

**MEMORANDUM OF AGREEMENT
SOUTH BRANCH ARROYO CONEJO DEFICIENCY STUDY
BETWEEN
CITY OF THOUSAND OAKS
AND
VENTURA COUNTY PUBLIC WORKS WATERSHED PROTECTION DISTRICT
WP-3-2023-03**

THIS AGREEMENT is made and entered into this ____ day of July 2023, by and between the **City of Thousand Oaks** (herein referred to as "City"), and **Ventura County Watershed Protection District** (hereafter referred to as "District").

RECITALS

WHEREAS, floodplain maps in the vicinity of the South Branch of Arroyo Conejo Creek in the southwest region of the City were created by the Federal Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) National Flood Insurance Program in January 1983, and were revised in January 2010; and

WHEREAS, residents of both the City and unincorporated Ventura County are adversely impacted with regard to structure and contents of homes and businesses due to the presence of the floodplain; and

WHEREAS, the City and the District requested assistance from the USACE to prepare a Federal Interest Document (FID) to investigate the qualification of a possible local and Federally funded floodplain reduction project under the USACE Continuing Authorities Program (CAP) Section 205 with the City identified as the Non-Federal Sponsor (NFS); and

WHEREAS, the published USACE FID and Feasibility Study (FS) of the specific risks to life, structures and property concluded this channel improvement project does not merit further investigation and the benefits and costs ratio of channel design alternatives do not meet the USACE minimum threshold; and

WHEREAS, the FS further revealed that the channel alteration may not be an effective solution since cause of the flooding is mostly due to local drainage systems in the area which should be examined for deficiencies; and

WHEREAS, the City and the District have issued an RFP/Q and desire to hire a consultant to perform Hydrology studies for the area, define the deficiencies, and propose solutions to reduce the overall size of the flood plain area (Deficiency Study); and

WHEREAS, the City and the District will include the proposed improvement projects into their respective Capital Improvement Programs (CIP) and coordinate the completion of such projects; and

WHEREAS, the City and the District will request FEMA to revise the Federal (DHS)/(FEMA) National Flood Insurance Program maps in this area with the goal of reducing the size of the flood plain, and the overall number of homes, and businesses in the flood plain;

WHEREAS, the City has agreed to serve as the lead agency and will directly coordinate the efforts described above, on behalf of the City and District; and

WHEREAS, the District has agreed to make available staff skills, particularly towards participating in certain tasks of the Deficiency Study.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth, the parties agree as follows:

AGREEMENT

1. City and District hereby agree to each provide the services described in Section 2. Staff time required to perform said services shall be at each respective agency's own cost. Other expenses shall be shared as described in Section 3.

2. DESCRIPTION OF SERVICES

Once a consultant is selected pursuant to the issued RFP/Q, the City and District shall each provide to the Consultant information support, document review, and participation in project components through the preparation of the Deficiency Study. This Agreement will be amended to include any additional tasks added. The parties' responsibilities for each component task are summarized below.

Task	City	District
Overall Study Phase Project Management	Meetings & Coordination	
RFP/Q, Consultant Selection	Meetings & Coordination	Provide Data & Support Review & Comment
Hydrology & Hydraulics Study Support/Review	Review & Comment	Provide Data, Review Model Review & Comment
Geospatial Information Systems (GIS) Support & Review	Provide Data & Support	Provide Data & Support
Engineering Deficiency Study Support/Review, including preliminary design recommendations.	Review & Comment	Review & Comment
Implementation of Capital Projects recommended by Deficiency Study	Provide Funding for Design and Construction, As-builts, Utility Research, and also Review & Comment	Provide Funding for Design and Construction, As-builts, Utility Research, and also Review & Comment

FEMA Map Revision	Provide funding for final FEMA Map Revision, as well as Review/Comment.	Provide funding for final FEMA Map Revision, as well as Review and Comment.
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3. **COST SHARE, PAYMENT AND EXCHANGE OF SERVICES**

(a) Cost Share Contributions. The intent of this agreement is to minimize expenditures through the shared contribution of services and by implementing the Deficiency Study collectively. The funding specified in Section 2 above required to complete the Deficiency Study will be divided between the City and District as follows:

- i. **Consultant engagement** – The cost of advertisement, RFP/Q preparation and hiring the consultant will be equally divided between the City and District.
- ii. **Consultant compensation** - The cost of all engineering work by the consultant and preparation of the Deficiency Study will be divided between the City and District at a 60/40 ratio (60% City and 40% District).

