MEMORANDUM OF AGREEMENT
BETWEEN
THE RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT,
THE COUNTY OF RIVERSIDE,
AND
U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

THIS Memorandum of Agreement ("MOA") is entered into between the Riverside County Flood Control and Water Conservation District ("District"), the County of Riverside ("County"), and the United States Army Corps of Engineers, Los Angeles District ("Corps"), collectively referred to as the "Parties".

RECITALS

WHEREAS, the Corps has regulatory jurisdiction over certain activities occurring in waters of the United States, 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 of 1899 ("RHA"), as amended; and

WHEREAS, Section 214 of the Federal Water Resources Development Act (WRDA) of 2000, as amended, codified at 33 U.S.C. 2352, authorizes the Secretary of the Army, after public notice, to accept and expend funds to expedite the permit application review process; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214 of the WRDA 2000, as amended and codified at 33 U.S.C. 2352, to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated September 2, 2015, has authorized the District and Division Engineers of the Corps to accept and expend funds contributed by District and County subject to certain limitations; and

WHEREAS, the Corps has indicated it is not able, without additional resources, to expedite the evaluation of District and County permit applications; and

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WHEREAS, the District and County are non-federal public entities and believe it is in their best interest to provide funds to the Corps pursuant to this MOA to streamline and expedite Corps' review under Section 404 of the CWA and/or Section 10 of the RHA for District and County designated priority projects, as more fully described in this MOA; and

WHEREAS, the Corps' District Engineer has determined that the acceptance and expenditure of funds received from the District and County is appropriate, and an informational public notice will be issued regarding the decision; and

WHEREAS, it is understood and acknowledged by all Parties that the Corps' review of District and County permit applications for District and County designated priority projects will be completely impartial and in accordance with all applicable federal laws and regulations; 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 the District and County in developing appropriate mitigation measures, (4) maximize the effective use of limited Corps personnel resources 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.

WHEREAS, the Parties had entered into a Memorandum of Agreement effective January 28, 2013 ("2013 MOA") for expedited and priority review by the Corps; and

WHEREAS, at the time the 2013 MOA expired on December 31, 2016, approximately $200,000 of advanced funds had not been spent by the Corps; and

WHEREAS, the District and County allowed the Corps to hold the unspent monies pending approval of a new agreement; and

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 Corps' acceptance and expenditure of funds contributed by District and County to provide expedited permit application evaluation-related services for District and County designated priority projects requiring Corps' approval pursuant to Section 404 of the CWA and/or Section 10 of the RHA, as listed in **Appendix A** to this MOA ("Priority Projects"). This MOA is not intended as the exclusive means of obtaining review of Priority Projects proposed by District and County; it is a vehicle by which District and County will obtain expedited permit application evaluation-related services outside of the ordinary Corps review process for Priority Projects.

B. The District enters into this MOA pursuant to its authority under Chapter 1122, Statutes of 1945, Act 6642 of the State Legislature.

C. The County enters into this MOA pursuant to its authority under Section 23003, 23004, and 23005 of the California Government Code.

D. The Corps enters into this MOA pursuant to its authority under 33 U.S.C. 2352.

Article II. - SCOPE OF WORK

A. The Corps will expedite permit application evaluation-related services for District and County designated Priority Projects under the jurisdiction of the Corps in exchange for funds provided by District and County as set forth below. The Corps' Regulatory Program is funded as a congressionally appropriated line item in the annual federal budget. Funds received from District and County will be added to the Regulatory budget of the Corps, in accordance with the provisions of 33 U.S.C. 2352.

B. The Corps will provide staffing resources exclusively dedicated to expediting permit application evaluation-related services, as described below, for District and County designated

Priority Projects and/or other programmatic efforts to support efficient decision-making related to the District and County CWA Section 404 and/or 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 District and County for Priority Projects. Corps Regulatory personnel will charge their time and expenses against the account when they perform work to expedite permit application evaluation-related requests for Priority Projects, or undertake other programmatic efforts to support efficient decision making related to District and County permitting needs.

D. Funds contributed by District and 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 Project permit applications. Activities covered by this MOA will include, but not be limited to, the following: application intake review, permit database entry, drawing correction, jurisdictional determinations, site visits, travel, preparing and distributing public notices, preparing and conducting public hearings, preparing correspondence, performing the public interest review, preparing draft permit decision documents, meetings with District and County and other agencies, and relevant training of District and County personnel or for Corps staff where the training supports the intent and purposes of the MOA.

