

**SUBMITTAL TO THE FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM: 11.1
(ID # 18371)

MEETING DATE:
Tuesday, April 05, 2022

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of the Cost-Share Agreement Between the Riverside County Flood Control and Water Conservation District and the County of Riverside for the Water Resources Development Act Section 214, FY 21/22 to FY 26/27, CEQA Exempt, All Districts. [\$410,000 Not-to-Exceed Cost – District Funds 51.5%, County Combined Improvement Funds 48.5%] (Companion Item to MT Item No. 18650)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the project is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061 (b)(3);
2. Approve the Cost-Share Agreement between the Riverside County Flood Control and Water Conservation District ("District") and the County of Riverside ("County");
3. Authorize the Chair of the District's Board of Supervisors to execute the Cost-Share Agreement documents on behalf of the District;
4. Authorize the District's General Manager-Chief Engineer to sign any necessary future amendments to the Cost-Share Agreement that do not increase the cost to the District and do not materially change the scope of services; and
5. Direct the Clerk of the Board to return one (1) fully executed Cost-Share Agreement to the District and one (1) fully executed Cost-Share Agreement to the County.

ACTION:Policy

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG

3/16/2022

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Washington and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: April 5, 2022
xc: Trans., Flood

Kecia R. Harper
Clerk of the Board

By:
Deputy

(Companion Item 3.25)

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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 410,000	\$ 0	\$ 410,000	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Zone 1 – 7 Funds 100% (See Additional Fiscal Information)			Budget Adjustment: No	
			For Fiscal Year: 21/22 – 26/27	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

A 408 permit requirement was established in Section 14 of the Rivers and Harbors Act of 1899, as amended, codified as 33 U.S.C. 408 (Section 408). The Cost-Share Agreement ("Agreement") between the District and County sets forth the terms and conditions in which the District will make the initial and subsequent deposits to the United States Army Corps of Engineers, Los Angeles District ("ACOE"), to expedite the evaluation of Section 408 permits for District and County designated priority projects. The County will reimburse the District for its initial deposit of \$200,000. Shared costs and any subsequent deposits thereafter will be based on each project's actual cost established by the ACOE.

County Counsel has approved the Agreement as to its legal form. A companion item for the Agreement appears on the Riverside County Transportation Department's Agenda this same date.

Environmental Findings

Pursuant to CEQA, the Agreement was determined to be exempt from CEQA under CEQA Guidelines Section 15061(b)(3). Section 15061(b)(3), or the "common sense exemption", applies to activities where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The Agreement merely identifies the standard provisions that the District and the County shall adhere to when providing funding for the proposed action. Based on the details provided in the Agreement, the District has determined that there is no possibility that the activity may have a significant effect on the environment.

Impact on Residents and Businesses

The ACOE's evaluation of permits are funded by ad valorem property tax revenue and entails no new fees, taxes or bonded indebtedness to residents and businesses. Execution of the Agreement imposes no additional impacts to residents and businesses.

Additional Fiscal Information

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Funding for the District contribution will be provided by the District's Zone 1 through Zone 7 funds. The County will reimburse the District \$200,000 for its designated priority projects and for any subsequent costs thereafter. Sufficient funding is available in the District's budget for Fiscal Year 2021-2022 and will be included in the District's recommended budget(s) for Fiscal Years 2022-2023 through 2026-2027, as appropriate and necessary.

SOURCE OF FUNDS: (Continued)

25110-947400- 525440 Const/Maint/Misc – Professional Services – Zone 1 (10%)
25120-947420- 525440 Const/Maint/Misc – Professional Services – Zone 2 (25%)
25130-947440- 525440 Const/Maint/Misc – Professional Services – Zone 3 (10%)
25140-947460- 525440 Const/Maint/Misc – Professional Services – Zone 4 (25%)
25150-947480- 525440 Const/Maint/Misc – Professional Services – Zone 5 (10%)
25160-947500- 525440 Const/Maint/Misc – Professional Services – Zone 6 (10%)
25170-947520- 525440 Const/Maint/Misc – Professional Services – Zone 7 (10%)

ATTACHMENT:

1. Cost-Share Agreement

AMR:blm
P8/242632



Jason Farin, Principal Management Analyst 3/29/2022



Cynthia M. Guazel, Chief Deputy County Counsel 3/17/2022

COST-SHARE AGREEMENT

Water Resources Development Act of 2000 Section 214

This Cost-Share Agreement ("Agreement"), dated as of April 5, 2022, is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), and the County of Riverside, a political subdivision of the State of California ("COUNTY"), collectively referred to as the "Parties":

