

ORANGE COUNTY BOARD OF SUPERVISORS

Acting as the Board of Supervisors and Orange County Flood Control District

MINUTE ORDER

July 29, 2008

Submitting Agency/Department: OC PUBLIC WORKS

Approve agreement with Costa Mesa for installation of 17 acres of riparian habitat and trails for Santa Ana Mainstem project; and make California Environmental Quality Act findings - District 2

The following is action taken by the Board of Supervisors:

APPROVED AS RECOMMENDED OTHER

Unanimous (1) NGUYEN: Y (2) MOORLACH: Y (3) CAMPBELL: Y (4) NORBY: Y (5) BATES: Y

Vote Key: Y=Yes; N=No; A=Abstain; X=Excused; B.O.=Board Order

Documents accompanying this matter:

- Resolution(s)
- Ordinances(s)
- Contract(s) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

Item No. 9

Special Notes:

Copies sent to:

CEO
OC Public Works: Nadeem Majaj
Linda Schorer

7-29-08



I certify that the foregoing is a true and correct copy of the Minute Order adopted by the Board of Supervisors, Acting as the Board of Supervisors and Orange County Flood Control District, Orange County, State of California.
DARLENE J. BLOOM, Clerk of the Board

By:
Deputy



AGENDA STAFF REPORT

ASR Control 08-001412

MEETING DATE: 07/29/08

LEGAL ENTITY TAKING ACTION: Board of Supervisors and Orange County Flood Control District

BOARD OF SUPERVISORS DISTRICT(S): 2

SUBMITTING AGENCY/DEPARTMENT: OC Public Works (Approved)

DEPARTMENT CONTACT PERSON(S): Nadeem Majaj (714) 834-3719
Lance Natsuhara (714) 834-5398

3244

2008 JUL 14 AM 11:36

RECEIVED

CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

SUBJECT: Fairview Park Cooperative Agreement

CEO CONCUR Concur	COUNTY COUNSEL REVIEW Approved Agreement to Form	CLERK OF THE BOARD Consent Calendar 3 Votes Board Majority
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Budgeted: N/A Current Year Cost: N/A Annual Cost: N/A

Staffing Impact: No # of Positions: Sole Source: No

Current Fiscal Year Revenue: N/A

Funding Source: N/A

Prior Board Action: December 12, 1989; June 3, 2008

RECOMMENDED ACTION(S)

- Acting as the Board of Supervisors and the Orange County Flood Control District:
1. Find that Negative Declaration SCH97101051, previously adopted by the City of Costa Mesa (City Council on December 15, 1997, satisfies the requirements of CEQA and is approved for the proposed project.
 2. Approve the Fairview Park Cooperative Agreement with the City of Costa Mesa.
 3. Authorize the Chairman of the Board to execute the agreement.

SUMMARY:

Approval of the Fairview Park Cooperative Agreement with the City of Costa Mesa will facilitate installation of 17 acres of riparian habitat and trails accessible by the public and mitigate impacts of the Santa Ana River Mainstem Project.

STAFFING IMPACT:

/A

REVIEWING AGENCIES:

County Executive Office/Risk Management
Treasurer-Tax Collector

ATTACHMENT(S):

Attachment A - Fairview Park Cooperative Agreement D08-019

AGREEMENT

This agreement, hereinafter referred to as "AGREEMENT" and for purposes of identification hereby numbered **D08-019** and dated the 29th day of JULY, 2008, is

BY and BETWEEN

ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, hereinafter referred to as "FLOOD DISTRICT,"

AND

CITY OF COSTA MESA, a municipal corporation hereinafter referred to as "CITY,"

Which are sometimes individually referred to as "PARTY," or collectively referred to as "PARTIES."

