

Amendment No. 1 to Agreement D12-006

This Amendment No.1 to Agreement D12-006, hereinafter referred to as “**AMENDMENT**,” is entered into and effective as of ____ of _____, 2015, by and between

ORANGE COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic in the State of
California, hereinafter referred to as "**DISTRICT**,"

AND

ORANGE COUNTY WATER DISTRICT, a special
government district formed under the Orange
County water District Act, Chapter 924, Statutes of
1933, as amended, hereinafter referred to as
"**OCWD**,"

which are sometimes individually referred to as “**PARTY**,” or collectively as “**PARTIES**.”

RECITALS

WHEREAS, OCWD and DISTRICT entered into that certain Agreement D12-006 dated May 1, 2012, hereinafter referred to as the “**Agreement**,” regarding the planning, design, construction, operation, and maintenance of certain improvements within the Fletcher Retarding Basin (Facility E10B01) hereinafter referred to as the “**BASIN**”, that would allow the BASIN to operate as both a flood control detention and groundwater recharging facility (“**Project**”);

WHEREAS, DISTRICT paid in full its obligation under Section 5.3 of the Agreement, the PARTIES acknowledge that Section 5.3 has been completed with no additional responsibilities outstanding by DISTRICT; and

WHEREAS, DISTRICT, through its Orange County Public Works representative, in support of the Project executed a Letter Agreement (Agreement Number C-1-2758 M2 CTFP Master Funding Agreement – Letter Agreement Number 8) with the Orange County Transportation Authority (**OCTA**) on

June 30, 2014 for Measure M2 Environmental Cleanup Program – Fiscal Year 2013-14 Tier 2 Water Quality Grant (the “**Grant**”); and

WHEREAS, OCTA awarded a Measure M2 Environmental Cleanup Program Grant funds to DISTRICT in the amount of \$2,525,000 (“**M2 Funding**”) which may only be used for of the following capital construction costs associated with the Project: BASIN excavation and exportation of unwanted materials, a pump station and a drain line, and a twelve-inch water supply pipeline; and,

WHEREAS, the PARTIES mutually desire to amend the Agreement in order to incorporate receipt and utilization of the Grant funds, and the PARTIES respective responsibilities thereto.

NOW, THEREFORE the PARTIES hereto agree as follows:

1. RECITALS

The provisions, definitions, and statements of intentions set forth in the recitals above are incorporated into this AMENDMENT.

2. DEFINITIONS

All capitalized terms used and not otherwise defined in this AMENDMENT, but defined in the Agreement, shall have the meanings set forth in the Agreement.

3. REVISIONS

a) Subsection 3.3 is deleted in its entirety and hereby substituted with the following:

3.3 DISTRICT reserves the right to modify, deepen, enlarge, repair, replace or construct other improvements needed within the BASIN as authorized under the Flood Control Act. In the event such improvements conflict with proposed OCWD’s activities, OCWD shall modify, remove or relocate all, or portions of IMPROVEMENTS that are in conflict, to a new location (if possible, within the BASIN) solely at OCWD’s expense within one hundred eighty (180) days of

receiving written notification from the Director of the need to modify, remove or relocate such IMPROVEMENTS. Should such modifications or removal be deemed necessary by Director within the first ten (10) years after the completion date of IMPROVEMENTS, DISTRICT shall reimburse OCWD its initial construction cost to complete the IMPROVEMENTS on a sliding scale, with 100% of said initial costs in the first year after the completion date of IMPROVEMENTS, reducing each following year by 10%, reaching zero ten years after the completion date of the IMPROVEMENTS. Under no circumstances would DISTRICT be required to reimburse or otherwise pay OCWD for costs or expenses that OCWD had already received reimbursement (e.g. through the M2 Funding) nor pay OCWD for other than actual IMPROVEMENT construction costs incurred by OCWD.

b) Subsection 4.2.4 is deleted in its entirety and hereby substituted with the following:

4.2.4 OCWD shall be responsible for all construction cost of the BASIN including but not limited to the inlet and outlet modification, BASIN fence and gate relocation, BASIN access road, access ramp to the bottom of the BASIN, and BASIN general construction mobilization, site clearing, and traffic control.

c) Subsection 4.2.20 is deleted in its entirety and hereby substituted with the following:

