DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
915 WILSHIRE BOULEVARD, SUITE 930
LOS ANGELES, CALIFORNIA 90017

REPLY TO
ATTENTION OF

SECONDAMENDMENT
TO
MEMORANDUM OF AGREEMENT
BETWEEN
CITY OF SAN MARCOS
AND
THE UNITED STATES ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

SUBJECT: Second Amendment to Memorandum of Agreement between the City of San Marcos (hereinafter the "City") and the U.S. Army Corps of Engineers, Los Angeles District

This Second Amendment to Memorandum of Agreement ("SECOND AMENDMENT"), made the 16th day of December 2016, is entered into by the City and the Los Angeles District of the United States Army Corps of Engineers (hereinafter the "Corps"), collectively referred to as the "Parties."

RECITALS

WHEREAS, the Corps has jurisdiction over certain activities occurring in waters of the United States, including wetlands, pursuant to section 404 of the Clean Water Act of 1972, as amended, and navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act of 1899, as amended; and

WHEREAS, the Parties entered into a Memorandum of Agreement ("MOA"), dated December 4, 2009, for expedited and priority review of City-designated priority projects by the Corps; and

WHEREAS, the Parties entered into a First Amendment to the MOA, effective November 23, 2011, to modify some terms and extend the duration of the MOA; and

WHEREAS, the MOA is set to expire December 31, 2016; and

WHEREAS, section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000") as amended and 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 of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army; 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 public entities subject to certain limitations; and

WHEREAS, $4,429.25 has been expended under the current terms of the MOA through June 2016, leaving a balance of approximately $138,574.77 in available funds; and

WHEREAS, the Parties desire to enter into a SECOND AMENDMENT to the MOA to further extend the duration of the MOA. The intent of the Parties is that this MOA shall remain in force for so long as the Corps is authorized to accept or expend funds under 33 U.S.C. § 2352 unless otherwise terminated by the Parties pursuant to the terms of this MOA; and

NOW, THEREFORE, the Parties agree as follows:

SECOND AMENDMENT

1. Article IV. – RESPONSIBILITIES OF THE PARTIES. Article IV.A.1 is modified in its entirety to read:

"A. The City shall:

1. Provide adequate information regarding City-designated priority projects, scheduling requirements, and other specific activities to initiate permit evaluation. Information required for the Corps to deem a permit application complete thereby allowing initiation of the permit review process can be found in Corps regulations at 33 C.F.R. §§ 325.1(d), 325.3(a), and in General Condition 31 of the Nationwide Permit Program. Upon request, the City shall provide supplemental information necessary to complete the permit application. Additional information [33 C.F.R. § 325.1(e)] required to complete the permit evaluation process may exceed what is needed to initiate the process. On a case-by-case basis, if requested by the Corps, the City shall provide such additional information so as to ensure the Corps can effectively accomplish the required review."

2. Article VI. – FUNDING. This entire Article is modified in its entirety to read:

"Article VI. – FUNDING

A. It is anticipated that previous funds provided by the City are sufficient to fund all work anticipated under this MOA through December 31, 2021.

B. No later than October 1, 2021 and October 1 of each year thereafter that this MOA remains in effect, the Corps will provide the City with an anticipated cost invoice ("Invoice") that provides an updated budget estimate of costs for the next calendar year, including any proposed changes in the level of staffing. Revisions agreed to by the Parties will be incorporated into a revised budget estimate. Invoices shall be submitted by the Corps to:

Matt Little
Deputy City Manager/Public Works Director
City of San Marcos
1 Civic Drive
San Marcos, CA 92069-2918

C. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, the City will each make a lump sum payment to the Corps of the total amount specified in the Corps' Invoice(s). Payments by the City are to be made by check payable to the Finance and Accounting Officer and sent to the following address:

U.S. Army Corps of Engineers, Los Angeles District
Finance and Accounting Officer
915 Wilshire Blvd.
Los Angeles, CA 90017
Attn: Carlos M. Tabares

D. If the Corps' actual costs for providing the agreed upon level of service will at any time during the term of this MOA exceed the amount of funds available, the Corps will notify the City at least 90 days prior to fund exhaustion of the incremental amount of funds needed to defray the costs. The City will have the option of (i) making a payment to the Corps for the incremental amount or (ii) agreeing to a reduced level of service.

E. The Corps will carry over any unobligated funds from year to year, or will refund such unobligated funds if this MOA is terminated or expires."

