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MEMORANDUM OF AGREEMENT
AMONG THE U.S. ARMY CORPS OF ENGINEERS,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, AND
THE SAN FRANCISCO PUBLIC UTILITIES COMMISSION

REGARDING THE ISSUANCE OF A PERMIT(S) UNDER THE AUTHORITY OF SECTION 404 OF THE CLEAN WATER ACT FOR THE LOWER CRYSTAL SPRINGS DAM IMPROVEMENTS PROJECT, SAN MATEO COUNTY, CALIFORNIA

WHEREAS, the U. S. Army Corps of Engineers, San Francisco District (Corps) (Lead Agency) will issue a permit (Undertaking), under File No. 30317S, pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) to the San Francisco Public Utilities Commission (SFPUC) (Proponent), for the Lower Crystal Springs Dam Improvements Project (LSCDI Project); and

WHEREAS, the Corps has consulted with the California State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800 for implementation of Section 106 of the National Historic Preservation Act of 1966 (NHPA); and

WHEREAS, the SHPO has concurred with the Corps regarding: 1) the Area of Potential Effects, 2) the Identification Effort, 3) the prior determination that the Lower Crystal Springs Dam (LSCD) is eligible for the National Register of Historic Places (NRHP) under criteria A and C through a consensus between SHPO and the Federal Highways Administration, 4) determination that the Crystal Springs Cottage is eligible for the NRHP under criterion A, and 5) pursuant to 36 CFR Part 800.5(d)(2) a finding of adverse effect was appropriate regarding the LCSD and the Crystal Springs Cottage; (Attachment A), and

WHEREAS, the Corps proposes to continue consultation with SHPO to resolve adverse affects to cultural resources through the development of this Memorandum of Agreement (MOA) and implementation of the accompanying Historic Properties Treatment Plan (HPTP) in Attachment B pursuant to 36 CFR Part 800.6; and

WHEREAS, the Corps has notified the Advisory Council on Historic Preservation (ACHP) of the Undertaking's adverse effect on historic properties, pursuant to 36 CFR Part 800.6(a) (1); and

WHEREAS, the Corps, in cooperation with the SFPUC, has consulted with the California Native American Heritage Commission (NAHC), and through such consultation has identified Native American groups and individuals that will continue to be consulted by the Corps

throughout the implementation of the Project and are invited signatories to this MOA; and

WHEREAS, the execution of this MOA constitutes completion of Section 106 of the NHPA for the Undertaking;

NOW, THEREFORE, the Corps, the SHPO, and the SFPUC shall ensure that the Undertaking is implemented in accordance with the following stipulations which take into account the effects of the Undertaking on historic properties within the APE, and that these stipulations shall govern until this MOA is fulfilled or the MOA is terminated in accordance with to Stipulations VI(E) or (F) below.

STIPULATIONS

The Corps shall incorporate the provisions of this MOA and implementation of measures described in the attached HPTP as conditions of the Clean Water Act Section 404 Permit for the Undertaking, and will ensure that the following measures are carried out in full:

I. PROJECT DESCRIPTION, AREA OF POTENTIAL EFFECTS, AND RECORDED HISTORIC PROPERTIES

The San Francisco Public Utilities Commission (SFPUC) is proposing to implement the Lower Crystal Springs Dam Improvements Project (LCSDI Project). This Project would modify various features of the Lower Crystal Springs Dam (LCSD) to comply with requirements of the California Department of Water Resources, Division of Safety of Dams (DSOD). Implementation of the Project would result in the removal of the DSOD operating restrictions on Crystal Springs Reservoir and restoration of the historical storage capacity of the reservoir. All Project components are located in an unincorporated area of San Mateo County on lands owned by the City and County of San Francisco (CCSF). The proposed Project would improve the SFPUC's ability to deliver water to its customers, particularly during dry years.

