

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



459A

FROM: TLMA - Transportation Department

SUBMITTAL DATE:
June 21, 2012

SUBJECT: Water Resources Development Act Section 214
Memorandum of Agreement and Cost Share Agreement

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Memorandum of Agreement between the County Flood Control and Water Conservation District, the County of Riverside, and the U.S. Army Corps of Engineers, Los Angeles District; and
2. Approve the Cost Share Agreement between the County Flood Control Water Conservation District and County of Riverside Transportation Department; and
3. Authorize the Chairman of the Board to execute the same.

Patricia Romo
Deputy Director of Transportation

Juan C. Perez
Director of Transportation and Land Management

Departmental Concurrence

RW; fs
(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 200,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13 thru 2015/16

SOURCE OF FUNDS: Highway Users Tax or Regular Gas Tax	Positions To Be Deleted Per A-30	<input type="checkbox"/>
There are no General Funds used in this project.	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Tina Grande

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL

BY:
MARSHALA L. VICTOR

DATE: 6/21/12

Policy

Consent

Dept't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.

District: All

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.35

The Honorable Board of Supervisors
RE: Water Resources Development Act Section 214
Memorandum of Agreement and Cost Share Agreement
June 21, 2012
Page 2 of 2

BACKGROUND: The Transportation Department (Department) in consultation with the County Flood Control and Water Conservation District (District) identified priority projects that will require coordination and approval from the U.S. Army Corps of Engineers (ACOE).

In an effort to respond in a timely manner to meet the public needs through delivery of priority transportation projects the Department and the District plan to enter into the Memorandum of Agreement (MOA) with the ACOE. The MOA sets forth the terms and conditions for ACOE to expedite the evaluation of Section 404 permits of the Clean Water Act for the Department and District's designated priority projects.

The Cost Share Agreement sets forth the terms and conditions by which the District will make initial and subsequent deposits to ACOE on behalf of the District and the Department, pursuant to the terms and conditions of the MOA, and the Department will reimburse the District for their initial deposit and actual share of the costs thereafter. Funding for the services provided by the ACOE on behalf of the Department will come from the Highway Users Tax (HUTA Section 2103) or Regular Gas Tax. Sufficient funds are available in the Department's budget for FY 2011/12 and will be included in the Department's proposed budgets for FY 2012/13, 2013/14, 2014/15 and 2015/16.

Entering into the MOA will afford the Department the ability to respond in a time efficient manner to public demands on our road system.

County Counsel has approved the Agreements as to their legal form. A companion item appears on the Flood Control and Water Conservation District Board's agenda on July 3, 2012.

COST SHARE AGREEMENT

Water Resources Development Act of 2000 Section 214 Memorandum of Agreement

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and the COUNTY OF RIVERSIDE, hereinafter called "COUNTY" on behalf of its Transportation Department, hereby agree as follows:

RECITALS

A. The United States Army Corps of Engineers (ACOE), under Section 404 of the Clean Water Act (CWA), has jurisdiction over certain activities occurring in "wetlands" and "waters of the United States"; and

B. Section 214 of the Federal Water Resources Development Act of 2000 (Public Law 106-541), as amended (WRDA), authorizes the Secretary of the Army 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

C. The Secretary of the Army has delegated the responsibility of carrying out Section 214 of the WRDA to the Chief of Engineers and his delegated representatives. The Chief of Engineers, by memorandum dated March 29, 2004, as modified October 1, 2008, has authorized the Los Angeles District and Division Engineers of the ACOE to accept and expend funds contributed by non-Federal public entities; and

D. The ACOE has indicated it is not able, without additional resources, to expedite the evaluation of permits of DISTRICT and COUNTY related to projects for a public purpose; and

1 E. ACOE'S timely permit evaluation services for the DISTRICT and
2 COUNTY designated priority projects are critically important for public health and safety
3 reasons; and

4 F. Pursuant to Section 214 of the WRDA, DISTRICT and COUNTY will
5 enter into a Memorandum of Agreement (MOA) with the ACOE, to provide funding for the
6 ACOE to expedite its environmental regulatory review under Section 404 of the CWA for
7 DISTRICT and COUNTY designated priority projects; and

