

SALINAS RIVER STREAM MAINTENANCE PROGRAM'S RIVER MANAGEMENT UNIT  
ASSOCIATION  
A CALIFORNIA UNINCORPORATED ASSOCIATION

**AGREEMENT OF ASSOCIATION**  
*Updated 10/26/16*

This Agreement of Association ("Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2016 (the "Effective Date"), by and among the members identified on the attached **Exhibit A** (the "Initial Members") for the purpose of forming, pursuant to California corporations code Sections 18000 et seq., an unincorporated, nonprofit association to be known as SALINAS RIVER STREAM MAINTENANCE PROGRAM'S RIVER MANAGEMENT UNIT ASSOCIATION, a California unincorporated association ("Association").

**1. RECITALS.**

1.1 The Initial Members consist of landowners of certain land located along the Salinas River mainstem, San Lorenzo Creek, Bryant Canyon Channel, or Gonzales Slough tributaries, in Monterey County, California who have combined their respective resources for the following stated mission:

"To facilitate, through an unincorporated association known as "Salinas River Stream Maintenance Program's River Management Unit Association," the Salinas River Stream Maintenance Program's River Management Unit Association in furtherance of the floodplain management and stream maintenance activities by each landowner on their respective riverine lands in compliance as "subpermittees" and "Responsible Parties" pursuant to the terms, conditions and requirements identified in or resulting from the Routine Maintenance Agreement and Verification Request Form and Agreement from the California Department of Fish and Wildlife ("CDFW") dated October 14, 2016 (No. 1600-2016-0016-R4) ("RMA") entered into by and between the CDFW and the and the Resource Conservation District of Monterey County ("Permittee")."

1.2 The Initial Members desire to form an unincorporated association to further its foregoing mission.

**2. AGREEMENT**

In consideration of the foregoing, the mutual covenants and obligations created in this Agreement, the benefits each of the Initial Members (and any subsequent Members) will derive from the floodplain management and stream maintenance activities, and other valuable consideration, the receipt and sufficiency of which they acknowledge, the Initial Members agree as follows:

2.1 **Creation and Name of Association.** The Initial Members, by their execution of this Agreement hereby create an unincorporated, non-profit association (“Association”). The name of the Association shall be Salinas River Stream Maintenance Program’s River Management Unit Association (“Association”).

2.2 **Membership in the Association.** All Members must be titled owners of real property in Monterey County, California, with Assessor Parcel Number(s) parcels (each, an “APN”) located along the Salinas River mainstem, San Lorenzo Creek, Bryant Canyon Channel, or Gonzales Slough tributaries, and each Member shall designate in writing the APN to which such Member intends this Agreement to apply for purposes of furtherance of the mission of Association. Membership is required prior to the Association conducting any activities on a landowner’s APN.

a. Initial Members. Membership in the Association as of the Effective Date shall consist of all of the Initial Members whose names appear on Exhibit A and who are signatories to this Agreement. The Assessor’s Parcel Number of each landowner’s APN shall be set forth next to each landowner’s signature to this Agreement.

b. Additional Members. Additional members (“New Members”) may join the Association by entering into a Joining Agreement, in a form and under such terms as are determined by the Executive Committee (defined below) from time to time. The Initial Members and Additional Members are sometimes referred to in this Agreement individually as a "Member" and collectively as "Members." When such references are used in a provision of this Agreement, the intent is to make no distinction between Initial Members and Additional Members with respect to that provision.

c. Types of Membership.

(i) Maintenance Membership. A Maintenance Membership is a Member whose APN has a designated numbered river maintenance channel as shown on maps distributed by Monterey County Water Resources Agency in June to all landowners with maintenance channels located on their property and/or Arundo donax located on their property which can be treated under the Stream Maintenance Program Area, as permitted under the 401/404 permit held by Monterey County Water Resources Agency and 1600 permit held by Permittee. This Members’ assessment will be based upon the total acreage upon which maintenance may be conducted. Assessments will be based upon amount of acreage enrolled, and additional acreage may be enrolled each year of the program.

