



STAFF REPORT

TOWN COUNCIL MEETING OF MAY 8, 2017

CONSENT AGENDA

To: Honorable Mayor and Members of the Town Council

From: Brit Snipes, Public Works Director

Subject: Memorandum of Understanding between the Town of Loomis and Placer County Flood Control and Water Consecration District for the timing, sequencing and funding of the Antelope Creek Flood Control Project, Upper Weir

Date: May 9, 2017

Recommendation:

Adopt Resolution authorizing the Town Manager to execute a Memorandum of Understanding between the Town of Loomis and Placer County Flood Control and Water Consecration District for the timing, sequencing and funding of the Antelope Creek Flood Control Project, Upper Weir.

Issue Statement and Discussion:

The Placer County Flood Control and Water Conservation District is requesting the Town of Loomis participate in funding a budget shortfall for the Antelope Creek Flood Control Project, Upper Weir. This project is a regional flood control facility included in the Update to the Dry Creek Watershed Flood Control Plan that was approved and adopted by the District Board of Directors in November 2011. The District member agencies include the City of Rocklin, City of Roseville, Town of Loomis and the County of Placer.

The project would be located along Antelope Creek in the City of Roseville between the Hwy 65 overcrossing and Atlantic Street and would provide regional mitigation of peak flows for the Dry Creek Watershed as a whole, including mitigation for future development projects in Loomis.

The original estimated cost of the project was \$2,910,953. The District intended to fund the project through a combination of the Dry Creek Trust Fund (drainage fees collected by each member agency at building permit) and two Department of Water Resources Grants. These funding sources total \$2,014,650, leaving a funding shortfall of \$929,843. The District's intent was to distribute this funding shortfall amongst the four member jurisdictions using a Per Capita based fair share loan utilizing jurisdictional populations. Under this scenario, Loomis's fair share

project cost increased to \$3,371,613 increasing the budget shortfall to \$1,356,963. Placer County and the City of Roseville have agreed to absorb this cost increase through their advance loan payments. Loomis's contribution will remain the same amount, \$19,992 (1.47% of the shortfall.).

Based on current levels of new development and associated fee revenue within the fund, it is estimated that full reimbursement should occur within 5 years of the first reimbursement payment.

CEQA

There are no CEQA issues involved with this Memorandum of Understanding.

Financial and/or Policy Implications:

Loomis would make an advance payment loan to the District of \$19,992 to be reimbursed with interest with a payback period estimated to be 5 years. Ongoing maintenance costs for the facility after construction would likely be another cost spread amongst the member agencies through annual assessments.

TOWN OF LOOMIS
RESOLUTION NO. 17-__

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS
AUTHORIZING THE TOWN MANAGER TO EXECUTE A MEMORANDUM OF
UNDERSTANDING FOR THE TIMING, SEQUENCING AND FUNDING OF THE
ANTELOPE CREEK FLOOD CONTROL PROJECT, UPPER WEIR**

BE IT RESOLVED by the Council of the Town of Loomis hereby approves and authorizes the Town Manager to execute a Memorandum of Understanding (MOU) herein submitted as Exhibit A, for the Timing, Sequencing and Funding of the Antelope Creek Flood Control Project, Upper Weir.

PASSED AND ADOPTED this 9^h day of May, 2017 by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Exhibit A

MEMORANDUM OF UNDERSTANDING FOR THE TIMING, SEQUENCING AND FUNDING OF THE ANTELOPE CREEK FLOOD CONTROL PROJECT, UPPER WEIR

Placer County Flood Control and Water Conservation District,
City of Rocklin, City of Roseville, Town of Loomis and Placer County

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made effective as of this ___th day of May, 2017, by and among the **Placer County Flood Control and Water Conservation District** ("District"), the **City of Rocklin** ("Rocklin"), the **City of Roseville** ("Roseville"), the **Town of Loomis** ("Loomis") and the **County of Placer** ("County") (collectively the Parties).

1. General Provisions.

A. Purpose. The purpose of this MOU is to establish the terms for the timing, sequencing and funding of the Antelope Creek Flood Control Project, Upper Weir hereinafter referred to as the "Project". The District has identified a Project funding shortfall to complete the construction of the Project as further detailed in Section 2, B below and within Exhibit A attached hereto and incorporated herein by this reference. This MOU will address the estimated funding shortfall through payments received from each of the District's member agencies within the Dry Creek watershed. These payments will be fully reimbursed over time under the terms of this MOU.

B. Execution of this MOU hereby rescinds the prior MOU dated June 10, 2013 entered into between the District, Roseville and the County for the timing and advance funding of the Antelope Creek Flood Control project.

C. Definitions.

"Advance Payment" means the lump sum loan payment made by each Participant to the District for the construction of the Project, exclusive of future regular quarterly payments of one-time fees on new development collected and deposited within the Fund .

