

REIMBURSEMENT AGREEMENT

This Agreement ("Agreement") is made and entered into this 11th day of January 2022 (the "Effective Date") by and between City of Corona ("CITY"), and Orange County Flood Control District (the "District"). CITY and the District are sometimes individually referred to herein as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the District, as a local sponsor of the United States Army Corps of Engineers ("CORPS") Santa Ana River - Prado Dam project which includes the raising of the Prado spillway to provide additional water storage in the Santa Ana River basin to provide flood protection for Orange County and for a portion of Riverside County (the "Project"), within that area generally depicted in the attached Exhibit A (the "Project Location"), is responsible for utility relocations impacted by the Project.

WHEREAS, a portion of the Project's proposed expanded inundation area ("Expanded Inundation Area") in the Prado Basin, which is between elevations 556 and 566 feet above mean sea level, resulting from the proposed raising of the Prado spillway, is within the CITY's jurisdiction. Parties herein acknowledge that the existing Prado Basin inundation area is at elevation 556 feet due to the existing elevation of the Prado spillway.

WHEREAS, CITY currently operates and maintains certain facilities within the Expanded Inundation Area as shown in the attached Exhibit B (collectively the "CITY Facilities").

WHEREAS, the District has determined that implementation of the Project may adversely impact the CITY Facilities and, to that end, the District has requested that CITY modify, protect in place and/or relocate some or all of the CITY Facilities (hereinafter referred to collectively as "Relocations") to accommodate the Project.

WHEREAS, the CITY and District agree that preliminary discussions have been completed and have agreed in principle on the impacted facilities and corresponding mitigation measures fully documented by a study and/or a report, summarized as shown in the attached Exhibit C, and that this Agreement will primarily cover the implementation phase of Relocations. CITY further acknowledges and agrees that the scope of this implementation does not cover any CITY Facilities outside of the Expanded Inundation Area, and that CITY is solely responsible for any impacts the Project may have for such excluded facilities.

WHEREAS, the Parties intend that costs incurred for Relocations to accommodate the Project where the CITY holds prior or superior property rights or priority interests ("CITY Land Rights") over those rights held by DISTRICT and/or the CORPS, if any, are to be borne by District as eligible project costs ("Eligible Project Costs"). City further intends to furnish documentation of its prior or superior rights to District.

WHEREAS, the Parties intend that the scope of Relocations are based on comprehensive engineering evaluation, analysis, conclusions and recommendations agreed upon by both Parties, with input from Parties' respective consultants where applicable, as to potential adverse impacts to the CITY Facilities that may otherwise be absent if the Prado Basin inundation area is not expanded.

WHEREAS, subject to the terms and provisions set forth herein, CITY is willing and able to perform the work (or cause the work to be performed) identified in the attached Exhibit B and Exhibit C for the identified CITY Facilities in order to accommodate the Project. The Parties intend this Agreement to establish the process by which the District will cover the Eligible Project Costs incurred by the CITY in accordance with the terms herein.

WHEREAS, the CITY is committed to implementing the Relocations prior to award of the spillway construction contract for the Project as determined by District and CORPS.

WHEREAS, the CITY understands that Eligible Project Costs are eligible for reimbursements from the CORPS and CITY shall comply with Federal and State Prevailing Wage laws, the Davis-Bacon Act, 40 U.S.C. 3141 et seq.; the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 et seq.; and the Copeland Anti-Kickback Act, 18 U.S.C. 874 and 40 U.S.C. 3145, and shall endeavor to assist the District in the request for reimbursements.

WHEREAS, the Parties intend this Agreement to enable District to certify utility relocations to the CORPS as needed for Project prior to the construction of the spillway.

NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE DISTRICT AND CITY AS FOLLOWS:

AGREEMENT

1. SCOPE OF WORK

This Project will require that the CITY Facilities within the Project Location, to be modified, protected in place and/or relocated by April 30, 2022 (hereinafter "Completion Date"). The Scope of Work for this Agreement is as indicated on the attached Exhibit C ("Scope of Work & Cost Estimate) for completion in accordance with the "Approved Plans" as defined below.

