



**MEMORANDUM OF AGREEMENT
BETWEEN CLARK COUNTY
REGIONAL FLOOD CONTROL DISTRICT
AND THE U.S. ARMY CORPS OF ENGINEERS,
SACRAMENTO DISTRICT**

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into as of this 9th day of January, between Clark County Regional Flood Control District, (hereinafter the "CCRFCD") and the Department of the Army, represented by the United States Army Corps of Engineers, Sacramento DISTRICT (hereinafter the "DISTRICT"), collectively referred to as "the PARTIES."

RECITALS

WHEREAS, the United States Army Corps of Engineers ("Corps"), has regulatory jurisdiction over certain activities occurring in 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") of 1899, as amended; and

WHEREAS, Section 214 of the Federal Water Resources Development Act ("WRDA") of 2000, Public Law 106-541 ("WRDA 2000"), as amended, 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 by 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 Chief of Engineers, by memorandum dated September 2, 2015, has authorized the DISTRICT and Division Engineers of the Corps to accept and expend funds contributed by non-federal entities subject to certain limitations; and

WHEREAS, the DISTRICT has indicated it is not able, without additional resources, to expedite the evaluation of permit applications under Section 404 of the CWA or Section 10 of the RHA for CCRFCD designated priority projects; and

WHEREAS, CCRFCD is a non-Federal public entity and requires expedited and priority review of certain projects under Section 404 of the CWA or Section 10 of the RHA, as more fully described in this MOA; and

WHEREAS, CCRFCD is a regional agency with six (6) member entities including unincorporated Clark County, City of Las Vegas, City of Henderson, City of North Las Vegas, City of Mesquite and Boulder City, hereinafter referred as MEMBER ENTITIES.

WHEREAS, the DISTRICT has determined that expenditure of funds received from CCRFCD is appropriate; and

WHEREAS, the DISTRICT issued an initial Public Notice dated May 31, 2019, regarding its intent to accept and expend funds contributed by CCRFCD; and

WHEREAS, it is understood and acknowledged by all PARTIES that DISTRICT review of permit applications requests for CCRFCD designated priority projects will be completely impartial and in accordance with all applicable Federal laws and regulations.

NOW, THEREFORE, the PARTIES agree as follows:

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

A. Pursuant to Section 214 of WRDA 2000, as amended by Public Law 111-315, 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 acceptance and expenditure of funds contributed by CCRFCD to expedite the evaluation of permit application requests for CCRFCD designated priority projects as defined in Article II(J), requiring approval by the DISTRICT pursuant to Section 404 of the CWA, Section 10 of the RHA. This MOA is not intended as the exclusive means of obtaining DISTRICT review of CCRFCD projects. This MOA is a vehicle by which CCRFCD and its member entities may obtain expedited review of CCRFCD designated priority projects, outside of the DISTRICT's standard review process.

B. CCRFCD enters into this MOA pursuant to Nevada Revised Statutes, Chapter 543.

Article II. - SCOPE OF WORK

A. CCRFCD will provide funds to the DISTRICT for federal fiscal year (FY) 2020 to expedite the evaluation of permit applications for CCRFCD designated priority projects under the jurisdiction of the DISTRICT. The phrase "federal fiscal year" in this MOA refers to the period beginning October 1 of each year and ending on September 30 of the following year. For example, Federal fiscal year 2020 is from October 1, 2019 through September 30, 2020.

B. CCRFCD will provide funds to the DISTRICT. The DISTRICT will allocate funds internally. Funds received from CCRFCD will be used to augment the DISTRICT's budget in accordance with Section 214 of the WRDA 2000.

C. The DISTRICT will provide staffing resources dedicated to expedite CCRFCD priority permit application reviews and/or other programmatic permit efforts to support efficient decision-making.

D. The DISTRICT will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of CCRFCD designated priority projects. The

DISTRICT's employees will charge their time against the account when they do work to expedite review and evaluation of CCRFCD permit applications or undertake other programmatic permit efforts to support efficient decision-making related to CCRFCD's permitting needs, including but not limited to evaluation and issuance/renewal of regional permits.

E. Funds contributed by CCRFCD hereunder will be exclusively used for expediting CCRFCD designated priority projects and mainly be expended to defray the costs of salary, associated benefits, overhead, and travel expenses for existing or additional personnel (including regulatory staff, support/clerical staff, and staff of other functional areas of the DISTRICT) associated with CCRFCD designated priority projects, which may be submitted by MEMBER ENTITIES. The DISTRICT shall provide staffing resources to expedite permit application and related services as described below to support efficient decision-making related to CCRFCD's Section 404 of the CWA, Section 10 of the RHA, permitting needs for CCRFCD designated priority projects. Such activities will include, but are not limited to, the following: early input and coordination on topics including engineering, environmental, regulatory, permit processing and permitting issues; application review, including all necessary engineering documentation, permit database entry, drawing correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, conduct of the public interest review, review and development of environmental compliance documents, preparation of draft permit decision documents, meetings with CCRFCD and/or MEMBER ENTITIES, stakeholders and applicants, permit compliance, mitigation monitoring, preparation of reports/audits of funds expended to CCRFCD, technical writing, training, travel, field office set up costs, copying, coordination activities, technical contracting, programmatic tool development and/or improvement, acquisition of GIS data, and any other permit evaluation-related responsibilities that may be mutually agreed upon. The DISTRICT will also provide an interagency and stakeholder forum and materials to describe Corps permit authorities and issues, if appropriate.

