

American River Flood Control District

State DWR Deferred Maintenance Project – Memorandum of Understanding with the City of Sacramento

Staff Report

Discussion:

The State of California Department of Water Resources and the District are cooperating in a Deferred Maintenance Project grant program to inspect levee pipes. Many of the pipes identified as eligible for grant funding are actually owned and operated by the City of Sacramento. The District set out to participate in this program and convey the grant funds to the City for them to inspect their pipes.

The City recently awarded a contract to a video inspection company to inspect pipes in City maintained levees. The contract did not initially include inspection of any pipes in District maintained levees. Subsequently, the City modified their contract to include inspection of City pipes in District levees. The City is seeking reimbursement of their costs to inspect these additional pipes and has provided a Memorandum of Understanding to detail the proposed transfer of funds from the District to the City.

The MoU included in your packet lists 19 City pipes to be video inspected within the District. The MoU caps the costs to the District at \$27,100. The City will conduct the inspections and then invoice the District for their costs up to the cost cap of \$27,100. Upon paying the City, the District will then be able to submit for reimbursement from the State of California under the Deferred Maintenance Project grant program. Staff at DWR have reviewed the MoU and have indicated they will be able to provide complete reimbursement to the District.

Recommendation:

The General Manager recommends that the Board of Trustees enter into the Memorandum of Understanding with the City of Sacramento for levee pipe inspection with the expectation that all of the spent funds would be eligible for reimbursement from the State.

MEMORANDUM OF UNDERSTANDING
REGARDING REIMBURSEMENT OF COSTS FROM THE
DEFERRED MAINTENANCE PROJECT- PHASE 1 EVALUATION
OF LEVEE PENETRATIONS
AGREEMENT

This Memorandum of Understanding (the “MOU”) is entered into on _____, 2018, by and between the City of Sacramento (City) and American River Flood Control District (ARFCD), each referred to herein as a “party” and collectively referred to herein as the “parties”.

RECITALS

A. The purpose of this MOU is to memorialize the understanding of the parties with respect to reimbursement of costs for the cleaning and inspecting of City pipes in ARFCD’s jurisdiction through ARFCD’s Deferred Maintenance Project – Phase 1 Evaluation of Levee Penetrations (DMP) grant. ARFCD received this grant from the California Department of Water Resources (DWR).

B. The parties each are required by California Senate Bill 5 , as amended by Senate Bill 1278 (2012), and the DWR’s *Urban Levee Design Criteria*, to video inspect or pressure test pipe penetrations through levees on a minimum of a 5-year interval.

C. The City entered into an agreement with APS Environmental (C2018-1297) to perform cleaning and inspecting of pipes within the City’s levee maintenance area along the Sacramento River with its own DMP grant. The City will execute a supplemental agreement with APS Environmental to clean and inspect the City pipes within ARFCD’s jurisdiction (Supplemental Agreement).

D. The parties believe it to be in their best interest, as well as the public’s best interest, for the City to administer the cleaning and inspection of its own pipes within ARFCD’s jurisdiction.

NOW THEREFORE, in consideration of the mutual obligations set forth herein, the parties agree as follows:

1. Cost Sharing, Invoices: The City will be responsible for administering the Supplemental Agreement. ARFCD agrees to pay the cost of the Supplemental Agreement, as agreed upon and shown below. ARFCD’s share of the Supplemental Agreement is set forth in Exhibit “B”, attached hereto and incorporated by this reference.

The cost of cleaning and inspection services for the City pipes within ARFCD’s jurisdiction are estimated to be \$24,600 and administration costs are estimated to be \$2,500.

The City will invoice ARFCD for contractor and administrative costs incurred for the Supplemental Agreement. Within 45 days of the receipt of the invoice(s), ARFCD shall remit its share of the invoice, as shown in Exhibit B, to reimburse the City for payment of the

contractor and administrative costs. In the event ARFCD believes an invoice should not be paid in whole or in part, the dispute shall be resolved those representatives identified on Exhibit "A.". The parties agree to exercise good faith and diligence in the resolution of any disputed invoice amounts. Notwithstanding any provision contained herein, the City shall be reimbursed by ARFCD for its respective proportionate share of any and all money ultimately paid to the contractor by the City pursuant to the Supplemental Agreement, as contemplated in Section 3 of this MOU and subject to the price ceiling specified in Section 4.

The parties' proportionate shares of the Supplemental Agreement set forth in Exhibit "B" may only be changed by amendment to this MOU as provided in Section 7, below, except with respect to the allocation of costs for supplemental tasks requested by, and for the benefit of, ARFCD.

2. Price Ceiling: In no case shall the total value of costs shared pursuant to this MOU exceed \$27,100, except by amendment of this MOU. This price ceiling shall not apply to costs for supplemental tasks requested by ARFCD. If additional costs associated with cleaning and inspecting pipes within the ARFCD are identified, the City may request additional funds and, upon agreement, will amend this MOU. The list of 19 pipes to be cleaned and inspected is set forth in Exhibit "C", attached hereto and incorporated by this reference.

3. Notices: Any invoice, payment, notice or other written communication related to this MOU will be provided to those representatives identified on Exhibit "A."

4. Term of MOU: This MOU shall be effective as of the date it is signed by all parties and shall remain in effect until all services and contracts covered by this MOU have been completed and performed and all payments required under this MOU have been made, or until terminated by the mutual written agreement of all parties or by operation of law, whichever occurs first.