2. REQUIRED PLANS AND DOCUMENTATION

a. Approved Plans. In furtherance of the District's request, CITY will have prepared certain plans/designs that identify (i) the CITY Facilities that will be impacted by the Project and (ii) the relocation or work needed for the affected CITY Facilities. Said CITY plans/designs that District expressly acknowledges as having been reviewed and approved as not presenting any conflicts with the Project shall become the "Approved Plans". It is the District's sole responsibility to ensure that no conflicts exist between the Approved Plans and the Project, and to timely inform CITY of the need for any refinements, modifications, or revisions to the Approved Plans to resolve any such conflicts that may later arise, all in accordance with subsections below.

b. Refinements to Plans. Depending upon the design status of the Project as of the Effective Date, the Parties acknowledge that refinements and/or adjustments to portions of the Approved Plans may be required in order to, for instance, eliminate minor conflicts. In such instance, CITY shall prepare such refinements to the Approved Plans as may be necessary in order to address/eliminate said conflicts. The refined Approved Plans shall be presented to the District for review and approval; CITY shall not commence the Facilities Work (*see* Section 3, below) unless and until the District has reviewed and approved the refined Approved Plans, if applicable. The District shall be responsible for all costs and expenses reasonably incurred by CITY in relation to the Eligible Project Costs, including CITY refinement of the Approved Plans that District has approved in advance in writing.

c. Revised Plans. In the event that modifications/revisions to the Approved Plans are required in order to accommodate changes to the Project (including the elimination of conflicts with the Project plans), to resolve conflicts within the Project area, or to address other changed conditions, then CITY shall prepare such modifications/revisions as are necessary to address said changes and shall present same to the District for review and approval. The District shall be responsible for all Eligible Costs reasonably incurred by CITY in relation to CITY's preparation of the modifications/revisions to the Approved Plans.

d. Record Drawing (As-Built Plans). City shall provide District a copy of as-built plans upon completion of the Relocations. These plans shall clearly show the actual work done and any field adjustments made in relation to the Approved Plans.

e. Documentation for City Land Rights. CITY shall furnish to District copies of its CITY Land Rights (e.g., easement deeds, outgrants, licenses, permits, etc.) which provide documentation of its property interest in the CITY Facilities including evidence that CITY holds prior or superior CITY Land Rights over those rights held by DISTRICT and/or the CORPS, if any.

3. FACILITIES WORK

Following the Parties' confirmation of the finality of the Approved Plans and the related CITY Land Rights, CITY shall cause the CITY Facilities to be modified, removed and/or relocated in accordance with the Approved Plans (the "Facilities Work"), with work completed by date specified herein per Section 1 (Scope of Work). CITY shall perform the Facilities Work in accordance with all applicable laws, rules and regulations including Federal and State Prevailing Wage laws, the Davis-Bacon Act, 40 U.S.C. 3141 et seq.; the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 et seq.; and the Copeland Anti-Kickback Act, 18 U.S.C. 874 and 40 U.S.C. 3145.

4. COST ALLOCATION

Where CITY holds CITY Land Rights the District recognizes such rights as prior/superior property rights or priority interests over those rights held by DISTRICT and/or the CORPS, if any, and District shall be exclusively responsible for all costs and expenses that are Eligible Project Costs associated with CITY's implementation of the Approved Plans; including, but not necessarily limited to, the costs and expenses associated with:

- (i) CITY's initial research/study and report to determine impacted CITY Facilities and corresponding mitigation measures,
- (ii) Preparation of the Approved Plans (and any revisions thereto and refinements thereof),
- (iii) CITY's performance of the Facilities Work, and
- (iv) District's acquisition of the property interests required for the Facilities Work, where applicable.