3. Article X.- EFFECTIVE DATE. This Article is modified in its entirety to read:

"Article X. -EFFECTIVE DATE AND DURATION

This MOA and any amendments will become effective on the date of signature by the last Party. Unless amended or modified pursuant to Article IX.A., this MOA shall remain in force until the MOA is terminated pursuant to Article IX.B."

4. Integration. This SECOND AMENDMENT represents the entire understanding of the City and the Corps regarding the changes to the MOA, and all other terms and conditions of the MOA remain in full force and effect.

[REMAINDER LEFT INTENTIONALLY BLANK]

SUBJECT: Second Amendment to Memorandum of Agreement between the City of San Marcos and the U.S. Army Corps of Engineers, Los Angeles District

IN WITNESS WHEREOF, this SECOND AMENDMENT is executed by the City of San Marcos, acting by and through its City Council or designated management authority, and by the U.S. Army Corps of Engineers, through its authorized officer.

CITY OF SAN MARCOS

By: _____
Jack Griffin
City Manager

Date: 11/15/16

ATTEST:

By: _____
Phillip Scollick
City Clerk

APPROVED AS TO FORM:

By: _____
Helen Holmes Peak
City Attorney

Date: 11/15/16

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

By: _____
Kirk E. Gibbs
Colonel, US Army
Commander and District Engineer

Date: 12-16-16

FIRST AMENDMENT
TO
MEMORANDUM OF AGREEMENT
BETWEEN
CITY OF SAN MARCOS, CA
AND THE
UNITED STATES ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

RECEIVED
DEC 07 2011
REGULATORY BRANCH
CARLSBAD FIELD OFFICE

This First Amendment to Memorandum of Agreement ("FIRST AMENDMENT"), made the 22nd day of November, 2011, is entered into by the City of San Marcos, CA (hereinafter the "City") and the Department of the Army, represented by the United States Army Corps of Engineers, Los Angeles District (hereinafter the "Corps"), collectively referred to as "the Parties."

RECITALS

WHEREAS, the Parties entered into a Memorandum of Agreement ("MOA"), dated December 4, 2009, for expedited and priority review of City-designated priority projects by the Corps; and

WHEREAS, section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000") as amended by Public Law 111-315, 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 of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army; and

WHEREAS, Public Law 111-315, signed into law on December 18, 2010, extended the sunset clause of section 214 of WRDA 2000 to December 31, 2016; and

WHEREAS, the MOA is set to expire December 4, 2011; and

WHEREAS, the Parties desire to extend the duration of the MOA.

NOW, THEREFORE, the Parties agree as follows:

FIRST AMENDMENT

1. Article V. - IMPARTIAL DECISIONMAKING. This Article is deleted in its entirety.

2. Article VI. – FUNDING. This Article is modified in its entirety to read:

"ARTICLE VI. - FUNDING

A. Within 30 days of execution of this MOA, City shall pay the anticipated costs expected to be incurred through September 30, 2012, at the level specified in the Corps' budget estimate, which is included as **Appendix B** to this MOA and incorporated herein by reference.

B. No later than July 1 of each year that this MOA remains in effect, the Corps will provide the City with an anticipated cost invoice ("Invoice") that provides an updated budget estimate of costs for the next Federal fiscal year, including any proposed changes in the level of staffing. Revisions agreed to by the Parties will be incorporated into a revised budget estimate. Invoices shall be submitted by the Corps to:

Mike Edwards
1 Civic Drive
San Marcos, CA 92069-2918

C. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, the City will each make an annual lump sum payment to the Corps. Upon receipt of the Corps' Invoice(s) and in accordance with normal City payment procedures, the City make an annual lump sum payment, in advance, of the total amount specified in the Invoice(s).

D. Expediting of permit evaluation related activities as specified in this MOA will be undertaken by the Corps only after funds have been transferred to the Corps. Payments by the City are to be made to:

U.S. Army Corps of Engineers, Los Angeles District
Finance and Accounting Officer
P.O. Box 532711
Los Angeles, CA 90053-2325
Attn: Carlos M. Tabares

E. If the Corps' actual costs for providing the agreed upon level of service will exceed the amount of funds available, the Corps will promptly notify the City of the incremental amount of funds needed to defray the costs. The City will either increase the funding amount or agree to a reduced level of service.

F. The Corps will carry over any unobligated funds from year to year, or will refund such unobligated funds if this MOA is terminated or expires."

