

COPY

**MEMORANDUM OF UNDERSTANDING FOR ACTIVITIES RELATED TO THE
DEPARTMENT OF WATER RESOURCES, HYDROLOGY AND FLOOD
OPERATIONS OFFICE, FLOOD EMERGENCY RESPONSE GRANT, FOR PHASE 2
OF THE UPGRADE OF THE ALERT FLOOD WARNING SYSTEM TO ALERT2
CAPACITY**

This Memorandum of Understanding ("MOU") is made this ___ day of _____, 2016, and entered into by and between the Ventura County Watershed Protection District (hereinafter referred to as "WPD"), the National Weather Service Oxnard Office (hereinafter referred to as "NWS-OXNARD"), the National Weather Service San Diego Office (hereinafter referred to as "NWS-SAN DIEGO"), Orange County, San Bernardino County, San Diego County, and Santa Barbara County.

RECITALS

WHEREAS the parties agreed to partner on a grant application to the Department of Water Resources ("DWR") Hydrology and Flood Operations Office Flood Emergency Response Grant Program ("FERG") to continue to upgrade the ALERT flood warning system in Southern California to ALERT2 capacity ("Project"); and

WHEREAS DWR announced in October 2015 that the application was successful and that a grant would be awarded to fund the Project; and

WHEREAS WPD agreed to serve as grantee and administrator for the Project; and

WHEREAS, the parties committed during the application period to perform certain tasks that were included in the Project;

NOW, THEREFORE, the parties desire to enter into this MOU in order to memorialize the tasks each organization is to perform in order to successfully complete the Project as approved by the DWR.

**ARTICLE 1
DEFINITIONS**

- 1.1 MEMBERS shall mean WPD, NWS-OXNARD, NWS-SAN DIEGO, Orange County, San Bernardino County, San Diego County, and Santa Barbara County.
- 1.2 AUTHORIZED AUTHORITY shall mean the individual authorized by each MEMBER to sign this MOU.

- 1.3 PARTY or PARTIES shall mean the MEMBERS.
- 1.4 PROJECT shall mean the work which is the subject matter of the GRANT AGREEMENT.
- 1.5 GRANT AGREEMENT shall mean the Agreement between the State of California Department of Water Resources and Ventura County Watershed Protection District under the Flood Emergency Response Projects – Statewide Grant Contract No. 4600011343.

**ARTICLE 2
PURPOSE, TERM, TERMINATION AND AMENDMENTS**

- 2.1 The purpose of the MOU is to establish a working agreement between the PARTIES with regard to successfully completing the DWR funded PROJECT.
- 2.2 The term of this MOU shall commence on the day and date written above and shall be effective until either May 1, 2019, or the end date of any approved extension by DWR to the GRANT AGREEMENT.
- 2.3 Any substantive amendment, modification, extension, or variation of terms of the MOU shall be in writing and shall be effective only upon written approval by the AUTHORIZED AUTHORITY of each of the PARTIES.

**ARTICLE 3
RESPONSIBILITIES OF THE PARTIES**

- 3.1 WPD shall act as grantee and shall, as an eligible grant recipient, enter into the GRANT AGREEMENT with the State to implement the approved PROJECT and to administer grant requirements. MEMBERS shall cooperate with WPD in the performance of its obligations under the GRANT AGREEMENT.
- 3.2 PROJECT tasks shall be allocated among the MEMBERS in accordance with Exhibit A-3: Description of Project Tasks to the GRANT AGREEMENT, which is appended as part of this MOU.
- 3.4 Each MEMBER is responsible for providing the deliverables for Task 1 through Task 3, and for submittal of documentation of project progress and costs as outlined in the GRANT AGREEMENT, Page 3, Section 8, to WPD representative by the twentieth (20th) day following the end of each quarter. WPD shall be responsible for preparing the progress reports and payment requests and transmitting these documents to the DWR each quarter.

3.5 Each MEMBER agrees to perform those maintenance obligations set forth in Section 15 of the GRANT AGREEMENT for the equipment installed by such MEMBER.