District shall pay Eligible Project Costs either via deposits made to the CITY or as otherwise set forth in accordance with the provisions of this Agreement. District shall not be responsible for costs associated with work undertaken by City that is not considered an Eligible Project Cost. CITY is aware that federal funds will be used to reimburse such Eligible Project Costs and as such shall comply with all applicable laws and as stated herein, including state and federal prevailing wage laws.

5. INITIAL COST ESTIMATE, PAYMENT(S) AND RECONCILIATION

a. Initial Cost Estimate. The total estimated value for Eligible Project Costs for the Facilities Work on the CITY Facilities per this Agreement as reflected in the Scope of Work listed on Exhibit C, for which the District is responsible is \$389,914 the "Initial Cost Estimate").

b. Initial Deposit. Concurrent with or after the District's execution of this Agreement, the District shall pay to CITY the amount of \$100,000 as the "Initial Deposit" to be applied toward the total Initial Cost Estimate owed by the District. CITY shall use the Initial Deposit monies to pay for and reimburse the CITY's Eligible Project Costs as defined herein. CITY shall send the District monthly statements of expenditures which had been paid from the Initial Deposit documentation that substantiates each expense qualification as Eligible Project Costs. CITY, at its sole discretion, may use portions of the Initial Deposit toward the cost of initial research and study that may have already been performed prior to approval of this Agreement, so long as such costs are appropriately reimbursable as Eligible Project Costs.

CITY accepts compensation as set forth herein in exchange for CITY assuming 100% full financial

responsibility for the Facilities Work. CITY certifies that it will not cause delays to the Project by failing to complete said work and that upon completion of said work, all impacts to CITY Facilities due to the Project and Expanded Inundation Area, will have been fully addressed with no further action necessary.

Upon completion of the Relocations, CITY releases District and Corps of any liabilities as to impact of Project on CITY Facilities and waives any rights of any claims in the future.

c. Reconciliation. The Parties acknowledge that the Initial Cost Estimate is just a preliminary estimate and that the costs associated with the Facilities Work could increase (or decrease) prior to CITY's completion of the Facilities Work. The Parties acknowledge that the District will not be responsible for paying the total costs and expenses actually incurred by CITY in relation to implementation of the Approved Plans or other activities in accordance with this Agreement, unless such costs are appropriately reimbursable as Eligible Project Costs. Thus, at the completion of the Facilities Work (or upon cancellation of the Project or termination of this Agreement), CITY will calculate the total actual costs and expenses for which the District is responsible hereunder, and the District will be provided with a final invoice identifying said costs and expenses. The District will be billed or refunded, as applicable, for any difference between the amounts paid by the District hereunder and the total Eligible Project Costs. Any amount owed to CITY shall be due no later than 60 days after the District's receipt of the final invoice; provided that prior to CITY incurring expenses hereunder that exceed the Initial Cost Estimate that City notifies District in writing as to the amount change. Notwithstanding anything to the contrary, this Agreement covers any increase in the Initial Cost Estimate that is less than 25% of the Initial Cost Estimate, provided that such increase shall not exceed an aggregate sum of One Million Dollars (\$1 million); otherwise, the Parties agree to enter into an amendment to this Agreement signed by the County of Orange, Board of Supervisors, or designee per delegated authority. Similarly, any amount owed by CITY to the District shall be refunded by CITY to the District within 60 days following CITY's preparation and delivery of the final invoice.

6. PROJECT SCHEDULING

The Parties acknowledge and agree that the Completion Date is critical for District to certify Relocations as required for the Project. The Parties further acknowledge and agree that Completion Date of the Facilities Work is contingent upon mutually acceptable schedules, available resources, the timely obtaining of permits, licenses, real property rights, and other documents, outages or other key items and not being delayed by those forces described below. The Parties shall work cooperatively and in good faith to timely meet all mutually acceptable schedules and to minimize delays. Prior to implementation of the Facilities Work, CITY shall provide District a proposed schedule for review and approval to ensure compliance with the Completion Date.

