

MEMORANDUM OF UNDERSTANDING
Between
San Bernardino County, through its Department of Agriculture / Weights & Measures
And
San Bernardino County Flood Control District
For
Herbicide Control Services

This Memorandum of Understanding (MOU) is made and entered into by and between the San Bernardino County, through its Department of Agriculture / Weights & Measures and the San Bernardino County Flood Control District.

This MOU addresses the procedures to be followed by the Department of Agriculture / Weights & Measures when providing herbicide control services within San Bernardino County Flood Control District facilities.

WHEREAS, the San Bernardino County Flood Control District, hereinafter referred to as DISTRICT, desires herbicide control services for Flood Control facilities; and

WHEREAS, DISTRICT finds the San Bernardino County Department of Agriculture/Weights & Measures, hereinafter referred to as DEPARTMENT, qualified to provide herbicide control services; and

WHEREAS, DISTRICT desires that such services be provided by DEPARTMENT and DEPARTMENT agrees to perform these services as set forth below.

NOW THEREFORE, DISTRICT and DEPARTMENT mutually agree to the following terms and conditions:

I. SCOPE OF WORK

The DEPARTMENT will:

- A. Provide to DISTRICT all necessary DEPARTMENT staff to perform abatement activities to control weeds as approved/requested by the DISTRICT's Flood Control Engineer, or designee.
- B. The DEPARTMENT's Agricultural Commissioner or designated Supervisor shall respond to service requests from the DISTRICT.
- C. Provide all herbicide materials needed for controlling weeds at the DISTRICT's flood control facilities.
- D. Provide herbicide application equipment, tools, personal protective equipment and other supplies necessary for performing herbicide abatement activities in compliance with requirements.
- E. Provide administrative support in the form of documentation and required reporting to State agencies for usage and provide monthly report to DISTRICT.
- F. Provide annual training to DISTRICT staff that applies herbicides.
- G. Act as DEPARTMENT consultant on matters involving herbicides, rodenticides and pesticides.
- H. Comply with the terms of California Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Aquatic Pesticides for Aquatic Weed Control in Waters of the United States (General Permit No. CAG 990005, Order No. 2013-0002-DWQ and as subsequently amended by Orders 2014-0078-DWQ and 2015-0029-DWQ) and all other applicable permits and orders.

DEPARTMENT shall comply with Order No. 2013-0002-DWQ and the DISTRICT's most recent approved Aquatic Pesticide Application Plan (APAP) in its provision of services to DISTRICT under

this MOU, and shall comply with all other applicable permits and orders, as well as future permits and orders issued by the State Water Resources Control Board.

After DISTRICT Operations Supervisors obtain DISTRICT's Environmental Management Division (EMD) approval and schedules spraying the DEPARTMENT shall provide 48 hour notice to the DISTRICT's EMD – NPDES Section of their intent to apply aquatic herbicides; and coordinate with DISTRICT personnel, or their contracted sampling vendor, to collect water samples for said event, in compliance with Order No. 2013-0002-DWQ and the DISTRICT's APAP.

- I. Report to the DISTRICT by e-mail any discovered non-compliance with Order No. 2013-0002-DWQ, the DISTRICT's APAP, or any other applicable permit or order issued by the State Water Resources Control Board.
- J. Provide DISTRICT with any information, correspondence and reports necessary to comply with the all applicable permits and orders issued by the State Water Resources Control Board in a timely manner.
- K. Submit invoices to the DISTRICT monthly for services that are provided under this MOU.
- L. Department will consult with DISTRICT as to what herbicides will be used on each facility and the application schedule will be coordinated between the DISTRICT and the DEPARTMENT.
- M. The DEPARTMENT will directly schedule spraying with DISTRICT Operations staff supervisors. DISTRICT Operations supervisors will coordinate all EMD approvals and be the liaison with the DEPARTMENT.