RECITALS

WHEREAS, the Water Resources Development Act of 1986, P.L. 99-662, provided authority for the United States Army Corps of Engineers ("CORPS") to construct certain flood control improvements on the Santa Ana River and Santiago Creek, California referred to as the Santa Ana River Mainstem Project ("SARMP");

WHEREAS, the FLOOD DISTRICT is a Local Sponsor of the SARMP in partnership with the Riverside County Flood Control & Water Conservation District, and San Bernardino County Flood Control District through the Local Cooperation Agreement dated December 13, 1989 ("LCA");

WHEREAS, in 2003 the CORPS implemented a dredging project in the lower reaches of the Santa Ana River between Pacific Coast Highway and Adams Avenue ("REACHES 1 and 2") to remove accumulated sediments and associated vegetation ("DREDGING PROJECT") in order to complete SARMP construction activities in REACHES 1 and 2;

WHEREAS, vegetation removal activities of the DREDGING PROJECT required the CORPS to mitigate for the loss of 17 acres of habitat within REACHES 1 and 2 through the restoration, creation, and/or enhancement of 17-acres of riparian habitat or to participate in a mitigation banking option, in accordance with the conditions contained in California Department of Fish and Game ("DFG") 1601 permits for REACHES 1 and 2 dated January 2003 and February 2004 and the U.S. Fish and Wildlife Service ("FWS") Biological Opinion dated December 2003 ("MITIGATION REQUIREMENTS");

WHEREAS, the CITY desires to develop a portion of the Fairview Park Wetlands and Riparian Habitat Project located on CITY property in the vicinity of REACHES 1 and 2 which includes 20.0269 acres of riparian

1 habitat, riparian habitat channels, water quality improvement ponds and trail access ("PROJECT"), as shown in
 2 Exhibit A;

3 **WHEREAS**, the implementation of 17 acres of specific riparian habitat within PROJECT area is DFG's and
 4 FWS's preferred approach for fulfilling the Mitigation Requirements due to the proximity of Fairview Park to the
 5 DREDGING PROJECT in REACHES 1 and 2;

6 **WHEREAS**, the CITY and FLOOD DISTRICT have entered into a separate Conservation Easement
 7 Agreement dated April 24, 2008, encumbering the 20.0269 acres of PROJECT area;

8 **WHEREAS**, PROJECT is located within the overflow floodplain of Fairview Channel and therefore subject to
 9 periodic flooding and the FLOOD DISTRICT'S flood control improvements adjacent to PROJECT are not intended to
 10 and are not designed to provide flood protection for PROJECT;

11 **WHEREAS**, the CORPS will fund and construct specific PROJECT items including clearing and grubbing,
 12 grading, irrigation, planting, plant establishment, construction fencing and electrical as shown on Exhibit B,
 13 hereinafter referred to as "MITIGATION" to fulfill the MITIGATION REQUIREMENTS;

14 **WHEREAS**, the CITY desires to contribute grant funds towards construction of specific PROJECT items, to
 15 be constructed by the CORPS, including construction of riparian habitat channels, excavation of Pond E, rock slope
 16 protection, and construction of a waterline and concrete weirs as shown on Exhibit B, hereinafter referred to as
 17 "BETTERMENT;"

18 **WHEREAS**, the CORPS can only receive funds from a Local Sponsor of the SARMP, who is the FLOOD
 19 DISTRICT, for related CITY expenditures;

20 **WHEREAS**, CORPS contractor will construct entire PROJECT which includes MITIGATION and
 21 BETTERMENT items and perform one year of establishment activities for habitat created as part of PROJECTS is
 22 established and deemed complete per Conservation Easement;

23 **WHEREAS**, CITY and FLOOD DISTRICT shall enter into a separate Operations and Maintenance
 24 Agreement to take effect following CORPS PROJECT construction and one-year establishment period; and

25 **WHEREAS** after the CORPS has completed its construction of PROJECT, including one year of
 26 establishment activities, the CITY will maintain the site in perpetuity as described in the Conservation Easement.

1 **NOW, THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

2 **1. RECITALS**

3 The recitals set forth above are incorporated herein by this reference.

4 **2. PURPOSE**

5 The purpose of this AGREEMENT between PARTIES is to establish the terms and conditions for
6 FLOOD DISTRICT's transfer of CITY funds to the CORPS for the implementation of PROJECT as
7 well as establishing other obligations arising from the Conservation Easement and related to the
8 construction of PROJECT,

9 **3. PROJECT COORDINATION**

10 a. FLOOD DISTRICT's Director of Orange County Public Works ("OCPW"), or an authorized
11 designee, hereinafter referred to as "FLOOD DISTRICT REPRESENTATIVE," shall be FLOOD
12 DISTRICT's representative in all matters pertaining to this AGREEMENT.