7. COMPLIANCE WITH CEQA AND OTHER ENVIRONMENTAL LAWS

The Parties agree to comply with the requirements of the California Environmental Quality Act ("CEQA") and other environmental laws, as applicable, and shall prepare any and all Negative Declarations, Mitigated Negative Declarations and/or Environmental Impact Reports which may be required by any agency or entity having jurisdiction over the Project and the Facilities Work. Notwithstanding any provision herein to the contrary, the District acknowledges and agrees that CITY will not begin the Facilities Work unless and until CITY has confirmed that all environmental permits, approvals, certifications and authorizations have been issued in relation to the Project and the Facilities Work.

8. COOPERATION BY BOTH PARTIES; TIMELY COMMUNICATION

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 Facilities Work, and ways that the Parties may work together to facilitate performance under this Agreement. Notwithstanding any provision herein to the contrary, failure by either Party to timely respond to requests for information shall be considered a default of this Agreement.

9. **INDEMNIFICATION BY DISTRICT**

The District agrees, for itself, and for its agents, contractors, and employees, to save harmless, defend, and indemnify CITY, its elected and appointed officials, officers, agents, contractors, and employees, and its successors and assigns, from and against all claims, loss, damage, actions, causes of action, expense and/or liability arising from or growing out of loss or damage to property, including CITY's own personal property, or injury to or death of persons, including employees of CITY, resulting in any manner whatsoever, directly or indirectly, by reason of the District's exercise of its rights or obligations as set forth herein. District's duty to indemnify CITY includes, without limitation, claims against CITY pertaining to the location and/or underlying real property rights for CITY's facilities in new locations (as may be applicable), and claims against CITY for the removal and/or remediation of pre-existing environmental contamination (provided such contamination was not caused by CITY). District shall not be excused of its duty to indemnify for CITY's ordinary negligence, but shall be excused to the extent claims, losses, or damages are attributable to CITY's sole negligence, gross negligence, or willful misconduct.

10. **INDEMNIFICATION BY CITY**

The City understands and agrees that all Facilities Work and Relocations are intended for flood control purposes for the CORPS operation of the Prado Dam which includes the Expanded Inundation Area within the Prado Basin due to the proposed raising of the existing spillway. The CITY agrees, for itself, and for its agents, contractors, and employees, to save harmless, defend, and indemnify District and CORPS, their elected and appointed officials, officers, agents, contractors, and employees, and their successors and assigns, from and against all claims, loss, damage, actions, causes of action, expense and/or liability arising from or growing out of loss or damage to property, including District's and CORPS' own personal property, or injury to or death of persons, including employees of District and CORPS, resulting in any manner whatsoever, directly or indirectly, by reason of the CITY's exercise of its rights or obligations as set forth herein. CITY shall not be excused of its duty to indemnify for District's ordinary negligence, but shall be excused to the extent claims, losses, or damages are attributable to District's and CORPS' sole negligence, gross negligence, or willful misconduct.

11. **NOTICES, CORRESPONDENCE, AND PAYMENT ADDRESS**

Any notices and correspondence provided for in this Agreement, *other than payments*, to be given by either Party hereto to the other shall be deemed to have been duly given when made in writing and deposited in the United States mail, registered or certified and postage prepaid, addressed as follows:

To CITY:
City of Corona
Public Works Department
400 S. Vicentia Avenue, Ste. 215
Corona, CA 92882
Attention: Savat Khamphou, P.E.

To District:
OC Public Works
601 N. Ross Street
Santa Ana, CA 92701
Attention: Nardy Khan

Payments: Any payments provided for in this Agreement shall be forwarded to the addresses below.

To CITY:
City of Corona
Public Works Department
400 S. Vicentia Avenue, Ste. 215
Corona, CA 92882
Attention: Savat Khamphou, P.E.

