



MARK PESTRELLA, Director

# COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

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IN REPLY PLEASE  
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# ADOPTED

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

February 27, 2024

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

63 February 27, 2024

JEFF LEVINSON  
INTERIM EXECUTIVE OFFICER

Dear Supervisors:

**WATER RESOURCES CORE SERVICE AREA  
TRANSPORTATION CORE SERVICE AREA  
WHITTIER NARROWS DAM SAFETY MODIFICATION PROJECT  
UNITED STATES ARMY CORPS OF ENGINEERS  
UTILITY RELOCATION AGREEMENT AND ADDED WORK  
MEMORANDUM OF AGREEMENT  
SUPERVISORIAL DISTRICTS 1 AND 4  
(3 VOTES)**

## **SUBJECT**

Public Works is seeking Board approval to enter into the following agreements with the United States Army Corps of Engineers related to impacts on Los Angeles County infrastructure from the United States Army Corps of Engineer's Whittier Narrows Dam Safety Modification Project: Utilities Relocation Agreement between the Los Angeles County and the United States Army Corps of Engineers related to the modification of Rosemead Boulevard: and an Added Work Memorandum of Agreement between the Los Angeles County Flood Control District and the United States Army Corps of Engineers related to the strengthening of the Poplink Storm Drain.

## **IT IS RECOMMENDED THAT THE BOARD:**

1. Find that the proposed Whittier Narrows Dam Safety Modification Project: Utility Relocation Agreement between the Los Angeles County and the United States Army Corps of Engineers is exempt from the provisions of the California Environmental Quality Act for the reasons stated in this Board letter and in the record of the proposed utility relocation project.
2. Delegate authority to the Director of Public Works or his designee, acting as the Road Commissioner, to enter and amend the Whittier Narrows Dam Safety Modification Project: Utility

Relocation Agreement between United States Army Corps of Engineers and the Los Angeles County to provide for the construction of modifications to Rosemead Boulevard by the United States Army Corps of Engineers as part of the project.

IT IS RECOMMENDED THAT THE BOARD ACTING AS THE GOVERNING BODY OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:

1. Find that the proposed Poplink Added Work Memorandum of Agreement is exempt from the provisions of the California Environmental Quality Act for the reasons stated in this Board letter and in the record of the proposed Poplink strengthening project.
2. Delegate authority to the Chief Engineer of the Los Angeles County Flood Control District or his designee to enter and amend the Poplink Added Work Memorandum of Agreement between the United States Army Corps of Engineers and the Los Angeles County Flood Control District to provide for the payment of funds by the Los Angeles County Flood Control District to the United States Army Corps of Engineers for the strengthening of the Poplink Storm Drain, capped at \$7.5 million.

#### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

Whittier Narrows Dam, constructed in 1957 by the United States Army Corps of Engineers (Corps), is an integral part of the Los Angeles County Drainage Area system, protecting 25 cities and over 1 million people downstream from potentially catastrophic flooding. In May 2016, the Corps determined that the dam was at a very high risk of failure during an extreme flood. The United States Army Corps of Engineers (Corps) is strengthening the Whittier Narrows Dam to increase community resilience and reduce flood risk. Improvements include structural reinforcements and raising the elevation of the spillway to protect the dam from failure due to overtopping or undermining/erosion. The Whittier Narrows Dam, constructed in 1957 by the Corps, is an integral part of the Los Angeles County Drainage Area (LACDA) system. In May 2016, the Corps determined that the dam was at a very high risk of failure. The necessary strengthening of the Whittier Narrows Dam requires modifications to the County's Rosemead Boulevard and the Flood Control District's Poplink Storm Drain. This project will protect and increase flood resilience for 25 cities and over 1 million people downstream of the dam, including the Cities of Downey, Montebello, Norwalk, and Pico Rivera and other areas within the Central Basin.

In 2019, the Corps completed the Whittier Narrows Dam Safety Modification Study and initiated the design phase of the Whittier Narrows Dam Safety Modification project. On March 1, 2019, the Board sent a 5-signature letter to the County Congressional Delegation and the Corps requesting the immediate allocation of funds to expedite repairs and upgrades needed for the dam. The project was included in the President's Budget for Fiscal Year 2021, with a fully funded cost of \$427.4 million. Construction is scheduled to extend through 2029.