II. DEPARTMENT RESPONSIBILITIES

- A. This MOU is not assignable by the DEPARTMENT either in whole or in part, unless a written waiver is provided by the DISTRICT.
- B. DEPARTMENT may not subcontract any task under the MOU without the written express approval from the DISTRICT's Chief Flood Control Engineer. If written approval is granted by the DISTRICT, the DEPARTMENT shall at all times remain responsible for the performance of and payment for all work performed by all subcontractors.
- C. The DEPARTMENT will maintain a level of staffing to perform the work that has been identified by the DISTRICT.
- D. DEPARTMENT will retain all records and information pertaining to the delivery of services under this MOU. The DEPARTMENT will permit the DISTRICT or other requesting regulatory agencies to examine the records and review information pertaining to their activities.

III. DISTRICT RESPONSIBILITIES

- A. DISTRICT must get approval from EMD for any herbicide application at Flood Control Facilities prior to requesting the work to be performed by the DEPARTMENT.
- B. Coordinate with the DEPARTMENT Agricultural Commissioner when planning any herbicide application that is not listed on the proposed work schedule to ensure the DEPARTMENT can provide such services.
- C. The DISTRICT will provide the DEPARTMENT with the name and phone number of a designated DISTRICT Manager in the event of questions or concerns the DEPARTMENT may have in regards to services performed under this MOU.

IV. MUTUAL RESPONSIBILITIES

- A. DISTRICT and DEPARTMENT shall exchange necessary information related to MOU activities in a manner that prevents unauthorized disclosures.
- B. In the event of a dispute under the MOU, the DISTRICT and DEPARTMENT will use their best endeavors to resolve the dispute at an operational level before referring to their respective superiors.
- C. DISTRICT and DEPARTMENT will work cooperatively to ensure effective compliance activities are maintained and where reasonably possible, will provide the other with information necessary to support these efforts in compliance with applicable federal, state and local laws.
- D. The DISTRICT will meet with the DEPARTMENT Agricultural Commissioner and designated Department Supervisor prior to March 31 each year to develop a proposed work schedule and mutually agree upon a proposed budget for the upcoming fiscal year.
- E. The DISTRICT will meet with the DEPARTMENT Agricultural Commissioner quarterly to review the status of the Work Schedule, expenditures and reimbursements to ensure the DEPARTMENT will complete the annual Work Schedule as agreed.
- F. DISTRICT shall provide reasonable notice of any changes in DISTRICT's facility inventory that is anticipated to increase the DEPARTMENT's scope of work. The DEPARTMENT will respond with a cost report summary which covers all anticipated costs associated with the expanded service area.
- G. Both parties agree this MOU may be modified at any time by a written modification mutually agreed upon by both parties.

V. FISCAL PROVISIONS

- A. The DISTRICT will be responsible for the costs incurred by the DEPARTMENT in providing services consistent with this MOU. The DEPARTMENT will charge the DISTRICT actual costs for these services which include all labor, materials and overhead incurred.
- B. The total amount paid by the DISTRICT per fiscal year under this MOU is not to exceed \$1,000,000, for a total not to exceed amount of \$5,000,000.

If the DEPARTMENT determines the need and cost for services under this MOU will exceed \$1,000,000 annually, DEPARTMENT shall advise DISTRICT of this finding prior to expending the entire \$1,000,000. Thereafter, DISTRICT and DEPARTMENT shall negotiate in good faith an amendment to this MOU to be approved by the Board of Supervisors.

- C. The DISTRICT will provide the DEPARTMENT with an estimated cost of herbicide control services for the upcoming fiscal year by March 31 based on the most current three year average of services billed by the DEPARTMENT. When developing the proposed annual Work Schedule and setting the proposed budget for the upcoming fiscal year, the DISTRICT will plan work accordingly to meet this minimum threshold of work.
- D. The DEPARTMENT will submit monthly invoices to:
 San Bernardino County Flood Control District
 Administrative Division
 Attn: Flood Control Accountant Room 207
 825 E. Third Street
 San Bernardino, CA 92415-0835
- E. DISTRICT will process payment, via Request for Transfer, within thirty (30) calendar days after receipt of invoice from DEPARTMENT. Billing shall not be authorized for DEPARTMENT services billed in excess of each fiscal year's allocation in the DISTRICT budget without prior approval from DISTRICT.