13 b. CITY's Public Services Director, or an authorized designee, hereinafter referred to as "CITY
14 REPRESENTATIVE," shall be CITY's representative in all matters pertaining to this
15 AGREEMENT.

16 **4. PERIOD OF PERFORMANCE**

17 The term of this AGREEMENT shall commence upon its execution by FLOOD DISTRICT's Board of
18 Supervisors and CITY COUNCIL. Thereafter, the AGREEMENT shall remain in effect until PROJECT
19 construction and one year establishment period and final accounting is deemed to be satisfactorily
20 complete by CITY and FLOOD DISTRICT, or unless terminated by either PARTY provided that written
21 notice of termination is given to the other PARTY pursuant to Paragraph 7 precedent to satisfactory
22 completion. FWS and DFG shall concur that MITIGATION REQUIREMENTS, as defined by the
23 Habitat Mitigation and Monitoring Plan of the Conservation Easement Agreement, are satisfied.

24 **5. CITY'S RESPONSIBILITIES**

25 a. Upon FLOOD DISTRICT's request, CITY shall submit four-hundred and sixty thousand dollars
26 (\$460,000) ("FUNDS"), which represents the estimated cost to construct BETTERMENT items

1 in PROJECT, to FLOOD DISTRICT within thirty (30) calendar days after receiving notification
 2 from the FLOOD DISTRICT. FLOOD DISTRICT shall manage FUNDS as prescribed in
 3 Paragraph 6.a. CITY's contribution of FUNDS is a portion of the total PROJECT cost, which is
 4 estimated to be \$1.46 million according to the CORPS. Final project cost will be determined at
 5 the close of the CORPS' construction contract.

- 6 b. CITY shall bear all its own administrative costs associated with this AGREEMENT.
- 7 c. CITY may at its discretion, at no cost to FLOOD DISTRICT and CORPS, furnish a resident
 8 engineer during construction of the PROJECT. CITY's resident engineer's access to the
 9 PROJECT site shall be subject to meeting all CORPS regulations as dictated by CORPS'
 10 resident engineer. CITY shall be entitled to consult and cooperate with CORPS' resident
 11 engineer, ensure conformance of the construction of BETTERMENT with the approved plans
 12 and specifications and provide review and approval for any change orders for BETTERMENT.
 13 However, after consultation and cooperation with CITY, the decision of CORPS' resident
 14 engineer regarding all matters involving the construction of PROJECT shall be final.
- 15 d. Subject to Paragraph 5.a. above, CITY shall be responsible for payment of all approved change
 16 orders for BETTERMENT. All change orders for BETTERMENT shall be subject to review,
 17 consultation and concurrence by CITY prior to their execution and implementation by the
 18 CORPS contractor. However, CITY's decision regarding change orders shall be subordinate to
 19 CORPS' resident engineer's decision, which shall be final. Subject to this paragraph and the
 20 paragraph above, CITY shall pay the costs for all approved change orders within thirty (30) days
 21 after receipt of a written request for payment from FLOOD DISTRICT. Documentation for
 22 change order requests pertaining to the BETTERMENT shall be provided to CITY by the
 23 CORPS.
- 24 e. Upon satisfactory completion of BETTERMENT by Corps contractor, CITY shall agree to
 25 maintain Pond E and trails within PROJECT area as shown in Exhibit A and CITY shall assume
 26 maintenance of entire PROJECT upon satisfactory completion of one year of establishment

1 activities by CORPS contractor and receipt of written concurrence from FLOOD DISTRICT per
 2 separate Operations and Maintenance Agreement.

3 f. CITY shall issue permits, including administrative charges, at no cost to FLOOD DISTRICT and
 4 CORPS for the construction and for one year establishment activities of PROJECT.

5 g. CITY shall comply with the payment and reimbursement procedures specified in Sections 6.a
 6 through 6.f for all those costs related to BETTERMENT. If CITY is paid a REFUND as defined
 7 below in Section 6.d., CITY will assign to FLOOD DISTRICT any rights CITY has to any
 8 remaining FUNDS held in the interest bearing escrow account provided for in Section 6.a. below.
 9 CITY will provide any documentation needed by FLOOD DISTRICT to permit FLOOD DISTRICT
 10 to be reimbursed from that escrow for amounts paid to the CITY.