8 G. DISTRICT and COUNTY will each benefit from participation in that
9 certain MOA; and

10 H. DISTRICT is willing to make an initial deposit of two hundred thousand
11 dollars (\$200,000), hereinafter referred to as "INITIAL DEPOSIT", with ACOE on behalf of
12 both DISTRICT and COUNTY pursuant to the terms of that certain MOA and this Agreement.
13 DISTRICT is also willing to make subsequent deposit(s), in advance, on an annual basis in an
14 amount as determined by the terms of that certain MOA provided each annual subsequent
15 deposit does not exceed two hundred thousand dollars (\$200,000), hereinafter referred to as
16 "SUBSEQUENT DEPOSIT"; and

17 I. COUNTY is willing to reimburse DISTRICT in the amount of forty
18 thousand dollars (\$40,000) for its cost-share of INITIAL DEPOSIT as set forth in this
19 Agreement; and

20 J. COUNTY is also willing to reimburse DISTRICT for its twenty percent
21 (20%) cost-share of SUBSEQUENT DEPOSITS as set forth in this Agreement; and

22 K. DISTRICT has included the sum of two hundred thousand dollars
23 (\$200,000) in its Fiscal Year 2012-2013 budget; and

1 L. The purpose of this Agreement is to memorialize the mutual understandings
2 by and between DISTRICT and COUNTY with respect to cost-share of the INITIAL DEPOSIT
3 and SUBSEQUENT DEPOSIT.

4 NOW, THEREFORE, in consideration of the preceding recitals and the mutual
5 covenants hereinafter contained, DISTRICT and COUNTY hereto mutually agree as follows:

6 SECTION I

7 DISTRICT shall:

8 1. Within thirty (30) days after DISTRICT'S receipt of a fully executed MOA
9 with ACOE, make an INITIAL DEPOSIT with ACOE on behalf of itself and COUNTY
10 pursuant to the terms of the said MOA.

11 2. Invoice COUNTY for forty thousand dollars (\$40,000) for its cost-share of
12 twenty percent (20%) of the INITIAL DEPOSIT within thirty (30) days of DISTRICT'S
13 remittance of INITIAL DEPOSIT to ACOE.

14 3. Keep an accurate accounting of all invoices associated with the MOA and
15 determine DISTRICT and COUNTY'S actual costs on an annual basis at the end of each Federal
16 fiscal year.

17 4. Make SUBSEQUENT DEPOSIT(S), on behalf of itself and COUNTY,
18 directly to ACOE within thirty (30) days of DISTRICT'S receipt of appropriate invoice(s) from
19 ACOE pursuant to the terms of the said MOA.

20 5. On an annual basis, invoice COUNTY for its twenty percent (20%) cost-
21 share of SUBSEQUENT DEPOSIT(S) to ACOE.

22 6. If at the end of the Federal fiscal year, the actual costs of ACOE'S work on
23 DISTRICT priority projects over the previous year as established in Section I.3., is greater than
24 DISTRICT'S eighty percent (80%) cost-share of INITIAL DEPOSIT or SUBSEQUENT
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1 DEPOSIT, reimburse COUNTY for the difference. The payment shall be accompanied by a
2 final accounting of invoices associated with MOA to establish DISTRICT'S actual costs.

3 7. If at the end of the Federal fiscal year, COUNTY'S actual costs over the
4 previous year as established in Section I.3. is greater than COUNTY'S twenty percent (20%) of
5 INITIAL DEPOSIT or SUBSEQUENT DEPOSIT, submit an invoice to COUNTY (Attention:
6 Russell Williams) for the difference. The invoice shall include a final accounting of invoices
7 associated with MOA to establish COUNTY'S actual costs.
8

9 SECTION II

10 COUNTY shall:

11 1. Reimburse DISTRICT (Attn: Business Office – Accounts Receivable) forty
12 thousand dollars (\$40,000) for COUNTY'S cost-share of twenty percent (20%) of INITIAL
13 DEPOSIT within thirty (30) days after receipt of an invoice from DISTRICT.
14

15 2. Reimburse DISTRICT (Attn: Business Office – Accounts Receivable) for
16 COUNTY'S cost-share of twenty percent (20%) of SUBSEQUENT DEPOSIT(s) to ACOE
17 within thirty (30) days after receipt of an invoice(s) from DISTRICT.

