

AGREEMENT BETWEEN THE CITY OF HUNTINGTON BEACH
AND THE STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION,
DIVISION OF BOATING AND WATERWAYS
FOR STAGE 13 PERIODIC NOURISHMENT
OF THE
ORANGE COUNTY BEACH EROSION CONTROL PROJECT

This agreement ("Local Agreement") is made and entered into the _____ day of _____, 20____, by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California, hereinafter called "CITY" and the CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, DIVISION OF BOATING AND WATERWAYS, hereinafter called "DEPARTMENT."

I. RECITALS

1. Congress has, by the enactment of Public Law 874, 87th Congress, specifically adopted and authorized a beach erosion control project from Anaheim Bay Harbor to Newport Bay in Orange County, California, providing for federal participation amounting to 67 percent of the first costs and costs of periodic nourishment and maintenance, in accordance with the plans and subject to the conditions recommended by Chief of Engineers in House Document 602, 87th Congress.
2. DEPARTMENT is authorized under Harbors and Navigation Code Section 67.2 to expend State funds appropriated for the Orange County Beach Erosion Control Project.
3. For projects that receive State funding from the Public Beach Restoration Fund, DEPARTMENT is required under Harbors and Navigation Code Section 69.6(a)(5) to collect no less than fifteen (15) percent of the nonfederal project costs for restoration, nourishment, or enhancement of nonstate public beaches from projects' local sponsors, with local cost shares to be provided as funds and/or in-kind services.

4. The project funded by this Local Agreement consists of up to approximately 1,750,000 cubic yards of sand fill at Surfside-Sunset Beach and 100,000 cubic yards of sand fill in the City of Newport Beach (such placements shall hereafter be referred to as "PROJECT") substantially in accordance with the plan set forth in House Document 602, 87th Congress. The PROJECT area for Stage 13 is the coastal shoreline between Surfside-Sunset Beach and Newport Pier (70 Newport Pier, Newport Beach), inclusive.

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II. GENERAL TERMS

1. Before DEPARTMENT expends any State funds on the PROJECT, DEPARTMENT shall require all local agencies that control a portion of the coastal shoreline within the PROJECT area to send funds to DEPARTMENT, in amounts proportional to the amount of the PROJECT area they operate, as measured in linear feet. DEPARTMENT shall apply this cost sharing methodology to four (4) local sponsors: City of Huntington Beach (CITY), which is a signatory to this agreement; City of Newport Beach; County of Orange; and Surfside Colony Storm Water Protection District. Cost contribution percentages for each non-federal partner are attached to this agreement as **Exhibit A** and are based on the proportional share of linear footage of the PROJECT area that each non-federal partner operates. CITY has reviewed Exhibit A and accepts the cost sharing methodology stated therein for PROJECT construction.

2. As provided for in Exhibit A, CITY will pay the sum of four hundred ten thousand five hundred seventeen dollars (\$410,517) to DEPARTMENT within thirty (30) days of the date of final execution of this Local Agreement, as CITY's share of the financing costs of PROJECT.

3. DEPARTMENT intends to enter into an agreement with the United States Army Corps of Engineers (Government) for undertaking PROJECT and, if DEPARTMENT enters such an agreement, will make available to the Government the sum of approximately \$7,632,900 in advance of the occurrence of actual PROJECT costs. The above amount consists of approximately \$6,954,297 from DEPARTMENT and a total of \$678,603 from all four local partners including CITY. DEPARTMENT

shall only make such advance if it receives a total of \$678,603 from all four local partners including CITY.

4. The Government requires DEPARTMENT to execute a Project Partnership Agreement before any PROJECT work begins. The Project Partnership Agreement requires DEPARTMENT to make certain guarantees which in some cases can only be accomplished through cooperation between DEPARTMENT and local partners. A draft of the Project Partnership Agreement is attached to this Local Agreement as **Exhibit B**. CITY agrees to support and assist DEPARTMENT in fulfilling all aspects of the Project Partnership Agreement where the DEPARTMENT determines such support and assistance is necessary. CITY shall cooperate with amending this Local Agreement to include the fully executed Project Partnership Agreement in substantially the same form and substance as Exhibit B within one hundred twenty (120) days following execution of the Project Partnership Agreement.