3. Article X. – MISCELLANEOUS. Paragraph B, Survival, is modified in its entirety to read:

"Under the provisions of section 214 of WRDA 2000 as extended, no funds may be expended pursuant to this MOA after December 31, 2016. However, if prior to this date, this statutory authority is extended or made permanent, then provisions

of this MOA shall remain in force until the earlier of the sunsetting of section 214 of WRDA 2000, as further extended or made permanent, or until the expiration date as provided in this MOA."

4. Article IX. – AMENDMENT, MODIFICATION AND TERMINATION. This Article is modified in its entirety to read:

"ARTICLE IX. – AMENDMENT, MODIFICATION AND TERMINATION

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

B. Any party reserves the right to terminate its participation in this MOA without cause upon thirty (30) days' written notice to the other parties. In the event of termination, the City will continue to be responsible for all costs incurred by the Corps in performing expedited environmental permit review services up to the time of notice and for the costs of closing out or transferring any ongoing contracts in support of the provision of services by the Corps under this MOA.

C. Within ninety (90) calendar days of termination of the MOA, or the expiration of the MOA, the Corps shall provide the City with a final statement of expenditures. Within sixty (60) calendar days after submittal of the Corps' final statement of expenditures, the Corps, subject to compliance with the Anti-Deficiency Act (31 U.S.C. 1341 et. seq.), shall directly remit to the City the unexpended balance of the advance payments, if any. Funds may be provided to the City either by check or electronic funds transfer."

5. ARTICLE X- EFFECTIVE DATE. This Article is modified in its entirety to read:

"ARTICLE X - EFFECTIVE DATE AND DURATION

This MOA and any amendments will become effective on the date of signature by the last Party. This MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2016 or 2) the MOA is terminated pursuant to Article IX.B."

6. Integration. This First Amendment represents the entire understanding of the City and the Corps regarding the changes to the MOA, and all other terms and conditions of the MOA remain in full force and effect.

[REMAINDER LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this FIRST AMENDMENT is executed by City of San Marcos, CA, acting by and through its City Council or designated management authority, and by the U.S. Army Corps of Engineers, through its authorized officer.

CITY OF SAN MARCOS

By: _____
City Manager

Date: 11/21/11

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Counsel

Date: 11.22.2011

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

By: _____
R. Mark Toy, P.E.
Colonel, US Army
Commander and District Engineer

Date: 23 NOV 2011

Cost Proposal:

APPENDIX B

City of San Marcos - U.S. Army Corps of Engineers, Regulatory Division Technical Assistance and Environmental Coordination Agreement for Section 214 of WRDA 2000 Activities

November 21, 2011

Los Angeles District			
	Personnel Costs		
	Federal Fiscal Year 2012		
	(Oct 1, 2011 - Sept 30, 2012)		
Tasks	**Staff Days**	**Rate**	**Cost**
Task 1 Pre-Application Mtgs	19.00	$1,097	$20,843
Task 2 Project Review and Analysis	140.00	$1,097	$153,580
Task 3 Monitoring and Compliance	19.00	$1,097	$20,843
Support work of GS-12/13	149.54	$0	$0
Subtotal Personnel Costs	**327.54**		**$195,266**
Direct Costs:			
Travel, Training, and Supplies @ $200			$5,001
Subtotal Direct Costs			**$5,001**
Total:	**327.54**		**$200,267**
Rate Calculations (all costs above for GS11/12 unless otherwise noted)	**Federal Fiscal Year 2011** *Based on 2010 Locality Pay Tables*		
Basic Hourly Rate			
Daily Rate (hourly rate x 8 hours)			
Effective Daily Rate (w/ benefits @ 54%)			
Overhead (Department 34% + District 39% = 73% total)			
Total Daily Rate (Effective Daily Rate + OH)			

MEMORANDUM OF AGREEMENT
BETWEEN
CITY OF SAN MARCOS, CA AND
THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

THIS AGREEMENT is entered into as of this 4th day of December, 2009 between the City of San Marcos, CA (hereinafter the "City") and the Department of the Army, represented by the United States Army Corps of Engineers, Los Angeles District (hereinafter the "Corps"), collectively referred to as "the Parties."

