

Replacement of Market Street Bridge at Santa Ana River

Between Hall Avenue and Rivera Street
In the Cities of Jurupa Valley and Riverside
Project No. C0-0528
Federal Aid No. BRLS-5956(200)

Memorandum of Understanding (MOU) – Between Riverside County Flood Control (RCFC) and U.S. Army Corps of Engineers (USACE)

Dated: May 2, 2023

Notice regarding this MOU:

This document is provided for reference only.

Although this information represents the latest information available, the County of Riverside Transportation Department does not guarantee the accuracy of this data.

JASON E. UHLEY
General Manager-Chief Engineer



1995 MARKET STREET
RIVERSIDE, CA 92501
951.955.1200
FAX 951.788.9965
www.rcflood.org

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

May 9, 2023

Mr. Justin Gay, Deputy District Engineer
U.S. Army Corps of Engineers, Los Angeles District
915 Wilshire Boulevard, Suite 1109
Los Angeles, CA 90017-3409

Dear Mr. Gay:

Re: Riverside Levees and Bridges
Memorandum of Understanding

Enclosed herewith for execution are four (4) copies of the Memorandum of Understanding By and Between the United States of America, Acting By and Through the Department of the Army, and the Riverside County Flood Control and Water Conservation District ("MOU").

Upon execution, please return the three (3) copies of the fully executed MOU, including the version stamped "CLERK'S COPY", to the following address for further processing:

Riverside County Flood Control and Water Conservation District
Attention: Alberto Martinez
1995 Market Street
Riverside, CA 92501

Please also email a copy of the fully executed MOU to amart@rivco.org.

Thank you for your assistance in the above matter. Should you have any questions, please do not hesitate to call Jeff Shim at 951.955.8845.

Very truly yours,

ALBERTO MARTINEZ
Chief Developer Services

Enclosures

cc: Julianna Adams
Nick Guizado
Ruddy Argueta
Jeff Shim

JJS:blm
P8/250966

**MEMORANDUM OF UNDERSTANDING
BETWEEN
RIVERSIDE COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT
AND
U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

This Memorandum of Understanding ("MOU") is entered into by and between the Riverside County Flood Control and Water Conservation District, ("RCFCWCD") a body corporate and politic and the Los Angeles District of the United States Army Corps of Engineers, a federal agency ("USACE"), collectively referred to as the "Parties."

RECITALS

WHEREAS, USACE Los Angeles District ("SPL") has an ongoing construction project named Riverside Levees Rehabilitation Project to rehabilitate the Riverside 1 and Riverside 2 Levee Systems (the "Federal Project"), located in Riverside County, California;

WHEREAS RCFCWCD seeks to permit Riverside County Transportation Department ("RCTD") to replace the Market Street Bridge and Mission Boulevard Bridge (collectively known as the "Bridges Project") within the construction footprint of the Federal Project;

WHEREAS RCFCWCD, as the Riverside Levees Project Local Sponsor, has submitted to the USACE two requests under 33 U.S.C. § 408 for Permission to construct the Bridges Project on behalf of the RCTD, 408 Permission numbers 408-SPL-2022-0010 and 408-SPL-2022-0012;

WHEREAS construction of the Bridges Project conflict with the temporary construction easement acquired for the Federal Project;

WHEREAS the Parties agree that the concurrent construction of the Federal Project and Bridges Projects will require coordination, communication, and construction services to ensure that any impact to the schedule and budget of the Federal Project is minimal;

WHEREAS it is the intent of the USACE to complete construction of Riverside Levees 1 and the segment of Riverside Levees 2 between Market Street and the State Route 60 Freeway which include the southern and central diversion channels (herein "Project Turnover Area") by Dec 31, 2023 and USACE is willing to turn over the Project Turnover Area to RCFCWCD for operations and maintenance (O&M) in an effort to minimize the need for active coordination of the Federal Project and Bridges Project;

