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**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN**  
**THE MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**  
**AND**  
**THE CITY OF LARKSPUR**  
**REGARDING THE LOWER CORTE MADERA CREEK IMPROVEMENT PROJECT**

This Memorandum of Understanding (“MOU”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_\_, by and between the Marin County Flood Control and Water Conservation District (“DISTRICT”) and the City of Larkspur (“CITY”). The DISTRICT and the CITY may be individually referred to herein as a “Party” or collectively referred to as “Parties”.

**RECITALS**

1. This MOU sets forth the preliminary terms for the development of the Lower Corte Madera Creek Improvement Project (“Project”). The Board of Supervisors of the DISTRICT and the Larkspur City Council agree to mutually cooperate with each other regarding the development of potential projects to make improvements to Lower Corte Madera Creek;
2. In response to the flood event of December 31, 2005, the DISTRICT, in cooperation with the Towns of San Anselmo, Ross, and Fairfax as well as the CITY and the unincorporated communities of Kentfield, Greenbrae, Sleepy Hollow and Oak Manor (together, “Ross Valley”), initiated the Flood Zone 9 Ross Valley Flood Protection and Watershed Program (“Program”);
3. In June 2007, the property owners of Ross Valley voted to assess themselves a storm drainage fee (Watershed Fee) that raises approximately \$2.2 million annually for the 20 year life of the Program;
4. The DISTRICT carried out a study to investigate the feasibility of creating a 100-year-flood level of protection resulting in the May 2011 “Capital Improvement Plan Study for Flood Damage Reduction and Creek Management for Flood Zone 9/Ross Valley” (“CIP Study”) by Stetson Engineers Inc.;
5. The CIP Study is meant to guide flood-related work by the DISTRICT and the abovementioned Towns/City/Unincorporated Areas, so that efforts can be coordinated toward a common goal;
6. The report identified over 180 projects and improvements that, when implemented in the appropriate sequence, will provide a high level of flood protection for Ross Valley;
7. The overall goal of the Program is to build or retrofit the necessary infrastructure to minimize or greatly reduce damage from a 100-year-flood (as defined at the time of the CIP Study report in May 2011) while maintaining and improving the natural environment and important habitat and ecosystems;
8. The CIP Study identifies opportunities to reduce the frequency and severity of flood damage by raising levees, increasing tidal prism, and periodic dredging of Lower Corte

Madera Creek to manage the sediment and hydraulic capacity within Lower Corte Madera Creek, a project that is partially within the CITY limits;

9. In December 2013, the Flood Zone No. 9 Advisory Board adopted a document titled "Principles and Goals of the Program" that states that the "Baseline Projects, the US Army Corps of Engineers' project, and dredging of the lower channel (i.e. Lower Corte Madera Creek Improvement Project) were selected as first priority projects in the 10-Year Work Program to provide a benefit to the largest number of residents and to take advantage of known, available grant funds";
10. The Flood Zone No. 9 Advisory Board, which includes a representative from the CITY, makes recommendations about the use of fees collected in Flood Zone No. 9 by the DISTRICT;
11. Reducing flood risk in the Ross Valley as soon as possible is of the highest importance and project improvements will be pursued that promote the 25-year level of flood protection in Ross Valley, including the CITY. The DISTRICT will consider other project benefits, that may not be fee eligible, such as navigation, water quality, habitat enhancement, sea level rise sustainability, and preservation or enhancement of local character when pursuing grant opportunities to provide improvements;
12. According to the Principles and Goals document, grant funding of at least 70% of the first priority projects estimated cost will be pursued by the Parties;
13. The DISTRICT and CITY have identified existing flooding challenges in the CITY along Lower Corte Madera Creek that include localized flooding of neighborhoods during high flows or extreme tides, interior drainage issues such as sediment restricting flow in outfall pipes, and navigation problems for recreational boaters caused by sediment aggradation. Sea level rise may also result in increased areas of CITY being subject to tidal flooding in the future;
14. The Parties acknowledge that ultimate approval of the construction of the Project is subject to the results of the DISTRICT's next phase of engineering research and analysis ("Tasks") and thereafter environmental review. The Parties also acknowledge that the Project is dependent on the ability to meet the needs and requirements of both the DISTRICT and the CITY and any applicable regulatory and permitting agencies;
15. The Tasks will be determined by following the Project Process that will be developed in collaboration with the Flood Zone 9 Technical Working Group. The steps in the Project Process will include phases for planning, identifying existing conditions, issues and opportunities, developing and comparing project alternatives and choosing alternatives to move ahead with design and environmental review;
16. The Tasks may include a geomorphic dredge design. Any such design may take into account the efficiency and cost effectiveness of the Tasks and of alternatives, and may consider the long term sediment management of Lower Corte Madera Creek;
17. The Parties agree to assign the appropriate staff to all Project-related tasks;
18. This MOU is intended to be preparatory to the execution of an agreement regarding the construction of a project that will reduce the number of outfalls into lower Corte Madera