Key project features include raising the dam spillway elevation to prevent overtopping, constructing drainage improvements within the Corps property, within the County of Los Angeles unincorporated area raising Rosemead Boulevard 6 feet, and within the City of Montebello raising Lincoln Avenue 6 feet and realigning Lincoln Avenue southward 60 feet. The Corps project will impact facilities under the jurisdiction of the Los Angeles County and the Los Angeles County Flood Control District (District), including Rosemead Boulevard owned and operated by Los Angeles County Public Works and a 78-inch storm drain (referred to as Poplink) owned and operated by the District.

The purpose of the proposed Utility Relocation Agreement between the County and the Corps is to provide for the terms and conditions associated with raising Rosemead Boulevard, including amendments to the existing easement to capture a wider footprint and new drainage features.

The roadway requires the same resurfacing and reconstruction, regardless of the Corps project, as no major maintenance work has been completed by Public Works since the roadway was relinquished by the State of California Department of Transportation in 2018. The Utility Relocation Agreement would be substantially similar to the draft enclosed (Enclosure A). The Corps would relocate the roadway at no construction cost to the County.

The purpose of the Added Work Memorandum of Agreement (MOA) between the District and the Corps is for the District to provide the Corps funds to pay all costs associated with the work necessary to strengthen Poplink Drain. Public Works has determined that the drain is subject to excessive loading under current conditions and, therefore, strengthening the Poplink Drain would be necessary regardless of the Corps project. The proposed Added Work MOA would be substantially similar to the draft enclosed (Enclosure B).

### **Implementation of Strategic Plan Goals**

These recommendations support the County Strategic Plan: Strategy II.3, Make Environmental Sustainability our Daily Reality, by supporting the timely completion of the project to protect life and property while preserving important recreational and flood management facilities.

### **FISCAL IMPACT/FINANCING**

There will be no impact to the County General Fund.

Work related to the Utility Relocation Agreement for Rosemead Boulevard has been determined to be compensable by the Corps. Therefore, all reasonable costs associated with this agreement will be borne by the Corps.

The Added Work MOA between the District and the Corps provides for the District to pay the Corps for the actual costs the Corps incurs in performing the work, capped at \$7.5 million.

Even though this is a joint Board letter for improvements to the District's Poplink Drain and the County Road for Rosemead Boulevard, only the Flood Control District fund will be impacted with a non-reoccurring cost, capped at \$7.5 million.

Funding the Added Work MOA will be included in the Flood Control District Fund (B07 – Capital Assets Infrastructure) Fiscal Year 2024-25 Budget.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

Rosemead Boulevard within the project limits was relinquished by the State of California and accepted by the Board at the May 15, 2018, meeting, Synopsis No. 33.

County Counsel has reviewed the Utility Relocation Agreement and Added Work MOA and will approve as to form prior to execution by the County and the District, respectively.

## **ENVIRONMENTAL DOCUMENTATION**

Execution of the Utility Relocation Agreement for reconstruction of the roadway and replacement of underground utilities underneath Rosemead Boulevard is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15301 (b), (c), and (d), 15302(c), and 15304(c) of the State CEQA Guidelines and Classes 1(e) and (x), (2), (3), (14), (17), (18), and (22); 2(b) and (e); and 4(m) of the County's Environmental Reporting Procedures and Guidelines, Appendix G.

The activities involve minor alteration of existing public facilities, replacement of features, and minor alteration of land, including reconstruction of the roadway at its new elevation with no expansion in use. Replacement features will have the same purpose and capacity. The work will not include the removal of scenic, healthy, mature trees.

Execution of the Poplink Added Work MOA to strengthen the Poplink Drain is categorically exempt from the provisions of the CEQA pursuant to Sections 15301 (b) and 15302 (c) of the State CEQA Guidelines and Classes 1 (e), 2(b), and 2(e) of the County's Environmental Reporting Procedures and Guidelines, Appendix G, since the activities involve repair and modification of an existing County facility, involving strengthening the Poplink Drain so that it may continue to function during and after the Corps construction of the project and replacement of features. There will be negligible or no expansion of use and replacement features will have the same purpose and capacity.

