

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

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

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

RECITALS

WHEREAS, pursuant to Section 14 of the Rivers and Harbors Act of 1899, codified at 33 USC§ 408 ("Section 408"), as amended, the Corps has jurisdiction over requests to alter or modify completed water resources development projects constructed by the Corps ("Section 408 Requests");

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 application of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army;

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;

WHEREAS, Engineering Circular (EC) 1165-2-216 authorizes District and Division Engineers of the Corps to accept and expend funds contributed by non-Federal public entities subject to certain limitations;

WHEREAS, the Corps has indicated it is not able, without additional resources, to expedite the evaluation of COUNTY-designated priority Section 408 Requests ("COUNTY- designated priority Section 408 Requests") that have a public purpose;

WHEREAS, COUNTY is a non-Federal entity and believes it is in its best interest to provide funds to the Corps pursuant to this MOA to streamline and expedite Corps' review of COUNTY-designated priority Section 408 Requests, as more fully described in this MOA;

WHEREAS, the Corps issued an initial public notice dated October 13, 2016, regarding its intent to accept and expend funds contributed by COUNTY;

WHEREAS, in a memorandum dated January 12, 2017, the District Engineer of the Corps' Los Angeles District determined that expenditure of funds received from the COUNTY is appropriate, and an informational public notice dated January 25, 2017 regarding the decision has been issued;

WHEREAS, it is understood and acknowledged by all Parties that the Corps' review of COUNTY-designated priority Section 408 Requests will be completely impartial and in accordance with all applicable Federal laws and regulations;

WHEREAS, this MOA establishes the responsibilities and operating procedures of the Parties with respect to the Corps' review of COUNTY-designated priority Section 408 Requests requiring Corps permission pursuant to Section 408; and

WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address, and protect environmental resources, including but not limited to impacts to existing and completed Corps water resources development projects and any component feature thereof, 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 COUNTY in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps resources by focusing attention on projects that would have the most effect on completed federal flood risk management facilities; (5) provide a mechanism for expediting COUNTY-designated priority Section 408 Request reviews and coordination when necessary; and (6) provide procedures for resolving disputes in this resource partnering effort.

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 COUNTY to provide expedited Section 408 Request evaluation-related services for COUNTY-designated priority Section 408 Requests. The COUNTY-designated priority Section 408 Requests are listed in **Appendix A** to this MOA. This MOA is not intended as the exclusive means of obtaining permit review of COUNTY Section 408 Requests. This MOA is a vehicle by which COUNTY will obtain expedited review and evaluation of COUNTY-designated priority Section 408 Requests outside of the ordinary Corps review process.

B. The COUNTY enters into this MOA pursuant to their authority under §2(9) of the Orange County Flood Control Act (Act 5682) and Government Code §23004(c).

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

D. This MOA is limited to COUNTY-designated priority Section 408 Request reviews only. A separate agreement may be required between COUNTY and the Corps to expedite environmental technical assistance, coordination services, review, and concurrence of documentation prepared to comply with Section 404 of the Clean Water Act of 1972, as amended, and/or Section IO of the Rivers and Harbors Act of 1899, as amended.

“E. COUNTY is a non-Federal public entity, a county governmental agency incorporated in the State of California, and may enter into this MOA.”

Article II. - SCOPE OF WORK

A. COUNTY will provide funds to the Corps to expedite review and evaluation related services for COUNTY -designated priority Section 408 Requests as designated in **Appendix A**. The Corps' operations and maintenance expenses are funded as a congressionally appropriated line item in the annual Federal budget. COUNTY will provide the Corps with funds in accordance with the provisions of 33 U.S.C. § 2352.

B. The Corps will provide staffing resources dedicated to expediting COUNTY- designated priority Section 408 Request reviews, as described in Article 11.D., below, and/or other programmatic efforts to support efficient decision-making .