18 3. Reimburse DISTRICT (Attn: Business Office – Accounts Receivable) for
19 COUNTY'S actual costs, pursuant to Section I.7., within thirty (30) days after receipt of an
20 invoice from DISTRICT.
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22 SECTION III

23 It is further mutually agreed:

24 1. The term of this Agreement shall be from the date the Agreement is
25 executed by DISTRICT'S Board of Supervisors to December 31, 2016.
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1 2. At any time during the term of this Agreement, either party may terminate
2 this Agreement with or without cause upon providing the other party with thirty (30) days
3 written notice stating the extent and effective date of termination.

4 3. In the event COUNTY terminates this Agreement, within thirty (30) days
5 after DISTRICT'S receipt of final accounting of invoices from ACOE, COUNTY shall
6 reimburse DISTRICT for the amount that COUNTY'S twenty percent (20%) cost-share of
7 INITIAL DEPOSIT or SUBSEQUENT DEPOSIT exceeds the ACOE'S actual costs for work on
8 COUNTY priority projects to the date of termination. Any remaining funds in the INITIAL
9 DEPOSIT or SUBSEQUENT DEPOSIT thereafter with the ACOE may be used by DISTRICT
10 on its own priority projects. The payment shall be accompanied by a final accounting of
11 invoices associated with MOA to establish COUNTY'S actual cost.
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13 If ACOE'S actual costs on COUNTY priority projects to the date of
14 termination exceed COUNTY'S twenty percent (20%) cost-share of INITIAL DEPOSIT or
15 SUBSEQUENT DEPOSIT, then COUNTY shall reimburse DISTRICT for the difference within
16 thirty (30) days after receipt of an invoice from DISTRICT. The invoice shall include a final
17 accounting of invoices associated with MOA to establish COUNTY'S actual cost.
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19 4. In the event DISTRICT terminates this Agreement, DISTRICT shall pay
20 for its actual costs to the date of termination and invoice COUNTY, as appropriate, for any
21 unexpended balance of INITIAL DEPOSIT or SUBSEQUENT DEPOSIT within thirty (30)
22 days after DISTRICT'S receipt of final accounting of invoices from ACOE. The payment
23 and/or invoice shall include a final accounting of invoices associated with MOA to establish
24 DISTRICT'S actual cost.
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26 5. COUNTY shall indemnify, defend, save and hold harmless DISTRICT
27 (including their respective officers, districts, special districts and
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1 departments, their respective directors, officers, Board of Supervisors, elected and appointed
2 officials, employees, agents, representatives, independent contractors, and subcontractors) from
3 any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of
4 or in any way relating to COUNTY (including its officers, employees, agents, representatives,
5 independent contractors, and subcontractors) actual or alleged acts or omissions related to this
6 Agreement, performance under this Agreement, or failure to comply with the requirements of
7 this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)
8 payment of attorney's fees or (d) any other element of any kind or nature whatsoever.
9

10 6. DISTRICT shall indemnify, defend, save and hold harmless COUNTY
11 (including its officers, employees, agents, representatives, independent contractors, and
12 subcontractors) from any liabilities, claim, damage, proceeding or action, present or future,
13 based upon, arising out of or in any way relating to DISTRICT (including its officers, Board of
14 Supervisors, elected and appointed officials, employees, agents, representatives, independent
15 contractors, and subcontractors) actual or alleged acts or omissions related to this Agreement,
16 performance under this Agreement, or failure to comply with the requirements of this
17 Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)
18 payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.
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20 7. In the event of any arbitration, action or suit brought by either COUNTY or
21 DISTRICT against the other party by reason of any breach on the part of the other party of any
22 of the covenants and agreements set forth in this Agreement, or any other dispute between
23 DISTRICT and COUNTY concerning this Agreement, the prevailing party in any such action or
24 dispute, by a final judgment or arbitration award, shall be entitled to have and recover from the
25 other party all costs and expenses or claims, including but not limited to, attorneys' fees and
26 expert witness fees. This section shall survive any termination of this Agreement.
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1 8. This Agreement is to be construed in accordance with the laws of the State
 2 of California. If any provision of this Agreement is held by a court of competent jurisdiction to
 3 be invalid, void or unenforceable, the remaining provisions shall be declared severable and shall
 4 be given full force and effect to the extent possible.