5. Amendments: Any amendments to this MOU must be in writing and executed by all parties.

6. Counterparts: This MOU may be executed by the parties in separate counterparts, each of which when so executed and delivered to the City of Sacramento shall be an original, but all such counterparts shall together constitute but one and the same instrument. After all executed signature pages are returned to the City of Sacramento, copies of the complete MOU will be mailed to each party.

7. General Provisions: Each party understands and agrees that there is no agency or joint venture relationship between the parties. It is further understood and agreed by the parties that notwithstanding anything contained herein, the employees of each party shall continue to be entirely and exclusively under the direction, supervision and control of the employing party.

The parties understand and agree that this MOU creates rights and obligations solely between the parties and is not intended to benefit any other party. No provision of this MOU shall in any way inure to the benefit of any third person so as to constitute any such third-person as a third-party beneficiary of this MOU or any of its items or conditions, or otherwise give rise to any cause of action in any person not a party hereto.

If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way, but only to the extent that the intent of the parties can be effectuated without the provision or provisions held invalid, void, or unenforceable.

The waiver by any party to this MOU of any requirements, condition or provision of this MOU shall not be deemed a waiver of any subsequent breach of that or any other requirement, condition or provision of this MOU.

The parties represent that the undersigned individuals executing this MOU on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind said parties to the obligations set forth herein.

This instrument and any attachments hereto constitute the entire MOU between the parties concerning the subject matter hereof.

DRAFT

CITY OF SACRAMENTO

Date: _____

By: _____
Title

ATTEST:

APPROVED AS TO FORM:

Title

Title

DRAFT

AMERICAN RIVER FLOOD CONTROL DISTRICT

Date: _____

By: _____
Title

ATTEST:

APPROVED AS TO FORM:

Title

Title

DRAFT

Exhibit A

**Deferred Maintenance Grant – Phase 1 Evaluation of Levee Penetrations
Representatives**

Connie Perkins
Senior Engineer
Engineering and Water Resources Division
City of Sacramento, Department of Utilities
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DRAFT

Exhibit B

Deferred Maintenance Grant – Phase 1 Evaluation of Levee Penetrations:
Supplemental Agreement Cost Sharing

Participating Agency	Administrative Costs	Not to Exceed Amount for Sharing Costs of Cleaning and Inspecting Pipes by Contractor
American River Flood Control District	\$2,500	\$24,600

Exhibit C
List of Pipes to be Inspected in ARFCD Jurisdiction (a)

LM	ID#	Cost	Lat	Long	Category (b)	ARFCD Staff Notes
0.387	24090	\$2,400.00	38.591048	-121.505339	3	Sac River Outfall Downstream of intake
1.578	24255	\$1,000.00	38.627241	-121.441465	1	Arcade Ck at Belden St
1.778	24256	\$1,600.00	38.627936	-121.437982	2	Arcade Ck at Diamond/Pamela
1.952	24259	\$1,000.00	38.627568	-121.434815	1	Arcade Ck at Delmar Way
3.192	24330	\$1,600.00	38.588601	-121.458503	2	Landfil drain pipe (Permit# 15041) id#3424
3.577	24331	\$1,000.00	38.58949	-121.45174	1	Landfill drain (covered for trail)
6.076	24338	\$1,600.00	38.5685122	- 121.4240892	2	H Street Bridge - Left Bank
6.774	24349	\$1,600.00	38.55945	-121.41896	2	HDPE near Sac State Alumni Gr
1.26	24368	\$1,000.00	38.625871	-121.447187	1	Arcade Ck just upstream of bike bridge
1.334	24370	\$1,600.00	38.626321	-121.445964	2	Arcade Ck just upstream of Rio Linda
1.468	24371	\$1,000.00	38.627201	-121.44379	1	Arcade Ck near Rivera Dr at Branch St
1.603	24372	\$1,000.00	38.627738	-121.44147	1	Arcade Ck near Rivera Dr at Beldon St
1.72	24373	\$1,000.00	38.628108	-121.439471	1	Arcade Ck
1.834	24375	\$1,000.00	38.628381	-121.437412	1	Arcade Ck
1.768	24379	\$1,000.00	38.6283009	- 121.4386137	1	Arcade Ck near Rivera Dr at Alvarado St
6.775	24595	\$1,600.00	38.55945	-121.41896	2	HDPE near Sac State Alumni Gr
0.751	24812	\$1,600.00	38.660518	-121.461826	2	Landside DI near Pinedale
0.083	24823	\$1,000.00	38.662976	-121.456464	1	Claire Ave
0.518	24826	\$1,000.00	38.667108	-121.450827	1	Rio Linda, just Upstream

Total: \$ 24,600.00

Footnotes:

- (a) Pipes will be cleaned and inspected based on the criteria set forth in the California Department of Water Resources' (DWR) agreement with ARFCD.
 (b) Funding is based on categories set by DWR.

Category	Cost	Description
I	\$1,000	Pipe location is known and ends are clear: Clean + video inspect
II	\$1,600	Pipe location is verified but the ends are obscured. Pipe may contain up to half-depth of silt: Potholes/desilt + clean + video inspect
III	\$2,400	Pipe may be filled with flowing or stagnant water and the ends may be submerged: Divert flow + clean + video inspect
IV	\$4,000	Pipe existence and location is not definitively known. Reasonable efforts is needed to either located the pipe or very it is non-existence: Locate + potholes/desilt + clean + video inspect