11 **6. FLOOD DISTRICT RESPONSIBILITIES**

12 a. FLOOD DISTRICT shall deposit all FUNDS received from CITY, which shall be expended for
 13 non-administrative project costs, in an interest bearing escrow account ("ESCROW") for CITY's
 14 exclusive benefit consistent with this AGREEMENT and shall account to CITY for all interest
 15 accrued on such FUNDS. CITY's FUNDS shall receive interest at the same rate as all other
 16 FLOOD DISTRICT funds deposited in ESCROW.

17 b. FLOOD DISTRICT shall bear all its own administrative costs associated with this AGREEMENT.

18 c. After CORPS successfully negotiates a construction contract for BETTERMENT, if the
 19 negotiated total required, as determined by the CORPS ("CONTRACT COST"), plus CORPS'
 20 design and administrative costs and contingencies, exceed the FUNDS (\$460,000) remitted to
 21 FLOOD DISTRICT by CITY, plus accrued interest referenced above, written justification
 22 supporting such excess amount shall be provided by FLOOD DISTRICT to CITY prior to the
 23 award of the BETTERMENT contract to the CORPS' contractor. After it receives, reviews, and
 24 approves of such written justification for the CONTRACT COST, CITY shall deposit such
 25 additional amount with FLOOD DISTRICT within sixty (60) calendar days of the receipt of a
 26 request for payment from FLOOD DISTRICT. If CITY does not approve of CONTRACT COST

1 described above, FLOOD DISTRICT and CITY shall meet and confer to develop a mutually
 2 agreeable revised scope for BETTERMENT to fit within the CITY's budgeted project funds.
 3 Should DISTRICT and CITY agree upon a revised scope for BETTERMENT, FLOOD DISTRICT
 4 shall forward the revised scope to CORPS and request a revised CONTRACT COST.

5 d. After completion of PROJECT, FLOOD DISTRICT shall provide to CITY a final written
 6 accounting of FUNDS. If that accounting indicates that FUNDS deposited in ESCROW, plus
 7 interest, were greater than those amounts paid to CORPS contractor for BETTERMENT, FLOOD
 8 DISTRICT will pay CITY that difference ("REFUND"). REFUND will be paid by the FLOOD
 9 DISTRICT from DISTRICT funds which are separate from ESCROW within thirty (30) calendar
 10 days of the date of the completion of final accounting by FLOOD DISTRICT.

11 e. FLOOD DISTRICT shall notify the California Department of Fish and Game for impacts to the
 12 Placentia Drain.

13 f. FLOOD DISTRICT shall assign, as and when needed, a qualified Construction Division Inspector
 14 ("INSPECTOR") from Orange County Orange Public Works to PROJECT, whose function shall
 15 be to verify that any PROJECT work is accomplished in a good quality workmanlike manner.
 16 Field corrections shall be documented in writing by INSPECTOR with a copy submitted to CITY.
 17 FLOOD DISTRICT's resident engineer's access to the PROJECT site shall be subject to meeting
 18 all CORPS regulations as dictated by CORPS' resident engineer. FLOOD DISTRICT shall be
 19 entitled to consult and cooperate with CORPS' resident engineer, ensure conformance of the
 20 construction of PROJECT with the approved plans and specifications and provide review and
 21 approval for any change orders.

22 **7. NOTICES**

23 a. Notices or other communications which may be required or provided under the terms of this
 24 AGREEMENT shall be given as follows:

25 FLOOD DISTRICT: Director
 26 Orange County Public Works
 P. O. Box 4048
 Santa Ana, CA 92702-4048

Facsimile No. (714) 834-2395

CITY: Public Services Director
City of Costa Mesa
P.O. Box 1200
Costa Mesa, CA 92628-1200
Facsimile No. (714) 754-5028

- b. All notices shall be in writing and deemed effective when delivered in person or on the second business day after deposit in the United States mail, first class, postage prepaid and addressed as above. Notwithstanding the above, the PARTIES may also provide notices by facsimile transmission, and any such notice so given shall be deemed to have been given upon receipt during normal business hours or in the event of receipt after business hours, the following business day. Any notices, correspondence, reports and/or statements authorized or required by this AGREEMENT, addressed in any other fashion shall be deemed not given.
- c. Either PARTY hereto may change its address to which notices are to be sent by giving written notice of such change to the other PARTY.

