless from, any

Losses, that may arise from (i) any grossly negligent act or omission of the City of Monterey related to the Project construction, management, operation, maintenance or repair, except for costs, expenses, claims, demands, judgments, losses, injuries and/or liability arising from any grossly negligent act or omission of MPWMD related to the Project development activities or (ii) any claim made by a City of Monterey employee specifically retained to provide services with respect to the Project development activities.

12. Insurance/Self Insurance.

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

13. Notices.

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

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

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

City of Monterey  
580 Pacific Street  
Monterey, California 93940  
Attention: Tricia Wotan

14. Successors and Assigns.

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

15. No Third-Party Beneficiaries.

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

16. Further Acts and Assurances.

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

17. Opinions and Determinations.

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

18. Captions.

The captions in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

19. Severability.

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

20. Entire Agreement.

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

21. Modifications in Writing.

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

22. Assignment.

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

23. Drafting Ambiguities.

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

24. Governing Law.

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

25. Venue.

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

26. Signing Authority.

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

27. Inspection of Books and Records.

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

28. Representations and Warranties.

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

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

**MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**

By: \_\_\_\_\_  
[Name], Chair

ATTEST:

\_\_\_\_\_  
DAVID J. STOLDT, Board Secretary

**City of Monterey**

By: \_\_\_\_\_  
[Name and Title]

ATTEST:

\_\_\_\_\_  
[Name and Title]

APPROVED AS TO FORM:

\_\_\_\_\_  
[Name of Attorney and Title]