The Corps has established the APE for the Undertaking, in consultation with the SHPO. The established APE is depicted on maps contained in the *Historic Context, Architectural and Archaeological Survey (HCAAS) Report for the Proposed Lower Crystal Springs Dam Improvement Project* (Attachment C). The APE for the Undertaking and proposed Project includes areas that would be affected by construction activities associated with the dam improvements, as well as areas affected by proposed operations, including the entire shoreline of Crystal Springs Reservoir (Upper and Lower), which would be subject to inundation under post-Project conditions. The APE includes the LCSD, the construction and staging areas at the top and toe of the dam, the shoreline band around Crystal Springs Reservoir (from the current DSOD-permitted water level of 283.8 feet to the post-Project maximum water level of 291.8 feet), plus a 50-foot buffer around the reservoir.

The HCAAS Report completed for the Project revealed that two historic properties are located within the APE (ENTRIX, Inc./MSE Joint Venture: October 2009). The LCSD was previously

determined eligible for the NRHP under criteria A and C, through a consensus between the State Historic Preservation Officer and the Federal Highways Administration in 1989. The HCAAS report recommended that the South Crystal Springs Cottage is eligible for the NRHP under criterion A (ENTRIX Inc./MSE Joint Venture: October 2009). On October 7, 2010 the SHPO concurred with the Corps that the construction associated with the Project would result in adverse effects to the LCSD through substantial alteration of a number of character-defining features that contribute to the historical significance of the dam. SHPO also concurred that the South Crystal Springs Cottage is eligible for the NRHP, and that rising water levels associated with operation of the Undertaking may have an indirect adverse effect on the cottage (Attachment A).

II. TREATMENT OF ADVERSE EFFECTS

A. The Corps and the SFPUC have agreed to resolve adverse effects to the LCSD and the South Crystal Springs Cottage by implementing mitigation measures detailed in the Historic Properties Treatment Plan (HPTP), included as Attachment B to this MOA. The program detailed in the HPTP includes:

a. Preparation of photographic and written documentation of the LCSD in accordance with the Historic American Engineering Record (HAER) Level II standards.
b. Development of public interpretation panels for the LCSD.
c. Implementation of an Historic Resources Protection Plan (HRPP) for the LCSD during project construction.
d. Geotechnical evaluation of the structural condition of the retaining wall supporting the South Crystal Springs Cottage and, if deemed necessary, make improvements to the wall to prevent adverse effects to the cottage.
e. A plan for any unexpected cultural discoveries, including human remains, during construction and operation.

B. A timeline for completion of all items and delegation of responsibilities is described in the HPTP (Attachment B).

III. REPORTING REQUIREMENTS

A. The Corps shall ensure that all reports resulting from actions pursuant to this MOA are provided to the SHPO, SFPUC, and other interested persons. The Corps shall ensure that all reports comply with contemporary professional standards and follow the *Secretary of the Interior's Archaeology and Historic Preservation* (as amended and annotated). Preparation of draft and final reports and review periods by the SHPO and SFPUC, as well as final preparation and dissemination of the final reports, are detailed in the HPTP (Attachment B).

IV. TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGIN

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A. The parties to this MOA agree that any Native American burials or related items discovered during the implementation of the Project will be treated in accordance with the requirements of 7050.5 (b) of the California Health and Safety Code. If, pursuant to 7050.5 (c) of the California Health and Safety Code, the county coroner/medical examiner determines that the human remains are or may be of Native American origin, then the discovery shall be treated in accordance with the provisions of 5097.98 (a)-(d) of the California Public Resources Code. If human remains are discovered and determined to be Native American, the NAHC will be contacted for a determination of Most Likely Descendant (MLD). The Corps and SFPUC will work with the MLD to determine appropriate treatment and/or reburial measures. Treatment of human remains will be conducted according to the measures outlined in the attached HPTP.