E. The Corps may expend funds provided by District and County 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 its review of District and County designated Priority Projects. If such expenditures, when combined with the costs of the Regulatory Division personnel, require funding in excess of the amount available under this MOA, then the Corps, as appropriate, shall not hire said contractors 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 funds provided by District and County for costs associated with the review of the Corps' work undertaken 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 oversight, funds may be used. The Corps will not expend funds provided by District and County to defray the costs of activities related to the Corps' enforcement functions, but may use funds provided by District and County to defray costs of activities related to permit compliance functions. Enforcement functions are defined as activities not permitted by the Corps but requiring Corps authorization. Permit compliance functions are defined as Corps oversight of Corps-permitted activities.

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

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between Parties, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. The Principal Representatives are identified in Article IV. B. Additional representatives may also be appointed to serve as points of contact on specific actions or issues. A Principal Representative may be changed upon written notification to the other parties.

Article IV. - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and delivered personally or sent by email or mailed by first class, registered, or certified mail to the applicable Principal Representative. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven (7) business days after it is mailed.

B. All inquiries during the term of this MOA will be directed to the Principal Representatives listed below:

If to District and County:

Mekbib Degaga
Chief of Regulatory Division
Riverside County Flood Control and Water Conservation District
1995 Market Street
Riverside, CA 92501

If to the Corps:

Michelle Lynch
Chief, South Coast Branch
Regulatory Division
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Boulevard, Suite 930
Los Angeles, CA 90017

With a copy in all instances to:

District Counsel
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Boulevard, Suite 930
Los Angeles, CA 90017

Article V. - RESPONSIBILITIES OF THE PARTIES

A. District and County will provide adequate resources to fund existing or additional Corps Regulatory personnel for the purpose of expediting the review of District and County designated Priority Projects and other identified activities. To facilitate the Corps' reviews and activities, District and County will:

1. Provide adequate information regarding District and County designated Priority Projects, scheduling requirements, 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, District and County shall provide supplemental information necessary to complete the permit application. Additional information [33 C.F.R. § 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, District and County shall provide such additional information so as to ensure the Corps can effectively accomplish the required review.

2. In consultation with the Corps, establish the specific order of priority of District and County designated Priority Projects as listed in **Appendix A** to this MOA. District and County designated Priority Projects included in Appendix A and the order of priority of those District and County designated Priority Projects may be changed by District and County Principal Representative without requiring an amendment to this MOA. Such changes shall be submitted to the Corps' Principal Representative in writing in the manner provided by Article IV and will be effective upon receipt thereof.

3. To the best of its ability, ensure the participation of all essential personnel during the permit evaluation or compliance process.

4. Work closely with the Corps to adjust priorities and schedules in order to optimize available Regulatory Division staff resources. While District and County will make every effort not to overlap project schedules, occasional overlaps may occur and District and County Principal Representative will work with the Corps to prioritize such overlaps.

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

B. The Corps shall use the funds provided to defray the costs of salaries and associated benefits, relevant training, and to reimburse travel expenses in order to:

1. Expedite review of District and County designated 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, permit applications related to non-Priority Projects submitted by District and County through the standard Corps review process.

2. Following any pre-application meetings and/or discussions to clarify the scope of anticipated permit application review processes, provide District and County with an estimated completion date for the permit evaluation process for each complete application submitted.

District and County shall be able to comment on the estimated completion date and adjust the order or list of Priority Projects per Appendix A, or provide additional resources per Article VI.

3. Consult with District and County regarding an adjustment of priorities or establishment of relative priorities if the current or projected workload of Priority Projects and activities exceeds the Corps' ability to provide the services specified herein.

4. Provide District and County a brief quarterly summary report of progress made 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(s) and his/her specific responsibilities for each Priority Project. If possible, the Corps will designate the same Project Manager for all major District and County designated Priority Project permit applications to ensure consistency and maintain efficiency of the review process.

Article VI. - FUNDING

A. The MOA shall initially be funded by the approximate $200,000 that District and County have on deposit with the Corps in Fund Auth/COA: 1039 and Fund Account 1232, which is the balance remaining from the 2013 MOA.