5 9. Neither this Agreement nor any part thereof shall be assigned by COUNTY
 6 or DISTRICT without the prior written consent of the other party.

7 10. Any and all notices to be given to either party, as required under this
 8 Agreement, must be given by personal delivery or by registered or certified mail addressed and
 9 delivered as set forth below. Other correspondence and invoices may be mailed by first class
 10 mail, postage prepaid, to the following addresses:

11
 12 RIVERSIDE COUNTY FLOOD CONTROL
 13 AND WATER CONSERVATION DISTRICT
 14 1995 Market Street
 15 Riverside, CA 92501
 16 Attn: Chief of Regulatory Division

COUNTY OF RIVERSIDE
 TRANSPORTATION DEPT.
 4080 Lemon Street
 Riverside CA 92501
 Attn: Russell Williams

17 11. This Agreement is the result of negotiations between the parties hereto, and
 18 the advice and assistance of their respective counsel. The fact that this Agreement was prepared
 19 as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty
 20 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT
 21 prepared this Agreement in its final form.

22 12. Any waiver by DISTRICT or COUNTY of any breach by any other party
 23 of any provision of this Agreement shall not be construed to be a waiver of any subsequent or
 24 other breach of the same or any other provision hereof. Failure on the part of DISTRICT or
 25 COUNTY to require from any other party exact, full and complete compliance with any of the
 26 provisions of this Agreement shall not be construed as in any manner changing the terms hereof,
 27 or estopping DISTRICT or COUNTY from enforcing this Agreement.
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1 13. This Agreement is intended by the parties hereto as a final expression of
2 their understanding with respect to the subject matter hereof and as a complete and exclusive
3 statement of the terms and conditions thereof and supersedes any and all prior and
4 contemporaneous agreements and understandings, oral or written, in connection therewith. This
5 Agreement may be changed or modified only upon the written consent of the parties hereto.

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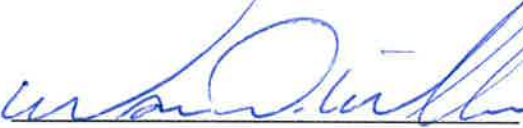
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

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(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

By 
WARREN D. WILLIAMS
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

PAMELA J. WALLS
County Counsel

By 
NEAL R. KIPNIS
Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By _____
Deputy


(SEAL)

Water Resources Development Act of 2000 Section 214 Memorandum of Agreement
Cost Share Agreement
CLC:blj
6/7/12

1 RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

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By 
JUAN C. PEREZ, Director
Transportation and Land Management

By _____
JOHN TAVAGLIONE, Chairman
County of Riverside Board of Supervisors
For Transportation Department

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By  6/21/12
MARSHA L. VICTOR
Principal Deputy County Counsel

By _____
Deputy

(SEAL)

Water Resources Development Act of 2000 Section 214 Memorandum of Agreement
Cost Share Agreement
CLC:blj
6/7/12

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

THIS MEMORANDUM OF AGREEMENT (hereinafter the "MOA") is entered into by the Riverside County Flood Control and Water Conservation District (hereinafter the "DISTRICT"), the County of Riverside (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, CORPS has regulatory 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

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, 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 CORPS to accept and expend funds contributed by non-Federal entities subject to certain limitations; and

1 WHEREAS, CORPS has indicated it is not able, without additional resources, to
2 expedite the evaluation of permits of DISTRICT and COUNTY related to projects for a public
3 purpose; and

