

**MEMORANDUM OF AGREEMENT
BETWEEN
THE ORANGE COUNTY FLOOD CONTROL DISTRICT,
THE COUNTY OF ORANGE,
AND
THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

SUBJECT: Memorandum of Agreement between the Orange County Flood Control District, the County of Orange, and the U.S. Army Corps of Engineers, Los Angeles District

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into by the Orange County Flood Control District (hereinafter the "District"), the County of Orange (hereinafter, the "County"), and the Los Angeles District of the United States Army Corps of Engineers (hereinafter the "Corps"). The Corps, District, and County are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the Corps has regulatory jurisdiction over certain activities occurring in waters of the United States, including wetlands, pursuant to section 404 of the Clean Water Act ("CWA") of 1972, as amended, and navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act ("RHA"), as amended; and

WHEREAS, section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000"), as amended and codified at 33 U.S.C. § 2352, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214 of the WRDA 2000, as amended, to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Assistant Secretary of the Army (Civil Works), by memorandum dated January 19, 2018, has authorized District Engineers and Division Engineers of the Corps to accept and expend funds contributed by non-Federal public entities subject to certain limitations; and

WHEREAS, the Corps has indicated it is unable, without additional resources, to expedite the evaluation of permits of the District and County related to projects for a public purpose; and

WHEREAS, the District and County are non-federal public entities and believe it is in their best interests of the taxpayers of the District and County to provide funds to the Corps pursuant to this MOA to streamline and expedite review by the Corps under Section 404 of the CWA and/or Section 10 of the RHA for District- and County-designated priority projects, as more fully described in this MOA; and

WHEREAS, in a memorandum dated August 11, 2022, the Corps' District Engineer determined that acceptance and expenditure of funds received from the District and County is appropriate; and

WHEREAS, the Corps complies with all federal laws, rules, and regulations regarding drug-free workplace requirements and the Americans with Disabilities Act; and

WHEREAS, it is understood and acknowledged by all Parties that the Corps' review of District and County permit applications for District- and County-designated priority projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, this MOA establishes the responsibilities and operating procedures of the Parties with respect to priority reviews and other activities covered in this MOA; and

WHEREAS, this MOA is intended to (1) enable the Parties to fully consider, address, and protect environmental resources early in the development of proposed actions, (2) avoid conflicts late in project development through close coordination during early planning and development stages, (3) provide sufficient information to the Corps for timely analysis of project effects and to assist the District and County in developing appropriate mitigation measures, (4) maximize the effective use of limited Corps staff resources by focusing attention on projects that would most affect aquatic resources, (5) provide a mechanism for expediting project coordination when necessary, (6) provide for the development of programmatic efforts to support efficient decision-making related to District and County permitting needs; and (6) provide procedures for resolving disputes in this resource partnering effort; and

WHEREAS, in 2013, the Parties had entered into a Memorandum of Agreement ("2013 MOA") for expedited and priority review by the Corps; and

WHEREAS, at the time this MOA is fully executed, the 2013 MOA will have expired on September 30, 2022, at which time the Corps estimates there will be an unexpended balance of advance payments in the amount of approximately \$60,000; and

WHEREAS, the County has allowed the Corps to hold the unexpended balance of advance payments from the 2013 MOA (i.e., not refund the monies) to use as initial funding in accordance with this MOA.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

A. This MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the Corps' acceptance and expenditure of funds contributed by District and County to provide expedited permit application evaluation-related services for District- and County-designated priority projects requiring Corps' approval pursuant to Section 404 of the CWA and/or Section 10 of the RHA as listed in **Appendix A** to this MOA ("Priority Projects"). This MOA is not intended as the exclusive means of obtaining review of Priority Projects proposed by District and County; it is a vehicle by which District and County will obtain expedited permit application evaluation-related services, outside of the ordinary Corps review process for Priority Projects.

B. The District and County enter into this MOA pursuant to their authority under Water Code Appendix section 36-2 subdivision (b)(9) of the Orange County Flood Control Act (Act 5682) and Government Code section 23004 subdivision (c).