5. If DEPARTMENT and the Government determine they will not execute the Project Partnership Agreement, this Local Agreement shall be of no further force and effect, and any funds provided by CITY to DEPARTMENT for PROJECT construction shall be returned by DEPARTMENT within ninety (90) days. If any local sponsor declines to enter an agreement with DEPARTMENT for PROJECT construction, the DEPARTMENT will not execute the Project Partnership Agreement, and this Local Agreement shall be of no further force and effect. DEPARTMENT shall notify CITY in writing that DEPARTMENT was unable to enter into all necessary agreements with other local sponsors and that this Local Agreement shall be of no further force and effect.

6. CITY agrees to indemnify, defend and hold harmless DEPARTMENT and its contractors, including but not limited to the Government, from all claims and losses arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of Stage 13, except for damages due to the sole fault or sole negligence of DEPARTMENT or its contractors.

7. DEPARTMENT will make best efforts to obtain within one hundred eighty (180) days of completion and acceptance of PROJECT a full accounting from the Government, and shall diligently

pursue a refund of any unexpended monies, and upon receipt thereof, shall divide proportionately any such monies between DEPARTMENT and CITY in a ratio equal to the respective contributions of the parties as described in Exhibit A.

8. Construction of PROJECT is anticipated to be completed by February 1, 2025. The project term (PROJECT TERM) shall last until the date Stage 14 construction begins or until ten (10) years after the date of acceptance of PROJECT completion by DEPARTMENT, whichever occurs first.

9. In the event construction of PROJECT is either formally cancelled before completion by the Government or is not completed by February 1, 2029, DEPARTMENT, or its Successor in interest, shall diligently pursue a refund of any unexpended monies, and shall upon receipt thereof, divide proportionately any such monies between DEPARTMENT and CITY in a ratio equal to the respective contributions of the parties as described in Exhibit A.

10. Provisions of the Project Partnership Agreement requiring ongoing monitoring and maintenance of the PROJECT area will continue beyond the completion of construction, with no defined end date, as required by the Government. DEPARTMENT will supply the Stage 13 Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual developed by the Government to CITY within ninety (90) days of DEPARTMENT'S receipt thereof, which will occur after completion of construction. DEPARTMENT and CITY shall coordinate and communicate about post-construction maintenance requirements and activities in good faith. CITY shall indemnify DEPARTMENT against all claims arising from such monitoring and maintenance duties that fall within CITY's jurisdiction, except in case of sole fault or sole negligence of the DEPARTMENT. Each party shall undertake their respective post-construction monitoring and maintenance responsibilities at its own expense.

11. Provisions of the Project Partnership Agreement require the Non-Federal Sponsor to assume responsibility for activities specified therein related to any hazardous, toxic, and radioactive wastes (HTRW) found within the PROJECT area. HTRW includes any material listed as a "hazardous substance" regulated under the federal Comprehensive Environmental Response, Compensation, and

Liability Act. At the time of execution of this Local Agreement, DEPARTMENT does not know of any HTRW on property operated by CITY within the PROJECT area. CITY agrees to fulfill all terms of the Project Partnership Agreement related to HTRW on property operated by the CITY on behalf of DEPARTMENT, at any time during the PROJECT TERM, at CITY's expense.

12. Provisions of the Project Partnership Agreement require the Non-Federal Sponsor to provide, at no cost to the Government, any real property interests, relocations, and placement area improvements determined by the Government to be required for construction, operation, and maintenance of the Project. DEPARTMENT lacks legal authority to acquire real estate owned by CITY. With respect to that portion of the PROJECT area which CITY owns, operates, or has legal authority to obtain, CITY agrees to comply with all requests for such real estate interests that originate from the Government, at any time during the PROJECT TERM, at CITY's expense.

13. The Project Partnership Agreement shall include the following provision or a substantially similar provision: "At least annually and after storm events, the Non-Federal Sponsor, at no cost to the Government, shall monitor and perform surveillance of the Project to determine losses of material and provide results of such surveillance to the Government." With respect to the portion of the PROJECT area that CITY operates, CITY agrees to fulfill this provision on behalf of DEPARTMENT throughout the PROJECT TERM, at CITY's expense.