F. Funds may also be expended to hire contract staff for the purpose of augmenting the resources available to the DISTRICT staff for the activities described in Article II (E). If such expenditures, when combined with the costs of the regulatory staff, require funding in excess of the amount specified in this MOA, then said contractors shall not be hired until and unless additional funds are approved by CCRFCD Board of Directors and memorialized by written amendment to this MOA.

G. The DISTRICT will not expend funds provided by CCRFCD for costs associated with the review of DISTRICT work undertaken by supervisors or other persons or elements of the DISTRICT in the decision-making chain of command; however, if a supervisor is performing staff work and not supervisory oversight, funds provided by CCRFCD pursuant to this MOA may be used.

H. The DISTRICT will not expend funds provided by CCRFCD to defray the costs of activities related to the DISTRICT's enforcement functions. "Enforcement functions" are defined as those activities related to investigating work not authorized by the DISTRICT but which required DISTRICT authorization.

I. If CCRFCD's funds are expended and are not replenished, the PARTIES will terminate this MOA in accordance with Article X(B) and any remaining CCRFCD designated priority permit applications will be processed pursuant to the standard review procedures, in a manner decided by the DISTRICT.

J. CCRFCD will provide written notification to the DISTRICT identifying which projects constitute priority projects for the purpose of this MOA. Because multiple projects may be ongoing simultaneously, CCRFCD will identify priorities and expectations for each project. CCRFCD will provide the DISTRICT with information about project workload and priorities on a quarterly basis.

Article III. - INTERAGENCY COMMUNICATIONS

A. To provide for consistent and effective communication between the DISTRICT and CCRFCD, 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 permit actions. Each party will issue a delegation letter to the other designating the Principal Representative for each agency.

B. 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 sent 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.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. CCRFCD shall:

1. Provide information regarding CCRFCD designated priority projects, scheduling requirements and other specific activities to initiate evaluation of permit applications. Information required for the DISTRICT to deem a permit application complete thereby allowing initiation of the permit application review process can be found at 33 C.F.R. 325.1(d), 325.3(a), and in General Condition 31 of the Nationwide Permit Program. Upon request, CCRFCD or its member entities shall provide supplemental information if it is reasonably necessary to assure the DISTRICT can effectively accomplish the required review.

2. Make a reasonable effort to provide the DISTRICT with information on other projects with CCRFCD involvement that may affect the DISTRICT workload and staff availability (e.g., schedules for projects with individual permits).

3. To the best of its ability, ensure the participation of all essential personnel and decision makers during the permit evaluation process.

4. Work closely with the DISTRICT to resolve workload conflicts and adjust priorities and schedules in order to make optimal use of available staff resources.

5. Because multiple projects may be ongoing simultaneously, CCRFCD will identify priorities and expectations for each project, and CCRFCD and the DISTRICT will discuss anticipated project workloads, proposed budgets, and other related matters annually during the term of the MOA. To keep expectations accurate and current, CCRFCD and DISTRICT will meet quarterly, in person or through teleconference, to share information on project updates.

B. The DISTRICT shall:

1. Assign qualified personnel to evaluate permit applications and associated tasks within projected funding levels provided under this MOA. The DISTRICT shall use the funds provided to defray costs of salaries and associated benefits.

2. Expedite review of permit applications in accordance with the purpose, scope and other terms and conditions of this MOA. DISTRICT shall meet the performance metrics of issuing general permits within 30 calendar days of receipt of complete permit application and individual permits within 90 calendar days of receipt of complete permit application. In cases where the DISTRICT does not meet these performance metrics, the DISTRICT shall provide written explanation in the annual summary report and as requested by CCRFCD. The DISTRICT shall not redirect resources from, or otherwise postpone, other CCRFCD projects submitted through the standard DISTRICT review process or covered by a separate MOA under Section 214 of the WRDA 2000.

3. Consult with CCRFCD regarding an adjustment of priorities or establishment of relative priorities if the current and/or projected workload of CCRFCD designated priority projects and activities exceeds DISTRICT's ability to provide the services specified in this MOA.

4. Provide CCRFCD an annual summary report of progress made under this MOA. This report will describe achievements, including how often the DISTRICT met the performance metrics, any improvements the DISTRICT has documented in coordinating and improving the efficiency of environmental reviews, and a summary of expenditures to date. The report also will identify any recommendations for improving consultation and coordination among the PARTIES to this MOA.

5. DISTRICT staff will travel to Clark County as necessary to provide field investigation and verification of jurisdiction determinations.