RECITALS

A. The United States Army Corps of Engineers (ACOE), under Section 408 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 (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 contributed by a non-Federal public entity to expedite the evaluation of a permit application 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 WRDA 2000, as amended, to the Chief of Engineers and his delegated representatives. The Chief of Engineers, by memorandum dated March 2, 2021, has authorized the Los Angeles District and Division Engineers of ACOE to accept and expend funds contributed by non-Federal public entities; and

D. ACOE has indicated it is not able, without additional resources, to expedite the evaluation of permits of DISTRICT and COUNTY Section 408 Requests related to projects for a public purpose: and

E. ACOE's timely permit evaluation services for DISTRICT and COUNTY designated priority projects are critically important for public health and safety reasons; and

F. Pursuant to Section 214 of WRDA, DISTRICT will enter into a Memorandum of Agreement (MOA) with ACOE, to provide funding for ACOE to expedite the evaluation of permits for Section 408 Requests under Section 408 of CWA for DISTRICT and COUNTY designated priority projects; and

G. Certain aspects of COUNTY designated priority projects, as shown on Exhibit "A", attached hereto and made a part hereof, are included in ACOE Section 408 Requests; and

H. Pursuant to the terms of that certain MOA and this Agreement, DISTRICT is willing to make the following financial contributions to ACOE:

- i. An initial deposit of Four Hundred Ten Thousand Dollars (\$410,000), hereinafter referred to as "INITIAL DEPOSIT", on behalf of itself and COUNTY. A portion of INITIAL DEPOSIT also includes the Program Management's annual cost associated with ACOE's administration of the designated projects, hereinafter called "PROGRAM COSTS", as shown on Appendix "A";
- ii. Subsequent deposit(s), in advance, on behalf of itself and COUNTY, based on ACOE's quarterly statement(s) summarizing the expenditures which are expected to be incurred in association with DISTRICT and COUNTY designated priority projects, hereinafter referred to as "SUBSEQUENT DEPOSITS"; and

I. COUNTY is willing to reimburse DISTRICT in the amount of Two Hundred Thousand Dollars (\$200,000) for its share of INITIAL DEPOSIT as set forth in this Agreement, hereinafter referred to as "COUNTY INITIAL REIMBURSEMENT"; and

J. COUNTY is also willing to reimburse DISTRICT for its cost-share of the PROGRAM COSTS incurred by ACOE as set forth in this Agreement, hereinafter referred to as "COUNTY PROGRAM COSTS; and

K. COUNTY PROGRAM COSTS will be determined by the terms of that certain MOA and upon receipt of ACOE's quarterly statement(s) summarizing the expenditures incurred by ACOE for each COUNTY designated priority project on Exhibit "A". COUNTY PROGRAM COSTS shall not exceed seventy percent (70%) of PROGRAM COSTS to ACOE; and

L. COUNTY is also willing to reimburse DISTRICT for its cost-share of the SUBSEQUENT DEPOSITS, as set forth in this Agreement, hereinafter referred to as "COUNTY SUBSEQUENT REIMBURSEMENTS"; and

M. DISTRICT has included the sum of Four Hundred Ten Thousand Dollars (\$410,000) in its Fiscal Year 2020-2021 budget; and

N. DISTRICT and COUNTY will each benefit from that certain MOA and cooperation between DISTRICT and COUNTY in these matters is in the best interest of the public; and

O. The purpose of this Agreement is to memorialize the mutual understandings by and between DISTRICT and COUNTY with respect to funding and reimbursements for ACOE to expedite the evaluation of permits for Section 408 Requests of CWA for DISTRICT and COUNTY designated priority projects.

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

SECTION I

DISTRICT shall:

1. Within thirty (30) days after DISTRICT's receipt of the fully executed MOA with ACOE, make an INITIAL DEPOSIT with ACOE on behalf of itself and COUNTY pursuant to the terms of that certain MOA.
2. Invoice COUNTY for COUNTY INITIAL REIMBURSEMENT and COUNTY PROGRAM COSTS, within thirty (30) days of DISTRICT's remittance of INITIAL DEPOSIT to ACOE.
3. Keep an accurate accounting of all invoices associated with MOA and determine DISTRICT's and COUNTY's actual costs on an annual basis at the end of each Federal fiscal year.
4. Make SUBSEQUENT DEPOSITS, on behalf of itself and COUNTY, directly to ACOE within thirty (30) days of DISTRICT's receipt of appropriate invoice(s) from ACOE pursuant to the terms of that certain MOA.
5. If applicable, on a quarterly basis, invoice COUNTY for its cost-share of subsequent COUNTY PROGRAM COSTS to ACOE, within thirty (30) days of DISTRICT's remittance of PROGRAM COSTS to ACOE.
6. If applicable, on a quarterly basis, invoice COUNTY for COUNTY SUBSEQUENT REIMBURSEMENTS, within thirty (30) days of DISTRICT's receipt of appropriate invoice(s) from ACOE.
7. If at the end of the Federal fiscal year, the actual costs of ACOE's work on DISTRICT and COUNTY designated priority projects, is greater than the previous year's actual