Creek by reconfiguring the piping in the Hillview Neighborhood and constructing a pump station on Bon Air Road, "the Project";

**NOW, THEREFORE**, it is mutually agreed by and between the Parties as follows:

### **RESPONSIBILITIES**

1. The DISTRICT agrees that it shall:
  - 1.1. Collaborate with the CITY to develop scopes of work and schedules for all Tasks performed to develop and design the Project within the CITY. The scopes of work and schedules for Tasks shall be reviewed by the Flood Zone 9 Advisory Board prior to commencing work on the Tasks.
  - 1.2. Deliver engineering products to designated CITY staff for review and comment.
  - 1.3. Fund and manage preparations of grant applications for the Project in coordination with the CITY.
  - 1.4. Conduct its Tasks in accordance with all applicable laws.
  - 1.5. Perform all work at its own expense and in a good and workmanlike manner.
2. The CITY agrees that it shall:
  - 2.1. Facilitate the DISTRICT's Tasks by providing the DISTRICT and its agents, representatives, and consultants with reasonable access to CITY-owned or controlled property.
  - 2.2. If feasible, provide review and comments on reports from any studies performed within fourteen (14) calendar days from the date of receipt of the study.
  - 2.3. Provide to the DISTRICT and its contractors and employees any and all pertinent data in the possession of the CITY.

**STANDARD PROVISIONS**

1. The CITY and DISTRICT both have the right to terminate this MOU without cause upon five (5) day written notice to the other Party.
2. Term: Unless terminated earlier by either Party, this MOU shall terminate upon execution of an agreement regarding the construction of the Project.
3. No Grant of Agency: Except as the Parties may specify in writing, no Party shall have authority, express or implied, to act on behalf of the other Party in any capacity whatsoever as an agent. No Party shall have any authority, express or implied, pursuant to this MOU, to unilaterally bind the other Party to any obligation whatsoever.
4. The CITY and DISTRICT expressly acknowledge and agree that the obligations of the Parties are limited to the terms of this MOU. The MOU does not commit the CITY or DISTRICT to any planning, zoning or other approvals needed to implement the intent of this MOU and all such CITY and DISTRICT actions will be subject to further discretionary action in compliance with all applicable legal requirements.
5. In the case of liabilities arising out of the activities of the Parties under this MOU, the Parties repudiate the division of liability outlined in Government Code sections 895.2 *et seq.* and instead agree to share liability based on the relative fault of the Parties.
6. Counterparts: This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

**IN WITNESS WHEREOF**, the Parties hereto have executed this MOU on the day first written above.

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Board of Supervisors of the Marin  
County Flood Control and Water  
Conservation District

\_\_\_\_\_  
City Counsel of the City of Larkspur

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President of the Board of Supervisors

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City of Larkspur Council Member

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County Counsel as to Form  
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City of Larkspur Counsel as to Form