

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE ORANGE COUNTY FLOOD CONTROL DISTRICT  
AND THE COUNTY OF ORANGE  
AND  
THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

THIS MEMORANDUM OF AGREEMENT (“MOA”) is entered into by the Orange County Flood Control District (hereinafter the “District”) and the County of Orange (hereinafter, the “County”) and the Los Angeles District of the United States Army Corps of Engineers (hereinafter the “Corps”), collectively referred to as the “Parties.”

**RECITALS**

WHEREAS, the Corps has jurisdiction over certain activities occurring in waters of the United States, including wetlands, pursuant to section 404 of the Clean Water Act (“CWA”) of 1972, as amended, and navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act (“RHA”), as amended.

WHEREAS, section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 (“WRDA 2000”), as amended by Public Law 111-315, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army; and

WHEREAS, under the provisions of section 214 of the WRDA 2000 as extended, no funds may be accepted or expended by the Corps pursuant to this MOA after December 31, 2016. However, this date may be extended by Federal law. The intent of the Parties is that this MOA shall remain in force for so long as the Corps is authorized to accept or expend funds under this statute (the “Statutory Termination Date”) unless otherwise terminated by the Parties pursuant to the terms of this MOA; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out section 214 of the WRDA 2000 to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated March 29, 2004, as modified October 1, 2008, has authorized the District and Division Engineers of the Corps to accept and expend funds contributed by non-Federal entities subject to certain limitations; and

WHEREAS, the Corps has indicated it is not able, without additional resources, to review or expedite the evaluation of permits of the District and the County related to projects for a public purpose; and

WHEREAS, the District and the County believe it is in the best interest of the taxpayers to provide funds to the Corps pursuant to this MOA to expedite Corps environmental review under section 404 of the CWA and section 10 of the RHA for designated priority projects as more fully described in this MOA; and

WHEREAS, the Corps issued an initial Public Notice dated, July 10, 2012 regarding its intent to accept and expend funds contributed by the District and the County; and

WHEREAS, in a memorandum dated December 13, 2012, the Corps determined that expenditure of funds received from the District and the County is appropriate, and an informational public notice will be issued on or before March 31, 2013; and

WHEREAS, it is understood and acknowledged by all Parties that the Corps' review of the District and the County's permit applications for District and the County-designated priority projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, this MOA establishes the responsibilities and operating procedures of the Parties with respect to priority reviews; and

WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address, and protect environmental resources early in the development of proposed actions; (2) avoid conflicts late in project development through close coordination during early planning and development stages; (3) provide sufficient information to the Corps for timely analysis of project effects and to assist County in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps Regulatory Division personnel by focusing attention on projects that would most affect aquatic resources; (5) provide a mechanism for expediting project coordination when necessary; and (6) provide procedures for resolving disputes in this resource partnering effort.

NOW, THEREFORE, the Parties agree as follows:

## AGREEMENT

### **Article I. - PURPOSE AND AUTHORITIES**

A. This MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by District and the County to provide expedited permit evaluation-related services for District and the County-designated priority projects under the jurisdiction of the Corps. This MOA is not intended as the exclusive means of obtaining review of projects proposed by the District and the County. This MOA is a vehicle by which the District and the County will obtain expedited permit evaluation-related services outside of the ordinary Corps review process.

B. The Corps enters into this MOA pursuant to its authority under section 214 of the WRDA 2000, as amended.

C. The District and the County enter into this MOA pursuant to its authority under §2(b)(9) of the Orange County Flood Control Act (Act 5682) and Government Code section 23004(c).

## **Article II. - SCOPE OF WORK**

A. The District and the County will provide funds to the Corps to expedite permit evaluation related services for designated priority projects under the jurisdiction of the Corps. The Corps' Regulatory Program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from the District and the County will be added to the Corps' Regulatory Program budget in accordance with the provisions of section 214 of WRDA 2000, as amended.

