

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN THE COASTAL SAN LUIS RESOURCE CONSERVATION DISTRICT
AND THE CITY OF ARROYO GRANDE REGARDING THE CORBETT CREEK
FLOODPLAIN AND STREAM RESTORATION PROJECT**

This Memorandum of Understanding (“MOU”) is entered into by and between the Coastal San Luis Resource Conservation District (“RCD”), a special district of the State of California and the City of Arroyo Grande (“CITY”), a California municipal corporation, (collectively the “Parties”) with reference to the following Recitals:

RECITALS

- A. In 2007, CITY received a civil liability complaint from the California Regional Water Quality Control Board relating to a sewage spill that occurred in or near Arroyo Grande Creek. The CITY was required to make restitution by expending \$60,000 on supplemental environmental projects (SEP) within the CITY.
- B. In response to the civil liability complaint, the CITY funded two separate SEPs: (a) an SEP to retrofit the City Hall parking lot to include a landscaped bioswale and drainage filtration (approximately \$41,000) and (b) an SEP to combat increased runoff and sedimentation in Corbett Canyon Creek (approximately \$19,000).
- C. The CITY subsequently expended an additional \$42,000 (over and above the restitution obligation) to perform a preliminary field survey, biological surveys and design for an expanded Corbett Canyon Creek project (“Corbett Creek Floodplain and Stream Restoration Project” or “Project”).
- D. Recently, the CITY participated with the RCD in a grant application to the Department of Water Resources (“DWR”) for the Urban Streams Restoration Program, which would provide funds for implementation of the Corbett Creek Floodplain and Stream Restoration Project.
- E. The CITY has agreed to provide \$70,000 cash and \$14,000 of in-kind staff time toward the Project.
- F. The DWR recently conditionally awarded a grant to the RCD in an amount not to exceed \$831,420 to fund the Corbett Creek Floodplain and Stream Restoration Project. The grant is conditioned on, among other things, the DWR and RCD entering into a grant agreement. The DWR and RCD are in the process of finalizing that certain Grant Agreement No. 4600009865. The Grant Agreement identifies the RCD as the project sponsor and the CITY as a program partner. Other programs partners are creek-side landowners, Central Coast Salmon Enhancement, the State Coastal Conservancy and the Natural Resource Conservation Service.
- G. As the Grant Agreement only generally sets forth the respective obligations of the RCD and CITY, the purpose of this MOU is to more clearly define the tasks and roles of each Party as to the other consistent with the Grant Agreement.

- H. The Parties agree that performance of the Corbett Creek Floodplain and Stream Restoration Project in the City of Arroyo Grande provides a public benefit. Specifically, implementation of the Project will alleviate flooding on Corbett Canyon Creek and reduce stress on the lower portion of Arroyo Grande Creek. The Project will also restore riparian and floodplain habitat.

NOW, THEREFORE, the Parties agree as follows:

1. CITY Contribution:

CITY agrees to provide \$70,000 cash and \$14,000 of in-kind staff time toward the Corbett Creek Floodplain and Stream Restoration Project in the manner set forth in this MOU.

2. Project Administration:

RCD will perform all Project administration such as invoicing, expense and travel reporting, tracking overhead, quarterly and final progress reports throughout the grant contract. RCD's obligation shall specifically include grant management to revise the scope of work as needed and administration of additional contractual documents, including contracts with the DWR and subcontractors.

3. Easement Acquisition for Clark Property:

- a) RCD will use its best efforts to obtain a conservation/flood easement for the approximately 12.5 acres of property specifically identified in the Grant Agreement as the Clark Property ("Conservation Easement Property"), with stream access restored to 10 acres of historic floodplain to attenuate peak storm flows and thereby increase flood protection to urban and agricultural areas downstream ("Conservation Easement").
- b) CITY will reimburse RCD, in an amount not to exceed \$12,000, for the costs RCD incurs in obtaining an appraisal, purchasing title reports and preparing, processing and recording the Conservation Easement in accordance with the requirements set forth in the Grant Agreement.
- c) CITY will provide in-kind staff time to work with RCD to develop a Maintenance Trust to manage the removal of increased sediment within the Conservation Easement Property and other maintenance tasks associated with the Conservation Easement.

4. Design Floodplain/Sediment Detention and Long-term Management Plan:

- a) CITY will provide in-kind staff time to attend two (2) meetings to review the engineering designs with necessary permitting agencies and partners and receive comment.
- b) CITY will work with RCD to develop a long-term management plan to support periodic sediment removal in order to maintain the Project's usefulness for sediment capture and revegetation of grassland areas.