8. INDEMNIFICATION

a. Indemnification by CITY

CITY hereby agrees to indemnify, defend (with counsel approved in writing by FLOOD DISTRICT), and hold harmless FLOOD DISTRICT, County of Orange ("COUNTY") and the elected or appointed officers, employees, agents and authorized representatives of FLOOD DISTRICT and/or COUNTY ("FLOOD DISTRICT/COUNTY INDEMNITEES") from any and all losses, injuries, liability, damages, claims, costs and expenses (including attorneys' fees and court costs), incurred by or made against FLOOD DISTRICT, COUNTY, or any FLOOD DISTRICT/COUNTY INDEMNITEES arising out of or resulting from (i) any breach of this AGREEMENT by CITY, (ii) the willful misconduct or negligent acts of CITY and/or CITY INDEMNITEES (as defined below) in connection with the performance of this AGREEMENT, (iii) injury to or death of any person or persons (including but not limited to workmen, members of the public, CITY employees, or contractors of CITY or subcontractors), or damage to

1 adjoining or other property, resulting from the operation and/or maintenance of PROJECT;
 2 provided, however, that the indemnification provided by this subparagraph shall not operate to
 3 relieve FLOOD DISTRICT or COUNTY from any loss, injury, liability, damages, claims, costs or
 4 expenses to the extent determined by a court of competent jurisdiction to have been
 5 proximately caused by the willful misconduct or negligent acts of FLOOD DISTRICT, COUNTY,
 6 or the FLOOD DISTRICT/COUNTY INDEMNITEES, or the contractors, agents, employees,
 7 representatives, invitees, licensees or guests of any of them. Approval by FLOOD DISTRICT of
 8 CITY's construction plans for PROJECT improvements shall not relieve CITY of any obligation
 9 described in this paragraph. As used in this subparagraph and subparagraph (b), below, the
 10 term "CITY INDEMNITEES" shall include any of the elected or appointed officers, employees,
 11 agents or official representatives of the CITY.

12 b. Risk Acceptance and Indemnification by CITY

13 CITY acknowledges that the principal purpose of PROJECT is for habitat mitigation purposes
 14 for the CORPS DREDGING PROJECT as well as recreational purposes. CITY, on behalf of
 15 itself and its indemnitees, licensees and guests, waives and releases FLOOD DISTRICT and
 16 COUNTY from all claims for damage to or destruction of PROJECT and interruption of any
 17 CITY operations and use of PROJECT, by actions of FLOOD DISTRICT for habitat mitigation
 18 purposes, including but not limited to flooding, overflow conditions or an activities or uses of the
 19 property by FLOOD DISTRICT for flood control purposes. CITY further acknowledges that that
 20 PROJECT is subject to periodic flooding and the FLOOD DISTRICT'S flood control
 21 improvements adjacent to PROJECT are not intended to and are not designed to provide flood
 22 protection for PROJECT, and that FLOOD DISTRICT is not liable to CITY or any other parties
 23 for loss of revenue, cancellation of any CITY sponsored event, access to PROJECT or for any
 24 other claims or causes of action resulting from the cancellation of this AGREEMENT or inability
 25 to use PROJECT for any cause or reason. CITY agrees, in accordance with Paragraph 8.a.
 26 above, to indemnify, defend with counsel approved by FLOOD DISTRICT in writing, and hold

1 FLOOD DISTRICT and the County of Orange harmless from any and all such claims. Nothing
 2 herein shall be deemed to require CITY to replace any portion of the PROJECT which is
 3 damaged or destroyed by causes beyond CITY's control.