4.2.20 OCWD shall obtain the advance written approval of the DIRECTOR for any proposed change to the approved IMPROVEMENTS construction plans prior to the implementation of such changes. Prior to issuing its approval of any Contract Change Orders (CCOs), OCWD shall submit all CCO's to DISTRICT for review and approval to verify that the IMPROVEMENTS will not interfere with the flood control function of the BASIN in a timely manner.

d) Subsection 4.2.24 is deleted in its entirety and hereby substituted with the following:

4.2.24 OCWD shall be responsible at its sole cost for the maintenance, repair, and replacement of all the IMPROVEMENTS, including but not limited to the access ways and ramps,

constructed within the BASIN by OCWD pursuant to this AGREEMENT.

e) Subsection 4.2.26 is deleted in its entirety and hereby substituted with the following:

4.2.26 OCWD shall be responsible to make all payments in accordance with OCWD's contract with the CONTRACTOR.

f) Add the following provision as Subsection 4.2.27:

4.2.27 OCWD agrees to remain at all times in compliance, and shall not offend DISTRICT's compliance, with the following requirements concerning utilization of the M2 Funding: the Grant, the Comprehensive Transportation Funding Programs Guidelines approved by the Orange County Transportation Authority on March 22, 2010, as amended, ("CTFP"), Master Funding Agreement No. C-1-2758 dated August 19, 2011, and Letter Agreement dated June 30, 2014 (Agreement No. C-1-2758 M2 CTFP Master Funding Agreement–Letter Agreement Number 8) with the Orange County Transportation Authority (OCTA) attached hereto as **Exhibit C** (the "Letter Agreement").

g) Subsection 5.2 is deleted in its entirety and hereby substituted with the following:

5.2 DISTRICT shall review the project plans and specifications, including design and engineering for the BASIN, including the inlet and outlet structures and other appurtenant facilities, and if found to be satisfactorily and in conformance with DISTRICT practices, standards and criteria, DIRECTOR shall approve and sign project plans and specifications. Such approval shall only be for evidence that the project, if constructed in accordance with the approved plans and specifications, would not interfere with the flood control function of the BASIN.

h) Subsection 5.6 is deleted in its entirety and hereby substituted with the following:

5.6 DISTRICT shall not be responsible for any cost to excavate the BASIN.

i) Subsection 5.7 is deleted in its entirety and hereby substituted with the following:

5.7 DISTRICT agrees to receive the M2 Funding in accordance with the Letter Agreement. DISTRICT agrees to pay or distribute the M2 Funding in accordance Section 6 below. The PARTIES agree the M2 Funding award of \$ 2,525,000 has fully satisfied DISTRICT's financial contribution as to the IMPROVEMENTS. To the extent there are any costs for the IMPROVEMENTS not covered by M2 Funding, such costs including any Contract Change Orders (CCOs) shall be the sole responsibility of OCWD, not incurred by DISTRICT.

j) Subsection 5.8 is deleted in its entirety and hereby substituted with the following:

5.8 intentionally deleted

k) Subsection 5.9 is deleted in its entirety and hereby substituted with the following:

5.9 intentionally deleted

l) Subsection 6.1 is deleted in its entirety and hereby substituted with the following:

6.1 OCWD shall submit to DISTRICT invoice(s) along with all information and supporting documentation necessary for a submission to OCTA, in accordance with CFTP, to receive the amount equal to seventy-five percent (75%) of the total M2 Funding.

m) Subsection 6.2 is deleted in its entirety and hereby substituted with the following:

6.2 DISTRICT shall submit to OCTA invoice(s), or other CFTP payment request, for seventy-five percent (75%) of the total M2 Funding, with the information and supporting documentation provided by OCWD.

n) Subsection 6.3 is deleted in its entirety and hereby substituted with the following:

6.3 When IMPROVEMENTS construction has been completed, OCWD shall within four (4)

months submit to DISTRICT an invoice along with all information and supporting documentation necessary for a submission to OCTA, in accordance with CFTP, to receive an amount equal to twenty-five percent (25%) of the total M2 Funding. Within six (6) months of construction completion, DISTRICT shall submit to OCTA an invoice, or other CFTP payment request, for twenty-five percent (25%) of the total M2 Funding, with the information and supporting documentation provided by OCWD.