V. INADVERTENT DISCOVERIES AND UNANTICIPATED EFFECTS

A. If the Corps or SHPO determines that implementation of the Undertaking will affect a previously unidentified property that may be eligible for the NRHP, or affect a known historic property in an unanticipated manner, the Corps will address the discovery, or unanticipated effect, in accordance with the procedures outlined in 36 CFR Part 800.13. The Corps and SHPO at their discretion may hereunder assume any discovered property to be eligible for inclusion in the NRHP, and that compliance with this stipulation shall satisfy the requirements of 36 CFR Part 800.13(a)(2). Pursuant to 36 CFR Part 800.13, the Corps will notify SHPO and interested Native Americans within seventy-two (72) hours of the discovery. The notification shall describe the actions proposed by the Corps to resolve the adverse effects. The SHPO shall respond within seventy-two (72) hours of the notification. The signatories agree that only cultural resources determined or assumed to be eligible for the NRHP will be subject to further consideration under terms of the MOA. The HPTP (Attachment B) contains details on the course of action to be followed in the event of an inadvertent discovery.

B. The Corps will ensure that the expressed wishes of consulting Native Americans are taken into account when any decisions are made regarding the treatment and disposition of Native American archaeological materials and records.

VI. ADMINISTRATIVE STIPULATIONS

A. STANDARDS

1. *Professional Qualifications*. All activities prescribed by Stipulations II, III, IV, and V of this MOA shall be carried out under the authority of the Corps by or under the direct supervision of a person or persons meeting, at a minimum, the Secretary of the Interior's *Professional Qualifications Standards* (PQS) (48 Fed Reg. 44,738-44,739) in the appropriate disciplines. However, nothing in this stipulation may be interpreted to preclude the Corps or any agent or contractor thereof, from using the services of persons who do not meet the PQS who are supervised by persons who meet the PQS.

2. *Historic Preservation Standards*. All activities prescribed by Stipulations II, III, IV, and V of this MOA shall reasonably conform to applicable standards and guidelines established by the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 Fed Reg. 44,716-44,740) and SHPO guidelines.

3. *Curation and Curation Standards*. The Corps shall ensure that, to the extent permitted by applicable federal law, the materials and records resulting from the activities prescribed by Stipulations II, III, IV, and V of this MOA are curated in accordance with 36 CFR Part 79.

B. CONFIDENTIALITY

The parties to this MOA acknowledge that historic properties covered by this MOA may be subject to the provisions of Section 304 of the NHPA and § 6254.10 of the California Government Code (Public Records Act) relating to the disclosure of archaeological site information and having so acknowledged, will ensure that all actions and documentation prescribed by this MOA are consistent with Section 304 of the National Historic Preservation act of 1966.

C. RESOLVING OBJECTIONS

1. Should SHPO object to the manner in which the terms of this MOA are implemented, the Corps will consult with the SHPO to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute, including the Corps' proposed resolution to the ACHP for their assistance in resolving the dispute. In the event the ACHP provides timely advice or comments, the Corps, prior to reaching a final decision on the dispute, shall prepare a written response that takes into account the recommendation or comment provided by the ACHP pertaining to the subject of the dispute, and provide them a copy of this written response.

2. The Corps' responsibility to carry out all actions under this MOA that are not the subject of a dispute will remain unchanged.

3. The Corps may authorize any action subject to objection under this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation.

4. At any time during implementation of the measures stipulated in this MOA, should an objection pertaining to such implementation be raised by a member of the public, the Corps shall notify the parties to the MOA in writing of the objection and take the objection into consideration. The Corps shall consult with the objecting party and, if

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the objecting party so requests shall also consult with SHPO, for no more than 15 days. Within ten (10) days following closure of this consultation period, the Corps will render a decision regarding the objection and notify all consulting parties of its decision in writing. In reaching its decision, the Corps will take into account any comments from the consulting parties regarding the objection, including the objecting party. The Corps decision regarding the resolution of the objection will be final.

D. AMENDMENTS

Any Signatory may propose that this MOA be amended, whereupon the Signatories will consult for no more than 30 days to consider such amendment. The amendment process shall comply with 36 CFR Parts 800.6(c) (l) and 800.6(c) (7). This MOA may be amended only upon the written agreement of the Signatories. If it is not amended, this MOA may be terminated by either Signatory in accordance with Stipulation VI(E).