4 WHEREAS, DISTRICT and COUNTY believe it is in the best interests of the taxpayers
5 of Riverside County to provide funds to CORPS pursuant to this MOA to expedite CORPS
6 environmental review under section 404 of CWA for DISTRICT and COUNTY designated
7 priority projects as more fully described in this MOA; and

8 WHEREAS, CORPS issued an initial Public Notice dated August 19, 2011, regarding
9 its intent to accept and expend funds contributed by DISTRICT; and

10 WHEREAS, in a memorandum dated June 1, 2012, CORPS determined that
11 expenditure of funds received from DISTRICT and COUNTY is appropriate, and an
12 informational public notice dated July 3, 2012, regarding the decision has been issued; and

13 WHEREAS, it is understood and acknowledged by all Parties that the CORPS' review
14 of DISTRICT and COUNTY's permit applications for DISTRICT and COUNTY-designated
15 priority projects will be completely impartial and in accordance with all applicable Federal
16 laws and regulations; and

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

3 WHEREAS, it is understood and acknowledged by all Parties that DISTRICT and
4 COUNTY will enter into a separate cost share agreement for the purposes of funding this
5 MOA.

6 NOW, THEREFORE, the Parties agree as follows:

7 **AGREEMENT**

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

9
10 A. This MOA is entered into by the Parties for the purpose of establishing a mutual
11 framework governing the respective responsibilities of the Parties for the acceptance and
12 expenditure of funds contributed by DISTRICT and COUNTY to provide expedited permit
13 evaluation-related services for DISTRICT and COUNTY-designated priority projects under the
14 jurisdiction of CORPS. This MOA is not intended as the exclusive means of obtaining review
15 of projects proposed by DISTRICT and COUNTY. This MOA is a vehicle by which
16 DISTRICT and COUNTY will obtain expedited permit evaluation-related services outside of
17 the ordinary CORPS review process.

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

21
22 C. DISTRICT enters into this MOA pursuant to its authority under Chapter 1122,
23 Statutes of 1945, Act 6642 of the State Legislature.

24
25 D. COUNTY enters into this MOA pursuant to its authority under sections 23003,
26 23004 and 23005 of the California Government Code.

1 Article II. - SCOPE OF WORK

2 A. DISTRICT will provide funds to CORPS to expedite permit evaluation related
3 services for DISTRICT and COUNTY-designated priority projects under the jurisdiction of
4 CORPS. The CORPS' Regulatory Program is funded as a Congressionally appropriated line
5 item in the annual Federal budget. DISTRICT will provide the CORPS with funds in
6 accordance with the provisions of section 214 of WRDA 2000, as amended.

7 B. CORPS will provide staffing resources exclusively dedicated to expediting
8 permit evaluation-related services, as described below, for DISTRICT and COUNTY-
9 designated priority projects and/or other programmatic efforts to support efficient decision-
10 making related to DISTRICT and COUNTY CWA section 404 permitting needs.

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

21 D. Funds contributed by DISTRICT hereunder will be expended by CORPS to
22 defray the costs of Regulatory Division personnel (including salary, associated benefits,
23 overhead and travel expenses) and other costs in order to expedite the evaluation of priority
24 permit applications designated by DISTRICT and COUNTY. Such activities will include, but
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1 not be limited to, the following: jurisdictional determinations; site visits; travel; federal register
2 and public notice preparation; preparation of correspondence; public interest review;
3 consultations under Section 106 of the National Historic Preservation Act and Section 7 of the
4 Endangered Species Act; preparation and review of environmental documentation; and
5 meetings with DISTRICT, COUNTY, and resource agencies.

6 E. CORPS may expend funds provided by DISTRICT to hire contractors to
7 perform select duties, including but not limited to site visits; preparing and providing technical
8 materials, including environmental documentation; GIS-related services; and meeting
9 coordination for the purpose of augmenting the resources available to CORPS for expediting
10 priority projects and activities designated by DISTRICT and COUNTY. If such expenditures,
11 when combined with the costs of the Regulatory Division personnel specified in Article II.D,
12 require funding in excess of the amount available under this MOA, then said contractors shall
13 not be hired by CORPS until and unless additional funds are provided by the DISTRICT, and
14 the Parties execute a written amendment to this MOA.
15