C. The Corps enters into this MOA pursuant to its authority under 33 U.S.C. § 2352.

Article II. - SCOPE OF WORK

A. The Corps will expedite permit application evaluation-related services for District and County Priority Projects under the jurisdiction of the Corps in exchange for funds provided by District and County as set forth below. The Corps' Regulatory Program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from the County will be added to the Regulatory Division budget of the Corps, in accordance with 33 U.S.C. § 2352.

B. The Corps will provide staffing resources exclusively dedicated to expediting permit application evaluation-related services, as described below, for District and County Priority Projects and/or other programmatic efforts to support efficient decision-making related to District and County CWA Section 404 and RHA Section 10 permitting needs.

C. The Corps will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of permit applications submitted by District and County for Priority Projects. Corps Regulatory personnel will charge their time and expenses against the account when they perform work to either expedite permit application evaluation-related requests for Priority Projects or, with prior approval of the District and County, undertake other programmatic efforts to support efficient decision-making related to the District and County's permitting needs.

D. Funds contributed by the County hereunder will be expended by the Corps to defray the costs of Regulatory Division personnel (including salary, associated benefits, overhead, and travel expenses) and other costs in order to expedite the evaluation of Priority Project permit applications. Activities covered by this MOA will include, but not be limited to, the following: application intake review; permit database entry; jurisdictional determinations; site visits; travel; preparing correspondence; performing the public interest review; preparing draft permit decision documents; preparation and review of environmental documentation; undertaking consultations pursuant to Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act; meetings with District and County staff and other agencies; and relevant training of District and County personnel or for Corps staff where the training supports the intent and purposes of the MOA and with proper approval of the District and County.

E. The Corps may expend funds provided by the County to hire contractors to perform select duties, including but not limited to: site visits; preparing and providing technical materials, including environmental documentation; GIS-related services; and meeting coordination for the purpose of augmenting the resources available to the Corps for expediting its review of District and County Priority Projects. If such expenditures when combined with the costs of the Regulatory Division personnel require funding in excess of the amount available under this MOA, then the Corps, as appropriate, shall not hire said contractors until and unless additional funds are provided by the County and the Parties execute a written amendment to this MOA.

F. The Corps will not expend funds provided by the County for costs associated with the review of the Corps' work undertaken by supervisors or other persons or elements of the Corps in the decision-making chain of command. However, if a supervisor is performing staff work and not supervisory oversight, funds may be used. The Corps will not expend funds provided by the County to defray the costs of activities related to the Corps' enforcement functions, but may use funds provided by the County to defray costs of activities related to permit compliance functions for District and County permits, such as compliance inspections. Enforcement functions are defined as activities not permitted by the Corps but requiring Corps authorization. Permit compliance functions are defined as Corps oversight of Corps-permitted activities.

G. If the funds provided by the County are expended and not replenished, any remaining District and County Priority Projects will be handled like those of any permit applicant.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Parties, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. The Principal Representatives are identified in Article IV.B. Additional representatives may also be appointed to serve as points of contact on specific issues. A Principal Representative for each party may be changed upon written notification to the other parties without requiring an amendment to this MOA.

Article IV. - NOTICES

A. All notices, requests, demands, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and delivered personally, given by email, or mailed by first-class, registered, or certified mail to the applicable Principal Representative. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven (7) business days after it is mailed.

B. All inquiries during the term of this MOA will be directed to the Principal Representatives listed below:

If to District and County:

Nardy Khan
Deputy Director, Infrastructure Programs
Orange County Public Works
601 North Ross Street
Santa Ana, CA 92701

If to the Corps:

Corice Farrar
Chief, South Coast Branch
Regulatory Division
U.S. Army Corps of Engineers, Los Angeles District
915 Wilshire Boulevard, Suite 1109
Los Angeles, CA 90017

With a copy in all instances to:

District Counsel

Memorandum of Agreement

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Orange County Flood Control District
County of Orange
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U.S. Army Corps of Engineers, Los Angeles District
915 Wilshire Boulevard, Suite 1109
Los Angeles, CA 90017

Article V. - RESPONSIBILITIES OF THE PARTIES

A. The District and County will provide adequate resources to fund existing or additional Corps Regulatory personnel for the purpose of expediting the review of District and County Priority Projects and other identified activities. To facilitate the Corps' review and activities, the District and County will:

1. Provide adequate information regarding District and County Priority Projects, scheduling requirements, and other specific activities to initiate permit evaluation. Information required for the Corps to deem a permit application complete, thereby allowing initiation of the permit review process, can be found in Corps regulations at 33 C.F.R. §§ 325.1(d), 325.3(a), and in the General Conditions of the Nationwide Permit Program. Upon request, District and County shall provide supplemental information necessary to complete the permit application. Additional information [33 C.F.R. § 325.1(e)] required to complete the permit evaluation process may exceed what is needed to initiate the application review process. On a case-by-case basis, if requested by the Corps, District and County shall provide such additional information in a timely manner to ensure the Corps can effectively accomplish the required review.
2. Make a reasonable effort to provide the Corps with information on other projects with District and County involvement to enable the Corps to apply available staff resources and plan for workload cycles.
3. In consultation with the Corps, establish the specific order of priority of the District and County Priority Projects as listed in **Appendix A** to this MOA. The District and County Priority Projects included in **Appendix A** and the order of priority of those Priority Projects may be changed by the District and County Principal Representative without requiring an amendment to this MOA. Such changes shall be submitted to the Corps' Principal Representative in writing in the manner provided by Article IV and will be effective upon receipt thereof.
4. To the best of their ability, ensure the participation of all essential personnel during the permit evaluation or compliance process.
5. Work closely with the Corps to adjust priorities and schedules to optimize available Regulatory Division staff resources. While the District and County will make every effort not to overlap project schedules, occasional overlaps may occur, and the Principal Representative will work with the Corps to prioritize such overlaps.
6. Provide funding pursuant to the terms of this MOA.

B. The Corps shall use the funds provided to defray the costs of salaries and associated benefits and reimburse travel expenses to:

1. Expedite review of District and County Priority Projects in accordance with the purpose, terms, and conditions of this MOA or any amendments thereto. The Corps shall not redirect resources from, or otherwise postpone, permit applications related to non-Priority Projects submitted by District and County through the standard Corps review process.

2. Upon submittal of new permit applications and following any meetings and/or discussions to clarify the scope of anticipated permit application review processes, provide the District and County with an estimated completion date for the permit evaluation process for each complete application submitted. The District and County shall be able to comment on the estimated completion date and adjust the order or list of Priority Projects in **Appendix A**, or provide additional resources per Article VI.E.

3. Consult with District and County regarding an adjustment of priorities or establishment of relative priorities if the current and/or projected workload of Priority Projects and programmatic efforts exceeds the Corps' ability to provide the services specified herein or negotiate additional funding in accordance with Article VI below.

4. Provide District and County a brief quarterly summary report of progress made and costs incurred under this MOA. Progress will be itemized for each permit application review completed during the quarter and for each permit application pending at the end of the quarter. This report will describe achievements, including any improvements the Corps has documented in coordinating and improving the efficiency of environmental/permit reviews, and will summarize expenditures to date. The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOA and will provide an estimate of costs expected for the ensuing quarter. The report shall not be more than five (5) pages.

5. Designate a Regulatory Project Manager(s) and his/her specific responsibilities for each Priority Project. If possible, the Corps will designate the same Regulatory Project Manager for all major Priority Project permit applications to ensure consistency and maintain efficiency of the review process.

Article VI. - FUNDING

A. The total maximum amount payable under this MOA will not exceed Nine Hundred Fourteen Thousand Two Hundred Seventy and No/100 Dollars (\$914,270.00).

B. The anticipated costs expected to be incurred by the Corps for the duration of this MOA is provided in the Corps' budget estimate, which is included as **Appendix B** to this MOA and incorporated herein by reference.

C. Within thirty (30) days of the effective date of this MOA, the County shall pay the anticipated costs expected to be incurred through September 30, 2023, at the level specified in Appendix B. This budget estimate has taken into account the \$60,000 the County has on deposit with the Corps in Fund Auth/COA: 1322 and Fund Account L1187475, which is the unexpended balance of advance payments remaining from the 2013 MOA.