C. The Corps will establish a separate internal financial account to track receipt and expenditure of funds associated with its review of COUNTY permit applications for COUNTY-designated priority Section 408 Requests. Corps' personnel will charge their time and expenses against the account when they perform work to either expedite Section 408 Request evaluation related requests for COUNTY-designated priority Section 408 Requests or undertake other programmatic efforts to support efficient decision-making related to COUNTY's permitting needs.

D. Funds contributed by COUNTY hereunder will be expended by the Corps to defray the costs of its staff (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the evaluation of COUNTY-designated priority Section 408 Requests. The Corps may expend COUNTY funds to perform select duties, including but not limited to technical analyses and writing, Agency Technical Review, real estate evaluation, risk analysis, copying or other clerical/support tasks, acquisition of data, site visits, travel , coordination activities, additional personnel (including support/clerical staff), contracting support for technical services (e.g., structural risk evaluation, geotechnical analysis, hydraulic and hydrological engineering review), construction quality assurance and control, environmental documentation preparation and review; consultation with resource agencies; meeting coordination; and any other permit evaluation related responsibilities that may be mutually agreed upon.

E. The Corps will *not* expend funds provided by 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 provided by COUNTY pursuant to this MOA may be used.

F. The Corps will *not* expend funds provided by COUNTY to defray the costs of activities related to the Corps' enforcement functions, but may use funds provided by COUNTY to defray costs of activities related to Section 408 permission compliance functions, such as quality assurance activities or reviews of associated Section 408 permission closeout documentation.

G. If the funds provided by COUNTY are expended and not replenished , any remaining COUNTY-designated priority Section 408 Requests will be handled like those of any Section 408 requester.

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 . Additional representatives may also be appointed to serve as points of contact on specific actions or issues. For the purposes of this MOA, COUNTY's Principal Representative will be "~~Jams Tyler, P.E., QSD," the Manager", OC" of Orange County Infrastructure Program~~ ~~is"/" Flood Program Support Division,~~ and the Corps' Principal Representative will be "~~Michael Lau" Stephen Vaughn, P.E., Engineering Division, Los Angeles District.~~ The Principal Representative for each party may be changed upon written notification to the other party.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. COUNTY will provide adequate resources to fund existing or additional Corps personnel for the purpose of expediting the review of COUNTY-designated priority Section 408 Requests and other identified activities. To facilitate the Corps' reviews and activities, the COUNTY will :

1. Provide adequate information regarding COUNTY-designated priority Section 408 Requests, scheduling requirements, and other specific activities to initiate permit evaluation. Information required for the Corps to deem a Section 408 package submittal complete thereby allowing initiation of the Section 408 request review process can be found in applicable Section 408 guidance, including but not limited to EC 1 165-2-216, POLICY AND PROCEDURAL GUIDANCE FOR PROCESSING REQUESTS TO ALTER US ARMY CORPS OF ENGINEERS CIVIL WORKS PROJECTS PURSUANT TO 33 USC 408, dated June 21, 2016, a copy of which has been provided to COUNTY. Upon request, the COUNTY shall provide supplemental information necessary to complete the permit application. Additional information required to complete the Section 408 Request evaluation process may exceed what is needed to initiate the process. On a case-by-case basis, if requested by the Corps, COUNTY shall provide such additional information as may be necessary to ensure the Corps can effectively accomplish the required review.

2. In consultation with the Corps, establish the specific order of priority ~~of the~~ Section 408 Requests listed in **Appendix A** to this MOA. The Section 408 Requests included in **Appendix A** and the order of priority of those ~~Section 408 R~~ requests may be changed by COUNTY's Principal Representative ~~“(changes to evaluation activity budgets in Appendix A require concurrence by Corps)”~~ 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 VI and will be effective upon receipt thereof.

3. To the best of its ability, ensure the participation of all essential COUNTY personnel during the Section 408 request evaluation process.

4. Work closely with the Corps to adjust priorities and schedules in order to optimize available Corps staff resources. If overlaps or conflicts occur among COUNTY- designated priority Section 408 Requests, then COUNTY will work with the Corps to prioritize such overlaps.