RECITALS

WHEREAS, Section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000") provides as follows:

> (a) IN GENERAL. - In Fiscal Years 2001 through 2003, the Secretary (of the Army), after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army.
>
> (b) EFFECT ON PERMITTING. - In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision-making with respect to permits, either substantively or procedurally; and

WHEREAS, Public Law 108-137 was signed into law on December 1, 2003, extending the sunset clause for Section 214 of the WRDA 2000 to September 30, 2005; and

WHEREAS, Public Law 109-99 was signed into law on November 11, 2005, extending the sunset clause for Section 214 of the WRDA 2000 to March 31, 2006; and

WHEREAS, Public Law 109-209 was signed into law on March 24, 2006, extending the sunset clause for Section 214 of the WRDA 2000 to December 31, 2006; and

WHEREAS, Public Law 109-434, was signed into law on December 20, 2006, extending the sunset clause for Section 214 of the WRDA 2000 to December 31, 2008; and

WHEREAS, section 2002 of Public Law 110-114, was signed into law November 8, 2007, extending the sunset clause of Section 214 of the WRDA 2000 to December 31, 2009; and

WHEREAS, it is expected that this statutory authority will be etended again prior to its current sunset date of December 31, 2009; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214 of the WRDA 2000 to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated March 29, 2004, as modified October 1, 2008, 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 City is a non-Federal entity and requires expedited and priority review of certain projects by the Corps; and

WHEREAS, the Corps issued an initial Public Notice dated August 17, 2009, regarding its intent to accept and expend funds contributed by the City; and

WHEREAS, the Corps' Los Angeles District Engineer has determined that, consistent with the terms and conditions of this Memorandum of Agreement, expenditure of funds received from the City is appropriate, and an informational public notice dated September 18, 2009, regarding the District Engineer's decision has been issued; and

WHEREAS, it is understood and acknowledged by all Parties that the Corps' review of the City's permit applications for City designated priority projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, the City is willing to provide funds to the Corps for the purpose of receiving expedited permit evaluation-related services for City designated priority projects as more fully described in this Memorandum of Agreement ("MOA"); and

WHEREAS, the Corps is willing to provide expedited permit evaluation-related services for City designated priority projects upon receipt of funding from the City, as more fully described in this MOA.

NOW, THEREFORE, the City and the Corps agree as follows:

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

Pursuant to Section 214 of the WRDA 2000, as extended, 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 the City to provide expedited permit evaluation-related services for City designated priority projects under the jurisdiction of the Corps. This MOA is not intended as the exclusive means of obtaining review of projects of the City. This MOA is a vehicle by which the City will obtain expedited permit evaluation-related services, outside of the ordinary Corps review process.

Article II. - SCOPE

A. The City will provide funds to the Corps to expedite permit evaluation related services for City designated priority projects under the jurisdiction of the Corps for two (2) years. The City may elect to extend the funding beyond two (2) years, subject to written amendment to this MOA. The Corps' regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from the City will be used to augment the Corps' regulatory budget in accordance with the provisions of WRDA 2000.

B. The Corps will provide staffing resources exclusively dedicated to expediting permit evaluation related services, as described in Article II.D., below, for City designated

priority projects and/or other programmatic efforts to support efficient decisionmaking related to the City's Clean Water Act (CWA) section 404 permitting needs.

C. The Corps will establish a separate internal account to track receipt and expenditure of the funds associated with its review of permit applications submitted by the City. Corps regulatory personnel will charge their time and expenses against the account when they perform work to either expedite resolution of permit requests designated by the City as a priority or undertake other programmatic efforts to support efficient decisionmaking related to the City's CWA section 404 permitting needs. Corps regulatory personnel will focus on the work as prioritized by the City, and if no or few projects are designated by the City as a priority, Corps personnel will then work on other programmatic efforts. The project(s) designated as a priority by the City are listed in **Appendix A** to this MOA. The list may be changed by the City's Principal Representative without requiring an amendment to this MOA. Such changes shall be submitted to the Corps in writing and will be effective upon receipt thereof.

D. Funds contributed by the City hereunder will be expended by the Corps to defray the costs of regulatory staff (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the evaluation of priority permit applications designated by the City. Such activities will include, but not be limited to, the following: jurisdictional determinations; site visits; travel; federal register and public notice preparation; preparation of correspondence; public interest review; preparation and review of NEPA documentation; meetings with the City and resource agencies; and any other permit evaluation related responsibilities that may be mutually agreed upon. Funds will *not* be expended for review of Regulatory Project Managers' work by supervisors or other persons or elements of the Corps in the decision-making chain of command. However, if a supervisor is performing staff work and not supervisory oversight, funds may be used. Enforcement activities will not be paid for from the funds contributed by the City, nor will such funds be used for paying the costs of public hearings and distribution of public notices unless the cost to do so is beyond the normal expenditures for the Corps. This would be discussed with the City in advance of expenditure.