- F. Compensation may be reduced or withheld in the event that DEPARTMENT fails to comply with the provisions of this MOU, or does not perform in accordance with the terms of this MOU.
- G. Funds made available under this MOU shall not supplant any federal, state or any governmental funds intended for services of the same nature as this MOU. DEPARTMENT shall not claim reimbursement or payment from DISTRICT for, or apply sums received from DISTRICT with respect to that portion of its obligations which have been paid by another source of revenue. DEPARTMENT agrees that it will not use funds received pursuant to this MOU, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the DISTRICT.

VI. RIGHT TO MONITOR AND AUDIT

- A. Administrative support staff for DISTRICT or any subdivision or appointee thereof, and the State of California or any subdivision or appointee thereof, including the Inspector General, shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of DEPARTMENT in the delivery of services provided under this MOU. Full cooperation shall be given by DEPARTMENT in any auditing or monitoring conducted.
- B. DEPARTMENT shall cooperate with DISTRICT in the implementation, monitoring and evaluation of this MOU and comply with any and all reporting requirements established by this MOU.
- C. All records pertaining to service delivery and all fiscal, statistical and management books and records shall be available for examination and audit by administrative support staff for DISTRICT, federal and state representatives for a period of three years after final payment under the MOU or until all pending county, state, and federal audits are completed, whichever is later. Records of DEPARTMENT which do not pertain to the services under this MOU shall not be subject to review or audit unless provided in this or another agreement. Technical program data shall be retained locally and made available upon DISTRICT's reasonable advance written notice or turned over to DISTRICT.
- D. DEPARTMENT shall provide all reasonable facilities and assistance for the safety and convenience of DISTRICT's representative in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work of DEPARTMENT.

VII. TERM

- A. This MOU shall be in effect from July 1, 2021 through June 30, 2026 with an option to extend one additional five year period, unless the MOU is terminated earlier by either party in accordance with Section VIII of this MOU.

VIII. EARLY TERMINATION

- A. This MOU may not be terminated without cause. In the event there is cause to terminate the MOU, either party must provide a thirty (30) day written notice. The DISTRICT's Chief Flood Control Engineer is authorized to exercise DISTRICT's rights with respect to any termination of this MOU. The DEPARTMENT's Director, or his/her appointed designee, has authority to terminate this MOU on behalf of DEPARTMENT.
- B. DEPARTMENT will be reimbursed for costs and uncancelable obligations incurred prior to the date of termination. DEPARTMENT will not be reimbursed for costs incurred after the date of termination.
- C. If, during the term of this MOU, State and/or Federal funds appropriated for the purposes of this MOU are reduced or eliminated, DISTRICT may immediately terminate this MOU upon written notice to DEPARTMENT.