E. TERMINATION

1. If this MOA is not amended as provided for in Stipulation VI(D), or if any Signatory proposes termination of this MOA for other reasons, the Signatory proposing termination shall, in writing, notify the other Signatories, explain the reasons for proposing termination, and consult with the other Signatories for at least 30 days to seek alternatives to termination. Such consultation shall not be required if the Corps proposes termination because the Undertaking no longer meets the definition set forth in 36 CFR Part 800.16(y).

2. Should such consultation result in an agreement on an alternative to termination, then the Signatories shall proceed in accordance with the terms of that agreement.

3. Should such consultation fail, the Signatory proposing termination may terminate this MOA by promptly notifying the other Signatories in writing. Termination hereunder shall render this MOA without further force or effect.

4. If this MOA is terminated hereunder, and if the Corps determines that the Undertaking will nonetheless proceed, then the Corps shall either consult in accordance with 36 CFR Part 800.6 to develop a new MOA or request the comments of the ACHP pursuant to 36 CFR Part 800.

F. DURATION OF THE MOA

1. Unless terminated pursuant to Stipulation VI(E), or unless it is superseded by an amended MOA, this MOA will be in effect following execution by the Signatories until the Corps, in consultation with SHPO, determines that all of its stipulations have been satisfactorily fulfilled. This MOA will terminate and have no further force or effect on the day that the Corps notifies SHPO in writing of its determination that all

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stipulations of this MOA have been satisfactorily fulfilled.

2. The terms of this MOA shall be satisfactorily fulfilled within five (5) years following the date of execution by SHPO. If the Corps determines that this requirement cannot be met, the parties to this MOA will consult to reconsider its terms. Reconsideration may include continuation of the MOA as originally executed, amendment or termination. In the event of termination, the Corps will comply with Stipulation VI(E)(4) if it determines that the Undertaking will proceed notwithstanding termination of this MOA.

3. If the Undertaking has not been implemented within five (5) years following execution of this MOA by SHPO, this MOA shall automatically terminate and have no further force or effect. In such event, the Corps shall notify SHPO in writing and, if it chooses to continue with the Undertaking, shall reinitiate review of the Undertaking in accordance with 36 CFR Part 800.

G. EFFECTIVE DATE

This MOA shall take effect on the date that it has been executed by the SHPO.

EXECUTION of this MOA by the Corps and SHPO, its subsequent transmittal by the Corps to the ACHP in accordance with 36 CFR § 800.6(b)(1)(iv), implementation of its terms, evidences that the Corps has afforded the ACHP an opportunity to comment on the Undertaking and its effect on historic properties and that the Corps has taken into account the effects of the Undertaking on historic properties.

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SIGNATORIES:

U.S. ARMY CORPS OF ENGINEERS, SAN FRANCISCO DISTRICT

By: _____ Date: _____
[Corps to provide signatory information.]

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

SAN FRANCISCO PUBLIC UTILITES COMMISSION

By: _____ Date: _____
Husam Masri, Regional Project Manager

INVITED SIGNATORIES:

[Reviewers: This will include the list of Native American tribes that request to be signatories to the MOA.]

By: _____ Date: _____

By: _____ Date: _____

By: _____ Date: _____

Attachments:

A. Office of Historic Preservation (OHP), *Re: Continued Consultation Regarding the Proposed Lower Crystal Springs Dam Improvements (LCSDI) Project, San Mateo County, California*. Ref: COE071001A. Letter from Jenan Saunders (for) Milford Wayne Donaldson, SHPO, to Jane M. Hicks, Chief, Regulatory Branch, Department of the Army, San Francisco District U.S. Army Corps of Engineers, October 7, 2010.
B. ESA, *Historic Properties Treatment Plan, Lower Crystal Springs Dam Improvement Project*, Prepared for SFPUC, December, 2010.
C. ENTRIX Inc./MSE Joint Venture, *Historic Context, Architectural and Archaeological Survey Report for the Proposed Lower Crystal Springs Dam Improvement Project.* Prepared for SFPUC, October, 2009.

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