16 F. CORPS will *not* expend funds provided by DISTRICT for costs associated with
17 the review of Regulatory Project Managers' work by supervisors or other persons or elements
18 of CORPS in the decision-making chain of command. However, if a supervisor is performing
19 staff work and not supervisory, decision-making oversight, funds may be used. CORPS will
20 *not* expend funds provided by DISTRICT to defray the costs of activities related to CORPS'
21 enforcement functions, but *may* use the funds to defray costs of activities related to compliance
22 functions.
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24 G. If the funds provided by DISTRICT are expended and not replenished, any
25 remaining priority permit applications will be handled like those of any permit applicant.
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1 Article III. - INTERAGENCY COMMUNICATIONS

2 To provide for consistent and effective communication between the Parties, each party will
3 appoint a Principal Representative to serve as its central point of contact on matters relating to
4 this MOA. Additional representatives may also be appointed to serve as points of contact on
5 specific actions or issues. For the purposes of this MOA, DISTRICT and COUNTY'S
6 Principal Representative will be Stuart McKibbin, Chief, Regulatory Division for DISTRICT
7 and CORPS' Principal Representative will be Therese Bradford, Chief, South Coast Branch,
8 Carlsbad Field Office. Either Principal Representative may be changed upon written
9 notification to the other Parties.
10

11 Article IV. - RESPONSIBILITIES OF THE PARTIES

12 A. DISTRICT, on behalf of itself and the COUNTY, will provide adequate
13 resources to fund additional CORPS Regulatory personnel for the purpose of timely review of
14 designated priority projects and other identified activities. To facilitate CORPS' review and
15 activities, DISTRICT and COUNTY will:
16

17 1. Provide adequate information regarding projects and other specific
18 activities to initiate permit evaluation. Information required for CORPS to deem a permit
19 application complete thereby allowing initiation of the permit review process can be found in
20 CORPS regulations at 33 C.F.R. §§ 325.1(d), 325.3(a), and in General Condition 31 of the
21 Nationwide Permit Program. Upon request, DISTRICT and COUNTY shall provide
22 supplemental information necessary to complete the permit application. Additional
23 information [33 CFR Part 325.1(e)] required to complete the permit evaluation process may
24 exceed what is needed to initiate the process. On a case-by-case basis, if requested by CORPS,
25 DISTRICT and COUNTY shall provide such additional information in a timely manner so as to
26 ensure CORPS can effectively accomplish the required review.
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1 2. Make a reasonable effort to provide CORPS with information on other
2 projects with DISTRICT and COUNTY involvement to enable CORPS to most efficiently
3 apply available staff resources and plan for workload cycles.

4 3. In consultation with CORPS, schedule CORPS involvement in the
5 priority projects identified by DISTRICT and COUNTY. The list of initial priority projects is
6 shown on **Appendix A**. The list may be changed by mutual agreement of the Principal
7 Representatives of each party without requiring an amendment to this MOA. Such changes
8 shall be submitted to CORPS' Principal Representative in writing, including email, and will be
9 effective upon receipt thereof.
10

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

13 5. Work closely with CORPS to adjust DISTRICT and COUNTY priorities
14 and schedules in order to make optimal use of available Regulatory Division staff resources.
15 While DISTRICT and COUNTY will make every effort not to overlap project schedules,
16 occasional overlaps may occur and DISTRICT and COUNTY Principal Representative will
17 work with CORPS to prioritize such overlaps.
18

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

20 B. CORPS shall supplement or reassign its existing Regulatory Division personnel,
21 which currently reviews DISTRICT and COUNTY projects on a routine basis, with qualified
22 personnel within projected funding levels provided by DISTRICT and COUNTY. CORPS
23 shall use the funds provided to defray the costs of salaries and associated benefits and to
24 reimburse travel expenses in order to:
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26 1. Expedite review of DISTRICT and COUNTY priority projects in
27 accordance with the purpose, terms, and conditions of this MOA or any amendments thereto.
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1 CORPS shall not redirect resources from, or otherwise postpone, other projects submitted by
2 DISTRICT and COUNTY through the standard CORPS review process.