B. The Corps will provide staffing resources exclusively dedicated to expediting permit evaluation-related services, as described below, for designated priority projects and/or other programmatic efforts to support efficient decision-making related to the District and County CWA section 404 and RHA section 10 permitting needs.

C. The Corps will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of permit applications submitted by the District and County. Corps Regulatory personnel will charge their time and expenses against the account when they perform work to either expedite resolution of permit requests designated by the District and the County as a priority or undertake other programmatic efforts to support efficient decision making related to the District and the County's permitting needs. Corps Regulatory personnel will focus on the work as prioritized by the District and County, and if the projects designated by the District and County as priorities are insufficient to keep Corps personnel busy, Corps personnel will then work on other programmatic efforts for the District and the County.

D. Funds contributed by the District and the County hereunder will be expended by the Corps to defray the costs of Regulatory Division personnel (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the evaluation of priority permit applications designated by the District and the County. Such activities will include, but not be limited to, the following: jurisdictional determinations; site visits; travel; federal register and public notice preparation; preparation of correspondence; public interest review; preparation and review of environmental documentation; undertaking consultations pursuant to section 106 of the National Historic Preservation Act and section 7 of the Endangered Species Act; and meetings with the County and resource agencies.

E. The Corps may expend District and County funds to hire contractors to perform select duties, including but not limited to site visits; preparing and providing technical materials, including environmental documentation; GIS-related services; and meeting coordination for the purpose of augmenting the resources available to the Corps for expediting priority projects and activities designated by the District and County. If such expenditures, when combined with the costs of the Regulatory Division personnel specified in Article II.D, require funding in excess of the amount available under this MOA, then said contractors shall not be hired by the Corps until and unless additional funds are provided by the District and County, and the Parties execute a written amendment to this MOA.

F. The Corps will not expend District and County funds for costs associated with the review of Regulatory Project Managers' work by supervisors or other persons or elements of

the Corps in the decision-making chain of command. However, if a supervisor is performing staff work and not supervisory, decision-making oversight, funds may be used. The Corps will not expend funds contributed by the District and the County to defray the costs of activities related to the Corps' enforcement functions, but may use District and County funds to defray costs of activities related to compliance functions.

G. If the funds provided by the District and County are expended and not replenished, any remaining priority permit applications will be handled like those of any permit applicant.

### **Article III. - INTERAGENCY COMMUNICATIONS**

To provide for consistent and effective communication between the Parties, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on specific actions or issues. For the purposes of this MOA, the District and the County's Principal Representative will be the Manager of Orange County Engineering's Project Management Section and the Corps' Principal Representative will be Corice Farrar, Chief, Orange-Riverside Section. The Principal Representative for each party may be changed upon written notification to the other parties.

### **Article IV. - RESPONSIBILITIES OF THE PARTIES**

A. The District and County will provide adequate resources to fund additional Corps Regulatory personnel for the purpose of timely review of designated priority projects and other identified activities. To facilitate the Corps' review and activities, the District and County will:

1. Provide adequate information regarding projects and other specific activities to initiate permit evaluation. Information required for the Corps to deem a permit application complete thereby allowing initiation of the permit review process can be found in Corps regulations at 33 C.F.R. §§ 325.1(d), 325.3(a), and in General Condition 31 of the Nationwide Permit Program. Upon request, the District and the County shall provide supplemental information necessary to complete the permit application. Additional information [33 CFR Part 325.1(e)] required to complete the permit evaluation process may exceed what is needed to initiate the process. On a case-by-case basis, if requested by the Corps, the District and the County shall provide such additional information in a timely manner so as to ensure the Corps can effectively accomplish the required review.

2. Make a reasonable effort to provide the Corps with information on other projects with District and County involvement to enable the Corps to most efficiently apply available staff resources and plan for workload cycles.

3. In consultation with the Corps, schedule Corps involvement in the priority projects identified by the District and the County. The list of initial priority project is shown on Appendix A. The list may be changed by mutual agreement of the Principal Representatives of each party without requiring an amendment to this MOA. Such changes shall be submitted to

the Corps' Principal Representative in writing, including email, and will be effective upon receipt thereof.