WHEREAS RCFCWCD is willing to accept O&M of the Project Turnover Area under the authorities of the existing Operation and Maintenance Manual for Riverside Levees ("O&M Manual") as an interim measure to facilitate the timely completion of the Bridges Project, except any close-out construction issues that may still need to be resolved by the Contractor for the Federal Project ("USACE's Contractor") and the USACE;

WHEREAS the Parties also recognize the small potential for construction schedules to change despite efforts by the USACE to maintain the Dec 31, 2023 turn over schedule;

WHEREAS the Parties also agree that including a mechanism to address the potential need for more proactive coordination of the Federal Project and Bridges Project may become necessary and that this MOU should provide a framework for such coordination;

WHEREAS the Parties also agree that this MOU, once executed, will become part of and included as a special condition to any permission issued to RCFCWCD under the authority of 33 U.S.C. §408;

WHEREAS the Parties agree that at the completion of the Federal Project the USACE will have addressed any remaining close-out construction items related to the Project Turnover Area and will provide RCFCWCD a complete and updated Operation, Maintenance, Repair, Replacement and Rehabilitation ("OMRR&R") Manual for the entirety of the Federal Project;

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I – PURPOSE AND AUTHORITIES

A. All of the recitals hereof are incorporated by this reference and are made a part hereof as though set forth at length herein.

B. This MOU is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for coordination associated with the Federal Project and the Bridges Project.

C. The Parties agree that the design and construction of the Federal Project shall be pursuant to the Cooperation Agreement Between the United States of America and Riverside County Flood Control and Water Conservation District for Rehabilitation of Federal Flood Risk Management Levees in Riverside County, California, entered into 20 October, 2021 (“Cooperation Agreement”), and any applicable federal laws, regulations and policies. Upon turnover of the Federal Project, in whole or in parts by the USACE, the OMRR&R of the Project Turnover Area shall be the responsibility of the RCFCWCD in accordance with Article II. The existing O&M Manual will serve as interim OMRR&R guidance pending the completion of the Federal Project, inclusive of close-out items and the completion and delivery of the Final OMRR&R Manual by the USACE.

ARTICLE II – SCOPE OF WORK FOR TURNOVER

A. As the Federal Project is currently under construction and the Bridges Project will be constructed within the same vicinity, the Parties agree that it is their joint desire to create this two-party MOU to ensure success for both projects.

B. RCFCWCD will accept maintenance responsibility for the Riverside Levee 1 (Right Levee), the two Right Levee related diversion channels (“Southern Diversion Channel” and “Central Diversion Channel”) and the southern portion of the Riverside Levee 2 (Left Levee) that is south of the Market Street Bridge (see Appendix A, which is attached hereto and incorporated herein) following the completion of the construction of these project elements, as provided herein. USACE will initiate the transfer process by sending a letter by December 31, 2023 to RCFCWCD documenting the Project Turnover Areas to be turned over to Riverside County for O&M responsibility under the O&M Manual and excepting any project close out items that may remain to be addressed within the Project Turnover Area.

C. Upon turnover of the Project Turnover Area, RCFCWCD shall be responsible to make the necessary changes to rectify any negative environmental effects within the Project Turnover Area as defined in the USFWS Biological Opinion and Monitoring and Adaptive Management Plan (MAMP) issued January 20, 2022, including pending Letter of Amendment to the Biological Opinion. USACE will continue to monitor the Project Turnover Area pursuant to the January 20, 2022, Biological Opinion (or as amended) and provide RCFCWCD reports of any detected negative environmental effects. RCFCWCD shall be responsible as the point of contact for any necessary communication with California Department Fish & Wildlife and U.S. Fish and Wildlife Service to coordinate and affirm amelioration and resolution of any negative environmental effects or changes within the Project Turnover Area.

D. Upon turnover of the Project Turnover Area by USACE, RCFCWCD will also be responsible for maintenance within the Project Turnover Area, as provided herein and exempting any Federal Project close out items.