To District:
OC Public Works
601 N. Ross Street
Santa Ana, CA 92701
Attention: Nardy Khan

12. **TERMINATION**

a. District's Right to Terminate Agreement. The District shall have the right to terminate this Agreement at any time upon written notice to CITY. If this Agreement is terminated by the District, the District shall be responsible to CITY for all Eligible Project Costs actually incurred by CITY in connection with CITY's preparation of the Approved Plans, performance of the Facilities Work prior to or on the date of termination, and any other actions/activities performed prior to or on the date of termination under this Agreement. CITY shall prepare and deliver to the District an invoice that describes/identifies the costs and expenses thus incurred by CITY. Within 60 days following CITY's delivery of said invoice, the District shall pay to CITY the amounts specified in the invoice.

b. Termination Due to District's Default. If the District is in default of any of the terms, provisions, conditions, limitations and covenants of this Agreement, CITY shall give the District written notice of default ("Default Notice") at the address provided for herein. If the District does not cure such default within a reasonable time specified in the Default Notice, CITY has the right, but not the obligation, to terminate this Agreement upon 30 days written notice to the District (or such lesser time as may be appropriate under the circumstances). Except as otherwise provided, should CITY exercise such right of termination, CITY shall be entitled to payment for all Eligible Project Costs related to the performance of this Agreement incurred by CITY, up to and including the date of termination. CITY shall prepare and deliver to the District an invoice that describes/identifies the costs and expenses thus incurred by CITY. Within 60 days following CITY's delivery of said invoice, the District shall pay to CITY the appropriate amounts specified in the invoice.

13. **JURISDICTION OF PUBLIC UTILITIES COMMISSION** – *intentionally deleted*

14. **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.

15. **GOVERNING LAW**

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

16. **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.

17. **THIRD PARTY BENEFICIARIES**

Except as provided herein in Sections 9 and 10, nothing herein is intended to create any third-party benefit.

18. **NO AGENCY, PARTNERSHIP OR JOINT VENTURE**

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.

19. **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.

20. **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 the Parties by way of an electronic signatures, in which case, said electronic signatures shall have the same force and effect as a written signature.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, this Agreement and each and every term herein is agreed to by and between the undersigned.

CITY OF CORONA,
a municipal corporation

Date: 12/8/2021

By: Jacob Ellis *Sk*
City Manager

Attest:

**APPROVED AS TO FORM
CITY ATTORNEY
CORONA, CALIFORNIA**

By: Sylvia Edwards 12/27/2021
City Clerk Date

By: *[Signature]* 1/5/2022 *MC*
City Attorney Date

**ORANGE COUNTY FLOOD
CONTROL DISTRICT,**
a body corporate and politic

Date: _____

By: _____
Director of OC Public Work or designee
Pursuant to Minute Order 10/06/2020

**APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA**

By: *[Signature]* 11-24-2021
Deputy Date

IN WITNESS WHEREOF, this Agreement and each and every term herein is agreed to by and between the undersigned.

CITY OF CORONA,
a municipal corporation

Date: _____

By: _____
City Manager

Attest:

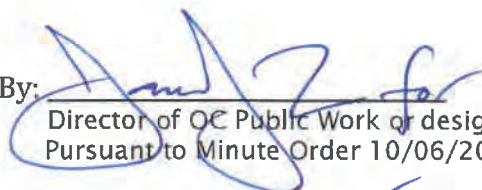
**APPROVED AS TO FORM
CITY ATTORNEY
CORONA, CALIFORNIA**

By: _____
City Clerk Date

By: _____
City Attorney Date

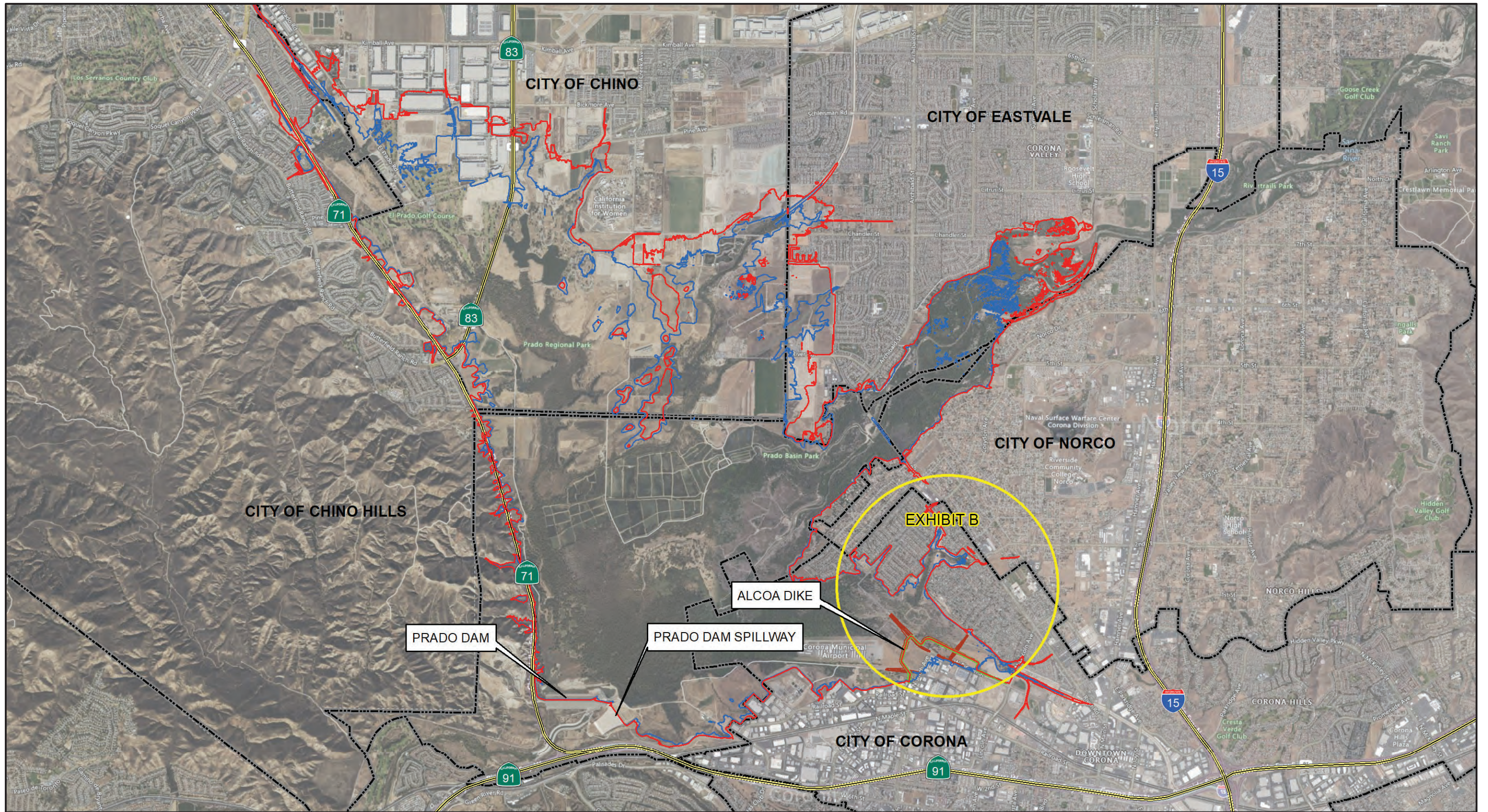
**ORANGE COUNTY FLOOD
CONTROL DISTRICT,**
a body corporate and politic

Date: 1/11/2022

By: 
Director of OC Public Work or designee
Pursuant to Minute Order 10/06/2020
James J. Tyler

**APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA**

By:  _____ 11-24-2021
Deputy Date



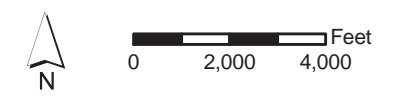
ORANGE COUNTY PUBLIC WORKS
PRADO DAM UTILITY RELOCATIONS

EXHIBIT A

- ⬮ New Inundation @ Elev 566-ft
- ⬮ Prado Existing Basin @ Elev 556-ft
- Highways
- Jurisdictional Boundary

Map Projection:
NAD83 State Plane California Zone 6
Vertical Datum:
NGVD29
Map Created:
10/15/2021
Data Sources:
OCPW 2015 Topo, Tetra Tech, Bing Maps

1 inch = 4,000 feet 1:48,000





**ORANGE COUNTY PUBLIC WORKS
PRADO DAM UTILITY RELOCATIONS**

EXHIBIT B

- ◆ RW Flow Meter
- Sewer Manholes
- ◆ Lift Station (Impacted)
- Sewer Manholes (Impacted)
- Air Vac (Impacted)
- Sewer Manholes (Impacted/Sealed)
- ~ Highways
- Jurisdictional Boundary
- ~ New Inundation@Elev 566-ft
- ~ Prado Existing Basin@Elev 556-ft
- ~ Alcoa Levee Alignment
- ~ Levee Road Grading

Map Projection: NAD83 State Plane California Zone 6
Vertical Datum: NGVD29
Map Created: 10/14/2021
Data Sources: OCPW 2015 Topo, Corona GIS, Bing Maps

1 inch = 1,100 feet 1:13,200

0 550 1,100 Feet



EXHIBIT C SCOPE OF WORK & ESTIMATES



CITY OF CORONA
DEPARTMENT OF WATER & POWER
PRADO DAM 556-566 FLOOD INUNDATION UTILITY RELOCATION
ESTIMATED CONSTRUCTION COST FOR UTILITIES MITIGATION MEASURES
November 24, 2021

Potable Water Utility					
Potable Water Appurtenance	Flood Classification	Action	Quantity	Retrofit Cost (\$/Item)	Total (\$) - Option 1
Air Vac	556 - 566 Inundation	Raise	3	\$600	\$1,800
Fire Hydrants	556 - 566 Inundation	None	15		
Fire Hydrant Valves	556 - 566 Inundation	None	15		
Gate Valve	556 - 566 Inundation	None	15		
Total Potable Water					\$1,800
Sewer Utility					
Sewer Appurtenance	Flood Classification	Action	Quantity	Retrofit Cost (\$/Item)	Total (\$) - Option 1
Sewer Manhole	556 - 566 Inundation	Seal 24" MH Lid	19	\$5,378	\$102,182
Sewer Manhole	556 - 566 Inundation	Seal 36" MH Lid	2	\$5,378	\$10,756
Stagecoach Sewer Lift Station	556 - 566 Inundation	Seal Access & Construct Perimeter Protection	1	\$18,800	\$18,800
Total Sewer					\$131,738
Reclaimed Water Utility					
Reclaimed Water Appurtenance	Flood Classification	Action	Quantity	Repair Cost / Relocation Cost (\$/Item)	Total (\$) - Option 1
Air Vac	556 - 566 Inundation	Relocate to Higher Elev	1	\$33,465	\$33,465
Reclaimed Fire Hydrants	556 - 566 Inundation	None	6		
Reclaimed Fire Hydrant Valves	556 - 566 Inundation	None	6		
Gate Valve	556 - 566 Inundation	None	3		
River Flow Control Station - Option 1 - Repair	556 - 566 Inundation	Replace Electrical Equipment	1	\$75,000	\$75,000
River Flow Control Station - Option 1 - Repair	556 - 566 Inundation	Replace Electronic Equipment	1	\$69,928	\$69,928
Total Reclaimed Water					\$178,393
Total Estimated Construction Cost for Utility Protection, Relocation and Replacement					\$311,931
Engineering, Administration, Contingency, Labor Compliance, Inspection (25%)					\$77,983
Total Estimated Cost for Utility Protection, Relocation and Replacement					\$389,914