3.6 In the event DWR provides notice of default under the GRANT AGREEMENT due to the breach of any other PARTY to this MOU, and such default is not cured within 30 days' notice thereof, WPD may in its sole discretion terminate this MOU as to the breaching PARTY. In the event of such termination, WPD may take any and all steps necessary to protect its interests, including demand for immediate repayment of all funds previously disbursed to such breaching PARTY.

ARTICLE 4 ADMINISTRATION AND FUNDING

4.1 This MOU shall be jointly administered by the PARTIES, and each MEMBER'S administrative activities hereunder shall be regarded as in-kind services independently funded by and performed at the discretion of the PARTIES.

4.2 WPD shall timely submit to the DWR invoices, reports, and assurances received from the MEMBERS prepared to meet the accounting, reporting and other requirements in the GRANT AGREEMENT. MEMBERS agree to fully cooperate with WPD in meeting its obligations under the GRANT AGREEMENT.

4.3 MEMBERS shall immediately provide notice to WPD'S representative in the event a MEMBER wishes to alter the schedule, materials, methods, or deliverables related to the PROJECT as set forth in the grant agreement. WPD shall timely forward MEMBER'S request for alteration to the DWR for its consideration.

4.4 As WPD is acting as grantee under the grant agreement, MEMBER'S questions and other communications related to the GRANT AGREEMENT or performance of work under the grant agreement shall be directed to WPD'S representative for resolution with DWR.

4.5 MEMBERS shall pay or cause to be paid and provide all required grant matching funds or in-kind matching services for the PROJECT and shall provide all necessary environmental review and obtain all required permits for MEMBER'S tasks defined in Exhibit A.4 of the grant agreement and listed above. Any costs over and above the funding provided in the approved budget for any line item shall be the responsibility of the MEMBER incurring those costs.

4.6 WPD shall reimburse grant funds to MEMBERS for activities completed in accordance with the terms of the GRANT AGREEMENT, but only upon receipt of grant funds for that work from the State. WPD shall not be responsible for any money paid out as a result of fraud, forgery or misrepresentation.

4.7 MEMBERS shall meet all requirements and limitations of the GRANT AGREEMENT and any amendment thereto, and shall comply with all applicable laws, policies and regulations in carrying out this PROJECT.

4.8 WPD is not acting as a surety. The MOU is not a performance, payment, completion, or labor and materials bond. WPD does not guarantee or warrant that the PROJECT will proceed, be completed, or that the grants funds for the PROJECT will be sufficient to meet incurred expenses. WPD does not guarantee or warrant the plans and specifications for the PROJECT. WPD does not guarantee or warrant any estimated construction costs or budgets set forth in either the grant application or GRANT AGREEMENT.

4.9 WPD does not guarantee or warrant that it will pay any invoice submitted by MEMBERS until monies for approved invoices have actually been transmitted by the DWR to WPD. WPD assumes no liability to any entity, including but not limited to, MEMBERS, and any contractors and subcontractors of any MEMBER on the PROJECT for any delays by the DWR in approval or transmittal of grant monies to WPD.

4.10 MEMBERS agree that they shall return any audit disallowance related to their expenditures on the PROJECT for transmission to the DWR.

4.11 It is agreed by the PARTIES that if any applicable federal or state budget act of the current year and/or any subsequent years does not appropriate sufficient funds for the grant, then this MOU shall be of no force and effect and shall terminate if the GRANT AGREEMENT is cancelled by the DWR. In this event, except for those monies already received from DWR and approved for payment for work on the PROJECT, WPD shall have no liability to transmit any monies for work on the PROJECT to other MEMBERS. MEMBERS agree to indemnify and defend and hold WPD harmless from any claims asserted against WPD by any entity in the event that the applicable federal or state budget act does not appropriate sufficient funds for the PROJECT.