E. Funds may also be expended by the Corps to hire contractors to perform select duties, including but not limited to site visits; preparing and providing technical materials, including environmental documentation; GIS-related services; and meeting coordination for the purpose of augmenting the resources available to the Corps for expediting priority projects and activities designated by the City. If such expenditures, when combined with the costs of the regulatory staff specified in Article II.D, require funding in excess of the amount available under this MOA, then said contractors shall not be hired by the Corps until and unless additional funds are provided by the City and a written amendment to this MOA is executed.

F. If the funds provided by the City are expended and not replenished, any remaining priority permit applications will be handled like those of any other non-participant, in a manner decided by the assigned Regulatory Project Manager and his or her supervisor.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Corps and the City, 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 actions or issues. Each party will issue a letter to the other designating the Principal Representative for each party within fifteen (15) days of MOA execution. The Principal Representative for each party may be changed upon written notification to the other party.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. The City shall:

1. Provide adequate information regarding projects and other specific activities to initiate permit evaluation. Information required for the Corps to deem a permit application complete thereby allowing initiation of the permit review process can be found in Corps regulations at 33 C.F.R. §§ 325.1(d), 325.3(a), and in General Condition 27 of the Nationwide Permit Program as published in the Federal Register (72, Fed. Reg. 11194, dated March 12, 2007). Upon request, the City shall provide supplemental information necessary to complete the permit application. Additional information [33 CFR Part 325.1(e)] required to complete the permit evaluation process may exceed what is needed to initiate the process. On a case-by-case basis, if requested by the Corps, the City shall provide such additional information so as to ensure the Corps can effectively accomplish the required review.

2. Make a reasonable effort to provide the Corps with information on other projects with City involvement to enable the Corps to most efficiently apply available staff resources and plan for workload cycles.

3. In consultation with the Corps, schedule Corps involvement in the priority projects identified by the City. The list of initial priority project is shown on Appendix A; the City will periodically identify additional priority projects in writing as necessary.

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

5. Work closely with the Corps to adjust priorities and schedules in order to make optimal use of available staff resources. While the City will make every effort to not overlap project schedules, occasional overlaps may occur and the City will work with the Corps to prioritize such overlaps.

6. Provide funding pursuant to the terms of this MOA.

B. The Corps shall:

1. Expedite review of the City's priority projects in accordance with the purpose, terms, and conditions of this MOA or any amendments thereto. The Corps shall not redirect resources from, or otherwise postpone, other projects submitted by the City through the standard Corps review process.

2. Upon submittal of new permit applications and following any meetings and discussions to clarify the scope of anticipated permit application review processes, Corps staff will provide the City with an estimated schedule to complete the permit evaluation process for each application submitted. The City shall be able to comment on these schedules and adjust priorities if workloads allow for such changes.

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

4. Provide the City a brief quarterly summary report of progress made under this MOA. Progress will be itemized for each permit application review completed during the quarter and for each permit application pending at the end of the quarter. This report will describe achievements, including any improvements the Corps has documented in coordinating and improving the efficiency of environmental reviews, and will summarize expenditures to date. The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOA and will provide an estimate of costs expected for the ensuing quarter. The report shall not be in excess of five (5) pages.

5. Designate a Regulatory Project Manager who will make his or her best efforts to attend periodic meetings with the City.

Article V. - IMPARTIAL DECISION-MAKING

It is understood and agreed that in order to ensure that the funds will not impact impartial decision-making with respect to permit evaluation related services for City designated priority projects under the jurisdiction of the Corps with respect to the City's permit applications, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, will apply to all cases using additional funds provided by the City as a participating non-Federal public entity:

1. In all cases where funds are used, all final permit decisions must be reviewed and signed by at least one level above the decision-maker (person with signature authority), unless the decision maker is the District Commander.

2. All documents involved in the decision making process (e.g., decision document and permit instrument, if applicable) must be reviewed and signed by the one-level-above reviewer as defined above.

3. All jurisdictional determinations made on projects where funds are used must have documentation that a non-funded regulator reviewed and agreed with the determination (e.g. peer review). This review does not need to be a field review.

4. In all cases where City funds are used, all final permit decisions will be made available and updated monthly on the Corps' Regulatory web page in an area separate

from any other final actions, clearly identifiable as being for projects funded through this authority.