D. No later than August 15, 2023, and August 15 of each year that this MOA remains in effect, the Corps will provide the County with an anticipated cost invoice ("Invoice") that provides an updated budget estimate of costs for the next Federal fiscal year, including any proposed changes in the level of staffing, less any estimated carry-over of unobligated funds from the prior Federal fiscal year. Revisions agreed to by the Parties will be incorporated into a revised budget estimate, which will not require an amendment to this MOA. Each Invoice shall be provided on Corps letterhead, have a unique number, and include (1) the Corps' name and address, (2) Corps' remittance address, if different, (3) name of County agency/department, (4) delivery/service address, (5) service dates, (6) description of services, (7) total amount, and (8) taxpayer ID number. Invoices shall be submitted by the Corps to AccountsPayable@ocpw.ocgov.com and a hard copy at the address below:

Orange County Public Works
Attn: Accounts Payable
601 N Ross Street
Santa Ana, CA 92701

E. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, County will make an annual lump sum payment to the Corps of the total amount specified in the Corps' budget estimate in Appendix B or Invoice(s). Payments by the County are to be made by wire transfer of funds in accordance with Standard Operating Procedure UFC 07 (**Appendix C**) or by check payable to the "USACE Los Angeles, FAO" and sent to the following address:

U.S. Army Corps of Engineers, Finance Center
ATTN: EROC: L1
5722 Integrity Drive
Millington, TN 38054

E. If the Corps' actual costs for providing the agreed upon level of service will at any time during the term of this MOA exceed the amount of funds available, the Corps will notify the District and County at least ninety (90) days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. The County will have the option of (i) making a payment to the Corps for the incremental amount, provided the total amount of payments to the Corps does not exceed the total

funding amount, (ii) increasing the total funding amount through an amendment to this MOA, or (iii) agree to a reduced level of service.

F. The Corps will carry-over any unobligated funds from year to year, or will refund such unobligated funds if this MOA is terminated or expires in accordance with Article X.

Article VII. - APPLICABLE LAWS

The applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of permit applications undertaken by the Corps will be governed by Corps regulations, policies, and procedures.

Article VIII. - DISPUTE RESOLUTION

In the event of a dispute, the Parties agree to use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The Parties agree that in the event such measures fail to resolve the dispute, they shall refer the dispute for resolution to an appropriate forum in accordance with federal law.

Article IX. - PUBLIC INFORMATION

Justification and explanation of District and County programs or projects before other agencies, departments, and offices will not be the responsibility of the Corps. The Corps may provide, upon request from District and County, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the Corps is responsible only for public information regarding Corps regulatory activities. District and County will give the Corps, as appropriate, advance notice before making formal, official statements regarding activities funded under this MOA.

Article X. - AMENDMENT, MODIFICATION AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties, except where otherwise noted.

B. Any party reserves the right to terminate its participation in this MOA without cause upon thirty (30) days' written notice to the other parties. In the event of termination, District and County will continue to be responsible for all costs incurred by the Corps in performing expedited environmental permit review services up to the time of notice and for the costs of closing out any ongoing contracts in support of the provision of services by the Corps under this MOA.

C. Within ninety (90) calendar days of termination or expiration of the MOA, the Corps shall provide the County with a final statement of expenditures. Within sixty (60)

calendar days after submittal of the Corps' final statement of expenditures, the Corps, subject to compliance with the Anti-Deficiency Act (31 U.S.C. § 1341, et seq.), shall directly remit to the County the unexpended balance of the advance payments, if any. Funds may be provided to the County either by check or electronic funds transfer.

Article XI. - MISCELLANEOUS

A. This MOA will not affect any pre-existing or independent relationships or obligations between the Parties.

B. If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

C. The Corps' participation in this MOA does not imply endorsement of District and County projects, nor does it diminish, modify, or otherwise affect Corps statutory or regulatory authorities.

D. This MOA, including any documents incorporated by reference or attachments thereto, but excluding the pre-existing relationships or obligations between the Parties referenced in subparagraph A above, constitute the entire agreement between the Parties. All prior or contemporaneous memoranda of agreements, understandings, representations, and statements, oral or written, are merged herein and shall be of no further force or effect.