In addition, as to all proposed work under the agreements, there are no cumulative impacts, unusual circumstances, damage to scenic highways, listing on hazardous waste site lists compiled pursuant to Government Code Section 65962.5, or indications that the activities may cause a substantial adverse change in the significance of a historical resource or other limiting factors that would make the above-referenced exemptions inapplicable based on the records of the projects.

Upon the Board's approval of the recommended actions, Public Works will file Notices of Exemption for the projects with the Register-Recorder/County Clerk in accordance with Section 21152 of the California Public Resources Code and will post the Notices to the County websites in accordance with Section 21092.2.

## **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

Project construction will temporarily disrupt the roadway until it can be reconstructed. No flood management services will be impacted.

**CONCLUSION**

Please return an adopted copy of this letter to Public Works, Stormwater Planning Division.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark Pestrella". The signature is fluid and cursive, with the first name "Mark" and last name "Pestrella" clearly distinguishable.

MARK PESTRELLA, PE

Director

MP:CTS:le

Enclosures

c: Auditor-Controller (Accounting Division)  
Chief Executive Office (Chia-Ann Yen)  
County Counsel (Mark Yanai)  
Executive Office  
Department of Parks and Recreation

**Whittier Narrows Dam Safety Modification Project**  
**Utility Relocations**  
**Los Angeles County, California**

**AGREEMENT WITH THE COUNTY OF LOS ANGELES FOR RELOCATION OF  
FACILITIES**

This Contract ("Agreement") entered into this \_\_\_\_ day of \_\_\_\_, 202\_\_, between the UNITED STATES OF AMERICA ("Government"), represented by the Real Estate Contracting Officer executing this Agreement, and the COUNTY OF LOS ANGELES ("Owner"). The Owner and the Government together are referred to as "Parties".

**EXPLANATORY STATEMENT**

1. The Government, under authority of Public Law 77-228, approved in August 2019, undertook the development of the Whittier Narrows Dam Safety Modification project, hereinafter called the "Project"; and
2. The Owner is the holder of certain easement rights appurtenant thereto on which the Owner has constructed and is operating and maintaining certain facilities, consisting of a public road known as Rosemead Boulevard, hereinafter referred to as the "Facility," which will be affected by the development and use of the Project by the Government;
3. It is necessary in the construction, operation, and maintenance of said Project that the aforementioned title, rights and privileges of the Owner be modified, and that said Facility of the Owner be modified, including but not limited to, permanently raising Rosemead Boulevard, hereinafter referred to as the "Relocation;" and
4. Although the Owner's Facility will remain in the same location, Government to issue amendment to existing easement to Owner for said Facility to capture the wider footprint due to elevation of the Facility, new drainage features, include an updated termination clause and add a subordination clause; and
5. It is the purpose of this Agreement to provide for the terms and conditions upon which the Relocation may proceed.

NOW, THEREFORE, in consideration of the faithful performance of each Party of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, it is mutually agreed as follows:

**Article 1. Obligations of the Government.**

- (a) Subject to the availability of funds, and subject to the provisions contained in this Agreement, the Government agrees to perform at its sole expense the Relocation described in **Exhibit "A"**,

at the place shown on the drawing(s) and in the manner prescribed by the Plans and Specifications, approved by the Owner prior to the commencement of the Relocation.

- (b) Government shall make such necessary surveys and prepare such drawings, schedules, and specifications in connection with the Relocation as may be required.
- (c) Government shall furnish, subject to the conditions hereinafter stipulated, all services, labor, materials, tools, equipment, permits and licenses necessary and essential to the reconstruction, Relocation, rearrangement, and/or alteration of the aforesaid facilities. The Relocation shall be constructed through standard Government procedures.
- (d) Any drawings, maps, and specifications which may be furnished by the Government shall be subject to written approval by the Owner or its authorized representative before any work to which they relate is performed.
- (e) Government shall issue amendment to existing easement substantially in the form attached hereto as Exhibit "X" to Owner upon completion of alteration of Owner's Facility.

Article 2. Obligations of the Owner.

- (a) In order to accomplish the Relocation of Owner's facilities affected by the construction, operation, and maintenance of the Project, the Owner hereby grants to the Government, and its assigns, without further consideration, right-of-entry for construction on those parcels of real estate, in which the Owner has an interest, necessary, in the opinion of the District Engineer or his authorized representative, for the completion of the Relocation of the Owner's facilities. The right-of entry granted by Owner is subject to the terms and conditions of road permits that Government, or its assigns, must obtain from Owner prior to start of construction.