5. Any procedures or decisions that would otherwise be required for a specific type of project or permit under consideration cannot be eliminated; however, process improvements that are developed can be shared in order for all members of the regulated public to benefit.

6. The Corps must comply with all applicable laws and regulations.

7. Funds will not be expended for the review of the decision maker's decision. If contracts are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Corps and before the Corps' permit decision is made.

8. Funds will not be used for enforcement activities. Funding may be used for compliance activities including monitoring of mitigation sites.

Article VI. - FUNDING

A. The City will pay the Corps an initial amount not to exceed $200,000.00 and an additional $200,000.00 twelve months from the effective date of this MOA (subject to potential increase as provided below), for purposes of funding 100 percent of one additional Regulatory Project Manager, including overhead, and associated support personnel and any additional services that may be required pursuant to Article II.E. for the term of this MOA ("Funding"). Additional payments by the City to the Corps, in an amount and schedule mutually agreed to by the Parties, may be made when priority projects are added to Appendix A. Replenishment funding may occur repeatedly throughout the term of this MOA. The City may elect to extend the services of the Regulatory Project Manager beyond two years, subject to additional funding by the City and written amendment to this MOA. Funding required under this MOA may be increased by the Corps annually to account for the Federal Government's General Schedule increases and locality adjustments. 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.

B. Expediting of permit actions by the Corps will be provided under this MOA only after funds have been transferred to the Corps.

C. Initial and additional funds will be payable in annual lump sums thirty (30) days in advance of the Corps incurring any financial obligations under this MOA. Payment(s) will be made to the Finance and Accounting Officer, U.S. Army Corps of Engineers, Los Angeles District.

D. The Corps will neither accept nor expend funds under this MOA after December 31, 2009, unless federal law extends the Corps' authority, under Section 214 of the WRDA 2000, to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

Article VII. - APPLICABLE LAWS

The applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of permit applications undertaken by the Corps will be governed by Corps regulations, policies and procedures.

Article VIII. - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute, the City and the Corps 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 IX. - PUBLIC INFORMATION

Justification and explanation of City programs or projects before other agencies, departments and offices will not be the responsibility of the Corps. The Corps may provide, upon request from the City, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the Corps is responsible only for public information regarding Corps regulatory activities.

Article X. - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA will not affect any pre-existing or independent relationships or obligations between the City and the Corps.

B. Survival

Under the provisions of Section 214 of the WRDA 2000 as extended, no funds may be expended pursuant to this MOA after December 31, 2009. However, if prior to this date, this statutory authority is extended, then provisions of this MOA shall remain in force consistent with the provisions of the statutory extension until the expiration date as provided in this MOA.

C. Severability

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.

Article IX. - AMENDMENT, MODIFICATION AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties. Either party may terminate this MOA prior to its expiration date by providing written notice to the other party. 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, the City will continue to be responsible for all costs incurred by the Corps in performing expedited environmental permit review services up to the time of notice.

B. This MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2009, unless the sunset clause of WRDA 2000 is extended, in which case the MOA will remain in effect for the duration of the statutory extension but not to exceed an amount of time equal to two (2) years from the effective date of this MOA, or 2) the MOA is terminated pursuant to this Article.

C. Within ninety days (90) days of termination, or expiration of the MOA, the Corps shall conduct an accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, the Corps shall return to the City any funds advanced in excess of the actual costs. Funds may be provided to the City either by check or by electronic funds transfer.

Article X. - EFFECTIVE DATE

This MOA will become effective on the date of signature by the last Party.

Article XI. - INTEGRATION

This MOA, including any documents incorporated by reference or attachments thereto, 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 as of the date stated in the introductory clause by the City of San Marcos, CA, acting by and through its City Council or designated management authority and by the U.S. Army Corps of Engineers, through its authorized officer.

Date: 12/4/09

City of San Marcos, CA

By: _____

City Manager

ATTEST:

By: _____
~~Secretary~~ Deputy City Clerk

APPROVED AS TO FORM:

By: _____

Counsel

Date: 12/04/2009

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

By: _____

Thomas H. Magness
Colonel, US Army
District Commander

Date: 11/30/09

Appendix A: City Priority Projects

(Dated: September 14, 2009)

The list of City Priority Projects under this Agreement includes the following:

1. San Marcos Creek Specific Plan
2. The Borden Road Bridge between Twin Oaks Valley Road and Woodward Street
3. South Lake Park
4. Grand Avenue Channel Widening and Restoration
5. Bradley Park Drainage Channel Restoration