6. Participate in quarterly status meetings either in person or through teleconference with CCRFCD to discuss CCRFCD designated priority projects and upcoming priorities.

7. Designate a Regulatory Project Manager who will make his or her best efforts to attend periodic meetings with CCRFCD.

Article V. - FUNDING

A. Within 30 days of the execution date of this agreement, the DISTRICT will provide CCRFCD with a cost estimate that provides an estimate of costs for federal FY 20. Upon receipt of the DISTRICT's cost estimate and in advance of the DISTRICT incurring any costs for federal FY 20, subject to approval by CCRFCD Board of Directors, CCRFCD will make a lump sum payment to the DISTRICT in an amount not to exceed \$60,000.

B. CCRFCD may elect to extend the services under this MOA and fund the costs of qualified personnel for expedited reviews for subsequent federal fiscal years as long as this MOA remains in effect. In the event CCRFCD elects to continue services under this MOA beyond FY 20, no later than August 1, 2020 and annually thereafter, CCRFCD shall provide written notice of this decision along with a not to exceed amount to the DISTRICT's Principle Representative. After receipt of CCRFCD's notice and no later than September 1, 2020 and annually thereafter, the DISTRICT will provide CCRFCD with an updated cost estimate that provides an estimate of costs for the next federal fiscal year, including any proposed changes in the level of staffing. Upon receipt of the DISTRICT's updated cost estimate and in advance of the DISTRICT incurring any costs for the next federal fiscal year, subject to approval by CCRFCD Board of Directors, CCRFCD will make a lump sum payment to the DISTRICT in the total amount specified in the DISTRICT's cost estimate.

C. The funds specified in subparagraph A above will be payable in one lump sum in advance of the DISTRICT incurring any financial obligations or performing work under this MOA and no later than ninety (90) calendar days after the effective date of this MOA as defined in Article XI. Payment will be made by check or electronic funds transfer to the Finance and Accounting Officer, U.S. Army Corps of Engineers, Sacramento DISTRICT.

D. Any carry-over funds from year to year would be credited to the following fiscal year's payment or refunded if this MOA is terminated or expires.

Article VI. - APPLICABLE LAWS

All applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it.

Article VII. - DISPUTE RESOLUTION

The PARTIES agree that, in the event of a dispute between the PARTIES, CCRFCD and the DISTRICT shall 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 VIII. - PUBLIC INFORMATION

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

Article IX. - MISCELLANEOUS

- A. This MOA will not affect any pre-existing or independent relationships or obligations between CCRFCD and the DISTRICT.
- 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 DISTRICT participation in this MOA does not imply endorsement of CCRFCD projects nor does it diminish, modify, or otherwise affect the DISTRICT's 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 agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

Article X. - AMENDMENT, MODIFICATION AND TERMINATION

- A. This Agreement may be modified or amended only by written, mutual agreement of the PARTIES.
- B. PARTIES may terminate this MOA prior to its expiration date by providing written notice. Such termination shall be effective upon the sixtieth (60th) calendar day following notice, unless a later date is set forth. In the event of termination, CCRFCD shall continue to be responsible for all costs incurred by the DISTRICT under this MOA prior to the effective date of such termination and for the costs of closing out or transferring any on-going CCRFCD designated priority projects. The DISTRICT will close out any ongoing CCRFCD designated priority projects prior to termination.
- C. Within ninety (90) calendar days of termination, or expiration of the MOA, the DISTRICT shall conduct an accounting to determine the actual costs of the work and develop a final statement of expenditures. Within thirty (30) calendar days of completion of this accounting, the DISTRICT shall return to CCRFCD any funds advanced in excess of the actual costs, subject to compliance

with the Anti-Deficiency Act (31 U.S.C. 1341 et seq.). Funds may be provided to CCRFCD either by check or by electronic funds transfer.

Article XI. - EFFECTIVE DATE AND DURATION

This MOA will become effective when signed by both CCRFCD and the DISTRICT. Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first: 1) July 1, 2025; or 2) the MOA is terminated pursuant to Article X.

Article XII. - INTEGRATION

This MOA, including any documents incorporated by reference or attachments thereto but excluding the pre-existing relationships or obligations between the PARTIES referenced in Article IX.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.

IN WITNESS WHEREOF, this MOA is executed by CCRFCD acting by and through its governing board or his designee, and by the U.S. Army Corps of Engineers, through its authorized officer, and shall become effective upon the date it is signed by both CCRFCD and the DISTRICT.

CLARK COUNTY REGIONAL FLOOD CONTROL DISTRICT

By: Lawrence L. Brown III
Lawrence L. Brown, III
Chairman

Date: January 9, 2020

APPROVED AS TO FORM:

By: Christopher D. Figgins
Christopher D. Figgins
Chief Deputy District Attorney

Date: 1/9/2020

U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

By: James J. Handura
James J. Handura
Colonel, US Army
DISTRICT Commander

Date: 11/14/19