3 2. Upon submittal of new permit applications and following any meetings
4 and discussions to clarify the scope of anticipated permit application review processes, CORPS
5 staff will provide DISTRICT and COUNTY with an estimated schedule to complete the permit
6 evaluation process for each application submitted. DISTRICT and COUNTY shall be able to
7 comment on these schedules and adjust priorities per Appendix A, or provide additional
8 resources per Article V.E.

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10 3. Consult with DISTRICT and COUNTY regarding an adjustment of
11 priorities or establishment of relative priorities if the current and/or projected workload of
12 priority projects and activities exceeds CORPS' ability to provide the services specified in this
13 MOA.

14 4. Provide DISTRICT and COUNTY a brief quarterly summary report of
15 progress made under this MOA. Progress will be itemized for each permit application review
16 completed during the quarter and for each permit application pending at the end of the quarter.
17 This report will describe achievements, including any improvements CORPS has documented
18 in coordinating and improving the efficiency of environmental reviews, and will summarize
19 expenditures to date. The CORPS shall provide a project cost accounting. The report also will
20 identify any recommendations for improving consultation and coordination among the Parties
21 to this MOA and will provide an estimate of costs expected for the ensuing quarter. The report
22 shall not be in excess of five (5) pages.

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25 5. Designate a Regulatory Project Manager who will make his or her best
26 efforts to attend periodic meetings with DISTRICT and COUNTY.

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1 Article V. - FUNDING

2 A. Within 30 days of execution of this MOA, DISTRICT, on behalf of itself and
3 COUNTY, shall pay the anticipated costs expected to be incurred through September 30, 2012,
4 at the level specified in CORPS' budget estimate, which is included as **Appendix B** to this
5 MOA and incorporated herein by reference.

6 B. No later than July 1 of each year that this MOA remains in effect, the CORPS
7 will provide DISTRICT with an anticipated cost invoice ("Invoice") that provides an updated
8 budget estimate of costs for the next Federal fiscal year, including any proposed changes in the
9 level of staffing. Revisions agreed to by the Parties will be incorporated into a revised budget
10 estimate. Invoices shall be submitted by CORPS to:

12 Stuart McKibbin
13 Chief, Regulatory Division
14 Riverside County Flood Control and Water Conservation District
15 1995 Market Street
16 Riverside, CA 92501

17 C. Prior to CORPS incurring any expenditure to expedite permit evaluation-related
18 activities as specified in this MOA, DISTRICT will make an annual lump sum payment to
19 CORPS. Upon receipt of CORPS' invoice(s) and in accordance with normal DISTRICT
20 payment procedures, DISTRICT will make an annual lump sum payment, in advance, of the
21 total amount specified in the invoice(s).

22 D. Expediting of permit evaluation related activities as specified in this MOA will
23 be undertaken by the CORPS only after funds have been transferred to CORPS. Payments by
24 DISTRICT are to be made to:

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

1 E. If CORPS' actual costs for providing the agreed upon level of service will
2 exceed the amount of funds available, CORPS will promptly notify DISTRICT of the
3 incremental amount of funds needed to defray the costs. DISTRICT will either increase the
4 funding amount or agree to a reduced level of service.

5 F. CORPS will carry over any unobligated funds from year to year, or will refund
6 such unobligated funds if this MOA is terminated or expires.

7 Article VI. - APPLICABLE LAWS

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

12 Article VII. - DISPUTE RESOLUTION

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

18 Article VIII. - PUBLIC INFORMATION

19 Justification and explanation of DISTRICT and COUNTY programs or projects before other
20 agencies, departments and offices will not be the responsibility of the CORPS. CORPS may
21 provide, upon request from DISTRICT and COUNTY, any assistance necessary to support
22 justification or explanations of activities conducted under this MOA. In general, CORPS is
23 responsible only for public information regarding CORPS regulatory activities.
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1 Article IX. - AMENDMENT, MODIFICATION, AND TERMINATION