B. No later than July 1, 2017 and every July 1 thereafter that this MOA remains in effect, the Corps will provide the District and 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. Revisions agreed to by the Parties will be incorporated into a revised budget estimate. Each Invoice shall be provided on Corps letterhead and include (1) the Corps'

name and address, (2) the Corps' remittance address, if different, (3) service dates, and (4) total amount. Invoices shall be submitted by the Corps to:

Finance Division
Riverside County Flood Control and Water Conservation District
1995 Market Street
Riverside, CA 92501

Or, by email to rcfcap@rcflood.org

C. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, District and County will make a lump sum payment to the Corps of the total amount specified in the **Appendix B** budget estimate or the Corps' Invoice(s). Payments by District and County are to be made by wire transfer of funds in accordance with Standard Operating Procedure UFC 07 (**Appendix C**), or by check payable to the Finance and Accounting Officer and sent to the following address:

U.S. Army Corps of Engineers, Los Angeles District
Finance and Accounting Officer
915 Wilshire Boulevard
Los Angeles, CA 90053-2325
Attn: Carlos M. Tabares

D. The Corps will carry over any unobligated funds from year to year.

E. If the Corps' actual costs for providing the agreed upon level of service will at any time during the term of this MOA exceed the amount of funds available, the Corps will notify District and County at least ninety (90) days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. District and County will have the option of (i) making a payment to the Corps for the incremental amount, provided the total amount of payments to the Corps does not exceed the total funding amount, (ii) increasing the total funding amount through an amendment to this MOA, or (iii) agree to a reduced level of service.

Article VII. - 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 VIII. - 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 refer the dispute for resolution to an appropriate forum in accordance with federal law.

Article IX. - PUBLIC INFORMATION

Justification and explanation of District and 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 District and 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. District and County will give the Corps, as appropriate, advance notice before making formal, official statements regarding activities funded under this MOA.

Article X. - 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, District and County will continue to be responsible for all costs incurred by the Corps 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 of the MOA or the expiration of the MOA, the Corps shall provide District and 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 District and County the unexpended balance of the advance payments, if any. Funds may be provided to District and County either by check or electronic funds transfer.

Article XI. – MISCELLANEOUS

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

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

C. 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.

D. This MOA, including any documents incorporated by reference or attachments thereto, but excluding the pre-existing relationships or obligations between the Parties referenced in subparagraph A above, 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 XII. - EFFECTIVE DATE AND DURATION

This MOA and any amendments will be effective on the date of execution by the last party. Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first: 1) September 30, 2026, or 2) the MOA is terminated pursuant to Article X.B.

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IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by the District and County, acting by and through their respective Boards of Supervisors, and by the Corps, through its authorized officer FEB 07 2017.

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

By: _____
JASON E. UHLEY
General Manager-Chief Engineer

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water Conservation District Board of Supervisors

APPROVED AS TO FORM:

GREGORY PRIAMOS
County Counsel

By: _____ 12/29/16
NEAL KIPNIS
Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By: _____
Deputy

(SEAL)

RECOMMENDED FOR APPROVAL:

By: _____
PATRICIA ROMO
Director of Transportation

APPROVED AS TO FORM:

GREGORY PRIAMOS
County Counsel

By: _____
SYNTHIA M. GUNZEL
Supervising Deputy County Counsel

COUNTY OF RIVERSIDE

By: _____
JOHN J. BENOIT, Chairman
Board of Supervisors
JOHN TAVAGLIONE

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By: _____
Deputy

(SEAL)

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

By: _____ Date: 2-6-17

KIRK E. GIBBS
Colonel, U.S. Army
Commander and District Engineer

Appendix A: DISTRICT and COUNTY Priority Projects

The list of priority projects under this MOA includes the following:

1. **Arroyo del Toro Channel, near Lake Elsinore**
2. **Cherly Creek Levee, Palm Springs**
3. **Eagle Canyon Dam and Line 41, Cathedral City**
4. **Little Lake MDP, Line B, Hemet**
5. **Clinton Keith Extension, I-215 to SR 79**
6. **Scott Road/I-215 Interchange, Haun to Antelope**
7. **Cajalco Road Widening, Temescal Canyon Road to I-215**
8. **I-10 Bypass Hathaway to Apache Trail, Newport Road to I-215, Interchange Haun to Antelope Road**
9. **Gilman Springs Road, 500' NW of Eucalyptus Road to 8430' SW of Alessandro Road**
10. **San Jacinto River Levee, Stage 4**
11. **San Jacinto MDP, Line C**
12. **Development of mitigation mechanisms for streamlined permitting**

Appendix B: CORPS' Budget Estimate for FY 16/17

TASK	TIME	RATE	COST
Pre-application Meetings	60 days	$1,097	$ 65,820
Project Review and Analysis	100 days	$1,097	$109,700
Monitoring and Compliance	30 Days	$1,097	$ 32,910
Subtotal Personnel Costs			**$175,520**
Direct Costs:			
Travel, Training and Supplies			$ 24,480
Subtotal Direct Costs:			**$ 24,480**
Total:			**$200,000**