4 c. Indemnification by FLOOD DISTRICT

5 FLOOD DISTRICT hereby agrees to indemnify, defend (with counsel approved in writing by
 6 CITY) and hold harmless CITY and CITY INDEMNITEES or their elected or appointed officials,
 7 employees, agents and authorized representatives from any and all losses, injuries, liability,
 8 damages, claims, costs and expenses (including attorneys' fees and court costs), incurred by or
 9 made against CITY or any CITY INDEMNITEE arising out of or resulting from (i) any breach of
 10 this AGREEMENT by the FLOOD DISTRICT, (ii) the willful misconduct or negligent acts of the
 11 FLOOD DISTRICT or its elected or appointed officials, officers, employees, agents, contractors
 12 and authorized representatives in connection with the performance of this AGREEMENT, and
 13 (iii) FLOOD DISTRICT's other obligations under the terms of this Agreement and applicable
 14 agreements with the CORPS provided, however, that the indemnification provided by this
 15 subparagraph shall not operate to relieve CITY from any loss, injury, liability, damages, claims
 16 or expenses to the extent determined by a court of competent jurisdiction to have been
 17 proximately caused by the willful misconduct or negligent acts of CITY, CITY INDEMNITEES or
 18 the guests or licensees of any of them. CITY acknowledges that FLOOD DISTRICT's indemnity
 19 obligations do not include any loss, injury, liability, damages, claims or expenses arising out of
 20 any risks assumed by CITY pursuant to Paragraph 8.b of this AGREEMENT.

21 **9. HAZARDOUS OR TOXIC MATERIALS**

22 CITY shall not store or allow toxic or hazardous materials in areas that may affect PROJECT. If
 23 CITY breaches the obligations stated herein, or if contamination by toxic or hazardous materials
 24 otherwise occurs for which CITY is legally liable to DISTRICT for damage resulting there, then CITY
 25 shall indemnify, defend with counsel approved in writing by FLOOD DISTRICT, and hold FLOOD
 26 DISTRICT and COUNTY harmless from any and all claims, attorneys fees, consultant fees and

1 expert witness fees that arise during or after the term of this AGREEMENT as a result of such
 2 contamination. This indemnification includes without limitation costs and penalties paid, if any,
 3 incurred by FLOOD DISTRICT or COUNTY in connection with any investigation of site conditions or
 4 any cleanup, remedial, removal, or restoration work required by any federal, state or local
 5 governmental entity because of toxic or hazardous materials being present in the soil or ground
 6 water and the presence of such materials in the soil or ground water is determined to be proximately
 7 caused by the acts of CITY, its indemnitees, licensees or guests. CITY shall promptly take all
 8 actions at its sole cost and expense as are necessary to clean, remove and restore the
 9 Conservation Easement Area to its condition prior to the introduction of such toxic or hazardous
 10 materials by CITY provided CITY shall first have obtained FLOOD DISTRICT's approval and the
 11 approval of any necessary governmental entities.

12 **10. INDEPENDENT CONTRACTOR STATUS**

13 This AGREEMENT is by and between FLOOD DISTRICT and CITY and is not intended and shall
 14 not be construed so as to create the relationship of agent, servant, employee, partnership, joint
 15 venture or association, as between FLOOD DISTRICT and CITY.

16 **11. SUCCESSORS**

17 This AGREEMENT shall be binding on the successors of the PARTIES hereto and shall not be
 18 succeeded by any PARTY without the prior written consent of the other PARTY. The consent of
 19 such other PARTY shall not be withheld unreasonably but, prior to approving any such succession
 20 involving the performance of any obligations pursuant to this AGREEMENT, the other PARTY shall
 21 be satisfied by competent evidence that the successor is technically qualified and financially able to
 22 perform those services to be succeeded. Failure to obtain the other PARTY's required prior written
 23 approval of any proposed succession will render such succession void.

24 **12. WAIVER OF RIGHTS**

25 The failure of FLOOD DISTRICT or CITY to insist upon strict performance of any of the terms,
 26 covenants or conditions of this AGREEMENT shall not be deemed a waiver of any right or remedy

1 that FLOOD DISTRICT or CITY may have, and shall not be deemed a waiver of the right to require
2 strict performance of all the terms, covenants and conditions of this AGREEMENT thereafter, nor
3 shall such failure constitute a waiver of any remedy for the subsequent breach or default of any
4 term, covenant or condition of this AGREEMENT.

5 **13. APPLICABLE LAW**

6 This AGREEMENT has been negotiated and executed in the State of California and shall be
7 governed by and construed in accordance with the laws of the State of California. In the event of
8 any legal action to enforce or interpret this AGREEMENT, the sole and exclusive venue shall be a
9 court of competent jurisdiction located in Orange County, California, and the PARTIES hereto agree
10 to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure
11 Section 394.