o) Subsection 6.4 is deleted in its entirety and hereby substituted with the following:

6.4 Upon receipt of a M2 Funding payment based upon submission of an OCWD invoice(s) and supporting documentation, DISTRICT agrees to submit said payment in full to OCWD within thirty (30) business days upon receipt from OCTA. The PARTIES acknowledge the M2 Funding does not cover all costs for construction of the IMPROVEMENTS and that DISTRICT has no further responsibility or obligation to provide any addition funding or contribution.

p) Section 18 is deleted in its entirety and hereby substituted with the following:

18. EXHIBITS

This AGREEMENT incorporates by this reference, the following Exhibits, which are attached hereto and incorporated herein:

Exhibit A – Location Map

Exhibit B – Insurance Requirements

Exhibit C – Letter Agreement No.8 C-1-2758 M2 CTFP

q) Subsection 24.1 is deleted in its entirety and hereby substituted with the following:

24.1 In the event that OCWD is unable to proceed with the construction of the IMPROVEMENTS in accordance with the terms of this AGREEMENT within three (3) years after the execution date of the AGREEMENT, each PARTY may terminate this AGREEMENT with or without cause, after conferring with the other PARTY and upon delivery of a thirty (30)

day written notice to the other PARTY. The written Notice of Termination shall state the effective date of such termination and shall be served in accordance with Paragraph 11 (NOTICES), above. If any part(s) of DISTRICT facilities within the BASIN are altered, damaged, or realigned because of the IMPROVEMENTS, OCWD shall reconstruct to the original condition or pay DISTRICT the cost of reconstruction to the original condition of DISTRICT's facilities within the BASIN that have been altered, damaged, or realigned because of the IMPROVEMENTS.

4. AUTHORITY

The PARTIES to this AMENDMENT represent and warrant that this AMENDMENT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

5. NO OTHER CHANGES; RATIFICATION

Except as expressly set forth in this AMENDMENT, each and all of the terms, conditions and covenants in the Agreement shall remain unchanged and in full force and effect, and the Agreement, as amended, is hereby ratified by the Parties.

6. COUNTERPARTS

This AMENDMENT may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, each PARTY hereto has executed this AMENDMENT by its duly authorized representatives as of the date set forth above.

ORANGE COUNTY WATER DISTRICT,
A special government district

Date: _____

BY: _____
Cathy Green
President

Date: _____

By: _____
Michael R. Markus
General Manager

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

BY: _____
Joel D. Kuperberg
General Counsel, OCWD

ORANGE COUNTY FLOOD CONTROL DISTRICT
A body corporate and politic

Date: _____

By _____
Chairman of the Board of Supervisors
Orange County, CA

SIGNED AND CERTIFIED THAT A COPY OF THIS
AGREEMENT HAS BEEN DELIVERED TO THE CHAIR
OF THE BOARD PER G. C. Sec 25103, Reso 79-1535
Attest:

Date: _____

Susan Novak
Clerk of the Board of Supervisors
Orange County, California

APPROVED AS TO FORM:
Office of the County Counsel
Orange County, California

By: 
Deputy

Date: 1/27/2015

Exhibit C

Letter Agreement No.8 C-1-2758 M2 CTFP



BOARD OF DIRECTORS

Shawn Nelson
Chairman

Jeffrey Lalloway
Vice Chairman

Patricia Bates
Director

Lori Donchak
Director

Matthew Harper
Director

Michael Hennessey
Director

Steve Jones
Director

Gary A. Miller
Director

John Moorlach
Director

Al Murray
Director

Janet Nguyen
Director

Miguel Pulido
Director

Tim Shaw
Director

Todd Spitzer
Director

Tom Tait
Director

Frank Ury
Director

Gregory T. Winterbottom
Director

Ryan Chamberlain
Ex-Officio Member

CHIEF EXECUTIVE OFFICE

Darrell Johnson
Chief Executive Officer

May 12, 2014

County of Orange
300 N. Flower Street
Santa Ana, CA 92702

Subject: Agreement No. C-1-2758, County of Orange, "M2 CTFP Master Funding Agreement" – Letter Agreement No. 8

Dear Mr. Silsby:

This Letter Agreement serves as the Orange County Transportation Authority's (OCTA) approval to amend Agreement No. C-1-2758, Attachment A-5 "Projects List". OCTA is deleting Attachment A-5, in its entirety, as identified in Article 4 "Responsibilities of Agency", paragraph A, and in lieu thereof is inserting the revised "Project List", attached hereto as Attachment A-8, which is incorporated and made a part of the Agreement. All provisions set forth in Master Funding Agreement No. C-1-2758 apply.