costs as established in Section I.3., DISTRICT shall pay the difference with ACOE on behalf of itself and COUNTY. DISTRICT shall submit an invoice to COUNTY (Attention: Cesar Tolentino) for the remainder for COUNTY designated priority projects. The invoice shall include a final accounting of invoices associated with MOA to establish COUNTY's actual costs.

8. Upon receipt of ACOE's quarterly statement(s), if DISTRICT designated priority projects account is and/or near depletion, DISTRICT shall replenish its project account from DISTRICT's funds.

9. Upon receipt of ACOE's quarterly statement(s), if COUNTY designated priority project account is and/or near depletion, DISTRICT shall notify and provide COUNTY with ACOE's quarterly statements of the minimal balance(s). COUNTY shall replenish its project accounts using COUNTY's funds.

10. If applicable, upon receipt of COUNTY's written notification to replace and/or add to COUNTY's designated priority projects for ACOE's Section 408 Requests, DISTRICT shall notify ACOE of COUNTY's written request. Upon ACOE approval of COUNTY's written request, DISTRICT will submit an invoice to COUNTY (Attention: Cesar Tolentino) for the costs of replacement and/or additional COUNTY designated priority projects. The invoice shall include a final accounting of invoices associated with the replacement and/or additional designated priority projects to establish COUNTY's actual costs.

SECTION II

COUNTY shall:

1. Reimburse DISTRICT (Attn: Business Office – Accounts Receivable) for COUNTY INITIAL REIMBURSEMENT and COUNTY PROGRAM COSTS, within thirty (30) days after receipt of an invoice from DISTRICT.

2. Reimburse DISTRICT (Attn: Business Office – Accounts Receivable) for COUNTY SUBSEQUENT REIMBURSEMENTS, within thirty (30) days after receipt of an invoice(s) from DISTRICT.

3. Reimburse DISTRICT (Attn: Business Office – Accounts Receivable) for subsequent COUNTY PROGRAM COSTS, within thirty (30) days after receipt of an invoice(s) from DISTRICT.

4. Submit payment to DISTRICT (Attn: Business Office – Accounts Receivable) for COUNTY's designated priority project actual costs, pursuant to Section I.9., within thirty (30) days after receipt of an invoice from DISTRICT.

5. If COUNTY wishes to replace and/or add to its designated priority projects for ACOE's Section 408 Requests, COUNTY shall provide written notification to DISTRICT of the replacement and/or additional designated project(s). Upon ACOE approval of COUNTY's written request, provide DISTRICT (Attn: Business Office – Accounts Receivable) for replacement and/or additional COUNTY's designated priority projects, pursuant to Section I.10., within thirty (30) days after receipt of an invoice from DISTRICT.

SECTION III

It is further mutually agreed:

1. The term of this Agreement shall be from the date the Agreement is executed by DISTRICT's Board of Supervisors and shall terminate on December 31, 2026.

2. At any time during the term of this Agreement, either Party may terminate this Agreement with or without cause upon providing the other Party with thirty (30) days written notice stating the extent and effective date of termination.

3. In the event COUNTY terminates this Agreement, within thirty (30) days after DISTRICT's receipt of final accounting of invoices from ACOE, COUNTY shall reimburse

DISTRICT for the actual costs of the INITIAL DEPOSIT or SUBSEQUENT DEPOSITS for work on COUNTY designated priority projects to the date of termination. Any remaining funds associated with the INITIAL DEPOSIT, SUBSEQUENT DEPOSITS or COUNTY PROGRAM COSTS thereafter with ACOE, will be refunded to COUNTY. The invoice/payment shall be accompanied by a final accounting of invoices associated with MOA to establish COUNTY's actual cost to the date of termination.

4. In the event DISTRICT terminates this Agreement, within thirty (30) days after receipt of final accounting of invoices and remittance to DISTRICT the unexpended balance of the advance payment from ACOE, DISTRICT shall reimburse COUNTY, as appropriate, for any unexpended balance of INITIAL DEPOSIT, SUBSEQUENT DEPOSITS or COUNTY PROGRAM COSTS, for its actual costs to the date of termination. The payment and/or invoice shall include a final accounting of invoices associated with MOA to establish DISTRICT's and COUNTY's actual cost.