12 **14. SEVERABILITY**

13 If any part of this AGREEMENT is held, determined or adjudicated to be illegal, void or
14 unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be
15 given effect to the fullest extent reasonably possible.

16 **15. ATTORNEY FEES/COSTS**

17 Should litigation be necessary to enforce any terms or provisions of this AGREEMENT, then each
18 PARTY shall bear its own litigation and collection expenses, witness fees, court costs and attorney's
19 fees.

20 **16. EXHIBITS**

21 This AGREEMENT incorporates by this reference, the following exhibit, which is attached hereto
22 and incorporated herein:

- 23 a. Exhibit A: Fairview Park Wetlands and Riparian Habitat Project - Site Plan
24 b. Exhibit B: Mitigation and Betterment Schedule of Work Items

25 **17. WAIVER AND INTERPRETATION**

26 Titles or captions contained herein are inserted as a matter of convenience and for reference, and in

1 no way define, limit, extend or describe the scope of this AGREEMENT or any provisions hereof. No
2 provision in this AGREEMENT is to be interpreted for or against a PARTY because that PARTY or
3 its legal representative drafted such provision.

4 **18. AUTHORITY**

5 The PARTIES to this AGREEMENT represent and warrant that this AGREEMENT has been duly
6 authorized and executed and constitutes the legally binding obligation of their respective
7 organizations or entities, enforceable in accordance with its terms.

8 **19. AMENDMENT(S)**

9 It is mutually understood and agreed by PARTIES that no addition to, alteration of, or variation of
10 the terms of this AGREEMENT, nor any oral understanding or agreement not incorporated herein,
11 shall be valid unless made in writing and signed and approved by both PARTIES.

12 **20. ENTIRE AGREEMENT**

13 This document sets forth the entire AGREEMENT between the FLOOD DISTRICT and CITY and
14 may be modified only by a written amendment between the PARTIES hereto, in accordance with
15 Paragraph 19 ("AMENDMENT(S)", above.

16 **20. COUNTERPART**

17 The PARTIES may execute this AGREEMENT in counterpart.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 IN WITNESS WHEREOF, each PARTY hereto has executed this AGREEMENT by its duly authorized
2 representatives as of the date set forth below.

3
4 CITY OF COSTA MESA,
5 a body corporate and politic in the State
6 of California

7 Date: 7/15/08

8 By: 
9 Mayor, City Council

10 Date: _____

11 **APPROVED AS TO FORM**
12 Office of the City Counsel
13 Costa Mesa, California

14 By: 
15 Deputy CITY ATTORNEY

16 ATTEST:

17 
18 JULIE FOLCIK, CITY CLERK
19 CITY OF COSTA MESA
20
21
22
23
24
25
26

Orange County Flood Control District

1
2 Date: 7-29-08

By
Chair of the Board of Supervisors
Orange County, CA

3
4
5 Signed and certified that a copy of this document has
6 been delivered to the Chair of the Board per G.C. Sec
7 25103, Reso 79-1535

Attest:

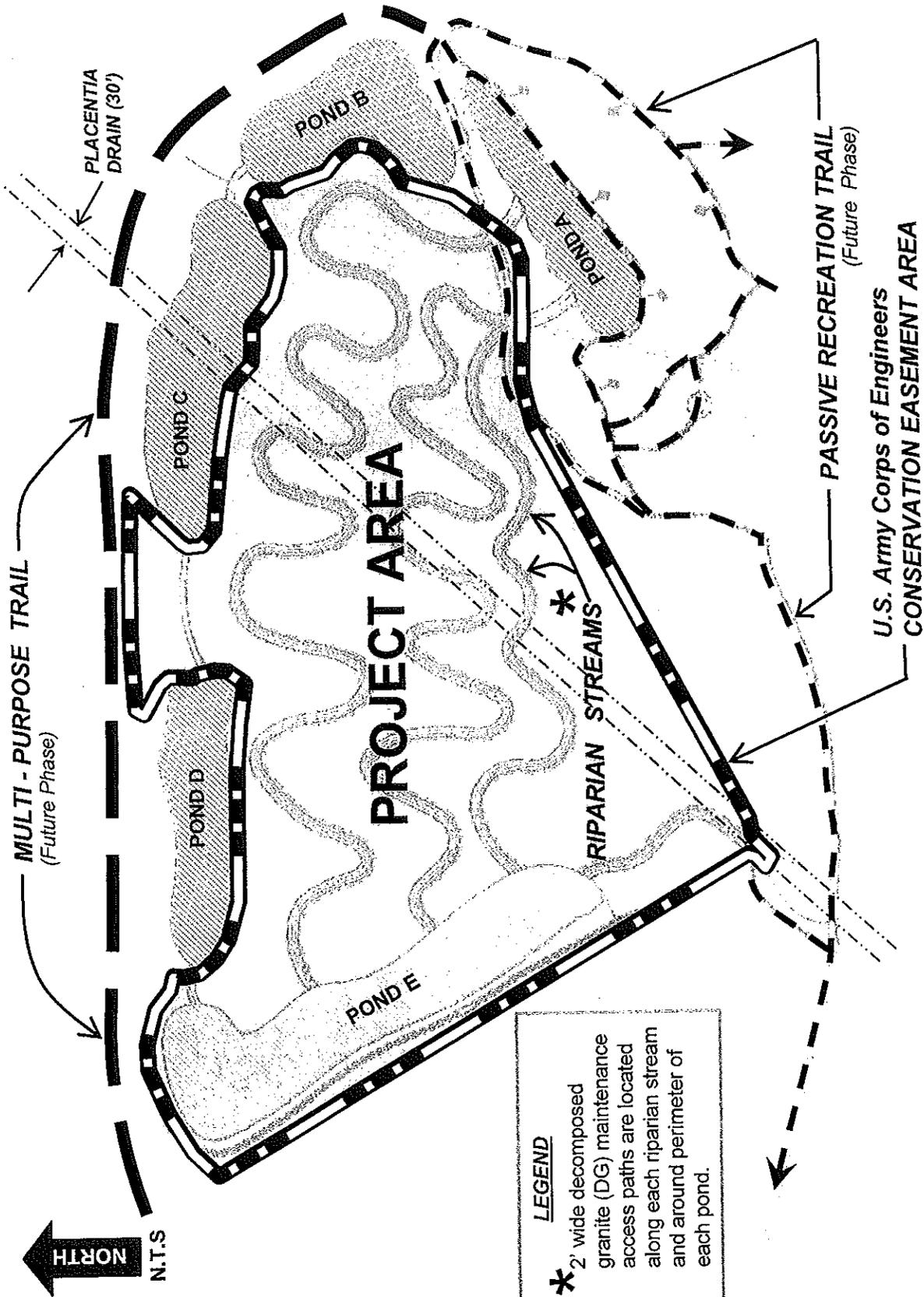
8
Darlene J. Bloom
Clerk of the Board of Supervisors
County of Orange, California



9
10 Date: 6/17/2025

11 **APPROVED AS TO FORM**
12 Office of the County Counsel
13 Orange County, California

14 By:
Deputy



Fairview Park Wetlands and Riparian Habitat Project – SITE PLAN

Exhibit B

**Fairview Park Wetlands and Riparian Habitat Project
Schedule of Work Items for CONSERVATION EASEMENT AREA**

ITEM #	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT
MITIGATION Items (to be paid by the Corps)			
1.0	As-Built Drawings	1.00	LS
2.0	Clear and Grub	17.00	AC
3.0	Grading	17.00	AC
4.0	Irrigation for Riparian Areas	1.00	LS
5.0	Planting for Riparian Areas	1.00	LS
6.0	Plant Establishment	1.00	LS
7.0	Temporary Construction Fence	4,500.00	LF
8.0	Electrical	2,000.00	LF
BETTERMENT Items (to be paid by the City of Costa Mesa through OCFCD)			
9.0	Access Trails	16,000.00	SF
10.0	Excavation Pond E	13,000.00	CY
11.0	Excavation Riparian Creeks	10,800.00	CY
12.0	Rock Slope Protection	250.00	TN
13.0	Six Inch HDPE Water Line	2,750.00	LF
14.0	Concrete Weirs	4.00	EA