The following additional provisions apply to the Project X project(s) approved by the Board on April 14, 2014:

1. Project X "Environmental Clean Up Program" anticipates using in kind services such as ongoing operation and maintenance of projects must include semi-annual reporting and expenditure verification of matching funds including backup documentation as part of the semi-annual review (SAR) reporting process and include in the M2 Eligibility Expenditure Report due within six months of the end of the jurisdiction's fiscal year. Failure to provide reporting and or evidence of on-going in-kind services for the life of the project will result in disqualification of Agency participation on future competitive calls for Comprehensive Transportation Funding Programs (CTFP) projects.

If you have any questions, please feel free to contact Roger Lopez at (714) 560-5438.

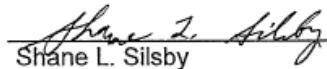
Agreement No. 1-2758, County of Orange
Master Funding Agreement – Letter Agreement No. 8
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Please execute this letter agreement and return the signed original to the attention of Michael Le, Associate Contract Administrator at (714) 560-5314, mle@octa.net. Upon full execution of the letter agreement, the effective date will be July 1, 2014.


Accepted and Agreed



Kia Mortazavi
Executive Director, Planning
Orange County Transportation Authority



Shane L. Silsby
Director of Public Works
County of Orange



Meena Katakia
Department Manager
Orange County Transportation Authority

6/30/14

Date


ML 

AGREEMENT NO. C-1-2758
 ATTACHMENT A-8
 LETTER AGREEMENT NO. 8

M2 CTFP MASTER FUNDING AGREEMENT
 County of Orange - Project List

Project Description	CTFP Amount	SLPP Amount	Programmed Fiscal Year	Board Date	Letter Agreement No.
Project O "Regional Capacity Program"					
Cow Camp Road - Segment 1 (Engineering)	\$1,000,000.00	\$0.00	2011-12	6/27/2011	1
Cow Camp Road - Segment 1 (Construction)	\$4,602,857.00	\$3,717,143.00	2012-13	6/27/2011	1
Edinger Avenue Bridge Widening at Santa Ana River (Engineering)	\$689,585.00	\$0.00	2013-14	6/27/2011	
La Pata Avenue Extension (Engineering)	\$2,250,000.00	\$0.00	2011-12	6/27/2011	
La Pata Avenue Extension - Phase 1 (Construction)	\$5,110,000.00	\$5,110,000.00	2013-14	4/23/2012	3
La Pata Avenue Extension - Phase 2 (Construction)	\$10,000,000.00	\$0.00	2013-14	4/8/2013	5
Brea Boulevard/Brea Canyon Road Widening Improvements (Engineering)	\$2,308,500.00	\$0.00	2014-15	4/14/2014	8
<i>Cumulative Program Total</i>	\$32,479,585.00				
Project X "Environmental Clean Up"					
Catch Screen Basins Project	\$100,000.00	\$0.00	2011-12	8/8/2011	2
Marina Trash Skimmer	\$100,000.00	\$0.00	2011-12	8/8/2011	2
Catch Basin Screens, Phase II	\$100,000.00	\$0.00	201-13	8/13/2012	4
Catch Basin Screens, Phase III	\$200,000.00	\$0.00	2013-14	9/23/2013	7
Fletcher Basin Improvement Project	\$2,525,000.00	\$0.00	2014-15	4/14/2014	8
Wagon Wheel Creek Restoration and Storm Water Management	\$1,020,030.00	\$0.00	2014-15	4/14/2014	8
Storm Water Runoff Quality and Quantity Control BMP (Irvine Regional)	\$1,072,049.00	\$0.00	2014-15	4/14/2014	8
<i>Cumulative Program Total</i>	\$5,117,079.00				
Project P "Regional Traffic Signal Synchronization Program"					
Antonio Parkway Corridor	\$108,864.00	\$0.00	2012-13	6/13/2011	2
<i>Cumulative Program Total</i>	\$108,864.00				
Total (All Projects)	\$37,705,528.00				