The Owner agrees to provide timely responses to Government submittals and requests for approval. Prior to award of the Base Contract, the Owner will complete its review and provide written approval, or if Owner does not approve, written comments explaining the non-approval, within 21 calendar days of receiving design submittals, including without limitation the Plans and Specifications. If any subsequent approval is required on the part of the Owner, Owner will complete its review and provide written approval, or if Owner does not approve, written comments explaining the non-approval, within 14 calendar days of receiving the request for approval from the Government. Subsequent of award of the Base Contract, the Owner will complete its review and provide written approval, or if Owner does not approve, written comments explaining the non-approval within 7 calendar days of notice of availability of any construction submittals for the Relocation. If any subsequent approval is required on the part of the Owner during construction, Owner will complete its review and provide written approval, or if Owner does not approve, written comments explaining the non-approval, within 7 calendar days of receiving the request for approval from the Government. Whether prior or subsequent to award of the Base Contract, any failure by the Owner to comply with the above stated limits shall constitute a waiver of Owner's right to approve or withhold approval, deferring to the Government's best judgment in completing the Relocation.

- (b) The Owner agrees that the facilities portrayed in **Exhibit "A"** constitute an adequate substitute for existing facilities which are to be relocated, rearranged, or altered as a result of the construction of the Project.
- (c) The Owner agrees, in accordance with Article 3, to provide the Government an estimate of Owner's reimbursable expenses reasonably allocable to the Relocation and, with the Government's concurrence, shall be included in **Exhibit "B"** and hereto incorporated into this Agreement.
- (d) The Owner shall, to the extent practicable, maintain separate cost records of its reimbursable expenses incurred because of, and related directly to, this Relocation Agreement.
- (e) The Owner without additional consideration, shall permanently subordinate by amendment to Easement No. DACW09-2-20-2157, its rights to the rights of the Government to use the Property for Project purposes.
- (f) Owner shall be responsible for obtaining all permits which must be directly acquired by the facility owner.

Article 3. Estimate of Reimbursable Owner Expenses.

The total estimated amount of Owner's reimbursable expenses relating to this Relocation are specified in **Exhibit "B"**. This estimate includes the coordination of planned service interruptions, required inspections, acceptance of completed work, and other costs reasonably allocable to the Relocation. The estimate is the subject of this Agreement and may be revised as necessary upon the mutual written concurrence of the Parties.

Article 4. Reimbursement and Method of Payment.

Subject to the availability of funds, the Government shall reimburse the Owner for all reasonable costs expended in connection with the Relocation as identified in **Exhibit "B"**. The Government shall reimburse the Owner for such costs within 90 days of receipt of invoices, supported by such evidence of expenses by the Owner as may be reasonably required by the Government under the terms of this Agreement. Payment shall be remitted to Owner's representative designated herein or by other method agreed to in writing by the Parties. It is understood and agreed that the Government is in no case liable for damages in connection with this Agreement on account of delay in payments to the Owner due to lack of available funds.

Article 5. Ownership and Conduct of Work.

- (a) The Owner's facilities Relocated pursuant to this Agreement shall be the property of the Owner. The Government shall be responsible for all materials furnished and work performed by it or its contractors in conjunction with the Relocation at the Government's sole cost and expense for one (1) year after completion of the Relocation and acceptance of the Facility by the Owner
- (b) The Parties acknowledge and agree that completion of the Relocation Work is contingent upon mutually acceptable schedules, available resources, the timely obtaining of permits, licenses, real property rights, and other necessary documents, outages or other key items and not being



Whittier Narrows Dam Safety Modification Project  
Los Angeles County, California

delayed by those forces described herein. The Parties shall work cooperatively and in good faith to timely meet all mutually acceptable schedules and to minimize delays.