The costs of the remainder of the tasks, including implementation of recommended Capital Improvement (CI) projects and the revision of the FEMA map shall be divided as follows:

- iii. **CI Program** – City and District will individually manage and fund the design, engineering, bid and construction of the future CI projects which are recommended by the Deficiency Study within their respective areas. Said projects will be budgeted and included within each agency's next 5-year capital improvement budget. District projects will also need to comply with District Zone budget prioritization guidelines before induction into the 5-year CIP.
- iv. **FEMA Map Revision** – City and District will work together to process the requested FEMA Map Revision. The cost of preparation of documents, application to FEMA and obtaining approval will be divided between the City and District at a 60/40 ratio (60% City and 40% District).

(b) Payment. The City shall be responsible for the upfront payment of costs for any of the above listed tasks. For those items requiring District contribution, City shall provide District with written invoices of the actual cost, in a form reasonably satisfactory to City's and District's Project Managers. Invoices shall be issued on a monthly basis, and describe the work performed. Payments shall be made within 30 days of the date of invoice.

4. **INFORMATION EXCHANGE**

The information exchange between the City and the District shall be coordinated with designated City staff are presently Jim Taylor, Senior Engineer with Mohammad Fatemi, Engineering Division Manager as alternate; and District staff are presently Yunsheng Su, Planning Team Lead, with Matthew Ehret, Deputy Director, Design and Construction as alternate.

5. TERMS, PROGRESS AND COMPLETION

The term of this Agreement is from the date first written above to June 30, 2028, unless extended or terminated as provided for herein.

6. HOLD HARMLESS AND INDEMNITY

(a) Mutual Hold Harmless.

(i.) The District holds the City, its elected officials, officers, agents, and employees harmless from all claims, demands, lawsuits, judgments, damages, losses, injuries or liability to the District, to the District's employees, to the District's contractors or subcontractors which damages, losses, injuries or liability occur during the work required under this Agreement, or occur while the District is on City property, or which are connected, directly or indirectly, with the District's performance of any activity or work required under this Agreement.

(ii.) The City holds the District and County of Ventura, their elected officials, officers, agents, and employees harmless from all claims, demands, lawsuits, judgments, damages, losses, injuries or liability to the City, to the City's employees, to the City's contractors or subcontractors which damages, losses, injuries or liability occur during the work required under this Agreement, or occur while the City is on District or County property, or which are connected, directly or indirectly, with the City's performance of any activity or work required under this Agreement.

(b) Mutual Defense and Indemnity of Third-Party Claims/Liability.

(i.) The District shall investigate, defend, and indemnify the City, its elected officials, officers, agents, and employees, from any claims, lawsuits, demands, judgments, and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, or professional errors and omissions arising out of, directly or indirectly, an error, negligence, or omission of the District or any of the District's officers, agents, employees, representatives, or subcontractors, or the willful misconduct of the District or any of the District's officers, agents, employees, representatives, or subcontractors, in performing the services described in, or associated with this type of work. The duty to defend shall include any suits or actions concerning any activity, product or work required under this Agreement, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related thereto.

(ii.) The City shall investigate, defend, and indemnify the District and County of Ventura, their elected officials, officers, agents, and employees,

from any claims, lawsuits, demands, judgments, and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, or professional errors and omissions arising out of, directly or indirectly, an error, negligence, or omission of the City or any of the City's officers, agents, employees, representatives, or subcontractors, or the willful misconduct of the City or any of the City's officers, agents, employees, representatives, or subcontractors, in performing the services described in, or associated with this type of work. The duty to defend shall include any suits or actions concerning any activity, product or work required under this Agreement, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related thereto.

(c) No Waiver. Both City and the District do not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by City or the District, or the deposit with City or the District, of any insurance certificates or policies described in Section 7.

7. INSURANCE

The District shall, at the District's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry workers' compensation statutory benefits as required by law. The District shall also, at the District's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry: (1) General Liability insurance and Automobile Liability insurance with liability limits of not less than \$1,000,000 per each claimant, and \$1,000,000 each occurrence for the injury or death of a person or persons, and property damage (which policy may have an aggregate annual limit, but in an amount of no less than \$2,000,000).