(ii) Benefit Membership. A Benefit Membership is a Member whose APN is in or adjacent to the river, on ground that could be affected by 5-10 year flows according to modeling conducted for the Stream Maintenance Program. This Member cannot, or has chosen not to, conduct maintenance on such APN. A Member cannot conduct maintenance on its APN where there is no designated numbered river maintenance channel or arundo located on the APN. A Member who is able to conduct maintenance, but has chosen not to, must adjust their Membership to a Maintenance Membership where such Member desires to commence

maintaining the APN. A Benefit Member benefits from regular stream maintenance in the designated numbered river maintenance channels and is further supported by the broader properties affected by flood flows. Enrollment as a Benefit Member will provide such Member with regular updates from the Stream Maintenance Program and access to project consultants if there are questions regarding the Program or their APN. A Benefit Member supports the Association and benefits the Salinas Valley River system as a whole, in addition to retaining the option to enroll in a Maintenance Membership (if applicable) in the future.

d. Withdrawal of a Member. A Member may withdraw voluntarily from the Association at any time by providing written notice of withdrawal to the then acting Secretary of the Association, including a withdrawal date that is not sooner than thirty (30) days after delivery of the withdrawal notice. Withdrawing Members do not receive a return of any assets or other resources conveyed to or bestowed upon the Association by such withdrawing Members.

e. Removal of a Member. A Member may be removed from the Association for failure to continue to meet membership requirements. The Association's Bylaws will contain procedures governing the removal of a Member, including without limitation, notice, cure period, and voting procedures. Removed Members do not receive a return of any assets or other resources conveyed to or bestowed upon the Association by such removed Members.

2.3 **Membership Billing.** The following fees will be assessed by the Association for membership within the first five years of the program. Fees may be amended by a majority vote of the Officers, and fees will be reassessed in 2020, approximately five years after the association's formation.

a. Landowner Fee. Assessed to all Members by the Association upon enrollment: \$1,050 per unique landowner. For 2016 only, The Landowner Fee shall be reduced by \$50 in the event that the landowner is also a regular member in good standing of the Grower-Shipper Association of Central California ("GSA Member").

b. Maintenance Membership Fee.

i. Base Fee. Applicable for the first five years of the program, based upon channel or arundo acreage maintained. The Base Fee is estimated at \$630 per acre of maintenance work. For 2016 only, the Base Fee shall be reduced by \$30 in the event the Maintenance Member is a GSA Member. The Base Fee shall be billed based on acreage maintenance estimates, and each year reconcile based upon how much actual work done on new property (property not previously assessed in 5-year window).

ii. Annual Verification Request Form Fee. \$281/year per Activity per channel, or as may be amended by CDFW. "Activity" is defined as any of the following: Sediment Removal & Grading, Native Vegetation Removal, Arundo Removal, Bar Ripping, and Tree Planting. A Verification Request Form ("VRF") can include multiple channels if they are interlinked and all having the Sediment

Removal & Grading or Vegetation Removal. As an example, the VNF Fee for a VRF that will include both Vegetation Removal and Grading this year would be \$562 (2x\$281), for example.

For landowners and/or operators that are not members of GSA, the following fees will incorporate a 5% administrative fee. This is applicable to 2016 only, as GSA is providing administrative service in that year, which is complimentary to GSA members.

d. Habitat Assessment Surveys. Shall be conducted by Approved Biologist according to permit conditions. Suitable habitat will be assessed annually at each channel to be maintained each year. Biologist will look for presence of animals and areas for dens, nests, roosting sites, etc. If den, nest, roosting sites, etc. are found the biologist can confirm that animal is using it through a second survey or assume the animal is using it and set up a buffer around the den, nest, roosting area to avoid disturbance. Landowners make these choices and direct the Approved Biologist on how they would like to proceed. *It is recommended that Members ask PERMITTEE for an estimate of costs before this work begins as this cost is billed separately for each operator.*

e. Pre-maintenance Surveys and Mapping. Shall be conducted by Permittee Biomonitoring according to permit conditions. The main purpose of these surveys is to assess mitigation requirements. Biomonitoring will digitally map channel boundaries once they have been staked and flagged by the owner/operator, assess the vegetation types in the maintenance area, and mark trees and sensitive resources (like wetlands) that need to be avoided or mitigated. *It is recommended that Members ask PERMITTEE for an estimate of costs before this work begins as this cost is billed separately for each operator.*

f. Biological Monitoring (Occurs during Maintenance Work) The costs of this will also be estimated by Permittee, and an admin fee will automatically be built in to the cost so that Permittee can conduct all necessary reporting on the work conducted. *It is recommended that Members ask PERMITTEE for an estimate of costs before this work begins as this cost is billed separately for each operator.*

## 2.4 Association Governance and Meetings.

a. Association Bylaws. The governance of the Association and the scheduling of the annual and other Association meetings shall be as set forth in the Association's Bylaws (as initially adopted and as they may be amended from time to time, the "Bylaws"), the initial version of which shall take effect upon adoption by the Initial Members, either by unanimous adoption as evidenced by the signature of all Initial Members on a copy of the Bylaws, or by majority vote of the Initial Members present at the Inaugural Meeting (defined below). Thereafter, the Bylaws may be amended as set forth in the Bylaws.