**Article 6. Disputes.**

In the event of any dispute arising out of this Agreement, the Party raising such dispute must promptly notify the other Party in writing of the nature of the dispute and seek in good faith to resolve the dispute through negotiation, which shall be a condition precedent to bringing any suit for breach of this Agreement. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both Parties. It is agreed that 30 days shall be a reasonable time limit for informal dispute resolution and negotiations, prior to utilizing formal dispute resolution services. Subject to the availability of funds, the Parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. In the event of a dispute related to construction, the Issue Resolution Ladder, as shown on Table 1, will be utilized as the process to resolution. The existence of a dispute shall not excuse the Parties from performance pursuant to this Agreement.

**CONSTRUCTION RESOLUTION LADDER**

LEVEL	LOS ANGELES COUNTY	USACE	KTR	TIME ALLOTTED
7	Director	CONTRACTING OFFICER / SPL COMMANDER / SPL DEPUTY DISTRICT ENGINEER		5 DAYS
6	Deputy Director (Transportation)	CHIEF OF CONSTRUCTION / MEGA-DIVISION CHIEF		5 DAYS
5	Assistant Deputy Director (Transportation Planning and Programs Division)	EXECUTIVE LEADERSHIP TEAM CHAIR / REAL ESTATE LEAD		5 DAYS
4	Principal Engineer (Transportation Planning and Programs Division)	PROJECT LEADER TEAM CHAIR / PROJECT MANAGER		5 DAYS
3	Senior Civil Engineer (Transportation Planning and Programs Division)	ACO / RESIDENT ENGINEER		2 DAYS
2	Senior Civil Engineer (Land Development Division)	COR – PROJECT ENGINEER		2 DAYS
1	Civil Engineer (Land Development Division)	QA PERSONNEL		1 DAY

Article 7. Parties' Representatives.

- (a) The Owner may assign representatives or agents to observe and to inspect the contemplated construction work as it progresses. All communication between the Owner and Government should be accomplished through the assigned representatives. Such representatives will communicate only with the Government's representative. The designation of a representative or agent should be done in writing and prior to the commencement of the Relocation work.
- (b) The Government will appoint a Government representative for the purpose of issuing instructions and entering into modifications pursuant to requirements for changes in drawings, schedules and specifications previously approved by the Government. The Government shall not be obligated to pay for or accept any modification request.

Article 8. Controlling Language.

The Parties intend the provisions of this Agreement and each of the documents incorporated by reference in it or to be developed later pursuant to the terms of this Agreement to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or among them. However, if and to the extent that specific language in this Agreement conflicts with specific language in any document that is incorporated into this Agreement by reference or any document that is later developed by the Parties pursuant to the terms of this Agreement, the specific language of this Agreement shall be controlling.

Article 9. Release.

The Owner agrees, on completion of the alteration or Relocation work provided for herein, to accept said substitute facilities and/or payment of the consideration provided for herein as full and just compensation for any and all damages that have been caused to the facilities altered or relocated hereunder and does hereby release the Government from any and all causes of action, suits at law or equity or claims or demands, and from any liability of any nature whatsoever for and on account of any damages to said right of way and facilities relocated or altered hereunder.

Article 10. Relationship of the Government, its Contractor, and Owner.

Owner acknowledges that the Government is the contracting party with its contractor(s), and that Owner shall have no right to direct the activities of said contractor(s). All matters which Owner desires to bring to the attention of the Government's contractor(s) shall be submitted in writing to the Government's Representative. Where any matter to be performed by or submitted to Owner or otherwise requires coordination with Owner the Government shall be responsible for ensuring such performance, submission, comment or coordination by requiring its contractor(s) to submit all matters to it for handling with Owner. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent or of partnership or of joint venture by and between the Parties hereto.

Article 11. Condemnation

Should it be determined for any reason that the right, title, and interest of the Owner in and to the lands referred to in Article 1, shall be acquired by condemnation, or other judicial proceedings, nothing contained herein shall be construed as a waiver of the United States' inherent power of eminent domain.

Article 12. Notice.

- (a) The Parties shall work cooperatively and in good faith to timely implement their respective duties and obligations set forth herein. To that end, the Parties shall timely communicate with one another regarding the status of the Project, the status of the Relocation Work, and ways that the Parties may work together to facilitate the completion of this Agreement.
- (b) Any notice, request, demand, payment or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or electronically or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Owner:

Masashi Tsujii  
Senior Civil Engineer  
Transportation Planning and Programs Division  
Los Angeles County Public Works  
900 S. Fremont Ave  
Alhambra, CA 91803  
mtsujii@dpw.lacounty.gov

If to the Government:

Chief, Acquisition and Management Section  
U.S. Army Corps of Engineers (USACE)  
Los Angeles Engineer District

- (c) 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.
- (d) 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 calendar days after it is mailed.