B. The Corps shall assign qualified personnel to evaluate the COUNTY-designated priority Section 408 Requests and prioritize associated tasks within projected funding levels provided under this MOA. The Corps shall use the funds provided to defray the costs of salaries and associated benefits and to reimburse travel expenses in order to:

1. Expedite review of COUNTY-designated priority Section 408 Requests as identified in **Appendix A** or any amendments thereto 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, Section 408 Requests related to non-priority Section 408 requests submitted by COUNTY through the standard Corps review process .

2. Following any pre-application meetings and/or discussions to clarify the scope of anticipated Section 408 review processes, provide COUNTY with an estimated schedule to the best of its ability within fourteen (14) calendar days of receiving COUNTY's scheduling requirements as described in Article IV subparagraph A (1) to complete the Section 408 Request evaluation process for each priority Section 408 Request submitted. COUNTY shall be able to comment on these schedules and adjust the order of COUNTY-designated

priority Section 408 Requests included in Appendix A, or provide additional resources per Article V. D, below.

3. Consult on a monthly basis with COUNTY regarding an adjustment of priorities or amendments to Appendix A if the current and/or projected workload of priority Section 408 Requests and activities exceeds the Corps' ability to provide the services specified herein or negotiate additional funding in accordance with Article V.D, below.

4. If a Section 408 permission is issued, provide construction quality assurance and quality control support for permit compliance purposes, which shall consist of reviewing technical submittals and requests for information, field inspections at critical construction milestones, review of proposed change orders that involve the design or design intent of any Section 408 permission, providing technical assistance during construction as requested by the COUNTY on a case by case basis and review of construction and Section 408 closeout documentation as applicable.

5. Provide COUNTY with a brief quarterly summary report of progress made under this MOA within twenty one (21) calendar days of the end of each quarter (January 21, April 21, July 21, and October 21). Progress will be itemized for each COUNTY-designated priority Section 408 Request package during the quarter for each COUNTY-designated priority Section 408 Request 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 COUNTY-designated priority Section 408 Request package reviews, and will summarize expenditures for each Section 408 package 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 in excess of five (5) pages of narrative per report.

6. Meet with COUNTY representative as needed to discuss progress under this MOA.

7. Prior to expiration of the MOA, hold a final meeting with COUNTY representatives to review a summary of COUNTY-designated priority Section 408 Request review streamlining and other activities under this MOA, as well as provide recommendations for future coordination between the Parties.

Article V. - FUNDING

A. The total compensation paid to the Corps under this MOA shall not exceed ~~"EIGHT"THREE~~ HUNDRED THOUSAND DOLLARS (\$~~"8"3~~00,000).

B. ~~Within sixty (60) days of the effective date of this MOA and p~~"P"rior to the Corps incurring any expenditure to expedite Section 408 Requests designated as a priority as specified in this MOA, the COUNTY will "transfer ~~make a lump sum payment to the Corps of the total amount specified in subparagraph~~" Appendix A "of this MOA" above. Payment by the COUNTY is to be made by "electronic funds transfer, in accordance with Standard Operating Procedure UFC 08 Appendix B, or" check payable to the Finance and Accounting Officer and sent to the following address:

U.S. Army Corps of Engineers, Los Angeles District
Finance and Accounting Officer
915 Wilshire Blvd.
Los Angeles, CA 90053-2325
Attn: Carlos M. Tabares

~~or by electronic funds transfer in accordance with Standard Operating Procedure UFC 08 Appendix B).~~

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

D. The Corps will provide COUNTY with written notice when 80% of the funding has been expended. If the Corps' actual costs for providing the agreed-upon level of service will exceed the amount of funds available, COUNTY will have the option of (i) increasing the total funding amount through an amendment to this MOA, or (ii) agree to a reduced level of service.

E. Following an initial review of a COUNTY priority project, Corps will provide COUNTY an estimate of costs that will be incurred to complete Section 408 review. If it is determined that the estimated amount to be incurred exceeds the amount of funding available, COUNTY will have the option to (i) provide additional funding for this MOA, or (ii) agree to a reduced level of service.