5. Design Stream Restoration Plan:

- a) CITY will provide funds necessary, not to exceed \$25,000, to RCD for the preparation of 50% design plans for a channel restoration project along 4,200 feet of stream (immediately downstream of the Conservation Easement Property) to restore the channel geometry, thereby increasing flow volumes. CITY engineering staff will attend two (2) meetings to review the designs with necessary permitting agencies and partners and receive comment.
- b) RCD will coordinate access agreements and outreach to multiple landowners on the Project trajectory.

6. Permitting and Environmental Compliance:

a) Permitting for Floodplain/Sediment Detention Basin.

- (1) CITY will provide staff time necessary, not to exceed a \$7,000 value, to review permit applications and prepare California Environmental Quality Act ("CEQA") documents. Permits include those required by the Department of Fish and Game, Regional Water Quality Control Board, U.S. Army of Corps of Engineers, and the CITY. The CITY will prepare a Negative Declaration or a Mitigated Negative Declaration based on the existing initial study and 100% designs of the floodplain project.

b) Permitting for Stream Restoration.

- (1) CITY will provide the staff time necessary, not to exceed a \$7,000 value, to prepare an initial study to determine what CEQA documents may be required for the stream restoration project.
- (2) CITY will provide up to \$33,000 in cash to cover the costs to write and submit permits and environmental compliance documents beyond the initial study subject to the option set forth below. RCD will complete permit applications and lead the permit conversations with the various responsible agencies. RCD will complete the CEQA documents after the initial study is performed. The CITY may, at its option, decide to prepare the needed CEQA documents as an in-kind match and advise RCD in writing if it intends to do so.

7. General Provisions of this MOU:

- a) The Parties recognize that grant disbursement is subject to fund availability and potential withholding by the State. In the event that the grant is not disbursed, the Parties are excused from the performance of this MOU except as set forth herein.
- b) CITY agrees to provide any information necessary for RCD to establish compliance with the terms set forth in the Grant Agreement.

- c) CITY agrees to perform all work set forth in this MOU in accordance with the requirements and standards set forth in the Grant Agreement and applicable provisions of the law.
- d) All coordination, assistance, and services rendered under this MOU will be carried out in compliance with the objectives, roles and responsibilities of the Parties.
- e) The Parties will exchange information and consult with each other before implementing the provisions hereof that may affect the ability of the other party to perform under this MOU.
- f) The Parties acknowledge that this MOU must be implemented through a complex series of steps that include several governmental approvals requiring compliance with the CEQA. Notwithstanding the obligations of CITY set forth in Paragraph 6 above, RCD shall be identified as the Lead Agency with respect to CEQA for all environmental issues related to all actions described in this MOU.

8. Roles and Responsibilities:

The Parties shall each designate in writing a single point of contact to ensure their respective responsibilities are satisfied. All future correspondence regarding this MOU and the rights and responsibilities hereunder shall be directed to the designated single points of contact.

9. Effective Date, Termination and Modification:

This MOU will become effective when executed by the Parties. This MOU may terminate by the mutual written consent of the Parties or by operation of law. This MOU may be amended by written instrument executed by the Parties.

10. Mutual Indemnification:

Each party shall, to the fullest extent permitted by law, indemnify, defend and hold the other party harmless against any and all costs, expenses, losses, claims, suits, damages, and liabilities (including reasonable attorney's fees) for acts or omissions arising out of or in connection with their respective acts or omissions performed under this MOU.

//////////NOTHING FURTHER BEYOND THIS POINT EXCEPT SIGNATURES//////////

IN WITNESS WHEREOF, the parties hereto have executed this MOU effective upon the date of last signature below.

**COASTAL SAN LUIS RESOURCE
CONSERVATION DISTRICT:**

By: Neil Havlik
Neil Havlik, President

Date: 11-21-12

ATTEST:

Nicole Z. Smith

**APPROVED AS TO FORM AND
LEGAL EFFECT:**

Erica A. Stuckey, Deputy County Counsel

Date: _____

CITY OF ARROYO GRANDE:

By: Tony Ferrara
Tony Ferrara, Mayor

Date: 11-13-12

ATTEST:

Kelly Wetmore
Kelly Wetmore, City Clerk

APPROVED AS TO FORM:

Timothy J. Carmel
Timothy J. Carmel, City Attorney

Date: 11/13/12

APPROVED AS TO CONTENT:

Steven Adams
Steven Adams, City Manager

Date: 11/13/12