"Antelope Creek Flood Control Project, Upper Weir" means those improvements located within Antelope Creek associated with the construction of one of two weirs near Antelope Creek Drive (the second weir for Phase 1 is located further downstream near Atlantic Street) as conceptually shown in the final Update to the Dry Creek Watershed Flood Control Plan dated November 2011 ("Plan"), which is incorporated herein by this reference.

"Current Estimated Cost," in connection with the Project, shall mean the current estimated cost for the remaining construction related items up to District's formal acceptance of the Project as complete, as evidenced by issuance of a Notice of Completion (NOC) to the District's construction contractor.

"Party" means the agencies subject to this MOU including the Placer County Flood Control and Water Conservation District, Placer County, the Cities of Roseville and Rocklin and the Town of Loomis.

"Project" shall mean the Antelope Creek Flood Control Project, Upper Weir.

"Fund" is the existing Dry Creek Trust Fund as maintained by the District for the purpose of holding those amounts collected from the Participants to fund the construction of the Project. The Fund is an existing interest bearing type trust fund maintained by the District and includes past and future drainage mitigation fee payments collected on new development, as separately collected and transferred to the District. With respect to any reimbursement of Advance Payments provided for in this MOU, the District shall not be required to pay any amounts until the Fund balance is sufficient for such payments. A sufficient Fund balance is hereby agreed to be a \$50,000 minimum amount.

"Participant(s)" means the County, Rocklin, Roseville and Loomis.

- D. Obligations of Participants. Participants shall budget for and make an Advance Payment as further detailed below and according to all provisions of this MOU.
- E. Obligations of District. The District shall place all Advance Payments received into the Fund and more specifically within the Antelope Creek Zone (one of seven established zones within the Fund). Advance Payments will be deposited together within the Antelope Creek Zone of the Fund, along with existing and future drainage mitigation fee payments regularly collected on new development per existing ordinance previously adopted by each of the Parties. The District will commit to completing construction of the Project, currently scheduled to be complete by December 2017. The District will make future reimbursement payments to each Participant totaling the amount of each Participant's respective original Advance Payment plus interest pursuant to all provisions of this MOU.

2. Project Funding Allocation.

- A. The District has prepared final construction documents for the Project and intends to begin construction in mid-May 2017 with funding provided from two existing State Department of Water Resources grants as well as from the Fund.
- B. The Current Estimated Cost for the Project is \$3,371,613. The total amount of available Project funding from the two State grant programs and the Fund is estimated at \$2,014,650. Therefore, the estimated Project funding shortfall, as of the date of this Agreement, is \$1,356,963 (see also Exhibit A). The total of all Advance Payments from each Participant as reflected in the table within Section 2, C below,

has been calculated to match the current funding shortfall of \$1,356,963. Any changes to the Current Estimated Cost and Advance Payment will be prepared and documented according to the agreed fair share formula as described below in Section 2, C. Any future changes (increases or decreases) to the awarded cost of construction, as documented by future construction contract change orders, will not be accounted for or otherwise included in the calculation of each Participant's final Advance Payment. The District will prepare and mail out an invoice of each Participant's final Advance Payment. Each Participant hereby agrees to make the final calculated Advance Payment to the District no later than August 1, 2017. The District will deposit the Advance Payments within the Fund as further described in Section 1, D above.

- C. The Advance Payment amounts reflected in the table below are calculated based upon an agreed fair share of the total amount of additional Project funding required (currently \$1,356,963).

Participant	% Share of Additional Project Funding	Advance Payment
Placer County	40.79	\$553,511
Roseville	44.32	\$601,397
Rocklin	13.42	\$182,063
Loomis	1.47	\$19,992
TOTAL	100	\$1,356,963

- D. Following award of the construction contract on April 10, 2017, the District shall diligently pursue construction of the Project to completion. The District shall attempt to exhaust the funds from the two State grant programs prior to using monies from the Fund. Only those Project expenses associated with the construction of the Project are to be funded by the Advance Payments.

3. Reimbursement of Advance Payment

The Participants acknowledge and agree that the District shall provide 100% reimbursement to each Participant according to the percentage share of additional project funding detailed in Section 2, C above. Interest shall accrue on un-reimbursed Participant contributions from the date of disbursement. Simple interest shall be applied to the unpaid principal balance as of June 30th each year. The interest rate shall be based upon the Construction Cost Index (CCI) for 20 cities and for San Francisco, as published in the Engineering News Record publication

for the preceding 12 months ending in May or other index agreed to by all participants. Reimbursement payments to the Participants shall be credited first to interest and then to the principal amount of their respective Participant contributions. Once the terms of reimbursement timing set forth in Section 4 below have been met, semi-annual (twice yearly) payments to the Participants will be made according to the percentage (the percentage listed above in Section 2C for each Participant) on the amount of Fund balance above \$50,000, assuming the amount of Fund balance above \$50,000 amounts to at least \$25,000 or more. If the terms set forth below in Section 4 have not been met, reimbursement will be placed on hold and evaluated by the District six months later. The District will provide a reimbursement calculation summary to accompany each reimbursement made and shall include an itemization of the remaining reimbursements yet to be made to equal the total Advance Payment.