Article 13. Force Majeure.

The Parties to this Agreement shall not be responsible or liable to each other for any delay in performance hereunder, or for any delays in the Project, due to any reason including, but not limited to: shortage of labor or materials, delivery delays, major equipment breakdown, load management, strikes, labor disturbances, freight embargoes, delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the contractor and the subcontractors or suppliers, war, riot, insurrection, civil disturbance, weather conditions, epidemic, quarantine restriction, sabotage, act of public enemy, fire, flood, earthquake, acts of another contractor in the performance of a contract with the Government, governmental rule, regulation or order, including orders of judgments of any court or commission, delay in obtaining necessary rights of way, acts of God, or any cause or conditions beyond the control of the Parties. The Parties expressly waive and release any and all claims for damages

against each other arising out of any delays in the Project unless due to a party's sole negligence or willful misconduct.

Article 14. Waiver

No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by any Party of any provision under this Agreement shall be effective unless in writing and signed by such Party, and no waiver shall affect any default other than the default specified in the waiver and then said waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.

Article 15. Duplicate Originals and Electronic Signatures

This Agreement may be executed in duplicate originals, each of which, when so executed and delivered, shall be an original but such counterparts shall together constitute one instrument and agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF) or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. This Agreement may be executed by Owner by way of an electronic signature, in which case, said electronic signature shall have the same force and effect as a written signature.

Article 16. Amendments

The provisions of this Agreement shall not be altered or amended by any representations or promises of any Party unless consented to in a writing executed by all Parties.

Article 17. Governing Law

This Agreement shall be subject to and construed according to the laws of the State of California.

Article 18. Captions and Headings

The captions and headings used in this Agreement are strictly for convenience and are not intended to and shall not affect the Parties' rights and obligations, or the construction or interpretation of this Agreement.

Article 19. Third Party Beneficiaries

Nothing herein is intended to create any third-party benefit.

Article 20. Entire Agreement

This Agreement contains the entire agreement between the Parties concerning the Relocation Work and supersedes any prior agreements between the Parties with respect to the Relocation Work. Any subsequent representations or modifications will be of no force or effect, except for a subsequent modification in writing executed by both Parties.

Whittier Narrows Dam Safety Modification Project  
Los Angeles County, California

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

United States of America

By: \_\_\_\_\_

County of Los Angeles

By: \_\_\_\_\_

DRAFT

**Exhibit A**  
**Description of Relocation**

Rosemead Blvd will be raised a maximum of approximately six feet at the centerline of the dam. The raise will occur between Gallatin and the upstream bridge. The road will maintain the same horizontal alignment and same rights-of-way. Consistent with the Plans and Specifications, traffic for 4 lanes will remain open along sequenced construction of temporary diversion alignments to the extent possible.

DRAFT

**Exhibit B**  
**Estimate of Reimbursable Owner Expenses**

Inspection Services	\$700,000
Construction Submittal Reviews	\$50,000
Total	\$750,000

DRAFT

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
[FULL NAME OF NON-FEDERAL INTEREST]  
FOR ADDITIONAL WORK DURING [INSERT "CONSTRUCTION" OR  
"OPERATION AND MAINTENANCE"] OF  
[FULL NAME OF THE PROJECT]

This MEMORANDUM OF AGREEMENT (hereinafter the "MOA") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Commander, \_\_\_\_\_ District (hereinafter the "District Commander"), and the [FULL NAME OF THE NON-FEDERAL INTEREST] (hereinafter the "Non-Federal Interest"), represented by [TITLE OF NON-FEDERAL INTEREST'S REPRESENTATIVE SIGNING MOA].