b. Board of Directors. The affairs of the Association shall be governed by Board of Directors of five to seven (5-7) members, consisting of: one (1) person from each River Management Unit (“RMU”) to be appointed by the Initial Members making up a respective RMU. The expectation of the Association is that in the first year of the program (2016-2017) only membership will be limited to RMUs 1, 2, 3, 6, and 7. In future years, it is expected that RMUs 4 and 5 (currently in the pilot program) will also join. The inaugural Executive Committee members shall be appointed or elected (as the case may be) at a meeting of the Initial Members to be scheduled, noticed and held within thirty (30) days after the execution of this Agreement by all of the Initial Members (the "Inaugural Meeting"). Notice of the date, time, and location of the Inaugural Meeting shall be provided to the Initial Members by the Fiscal Agent (defined below) not less than ten (10) days before the date of the Inaugural Meeting at the notice address shown on Exhibit A. Executive Committee Members appointed and elected at the Inaugural Meeting will serve until the Annual Meeting of Members to be held in December 2016 (unless sooner replaced as allowed under the Bylaws). Thereafter, the appointment and election of Executive Committee members shall be conducted as set forth in the Association's Bylaws.

c. Other Committees. The Bylaws may also provide for the establishment of additional committees (or the appointment of such additional committees by the Executive Committee).

d. Annual Meeting. The Association shall hold an annual meeting during the month of December in each calendar year. The location and agenda for each annual meeting shall be determined by the Executive Committee. Notice of the annual meeting and agenda shall be given as proscribed in the Association's Bylaws. The scheduling of additional Association meetings, including special meetings, shall be done in the manner set forth in the Bylaws.

## 2.5 Association Finances.

a. Interim Finance Committee. During the period from the Effective Date to the 31<sup>st</sup> of December 2016 (“Transition Period”) and prior to the election of the Executive Committee in December 2016, the Grower-Shipper Association will collect funds, hold such funds in the Association’s bank account, and pay expenditures of the Association, in concurrence with the budget attached hereto as Exhibit B, which budget is approved by the Initial Members as the operating budget of the Association from the Effective Date through fiscal year ending December 31, 2021. The Board of Directors may amend the budget in its discretion.

b. Finance Committee. After the Transition Period, the Association's finances shall be overseen by a Finance Committee appointed by the Executive Committee as further set forth in the Bylaws. Members of the Executive Committee may serve on the Finance Committee, provided however, that the Executive Committee member appointed by the Association's Fiscal Agent (defined below), if then applicable, may not serve on the Finance Committee.

c. Annual Budget/Assessments. Prior to the end of each calendar year, the Finance Committee shall prepare an annual budget for the upcoming calendar year showing the

Association's anticipated expenses for that year, together with proposed assessments for each of the Members. The Annual Budget shall be subject to the approval of the Members at the Annual Meeting in the manner set forth in the Bylaws.

d. Fiscal Agent. The Association may continue the practice followed by Association of selecting a fiscal agent (the "Fiscal Agent") from among the Members to act in the Association's behalf in contracting for Projects and other services needed by the Association as approved by the Executive Committee. As of the Effective Date, the Fiscal Agent is The Grower-Shipper Association of Central California. The determination of Fiscal Agent will be re-assessed at the first meeting of the Board, in December 2016.

e. Insurance. The Executive Committee shall obtain and keep in force such property and liability insurance as it deems advisable to protect the Association from casualty loss and to protect the Members, and the Executive Committee Members and Officers, from liability in connection with the ownership and operation, maintenance, and the operation of the Association generally.

2.6 **Dissolution**. The following events shall result in the dissolution of the Association:

a. Lack of Membership. There remain fewer Members in the Association than required by applicable law; or

b. Vote of Members. A duly-presented motion to dissolve the Association at a duly-called meeting of the Association is approved by not less than three-fourths 3/4 of the then-existing Members; or

c. Final Judgment. A non-appealable judgment by a court of competent jurisdiction that the Association is or shall be dissolved. If the Association is dissolved, after satisfying all debts and obligations of the Association, any remaining assets of the Association shall be disposed of in one of the following manners, as approved by a majority of the Members then entitled to vote under the Association's Bylaws:

i. The remaining assets shall be conveyed, in whole, to an "Eligible Entity" as that term is defined below; or

ii. The remaining assets shall be liquidated and the proceeds thereof distributed as follows:

(a) First, to the then-current Members, a payment shall be made calculated by multiplying the total amount of such proceeds by a fraction the numerator of which is the total value of all cash and non-cash support (not including annual maintenance fees) a Member has paid or provided to the Association and the denominator of which is the total value of all cash and non-cash support (not including annual maintenance fees) that all Members have paid or provided to the Association (including, to the extent they can be calculated with reasonable accuracy, the value of all cash and non-cash support provided to Association by the Initial Members as of the Effective Date), all as determined by the Association's records as

supplemented by any additional records that the Executive Committee deems reliable. Notwithstanding the foregoing, no Member may receive a payment in excess of 100% of the total amount of cash and non-cash support that Member provided to the Association (not including annual maintenance fees), the intent being that no Member shall profit from the disposition of the Association's assets upon the dissolution of the Association; and

(b) any remaining assets shall be distributed to one or more Eligible Entities.

iii. For purposes of this section, an "Eligible Entity" is an entity of the type designated as eligible for a distribution of the Association's assets under then applicable law, as determined and selected by the Executive Committee.

**2.7 Personal Liability.** Under no circumstances shall any Member, or any officer, official, director, commissioner, member, agent, or employee of any Member, have any personal liability arising out of this Agreement, and no Member shall seek or claim any such personal liability on the part of any of the above. Notwithstanding the foregoing, the Members agree to the fullest extent permitted under applicable law to indemnify, defend, and hold one another harmless from and against any claims or liabilities arising out of damage to person or property caused by the gross negligence or willful misconduct of the indemnifying Member, or its agents or employees in the performance of this Agreement.

## **2.8 General Provisions.**

a. Amendment. This Agreement may not be amended, modified or supplemented except by a written agreement executed by all the Parties.

b. Assignment. No assignment or transfer by any Party of their respective rights and obligations hereunder shall be made except with the prior written consent of the other Party hereto.

c. Attorneys' Fees. In the event any Party hereto institutes an action or proceeding to enforce any rights arising under this Agreement, the Party prevailing in such action or proceeding shall be paid all reasonable attorneys' fees and costs.

d. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their permitted successors and assigns, and any reference to a Party hereto shall also be a reference to a permitted successor or assign.

e. Captions. The titles and captions contained in this Agreement are inserted herein only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

f. Complete Agreement. This Agreement and the attached Exhibits constitute the complete and exclusive statement of agreement among the Parties with respect to

the subject matter herein and therein replace and supersede all prior written and oral agreements or statements by and among the Parties.

g. Controlling Law. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of California.

h. Counterparts/Facsimile or Digital Signatures. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. Facsimile or digitally transmitted signatures shall be binding upon the parties hereto.

i. Exhibits. The Exhibits appended to this Agreement are incorporated herein and for all purposes are a part of this Agreement.

j. Jurisdiction and Venue. The Parties acknowledge and understand that the making of this Agreement is in Monterey County, California.

k. Reliance on Authority of Person Signing Agreement. If a Party is not a natural person, then no other Party will (a) be required to determine the authority of the individual signing this Agreement to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual, or (b) be responsible for the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such entity.

l. Severability. The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal. If any provision of the Agreement is held invalid or unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

m. Waiver. A waiver by one Party of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any Party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**[Signatures Appear on Following Page]**



RESPONSIBLE PARTY(IES):

Individual Corporate Owner, Business Entity, Tenant or Other

\_\_\_\_\_  
By:  
Title:

\_\_\_\_\_  
By:  
Title:

\_\_\_\_\_  
By:  
Title:

If the Responsible Party is a Tenant, the Landlord/Owner of the Property must consent in writing to the Tenant's participation in the program by their signature below:

\_\_\_\_\_  
Landlord/Owner

THE PROPERTY:

APN \_\_\_\_\_ Address: \_\_\_\_\_

**EXHIBIT A**

INITIAL MEMBERS/NOTICE ADDRESSES:



**General Notes**

Estimated 125 Acres of channel work in 2016

Estimated 350 Acres of work within 5 years, Max Available: 855.30

Does not take into account RMU 4 & 5 joining in future years, which will be unbudgeted income.

247.85 acres of arundo can be mitigated in the permit if all channels worked, conservative estimate of actual: 125

Estimate \$600/acre of maintenance work

It's expected that new fees will be assessed in 2021 that aren't accounted for in this budget.

MCWRA Landowner and Operator Base Fee Considered In-Kind per Salinas River Channel Coalition recommendation

In 2016, GSA is managing the finances. In 2016, members of GSA receive a reduced rate, while non-members' rate on all services will include an administrative fee of 5%.

**EXHIBIT B**

BUDGET