4. Timing of Reimbursements

Reimbursements of Advance Payments to the Participants shall begin once the District has formally accepted the Project as complete, evidenced by issuance of a Notice of Completion (NOC) to the District's construction contractor, and once the Fund balance is at or above a minimum \$50,000 level and the amount of Fund balance above \$50,000 amounts to at least \$25,000 or more. Reimbursement shall continue, assuming Fund balance minimums are met on a semi-annual basis (twice yearly) until such time that all of the Participants have been fully reimbursed for their Advance Payments and any interest accrued per Section 3 above, , Based on current levels of new development and the associated fee revenue being generated in the Fund, it is estimated that full reimbursement should occur within 5 years of the first reimbursement payment being issued. Full reimbursement may be reached within an earlier timeframe if the costs of construction come in lower than the total construction contract price initially awarded by the District.

If construction of the Project is not accepted as complete within two years of the receipt of Advance Payments, subject to extension for delay caused by events and occurrences outside the reasonable control of the District, as determined by the District's Technical Advisory Committee, or the District's Board has otherwise formally cancelled construction of the Project, the District will make reimbursements to each Participant according to Section 3 above and this Section 4.

5. Amendments

This MOU may be amended at any time by a written instrument executed by all of the Parties hereto; provided, however, no amendment may be adopted which would directly or indirectly reduce or eliminate the reimbursement provisions contained herein.

6. Term of MOU; Termination.

This MOU shall remain in full force and effect until the completion of the Project and performance of the District's reimbursement obligations hereunder. The Parties agree

termination of the MOU may only occur in writing and according to terms found mutually agreeable to all Parties.

7. Entire Agreement.

This MOU is intended as the complete integration of all understandings between the Parties, constitutes the entire agreement between the Parties pertaining to the subject matter contained in it, and supersedes all prior or contemporaneous oral or written agreements, representations, statements, documents, or understandings of the Parties. No prior or contemporaneous addition, deletion, or other amendment shall have any force or effect unless embodied in writing.

8. Notices.

All notices and other communications under this MOU shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally to the Party to whom notice is given, or if made by telecopy directed to the Party to whom notice is to be given at the telecopy number listed below, or (ii) at the earlier of actual receipt or the second business day following deposit in the United States mail, postage prepaid. Notices and other communications shall be directed to the Parties at the addresses shown below:

District: Brian Keating, District Manager
Placer County Flood Control and Water Conservation District
3091 County Center Drive, Suite 220
Auburn, CA 95603

Placer County: Ken Grehm, Director
Placer County Department of Public Works
3091 County Center Drive
Auburn, CA 95603

Roseville: Rhon Herndon
Public Works Director
City of Roseville
311 Vernon Street
Roseville, CA 95678

Rocklin: Dave Palmer
City Engineer
City of Rocklin
3970 Rocklin Road
Rocklin, CA 95677

Loomis: Britt Snipes
Public Works Director
Town of Loomis
3665 Taylor Road
Loomis, CA 95650

9. Waiver.

No waiver of any of the provisions of this MOU shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

10. Effect of Captions and Headings.

The captions and headings of this MOU are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

11. Counterparts.

This MOU may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12. Severability.

Any provision of this MOU which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement, except as necessary to carry out the intent of the Parties in entering into this MOU.

13. Authority.

Each of the persons signing this MOU on behalf of a Party hereto represents that he or she is authorized to sign the MOU on behalf of such Party and that all approvals, resolutions and consents which must be obtained to bind such Party have been obtained that no further approvals, acts or consents are required to bind such Party to this Agreement.

14. Choice of Law.

This agreement is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. Any legal proceedings on this agreement shall be brought under the jurisdiction of the Superior Court of the County of Placer, State of California. Each Party waives any Federal court removal and/or original jurisdiction rights it may have.

IN WITNESS WHEREOF, the Parties hereto have entered into this MOU effective as of the date first above written.

ATTEST: PLACER COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT

_____ By _____
District Secretary Executive Director

Approved as to Form:

District Counsel

ATTEST: COUNTY OF PLACER

_____ By _____
Clerk of the Board, Chief Executive Officer
Placer County

Approved as to Form:

County Counsel

ATTEST: CITY OF ROCKLIN
A Municipal Corporation

_____ By _____
City Clerk, City of Rocklin City Manager

Approved as to Form:

City Attorney

ATTEST: CITY OF ROSEVILLE
A Municipal Corporation

City Clerk, City of Roseville

By _____
City Manager

Approved as to Form:

City Attorney

ATTEST: Town of Loomis
An Incorporated Township

Secretary

By _____
Town Manager

Approved as to Form:

Town Attorney