The City, its elected officials, officers, and employees, shall be named as additional insured. The District shall provide the City with evidence of self-insurance or copies of certificates (on a City certificate form or an Accord form as modified per City direction) for all policies, with the appropriate named additional insured coverage and endorsement that they are not subject to cancellation without 30 days prior written notice to City.

The City shall, at the City's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry workers' compensation statutory benefits as required by law. The City shall also, at the City's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry: (1) General Liability insurance and Automobile Liability insurance with liability limits of not less than \$1,000,000 per each claimant, and \$1,000,000 each occurrence for the injury or death of a person or persons, and property damage (which policy may have an aggregate annual limit, but in an amount of no less than \$2,000,000).

.The District and County of Ventura, their elected officials, officers, and employees, shall

be named as additional insured. The City shall provide the District with evidence of self-insurance or copies of certificates (on County certificate form or an Accord form as modified per District direction) for all policies, with the appropriate named additional insured coverage and endorsement that they are not subject to cancellation without 30 days prior written notice to District.

8. RELATION OF THE PARTIES

The relationship of the parties to this Agreement shall be that of independent contractors; In no event shall the District be considered an officer, agent, servant, or employee of City and in no event shall the City be considered an officer, agent, servant, or employee of District.

9. TERMINATION OF AGREEMENT

The City or the District may terminate without cause any portion or all the services agreed to be performed under this agreement by providing the remaining party written notice 60 calendar days in advance of termination. If termination is for cause, no notice period need be given.

10. RETENTION AND REVIEW OF RECORDS

All records generated by the District, its agents and contractors and by the City, its agents, and contractors in performing work related to this agreement, such as but not limited to financial records, time sheets, work progress reports, invoices, and bills, shall be kept for three (3) years beyond the expiration date of this agreement or any extension. These records shall be made available upon request.

11. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach or cover any other period, other than any default or breach and/or period specified. All the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

12. CONSTRUCTION OF LANGUAGE OF AGREEMENT

The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the

objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

13. MITIGATION OF DAMAGES

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

14. GOVERNING LAW

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Ventura County.

15. TAXPAYER IDENTIFICATION NUMBER

In the event there is a compensatory exchange of funds as a result of this agreement, the Payee shall provide the Payor a Taxpayer Identification Number and Certification, Form W-9 as most recently issued by the Internal Revenue Service.

16. NON-APPROPRIATION OF FUNDS

Payments due and payable to the District for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of City funds. In the event City has not appropriated sufficient funds for payment of the District services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.

17. MODIFICATION OF AGREEMENT

The tasks described in this Agreement and all other terms of this Agreement may be modified only upon mutual written consent of the City and the District.

18. USE OF THE TERM "CITY"

Reference to "City" in this Agreement includes City Manager or any authorized representative acting on behalf of City.

19. PERMITS AND LICENSES

The District and the City shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

20. CAPTIONS

The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement.

21. AUTHORIZATION

Each party has expressly authorized the execution of this Agreement on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint ventures, insurance carriers and any others who may claim through it to this Agreement.

22. ENTIRE AGREEMENT BETWEEN PARTIES

This Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services and contains all of the covenants and agreements between the parties with respect to said services.

23. PARTIAL INVALIDITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

24. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

CITY OF THOUSAND OAKS

Jim Taylor, Senior Engineer
Public Works Department
2100 E. Thousand Oaks Boulevard
Thousand Oaks, CA 91362

VENTURA COUNTY WATERSHED PROTECTION DISTRICT

Glenn Shephard, Director
800 So. Victoria Avenue
Ventura, CA 93009 - 1600
Fax: (805) 654-3350

In concurrence and witness whereof, this Agreement has been executed by the parties effective on the date and year first above written.

VENTURA COUNTY PUBLIC WORKS WATERSHED PROTECTION DISTRICT

Glenn Shephard
Director

Date

CITY OF THOUSAND OAKS

Andrew Powers
City Manager

Date:

ATTEST:

Laura B. Maguire
City Clerk

Date:

APPROVED AS TO FORM:
Office of the City Attorney

By: _____
Noel Doran
Assistant City Attorney

Date:

COUNTY COUNSEL

Alberto Boada
Principal Assistant County Counsel

Date