E. Contractors for the Bridges Project shall not enter, park vehicles, stage or store any materials within the USACE Temporary Construction Easement (TCE) (See Appendix B, which is attached hereto and incorporated herein) before Project Turnover Area turnover.

ARTICLE III – INTERAGENCY COMMUNICATIONS AND COORDINATION

A. 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 MOU. Additional representatives may also be appointed to serve as points of contact on specific actions or issues. For the purposes of this MOU, the Principal Representatives are identified in Article VI. The Principal Representative for each party may be changed upon written notification to the other party.

B. In the event that the Project Turnover Area cannot be turned over to RCFCWCD by December 31, 2023, it may be necessary to develop a more active coordination plan between the Federal Project and the Bridges Project. Such a plan shall be put in writing and signed by both the LA District Colonel and the RCFCWCD General Manager-Chief Engineer.

C. The Parties also agree that the following criteria will be part of the plan development and implementation:

- a. USACE and RCFCWCD will coordinate to develop exhibits identifying any overlapping work areas including staging areas and haul routes within the Project Turnover Area (herein called Overlap Area);
- b. RCFCWCD shall be responsible for repair and maintenance of the haul roads within the Overlap Area. RCFCWCD will provide traffic control flagman as required and agreed to in the Overlap Area plan, to ensure USACE's Contractor has the priority access within the construction Overlap Area;
- c. RCFCWCD staging areas and haul routes shall be clearly identified and marked to avoid construction vehicle access between the USACE and RCFCWCD contractors.

ARTICLE IV – NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this MOU shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to RCFCWCD:

Riverside County Flood Control and Water Conservation District

1995 Market Street
Riverside, CA 92501
Attn: Alberto Martinez, P.E.

If to USACE:

U.S. Army Corps of Engineers
Construction Division
915 Wilshire Blvd., Suite 1109
Los Angeles, CA 90017
Attn: Shaun R. Frost, P.E.

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

ARTICLE V – TERMINATION OR SUSPENSION

A. This MOU may be modified or amended only by written mutual agreement of the Parties.

ARTICLE VI – DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this MOU, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. 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 the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance provided herein.

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.

First level coordination and dispute resolution should be sought between the USACE Administrative Contracting Officer and RCFCWCD Project Manager(s). If resolution cannot be obtained within 7 calendar days, second level coordination and dispute resolution should be

sought between the USACE Contracting Officer and RCFCWCD Division Chief. If resolution still cannot be obtained within an additional 14 calendar days, USACE SPL Deputy District Engineer for Programs and Project Management Justin Gay and RCFCWCD General Manager Chief Engineer Jason Uhley. If resolution still cannot be obtained within an additional 30 calendar days, unilateral decision shall be made by the USACE SPL District Engineer.

ARTICLE VII – RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this MOU, the USACE and the RCFCWCD each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE VIII – CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE IX – APPLICABLE LAWS

The applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOU and all documents and actions pursuant to it. Unless otherwise required by law, expediting of RCFCWCD-designated priority Section 408 Requests undertaken by USACE will be governed by USACE regulations, policies, and procedures.

ARTICLE X – MISCELLANEOUS

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

B. If any provision of this MOU 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. This MOU, including any documents incorporated by reference or attachments thereto, but excluding the pre-existing relationships or obligations between the Parties referenced herein, constitute the entire agreement between the Parties.

ARTICLE XI – EFFECTIVE DATE AND DURATION

This MOU and any amendments will be effective on the date of signature by the last Party. Unless amended or modified, this MOU shall remain in force until whichever of these

events occurs first: 1) December 31, 2027, or 2) after the Federal Project is turned over to RCFCWCD 3) the MOU is terminated pursuant herein.

