

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT
AND RECORD OF ACTION**

January 5, 2021

FROM

BRENDON BIGGS, Chief Flood Control Engineer, Flood Control District

SUBJECT

Amendment to Memorandum of Agreement with the United States Army Corps of Engineers for Expedited Permit Reviews

RECOMMENDATION(S)

Acting as the governing body of the San Bernardino County Flood Control District, approve **Amendment No. 1** to the **Memorandum of Agreement No. 16-47** with the United States Army Corps of Engineers to add Section 408 requests, remove the \$250,000 cap on the transfer of funds, and extend the term by five years for an agreement term of March 23, 2016 to December 31, 2025.

(Presenter: Melissa Walker, Deputy Director, 387-7906)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

**Ensure Development of a Well-Planned, Balanced, and Sustainable County.
Pursue County Goals and Objectives by Working with Other Agencies.**

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The United States Army Corps of Engineers (USACE) review and permit issuance cost will be paid by the permittees participating in the Memorandum of Agreement (MOA). Any payments received by the San Bernardino County Flood Control District (District) from the permittees for the aforementioned MOA will be passed through to USACE.

BACKGROUND INFORMATION

Many of the District's facilities were originally designed and constructed by USACE. Accordingly, any modifications or connections to these facilities require authorization from USACE pursuant to Section 408 of Title 33 of the United States Code, commonly referred to as a Section 408 Permit.

On February 9, 2016 (Item No. 61), the District Board of Supervisors (Board) approved the MOA with USACE to provide funding for USACE to conduct an expedited review and issue a Section 408 Permit to permittees encroaching on the District's Lytle Creek facility that was originally designed and constructed by USACE. Only the owner of a facility, the District, can obtain a Section 408 Permit from USACE. Approval of these encroaching projects by the USACE requires a detailed technical review both by the USACE and the District.

The MOA was originally entered into to address the Lytle Creek improvement project request, however, the MOA also allowed for additional improvement projects to be added to the list of

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District-designated priority Section 408 Permit requests, with a deposit of additional funds to USACE, at the discretion of the District Chief Flood Control Engineer. Funds deposited with USACE under the MOA are paid by the permittees submitting the Section 408 Permit. The original February 9, 2016 (Item No. 61), Board item approving the MOA imposed a \$250,000 cap on funds that could be transferred to USACE, however, that stipulation was not included in the MOA itself. Because permittees submitting the Section 408 Permit request pay for the priority requests, this item also seeks to remove the \$250,000 cap.

Since the initial approval of the MOA, the District has received several additional requests, and deposit of funds, from permittees to be added to the priority Section 408 Permit request list. The District receives numerous permit issuance requests from agencies, developers, and property owners for proposed improvements on District facilities that were designed and constructed by the USACE. These requests include the construction of side drain connections on various facilities, such as channels and basins, and building of bridges over District facilities, construction of levees, and placement of overhead and underground crossings of utility lines. The USACE's reviews of such proposed facilities are typically time consuming and contingent upon the continued availability of funding to sustain costs for such permit review requests and issuance of Section 408 Permits.

Currently, the District is processing permits P-12017059 and P-12017055, among others, which have been added to the priority Section 408 Permit request list and submitted to USACE for review under the provisions of the MOA. Due to the continued interest in the provisions of this MOA by permittees, and to ensure the uninterrupted review of current and future permits by USACE, the District and USACE seek to amend the MOA to allow for the addition of other projects approved for expedited Section 408 Permit review.

Additionally, the proposed Amendment No. 1 will extend the MOA term by five years through December 31, 2025, allowing the USACE to continue to commit staff to work in an expeditious manner on those additional, future Section 408 Permit requests on a priority basis as determined by the District Chief Flood Control Engineer. This ensures development of a well-planned, balanced, and sustainable County, as well as supporting the County and Chief Executive Officer's goals to improve County goals and objectives by working with other agencies.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Sophie A. Akins, Deputy County Counsel, 387-5455) on November 6, 2020; Finance (Carolina Mendoza, Administrative Analyst, 387-0294) on December 8, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on December 14, 2020.

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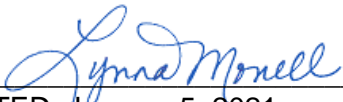
Record of Action of the Board of Supervisors
San Bernardino County Flood Control District

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Janice Rutherford

Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: January 5, 2021



cc: Flood - Walker w/agree
Contractor - C/O Flood w/agree
File - w/agree
CCM 01/15/2021