4. To the best of their ability, ensure the participation of all essential personnel during the permit evaluation process.

5. Work closely with the Corps to adjust District and County priorities and schedules in order to make optimal use of available Regulatory Division staff resources. While the District and County will make every effort not to overlap project schedules, occasional overlaps may occur and the County Principal Representative will work with the Corps to prioritize such overlaps. Any discrepancies between the District and County will be resolved internally by the County's Principal Representative.

6. Provide funding pursuant to the terms of this MOA.

B. The Corps shall supplement or reassign its existing Regulatory Division personnel, which currently reviews District and County projects on a routine basis, with qualified personnel within projected funding levels provided by the District and the County. The Corps shall use the funds provided to defray the costs of salaries and associated benefits and to reimburse travel expenses in order to:

1. Expedite review of the District and the County priority projects in accordance with the purpose, terms, and conditions of this MOA or any amendments thereto. The Corps shall not redirect resources from, or otherwise postpone, other projects submitted by the District and the County through the standard Corps review process.

2. Upon submittal of new permit applications and following any meetings and discussions to clarify the scope of anticipated permit application review processes, Corps staff will provide the District and the County with an estimated schedule and budget to complete the permit evaluation process for each application submitted. The District and the County shall be able to comment on these schedules and adjust priorities per Appendix A, or provide additional resources per Article V.E.

3. Consult with the District and the County regarding an adjustment of priorities or establishment of relative priorities if the current and/or projected workload of priority projects and activities exceeds Corps' ability to provide the services specified in this MOA.

4. Provide the District and the County a brief quarterly summary report of progress made and costs incurred under this MOA. Progress will be itemized for each permit application review completed during the quarter and for each permit application pending at the end of the quarter. This report will describe achievements, including any improvements the Corps has documented in coordinating and improving the efficiency of environmental reviews, and will summarize expenditures to date. The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOA and will provide an estimate of costs expected for the ensuing quarter. The report shall not be in excess of five (5) pages.

5. Designate a Regulatory Project Manager who will make his or her best efforts to attend periodic meetings with the District and the County.

**Article V. - FUNDING**

A. The total lump sum payment authorized by this MOA shall not exceed \$400,000 for the duration of the MOA unless agreed upon by all Parties.

B. Within 30 days of execution of this MOA, the District and the County shall pay the anticipated costs expected to be incurred through September 30, 2013 at the level specified in the Corps' budget estimate, which is included as Appendix B to this MOA and incorporated herein by reference.

C. No later than July 1 of each year that this MOA remains in effect, the Corps will provide the District and the County with an anticipated cost invoice ("Invoice") that provides an updated budget estimate of costs for the next Federal fiscal year, including any proposed changes in the level of staffing, less any estimated carry-over of unobligated funds from the prior Federal fiscal year. For Federal fiscal year 2017, unless the sunset provision of section 214 of WRDA 2000 is extended, the Corps shall provide the District and County with an Invoice that provides an updated budget estimate of anticipated costs through the sunset date of December 31, 2016. Revisions agreed to by the Parties will be incorporated into a revised budget estimate. Each Invoice shall be provided on Corps letterhead, have a unique number, and include (1) the Corps' name and address, (2) Corps' remittance address, if different, (3) name of County agency/department, (4) delivery/service address, (5) service dates, (6) description of services, (7) total amount, and (8) taxpayer ID number. Invoices shall be submitted by the Corps to:

Orange County Public Works  
Attn: Accounts Payable  
300 N Flower Street, 8<sup>th</sup> Fl.  
Santa Ana, CA 92703

D. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, the District and the County will make an annual lump sum payment to the Corps of the total amount specified in the Invoice(s). Payments by the District and the County are to be made to:

U.S. Army Corps of Engineers, Los Angeles District  
Finance and Accounting Officer  
P.O. Box 532711  
Los Angeles, CA 90053-2325  
Attn: Carlos M. Tabares

E. If the Corps' actual costs for providing the agreed upon level of service will exceed the amount of funds available, the Corps will notify the District and the County at least 90 days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. The District and the County will either increase the funding amount or agree to a reduced level of service.