(REMAINDER LEFT INTENTIONALLY BLANK)

IN WITNESS WHEREOF, this MOU is executed as of the dates indicated below by RCFCWCD, acting by the Boards of Supervisors, and by the USACE, through its authorized officer _____

May 2nd, 2023

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

RIVERSIDE COUNTY FLOOD CONTROL

**AND WATER CONSERVATION DISTRICT, a
body corporate and politic**

By J. Uhley
JASON E. UHLEY
General Manager-Chief Engineer

By Karen S. Spiegel
KAREN SPIEGEL, Chair
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

MINH C. TRAN
County Counsel

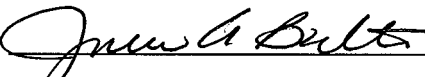
KIMBERLY RECTOR
Clerk of the Board

By KB
KRISTINE BELL-VALDEZ
Deputy County Counsel

By Bruna Smo
Deputy

(SEAL)

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT, a federal agency

By: 

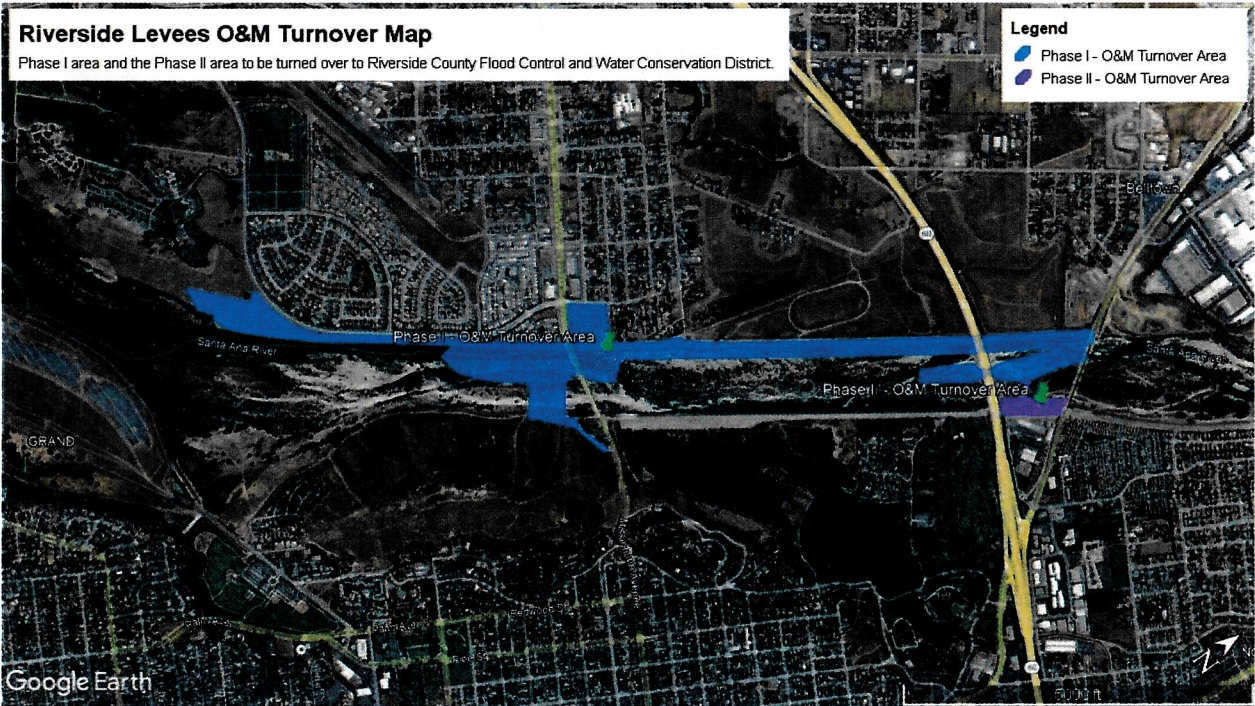
JULIE BALTEN

Colonel, U.S. Army

Commander and District Engineer

Date: 17 May 2023

Appendix A: Project Turnover Area as described in Article II: Scope of Work.



Appendix B: USACE Temporary Construction Easement (TCE)