WITNESSETH, THAT:

WHEREAS, the [FULL NAME OF THE PROJECT] (hereinafter the "Project") was authorized pursuant to [CITE AUTHORITY, INCLUDING SECTION NUMBER AND PUBLIC LAW NUMBER];

WHEREAS, the Non-Federal Interest requests [DESCRIPTION OF ADDITIONAL WORK] (hereinafter the "Additional Work") and agrees to pay all costs associated with the Additional Work; and

WHEREAS the Government is authorized pursuant to 33 U.S.C. 701h to accept and expend funds to carry out the Additional Work in connection with ["construction" or "operation and maintenance", as applicable] of the Project.

NOW, THEREFORE, the Government and the Non-Federal Interest agree as follows:

1. The Non-Federal Interest shall provide to the Government funds to pay all costs, including the costs of environmental compliance, supervision and administration, associated with the Additional Work. While the Government will endeavor to limit the costs associated with the Additional Work to the current estimate of \$ \_\_\_\_\_, the Non-Federal Interest acknowledges that the actual costs for the Additional Work may exceed such estimated amount due to claims or other unforeseen circumstances and that the Non-Federal Interest is responsible for all costs, including any claims, related to the Additional Work.
2. Within \_\_\_\_\_ (\_\_\_\_) calendar days of execution of this MOA, the Non-Federal Interest shall provide to the Government the sum of \$ \_\_\_\_\_. If at any time the Government determines, , that additional funds are needed, the Government shall notify the Non-Federal Interest in writing of the amount, and no later than \_\_\_\_\_ (\_\_\_\_) calendar



days from receipt of such notice, the Non-Federal Interest shall provide to the Government the full amount of the additional funds.

3. The Non-Federal Interest shall provide the funds to the Government by delivering a check payable to “FAO, USAED \_\_\_\_\_ District” to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

4. The Government shall not commence the Additional Work until: a) all applicable environmental laws and regulations have been complied with, including, but not limited to, the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and Section 401 of the Clean Water Act (33 U.S.C. 1341); and the Non-Federal Interest has provided to the Government authorization for entry to all lands, easements and rights-of-way the Government determines to be required for the Additional Work.

5. The Government shall provide the Non-Federal Interest with quarterly reports obligations and status for all items of Additional Work performed by the Government, including associated costs, and any other information reasonably required by the Non-Federal Interest. The first such report shall be provided within \_\_\_\_\_(\_\_\_\_) calendar days after the final day of the first full quarter of the Government fiscal year following receipt of the funds pursuant to this MOA. Subsequent reports shall be provided within \_\_\_\_\_(\_\_\_\_) calendar days after the final day of each succeeding quarter until the Government concludes the Additional Work.

6. Upon conclusion of the Additional Work and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of such work and furnish the Non-Federal Interest with written notice of the results of such final accounting. Such final accounting shall in no way limit the Non-Federal Interest’s responsibility to pay for all costs associated with the Additional Work, including contract claims or any other liability that may become known after the final accounting. If such costs are more than the amount of funds provided by the Non-Federal Interest, the Non-Federal Interest shall provide the required additional funds within \_\_\_\_\_(\_\_\_\_) calendar days of such written notice by delivering a check payable to “FAO, USAED \_\_\_\_\_ District” to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If such costs are less than the amount of funds provided by the Non-Federal Interest, the Government shall refund the excess to the Non-Federal Interest within \_\_\_\_\_(\_\_\_\_) calendar days of such written notice, subject to the availability of funds.

7. Before either party to this MOA may bring suit in any court concerning an issue relating to this MOA, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

8. In the exercise of their respective rights and obligations under this MOA, the Government and the Non-Federal Interest each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

9. 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 either delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Interest:

**[TITLE AND ADDRESS]**

If to the Government:

**[TITLE AND ADDRESS]**

b. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

10. This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may unilaterally terminate further performance under this MOA by providing at least 15 calendar days prior written notice to the other party. In the event of termination, the Non-Federal Interest remains responsible for any and all costs incurred by the Government under this MOA for the Additional Work performed up to the date of the notice and for any and all costs of closing out or transferring any ongoing contracts.

IN WITNESS WHEREOF, the parties hereto have executed this MOA, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

[FULL NAME OF NON-FEDERAL INTEREST]

BY: \_\_\_\_\_  
**[INSERT TYPED NAME]**  
**[Insert Rank]**, U.S. Army  
District Commander

BY: \_\_\_\_\_  
**[INSERT TYPED NAME]**  
**[Insert Full Title]**

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_