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

4 B. Any Party reserves the right to terminate its participation in this MOA without
5 cause upon thirty (30) days' written notice to the other Parties. In the event of termination,
6 DISTRICT and COUNTY will continue to be responsible for all costs incurred by CORPS in
7 performing expedited environmental permit review services up to the time of notice and for the
8 costs of closing out or transferring any ongoing contracts in support of the provision of services
9 by CORPS under this MOA. If either DISTRICT or COUNTY elect to terminate this MOA
10 and the other entity wishes to continue, this MOA must be modified or amended to reflect that
11 change.
12

13 C. Within ninety (90) calendar days of termination of this MOA, or the expiration
14 of this MOA, CORPS shall provide DISTRICT and COUNTY with a final statement of
15 expenditures. Within sixty (60) calendar days after submittal of CORPS' final statement of
16 expenditures, CORPS, subject to compliance with the Anti-Deficiency Act (31 U.S.C. 1341 et.
17 seq.), shall directly remit to DISTRICT the unexpended balance of the advance payments, if
18 any. Funds may be provided to DISTRICT either by check or electronic funds transfer.
19

20 Article X. - MISCELLANEOUS

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

23 B. Under the provisions of section 214 of WRDA 2000 as extended, no funds may
24 be accepted or expended by CORPS pursuant to this MOA after December 31, 2016. However,
25 if prior to this date, this statutory authority is extended, then provisions of this MOA shall
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1 remain in force until the earlier of the sun setting of section 214 of WRDA 2000, as further
2 extended, or until the expiration date as provided in this MOA.

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

6 D. CORPS' participation in this MOA does not imply endorsement of DISTRICT
7 and COUNTY projects nor does it diminish, modify, or otherwise affect CORPS statutory or
8 regulatory authorities.

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

13
14 Article XI. - EFFECTIVE DATE AND DURATION


15 This MOA will become effective on the date of signature by the last Party. This MOA shall
16 remain in force until whichever of these events occurs first: 1) December 31, 2016 or 2) MOA
17 is terminated pursuant to Article IX.B.

18 [REMAINDER LEFT INTENTIONALLY BLANK]

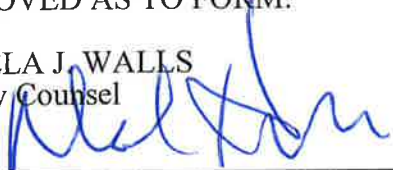
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1 IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by the
2 DISTRICT and COUNTY, acting by the respective Boards of Supervisors, and by the CORPS,
3 through its authorized officer.

4 RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

5 By  By _____
6 **WARREN D. WILLIAMS** **MARION ASHLEY, Chairman**
General Manager-Chief Engineer **Riverside County Flood Control and Water
Conservation District Board of Supervisors**

7 APPROVED AS TO FORM:

8 **PAMELA J. WALLS**
9 **County Counsel**
10 By 
11 **NEAL KIPNIS**
Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By _____
Deputy

12 Date 


Date _____
(SEAL)

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26 CLC:blj
6/6/2012

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RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By 
JUAN C. PEREZ, Director
Transportation and Land Management

By _____
JOHN TAVAGLIONE, Chairman
County of Riverside Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By  6/21/12
MARSHA L. VICTOR
Principal Deputy County Counsel

By _____
Deputy

Date _____
(SEAL)

CLC:blj
6/6/2012

APPROVED AS TO FORM:

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By: _____
Counsel

Date: _____

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

By: _____
R. MARK TOY
Colonel, U.S. Army Corps of Engineers
Commander and District Engineer

Date: _____

CLC:blj
6/6/2012

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2 **Appendix A: DISTRICT and COUNTY Priority Projects**

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

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

2	TASK	TIME	RATE	COST
3				
4	Pre-application Meetings	60 days	\$1,097	\$ 65,820
5	Project Review and Analysis	100 days	\$1,097	\$109,700
6	Monitoring and Compliance	30 Days	\$1,097	\$ 32,910
7	Subtotal Personnel Costs			\$175,520
8	Direct Costs:			
9	Travel, Training and Supplies			\$ 24,480
10	Subtotal Direct Costs:			\$ 24,480
11				
12	Total:			\$200,000
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