F. The Corps will carry-over any unobligated funds from year to year, or will refund such unobligated funds if this MOA is terminated or expires.

G. The Corps will neither accept nor expend funds under this MOA after December 31, 2016, unless Federal law extends the Corps authority under section 214 of WRDA 2000, to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

#### **Article VI. - APPLICABLE LAWS**

The applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of permit applications undertaken by the Corps will be governed by Corps regulations, policies and procedures.

#### **Article VII. - DISPUTE RESOLUTION**

In the event of a dispute, the Parties agree to use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The Parties agree that, in the event such measures fail to resolve the dispute, they shall proceed in accordance with applicable Federal law.

#### **Article VIII. - PUBLIC INFORMATION**

Justification and explanation of District and the County programs or projects before other agencies, departments and offices will not be the responsibility of the Corps. The Corps may provide, upon request from the District and the County, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the Corps is responsible only for public information regarding Corps regulatory activities.

#### **Article IX. - AMENDMENT, MODIFICATION AND TERMINATION**

A. This MOA may be modified or amended only by written, mutual agreement of the Parties.

B. Any party reserves the right to terminate its participation in this MOA without cause upon thirty (30) days' written notice to the other parties. In the event of termination, the terminating party will continue to be responsible for all costs incurred by the Corps or its contractors in performing expedited environmental permit review services up to the time of notice and for the costs of closing out any ongoing contracts in support of the provision of services by the Corps under this MOA.

C. Within ninety (90) calendar days of termination or expiration of the MOA, the Corps shall provide the District and the County with a final statement of expenditures. Within sixty (60) calendar days after submittal of the Corps' final statement of expenditures, the Corps, subject to compliance with the Anti-Deficiency Act (31 U.S.C. 1341 et. seq.), shall directly remit

to the District and the County the unexpended balance of the advance payments, if any. Funds may be provided to the District and the County either by check or electronic funds transfer.

**Article X. - MISCELLANEOUS**

A. This MOA will not affect any pre-existing or independent relationships or obligations between the Parties.

B. If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

C. The Corps' participation in this MOA does not imply endorsement of District and the County projects nor does it diminish, modify, or otherwise affect Corps statutory or regulatory authorities.

D. This MOA, including any documents incorporated by reference or attachments thereto, constitute the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

**Article XI. - EFFECTIVE DATE AND DURATION**

This MOA and any amendments will become effective on the date of signature by the last Party. Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first: 1) the Statutory Termination Date; or 2) the MOA is terminated pursuant to Article IX.

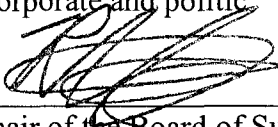
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IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by the District and the County, acting by and through its authorized officer, and by the Corps, through its authorized officer.

ORANGE COUNTY FLOOD CONTROL DISTRICT,  
a body corporate and politic

Date: 1-29-13

By   
Chair of the Board of Supervisors

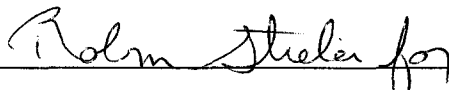
COUNTY OF ORANGE,  
a political subdivision of the State of California

Date: 1-29-13

By   
Chair of the Board of Supervisors

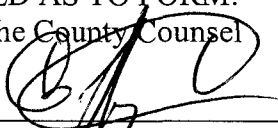
Signed and Certified that a copy of this document has been delivered to the Chair of the Board per Government Code Section 25103, Resolution 79-1535

Attest:

  
Clerk of the Board of Supervisors




APPROVED AS TO FORM:  
Office of the County Counsel

By:   
Deputy

Date: 1/14/2012

U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT

Date: 15 MAR 13

By   
ALEXANDER G. DERANEY  
Lieutenant Colonel, US Army  
Acting Commander and  
Acting District Engineer