F. COUNTY may in its discretion choose to tender additional payments to Corps, in an amount and schedule mutually agreed upon by the Parties, when additional COUNTY-designated priority Section 408 Requests are added to **Appendix A**.

G. The Parties may elect to extend the services of Corps beyond December 31, 2029, subject to: 1) additional funding being provided by COUNTY and 2) written amendment to this MOA.”

Article VI. - NOTICES

A. Any notice, request, demand, 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 or mailed by first-class, registered, or certified mail, as follows:

If to COUNTY:

Orange County Public Works
“c/o” Flood Program”s” Support / Santa Ana River Project Section
601300 N. Ross Flower St”.”reet
Santa Ana, CA 92703”1”
Attn: Mehdi Sobhani”James Tyler”

If to Corps:

U.S. Army Corps of Engineers Engineering Division
915 Wilshire Blvd.” Suite 930”, 11th Floor
Los Angeles, CA 90017
Attn: “Michael Lau” Stephen Vaughn

With a copy in all instances to:

District Counsel
U.S. Army Corps of Engineers Los Angeles District
915 Wilshire Blvd., Suite 1535
Los Angeles, CA 90017

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. 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) calendar days after it is mailed.

Article VII. - APPLICABLE LAWS

~~The applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and “any amendments will be effective on the date of signature by the last Party. Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2029, or 2) the MOA is terminated pursuant to Article X.B.” all documents and actions pursuant to it. Unless otherwise required by law, expediting of COUNTY designated priority Section 408 Requests 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 COUNTY's programs or projects related to or arising out of COUNTY-designated priority Section 408 Requests which may be pending before other agencies, departments, and offices will not be the responsibility of the Corps. The Corps may provide, upon request from the 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. 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.

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, COUNTY will continue to be responsible for all costs incurred by the Corps in performing expedited COUNTY-designated priority Section 408 Requests review services up to the time of notice and for the costs of closing out or transferring any ongoing contracts in support of the provision of services by the Corps under this MOA.

C. Within ninety (90) calendar days of termination of the MOA, or the expiration of the MOA, the Corps shall provide 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, codified at 31 U.S.C. 1341 *et seq.*, shall directly remit to COUNTY the unexpended balance of the advance payment, if any. Funds may be provided to 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. The Corps' participation in this MOA does not imply endorsement of the COUNTY-designated priority Section 408 Requests, nor does it diminish, modify, or otherwise affect Corps' statutory or regulatory authorities.

C. 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.

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 agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

Article XII. - EFFECTNE DATE AND DURATION

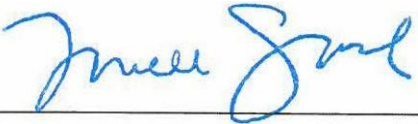
This MOA and any amendments will be effective on the date of signature by the last Party. Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first: 1) December 31, 202⁹₂ or 2) the MOA is terminated pursuant to Article X.B.

“INTEGRATION: Except as expressly amended herein, all terms and conditions of the 2017 MOA remain in full force and effect”

[REMAINDER LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by COUNTY, acting by and through its governing board, and by the Corps, acting by and through its authorized officer.

ORANGE COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic

By: 

Date: 3-15-17

Chair of the Board of Supervisors


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

By: _____

Date: 3-15-17

Chair 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: 
Clerk of the Board of Supervisors



3-15-17

APPROVED AS TO FORM:
Office of the County Counsel

By:  _____
Deputy County Counsel

Date: 2-17-17

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

By: _____

Date: _____

Kirk E. Gibbs

“Julie A. Balten”

Colonel, U.S. Army

Commander and District Engineer

**Appendix A: COUNTY-Designated Priority Section 408 Requests (Dated:
October 1, 2016)**

The list of COUNTY-designated Priority Section 408 Requests under this MOA includes the following proposed projects:

1. Santa Ana River Mainstem 2.

Carbon Creek

3. Coyote Creek

4. Santa Ana River Parkway