5. COUNTY shall indemnify, defend, save and hold harmless DISTRICT (including its officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to COUNTY's (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c) payment of reasonable attorney's fees; or (d) any other element of any kind or nature whatsoever.

6. DISTRICT shall indemnify, defend, save and hold harmless COUNTY (including its officers, elected and appointed officials, employees, agents, representatives,

independent contractors, and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DISTRICT's (including its officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death (c) payment of reasonable attorney's fees; or (d) any other element of any kind or nature whatsoever.

7. The obligation(s) of DISTRICT under this Agreement are limited by and contingent upon the availability of DISTRICT funds. In the event that such funds are not forthcoming for any reason, DISTRICT shall immediately notify COUNTY in writing and shall terminate MOA with ACOE. Upon COUNTY's receipt of DISTRICT's notification, this Agreement shall be deemed terminated. Within thirty (30) days after receipt of final accounting of invoices and remittance to DISTRICT the unexpended balance of the advance payment from ACOE, DISTRICT shall reimburse COUNTY, as appropriate, for any unexpended balance of INITIAL DEPOSIT, SUBSEQUENT DEPOSITS or COUNTY PROGRAM COSTS, for its actual costs to the date of termination. The payment and/or invoice shall include a final accounting of invoices associated with MOA to establish DISTRICT's and COUNTY's actual cost.

8. This Agreement is to be construed in accordance with the laws of the State of California. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall be declared severable and shall be given full force and effect to the extent possible.

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

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

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Chief of Planning

COUNTY OF RIVERSIDE
TRANSPORTATION DEPT.
4080 Lemon Street
Riverside CA 92501
Attn: Cesar Tolentino

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

12. Any waiver by DISTRICT or COUNTY of any breach by any other Party of any provision of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or any other provision hereof. Failure on the part of DISTRICT or COUNTY to require from any other Party exact, full and complete compliance with any of the provisions of this Agreement shall not be construed as in any manner changing the terms hereof, or estopping DISTRICT or COUNTY from enforcing this Agreement.

13. Any action at law or in equity brought by any of the Parties hereto for the purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the Parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county.

14. No alternation or variation of the terms of this Agreement shall be valid unless made in writing and signed by both Parties and no oral understanding or agreement not incorporated herein shall be binding on either Party hereto.

15. This Agreement is intended by the Parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith.

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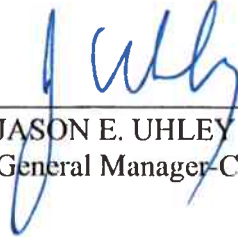
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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on

April 5, 2022
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By 
JASON E. UHLEY
General Manager-Chief Engineer

By 
KAREN SPIEGEL Chair
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER
Clerk of the Board

By 
KRISTINE BELL-VALDEZ
Supervising Deputy County Counsel

By 
Deputy

(SEAL)

Water Resources Development Act of 2000 Section 214 Memorandum of Agreement
Cost-Share Agreement with County of Riverside
AMR:blm
02/01/22

RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By 
MARK LANCASTER
Director of Transportation

By 
JEFF HEWITT, Chair
Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

County Counsel

KECIA HARPER
Clerk of the Board

By 
DANIELLE MALAND
Deputy County Counsel

By 
Deputy

(SEAL)

Water Resources Development Act of 2000 Section 214 Memorandum of Agreement
Cost -Share Agreement with County of Riverside
AMR:blm
02/01/22



EXHIBIT

MARKET ST


JULIAWAY

VAIBWAY

FRINGC

GEBBCE

Legend:

 Market Street Bridge Replacement

EXHIBIT



Legend:

-  Mission Blvd Bridge Replacement

Appendix A: DISTRICT-Designated Priority Section 408 Requests

Dated: 16th March 2021

The list of DISTRICT-designated Priority Section 408 Requests under this MOA includes the following proposed projects:

Project Name	Program Cost	RCFCWCD Project Manager
Program Management (Annual Cost)	\$25,000 (5yr = \$125,000)	Albert Martinez
County Transportation Projects		
Mission Inn Blvd Bridge Design and Construction (Geotech Borings Permit 408-SPL-2020-0026)	\$100,000	Albert Martinez
Market Street Bridge Design and Construction (Geotech Borings Permit 408-SPL-2020-0032)	\$100,000	Albert Martinez
District Projects		
Lake Elsinore Outlet Channel (2x 36in RCP Side Drain Connection 408-SPL-2020-0024)	\$25,000	Albert Martinez
Potential Project Review	\$60,000	Albert Martinez
Total	\$410,000	

This project list will be updated by DISTRICT on an as needed basis.