**Appendix A:** District and the County Priority Projects

The list of priority projects under this MOA includes the following and may be modified pursuant to Article IV.A.3.:

1. San Juan Creek Bike Trail
2. County-wide Long-term Routine Maintenance Permitting Program
3. Brea Blvd. Bridge (No. 55C-0121) over Brea Canyon Creek Repairs
4. Brea Blvd. Bridge (No. 55C-0122) over Brea Canyon Creek Repairs
5. Brea Blvd. Bridge (No. 55C-0123) over Brea Canyon Creek Repairs
6. Broadway Bridge (55C-0283) over Sunset Channel Repairs
7. Kitterman Drive Bridge (No. 55C-0176) over Silverado Canyon Road Repairs
8. Modjeska Canyon Bridge (No. 55C-0172) over Santiago Creek Repairs
9. Santiago Canyon Bridge (No. 55C-0065) over Limestone Creek Repairs
10. Santiago Canyon Bridge (No. 55C-0174) over Silverado Creek Repairs
11. Santiago Canyon Bridge (No. 55C-0177) over Silverado Creek Repairs
12. Santiago Canyon Bridge (No. 55C-0179) over Silverado Creek Repairs
13. Santiago Canyon Bridge (No. 55C-0181) over Silverado Creek Repairs
14. Sycamore Drive Bridge (No. 55C-0189) over Silverado Creek Repairs
15. Santiago Canyon Bridge (No. 55C-0174) over Trabuco Creek Repairs
16. Silverado Canyon Road Slope Repair
17. Villa Park Dam Maintenance and Repairs
18. Harbor View Dam Maintenance and Repairs
19. Peters Canyon Dam Maintenance and Repairs
20. Lower Peters Canyon Dam Maintenance and Repairs
21. Sulphur Creek Dam Maintenance and Repairs
22. Yorba Linda Reservoir Maintenance and Repairs
23. Trabuco Retarding Basin Maintenance and Repairs
24. Bee Canyon Retarding Basin Maintenance and Repairs
25. Round Canyon Retarding Basin Maintenance and Repairs
26. Marshburn Retarding Basin Maintenance and Repairs
27. Hicks Canyon Retarding Basin Maintenance and Repairs
28. East Hicks Canyon Retarding Basin Maintenance and Repairs
29. Orchard Estates Retarding Basin Maintenance and Repairs
30. Agua Chinon Retarding Basin Maintenance and Repairs
31. Galivan Retarding Basin Maintenance and Repairs
32. Rossmoor Retarding Basin Maintenance and Repairs
33. Loftus Diversion Channel Maintenance and Erosion Repairs
34. Imperial Channel Maintenance and Erosion Repairs
35. Sunset Channel Maintenance and Erosion Repairs
36. Atwood Channel Maintenance and Erosion Repairs
37. Borrego Channel Maintenance and Erosion Repairs
38. San Joaquin Channel Slope Repair, Sediment and Vegetation Removal
39. Rossmoor Storm Channel Improvements – Earthen Slopes to Concrete Slopes

40. Redhill Channel Improvements – Replace Damaged Reinforced Concrete Box
41. Barranca Channel Slope Repair, Sediment and Vegetation Removal
42. San Diego Creek Channel (Reach II) Campus to I-405 Routine Maintenance
43. San Diego Creek Channel at Irvine Center Drive Routine Maintenance
44. Peters Canyon Wash Channel Maintenance
45. Develop mitigation opportunities for projects.

Appendix B: Corps' Budget Estimate for initial year

<b>TASK</b>	<b>COST</b>
Pre-application Meetings	\$ 75,000
Project Review and Analysis	\$ 75,000
Administrative	\$ 10,000
Monitoring	\$ 20,000
<b>Subtotal Personnel Costs</b>	<b>\$180,000</b>
Supplies	\$ 20,000
<b>Subtotal Direct Costs:</b>	<b>\$20,000</b>
<b>Total:</b>	<b>\$200,000</b>