4.12 MEMBERS shall proceed with all reasonable diligence in: (i) the commencement and completion of the PROJECT; (ii) submission of any written reports, financial information, insurance, bonds, and assurances required by the GRANT AGREEMENT for the PROJECT; and (iii) submittal of requests for payment fully compliant with the GRANT AGREEMENT.

ARTICLE 5 MISCELLANEOUS PROVISIONS

5.1 APPROVAL BY PARTIES: This MOU and any amendments thereto shall not be binding on the PARTIES unless signed by their AUTHORIZED AUTHORITY.

5.2 COMPLETE AGREEMENT: This MOU constitutes the entire agreement between the PARTIES with respect to the subject matter of this MOU. No prior oral or written understandings or agreements between the PARTIES with respect to the subject matter of this MOU are incorporated herein and any such understandings or agreements are entirely superseded by this MOU.

5.3 INTERPRETATION: This MOU shall be interpreted and construed reasonably and neither for nor against any of the PARTIES, regardless of the degree to which any of the PARTIES participated in its drafting.

5.4 SEVERABILITY: If any term, provision, covenant, or condition of this MOU is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of the MOU shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

5.5 INDEPENDENT CONTRACTORS: The PARTIES agree that they are, and at all times shall be, independent contractors of, and not the agent of the other.

5.6 GOVERNING LAW: This MOU shall be governed by and construed in accordance with the laws of the State of California.

5.7 COUNTERPARTS: This MOU may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument

5.8 NOTICES: All notices or correspondence under this MOU shall be given to the following addresses and shall be deemed delivered on the date of actual delivery or on the third business day after the date of mailing.

NATIONAL WEATHER SERVICE – OXNARD OFFICE

Mark Jackson
National Weather Service Los Angeles/Oxnard
520 North Elevar Street
Oxnard, CA 93030

NATIONAL WEATHER SERVICE – SAN DIEGO

Roger Pierce
National Weather Service San Diego
11440 W. Bernardo Court, Suite 230
San Diego, California 92127

ORANGE COUNTY

~~Chris Crompton~~ *Amanda Carr*

Interim-Director, OC Environmental Resources
2301 N. Glassell Street
Orange, CA 92865

SAN BERNARDINO COUNTY

Director of Public Works –Gerry Newcomb
or Deputy Director – Kevin Blakeslee
825 East Third Street
San Bernardino, CA 92415-0835

SAN DIEGO COUNTY

Rich Crompton, Director, Public Works
County of San Diego
5510 Overland Ave, Suite 410
San Diego, CA 92123-1237

SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT


Scott D. McGolpin, Director - Public Works
County of Santa Barbara
Public Works Department
103 East Anapamu Street
Santa Barbara 93101

VENTURA COUNTY WATERSHED PROTECTION DISTRICT:

Tully Clifford
Director, Ventura County Watershed Protection District
800 South Victoria Avenue
Ventura, CA 93009-1600

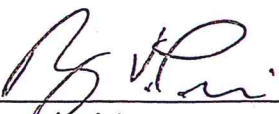
IN WITNESS WHEREOF, the PARTIES have executed this MOU on the dates indicated below.

NATIONAL WEATHER SERVICE – OXNARD OFFICE



By: Meteorologist Date 6-29-16

NATIONAL WEATHER SERVICE – SAN DIEGO



By: Meteorologist Date 6/30/16

ORANGE COUNTY

Amanda Carr Date 7/12/16
By: Manager, Orange County Watersheds

SAN BERNARDINO COUNTY

Gerry Newcombe Date 7/26/16
By: Director, Public Works Gerry Newcombe

SAN DIEGO COUNTY

David Hall Date 9/2/16
By: ~~Director, Public Works~~ **David Hall**
Clerk of the Board

SANTA BARBARA COUNTY

By: Director – Public Works Date _____

VENTURA COUNTY WATERSHED PROTECTION DISTRICT

By: District Director Date _____

Approved and/or authorized pursuant to
County of San Diego Administrative Code §123.
By: [Signature] Date: 9/2/16
Deputy Clerk of the Board Supervisors

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL
BY C. Ellen Palacken
SENIOR DEPUTY