IX. GENERAL PROVISIONS

- A. No waiver of any of the provisions of the MOU documents shall be effective unless it is made in a writing which refers to provisions so waived and which is executed by the Parties. No course of dealing and no delay or failure of a Party in exercising any right under any MOU document shall affect any other or future exercise of that right or any exercise of any other right. A Party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right.
- B. Any alterations, variations, modifications, or waivers of provisions of the MOU, unless specifically allowed in the MOU, shall be valid only when they have been reduced to writing, duly signed and approved by the Authorized Representatives of both parties, and approved by the Board of Supervisors as an amendment to this MOU. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.
- C. DEPARTMENT agrees to indemnify, defend (with counsel approved by DISTRICT) and hold harmless the DISTRICT and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of its obligations under this MOU.
- DISTRICT agrees to indemnify, defend (with counsel approved by DEPARTMENT) and hold harmless the DEPARTMENT and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of its obligations under this MOU.
- In the event the DEPARTMENT and/or the DISTRICT is found to be comparatively at fault for any claim, action loss or damage which results from their respective obligations under the MOU, the DEPARTMENT and/or DISTRICT shall indemnify the other to the extent of its comparative fault.
- Furthermore, if the DEPARTMENT or DISTRICT attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, the DEPARTMENT or DISTRICT agree that any alleged negligence of the employee shall not be construed against the employer of that employee.
- D. The DEPARTMENT is a self-insured public entity. As such, without in any way affecting the indemnity herein provided and in addition thereto, the DEPARTMENT shall maintain throughout the term of this MOU, its standard self-insurance general liability policy. Without in any way affecting the indemnity herein provided and in addition thereto, DISTRICT warrants to DEPARTMENT that it is lawfully self-insured with respect to the liabilities it might incur with respect to this MOU and DISTRICT shall maintain self-insurance throughout the term of this MOU.
- E. All of the DISTRICT's revenues as defined below, have been pledged to secure the payment of the principal and interest on certain bonds and refunding bonds ("Bonds") issued by the DISTRICT in May 2007. The pledge constitutes a first lien on the revenues for the payment of the Bonds. Any payments under this MOU are subject to the prior pledge of revenues described above. DISTRICT payments pursuant to this MOU will be made to the extent there are sufficient funds available after payment of the Bonds. For purposes of this paragraph, "revenues" shall mean all income and revenue received by the DISTRICT from the operation or ownership of the flood and storm water control and conservation facilities ("Flood Control System") of the DISTRICT (including but not limited to, all real and personal property, or any interest therein, and all additions, improvements, betterments and extensions thereto), determined in accordance with Generally Accepted Accounting Principles, including all ad valorem property taxes received by the DISTRICT pursuant to Article XIII A of the Constitution of the State of California and Section 95 et seq. of the California Revenue and Taxation Code, all rents, royalties and license and permit fees and charges received by the DISTRICT, investment income and all other money howsoever derived by the DISTRICT from the operation or ownership of the Flood Control System or arising from the Flood Control System, but excluding (a) ad valorem property taxes levied to pay any voter approved general obligation indebtedness of the DISTRICT, (b) assessments levied

pursuant to Section 43-7 or Section 43-26.9 of the San Bernardino County Flood Control Act (Cal. Water Code App. Sect. 43-1 et seq.), and (c) grants, advances or contributions in aid of construction, except to the extent such grants are unrestricted and available for any expenditure of the DISTRICT.

- F. When notices are required to be given pursuant to this MOU, the notices shall be in writing and mailed or e-mailed to the following respective addresses listed below:

San Bernardino County
Agriculture / Weights & Measures
Attn: Angela Godwin
777 E. Rialto Avenue
San Bernardino, CA 92415

San Bernardino Flood Control District
Operations Division
Attn: Sameh Basta
825 E. Third Street
San Bernardino, CA 92415-0835

E-mail: Angela.Godwin@awm.sbcounty.gov

E-mail: Sameh.Basta@dpw.sbcounty.gov

Signatures continued on next page

X. CONCLUSION

- A. This MOU, consisting of seven (7) pages, is the full and complete document describing services to be rendered by DEPARTMENT to DISTRICT including all covenants, conditions and benefits.
- B. The signatures of the Parties affixed to this MOU affirm that they are duly authorized to commit and bind their respective DEPARTMENTS to the terms and conditions set forth in this document.

**San Bernardino County
Agriculture Weights and Measures**

►
Curt Hagman, Board Chairman

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD
Lynna Monell, Clerk of the Board

By _____
Deputy

San Bernardino County Flood Control District

By ►
Curt Hagman, Board Chairman

Dated: _____

Title _____
(Print or Type)

Dated: _____

Address _____

Approved as to Legal Form

►
Daniel Pasek, Deputy County Counsel

Date _____

Reviewed by Contract Compliance

►

Date _____

Presented to Board for Signature

►
Angela Godwin, Agricultural Commissioner /
Sealer of Weights & Measures

Date _____