14. The Project Partnership Agreement shall include the following provision or a substantially similar provision: "Not less than once each year, the Non-Federal Sponsor shall inform affected interests of the extent of risk reduction afforded by the Authorized Project." With respect to the portion of the PROJECT area that CITY operates, CITY agrees to fulfill this provision on behalf of DEPARTMENT throughout the PROJECT TERM, at CITY's expense.

15. The Project Partnership Agreement shall include the following provision or a substantially similar provision: "The Non-Federal Sponsor shall ensure participation in and compliance with applicable Federal floodplain management and flood insurance programs. The Non-Federal Sponsor may execute

agreements with other non-Federal entities to ensure such participation and compliance.” With respect to the portion of the PROJECT area that CITY operates, CITY agrees to fulfill this provision on behalf of DEPARTMENT throughout the PROJECT TERM, at CITY’s expense.

16. The Project Partnership Agreement shall include the following provision or a substantially similar provision: “The Non-Federal Sponsor shall ensure publication of floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with the Authorized Project, and provides that the Non-Federal Sponsor may execute agreements with other non-Federal entities to ensure such publication and provision.” With respect to the portion of the PROJECT area that CITY operates, CITY agrees to fulfill this provision on behalf of DEPARTMENT throughout the PROJECT TERM, at CITY’s expense.

17. The Project Partnership Agreement shall include the following provision or a substantially similar provision: “The Non-Federal Sponsor shall prevent obstructions or encroachments on the Authorized Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the level of coastal storm risk reduction the Authorized Project affords, hinder operation and maintenance of the Authorized Project, or interfere with the Authorized Project’s proper function.” With respect to the portion of the PROJECT area that CITY operates, CITY agrees to fulfill this provision on behalf of DEPARTMENT throughout the PROJECT TERM, at CITY’s expense.

18. The Project Partnership Agreement shall include the following provision or a substantially similar provision: “For shores, other than Federal shores, protected pursuant to this Agreement using Federal funds, the Non-Federal Sponsor shall ensure the public use of, and access to, such shores by all on equal terms in a manner compatible with the authorized purpose of the Project.” With respect to the portion of the PROJECT area that CITY operates, CITY agrees to fulfill this provision on behalf of DEPARTMENT throughout the PROJECT TERM, at CITY’s expense.

19. The Project Partnership Agreement shall include the following provision or a substantially similar provision: "The Non-Federal Sponsor shall provide and maintain necessary access roads, parking areas, and other associated public use facilities, open and available to all on equal terms, as described in the Decision Document." With respect to the portion of the PROJECT area that CITY operates, CITY agrees to fulfill this provision on behalf of DEPARTMENT throughout the PROJECT TERM, at CITY's expense. This requirement shall not compel CITY to provide access in a manner inconsistent with past final published court rulings and decisions of the California Coastal Commission.

20. Any notice or other written instrument required or permitted by this Local Agreement to be given by one party to the other shall identify the PROJECT by name (e.g., "Stage 13, Orange County Beach Erosion Control Project") and shall be deemed received when either personally served or forty-eight (48) hours after being deposited in the U.S. Mail, postage prepaid, registered or certified and addressed as follows:

If to CITY: City of Huntington Beach
 2000 Main Street
 Huntington Beach, CA 92648
 Attn: Director of Public Works

If to DEPARTMENT: California State Parks, Division of Boating and Waterways
 P.O. Box 942896, Grants & Loans, 12th Floor
 Sacramento, CA 94296
 Attn: Project Manager, Public Beach Restoration Program

21. This agreement is not valid until approved by the California Department of General Services.

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IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date opposite their respective signatures:

CITY OF HUNTINGTON BEACH,
A municipal corporation of the State of California

Date: _____

By: _____
Tony Strickland
Mayor

ATTEST:

Robin Estanislau
City Clerk

INITIATED AND APPROVED:



Sean Crumby
Director of Public Works

REVIEWED AND APPROVED:

Al Zelinka
City Manager

APPROVED AS TO FORM:

Michael E. Gates 
City Attorney

CALIFORNIA DEPARTMENT OF PARKS
AND RECREATION, DIVISION OF BOATING
AND WATERWAYS

Date: _____

By: _____
Ramona Fernandez
Deputy Director