E. To the extent not inconsistent with Federal law, rules, and regulations, the District and County shall have the right to review and audit, and the reasonable right of access to the Corps' premises during normal business hours to review and audit the Corps' compliance with the provisions of the MOA ("District and County's Right"). The District and County's Right includes the right to inspect and photocopy any and all books, records, documents, accounting records, and any other evidence of procedures and practices that District and County determine are necessary to discover and verify that the Corps is in compliance with all requirements under this MOA, and to retain copies, outside of the Corps' premises, of any and all records related to the expedited permit evaluation services provided hereunder with appropriate safeguards, if such retention is deemed necessary by the District and County in their sole discretion. This information shall be kept by the District and County in the strictest confidence allowed by law.

F. The Parties may execute this MOA two or more counterparts, which shall, in the aggregate, be signed by all Parties; each counterpart shall be deemed an original instrument as against any party who has signed it.

Article XII. - EFFECTIVE DATE AND DURATION

This MOA and any amendments will become effective on the date of signature by the last Party. Unless amended or modified pursuant to Article X, this MOA shall remain in force until whichever of these events occurs first: 1) September 30, 2029; or 2) the MOA is terminated pursuant to Article X.B.

[REMAINDER LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by the District and County, acting by and through their respective Boards of Supervisors, and by the Corps, through its authorized officer.

ORANGE COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic

Date: _____

By _____
Doug Chaffee
Chairman of the Board of Supervisors

IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by the District and County, acting by and through their respective Boards of Supervisors, and by the Corps, through its authorized officer.

COUNTY OF ORANGE,
a political subdivision of the State of California

Date: _____

By _____

Doug Chafee

Chairman of the Board of Supervisors

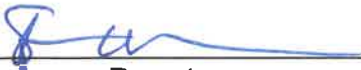
Signed and Certified that a copy of this document has
been delivered to the Chair of the Board per
Government Code Section 25103, Resolution 79-
1535

Attest:

Robin Stieler

Clerk of the Board of Supervisors

APPROVED AS TO FORM:
Office of the County Counsel

By:  _____
Deputy

Date: 8/15/2022

IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by the District and County, acting by and through their respective Boards of Supervisors, and by the Corps, through its authorized officer.

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

Date: _____

By _____
JULIE A. BALTEN
Colonel, US Army
Commanding

Appendix A: District and the County Priority Projects

The list of priority projects under this MOA includes the following and may be modified pursuant to Article IV.A.3.:

1. OC Loop Segments O, P, Q
2. Countywide Long-term Routine Maintenance Permitting Program (RGP 100) – Ongoing Evaluation and Verification of Projects Covered under RGP 100
3. San Diego Creek Reach I Maintenance (UNB to Campus Dr. Vegetation and Sediment Removal)
4. Modjeska Canyon Road Bridge (55C0172) Replacement
5. Modjeska Grade Road, Road and Drainage Improvements
6. Silverado Canyon Bridge (55C-0174) Replacement
7. Silverado Canyon Bridge (55C-0177) Replacement
8. Trabuco Canyon Bridge (55C-0008) Replacement
9. Trabuco Creek Road Stabilization between Trabuco Canyon Road and Cleveland Forest
10. Brea Boulevard Bridge Replacement and Corridor Enhancement
11. San Diego Creek Reach II (Campus Dr. to I-405) Vegetation and Sediment Removal
12. Laguna Canyon Channel Replacement in front of Sawdust Festival
13. C05 Bridge Retrofit of Warner, Springdale, Edwards
14. Santa Ana Delhi Channel reconstruction between Upper Newport Bay and Mesa Dr.
15. Fullerton Creek I-5 to Dale - trapezoidal concrete to vertical wall concrete
16. San Juan Creek PCH Replacement
17. East Garden Grove Wintersburg Channel Widening – C06 to Woodruff
18. Carbon Creek Channel Reconstruction – Western to Dale
19. Ocean Outlet Maintenance Program
20. Bolsa Chica Channel Bank Stabilization along Seal Beach Naval Weapons Station
21. Hangman's Parking Lot (Limestone Canyon)
22. Wagon Wheel Long-Term Timber Wall Repairs

Appendix B: Corps' Budget Estimate - Annually and for Duration of Funding Agreement

Appendix C: Standard Operating Procedure UFC 08