



Department of Public Works

- Environmental & Construction • Flood Control
- Operations • Solid Waste Management
- Surveyor • Transportation

Gerry Newcombe
Director

RECEIVED

APR 22 2015

REGULATORY DIVISION
LOS ANGELES OFFICE

April 10, 2015

Daniel P. Swenson, D.Env
 Chief, North Coast Branch, Regulatory Division
 U.S. Army Corps of Engineers
 Los Angeles District
 915 Wilshire Boulevard, Suite 930
 Los Angeles, CA 90017

RE: AMENDED MEMORANDUM OF AGREEMENT BETWEEN COUNTY OF SAN BERNARDINO AND THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

Dear Mr. Swenson:

On April 7, 2015, the County of San Bernardino Board of Supervisors approved Amendment No. 2 to the above referenced agreement (WRDA). A copy of the Board action, along with the fully-executed Amendment is enclosed for your use.

Amendment No. 2 extends the duration of the WRDA through September 30, 2020, and authorizes additional funding, as well as other agreed modifications to the WRDA language.

Should you have any questions, please contact me at (909) 387-7913.

Sincerely,

ANNESLEY IGNATIUS, P.E.
 Deputy Director – Environmental & Construction

ARI:nh/2015-04-13-01

- cc: District Counsel, USACE, Los Angeles District
 Gerry Newcombe, Director, DPW
 Scott Runyan, Deputy County Counsel
 Mitch Norton, Deputy County Counsel

BOARD OF SUPERVISORS

ROBERT A. LOVINGOOD
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**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

April 7, 2015

**FROM: GERRY NEWCOMBE, Director
Department of Public Works – Environmental & Construction**

**SUBJECT: AMENDMENT NO. 3 TO AGREEMENT NO. 06-488 – SECOND AMENDMENT
TO AMENDED MEMORANDUM OF AGREEMENT WITH THE U.S. ARMY
CORPS OF ENGINEERS**

RECOMMENDATION(S)

Approve Amendment No. 3 to Agreement No. 06-488, which will constitute the Second Amendment to the Amended Memorandum of Agreement, with the United States Army Corps of Engineers, Los Angeles District, to extend the term from April 30, 2015 to September 30, 2020 and to increase the total agreement amount by \$250,000, from \$562,000 to \$812,000.
(Presenter: Gerry Newcombe, Director, 387-7906)

BOARD OF SUPERVISORS COUNTY GOALS AND OBJECTIVES

**Operate in a Fiscally-Responsible and Business-Like Manner.
Pursue County Goals and Objectives by Working with Other Governmental Agencies.**

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). Expenditures for services provided to Transportation will be financed by Gas Tax and other local, state, and federal funding. Sufficient appropriation and revenue have been included in the 2014-15 Operations budget for Transportation (SAA-TRA) and will be included in future budgets.

BACKGROUND INFORMATION

The Water Resources Development Act of 2000 (WRDA – Public Law 106-541) allows the United States Army Corps of Engineers (USACE) to accept and expend funds contributed by non-federal public agencies to expedite the evaluation of permit applications for projects under the jurisdiction of the USACE. Environmental permit processing through the USACE can take eight months to one year, even on simple projects, due to the complexity of its regulations.

This amendment extends the term of the existing Memorandum of Agreement (MOA) with the USACE from April 30, 2015 to September 30, 2020 and authorizes a deposit of up to \$250,000 in additional funds, such that the total amount payable to the USACE under the MOA shall not exceed \$812,000.

cc: PW/E&C- Newcombe
; Ignatius w/Agree
Contractor c/o PW/E&C w/Agree
ATC-Acct. Pay. Mgr. w/Agree
EBIX-BPO c/o Risk Mgmt.
Purchasing- Gomez
CAO-Garth
File - w/Agree
ss 4/8/15

ITEM 38

Record of Action of the Board of Supervisors
APPROVED (CONSENT CALENDAR)
COUNTY OF SAN BERNARDINO
Board of Supervisors

MOTION	ABSENT	AYE	AYE	MOVE	SECOND
	1	2	3	4	5

LAURA H. WELCH, CLERK OF THE BOARD

BY _____

DATED: April 07, 2015

**AMENDMENT NO. 3 TO AGREEMENT NO. 06-488 – SECOND
AMENDMENT TO AMENDED MEMORANDUM OF AGREEMENT WITH THE
U.S. ARMY CORPS OF ENGINEERS
APRIL 7, 2015
PAGE 2 OF 2**

This item will allow the County to meet its goals and objectives by working cooperatively and in a fiscally-responsible manner with the USACE to expedite the processing and approval of environmental permit applications which are necessary to construct Capital Improvement Projects and maintain existing facilities.

On June 13, 2006 (Item No. 17), the Board of Supervisors (Board) approved the initial MOA under WRDA between the County and the USACE for the sole purpose of funding the expedited processing of the proposed Northern Santa Fe Railway Company's (BNSF) third track in Cajon Pass.

On April 10, 2007 (Item No. 10), the Board approved Amendment No. 1 to the MOA that replaced the original MOA in its entirety, with language that was general in nature, outlining the mechanism by which the County can provide funds to the USACE, and commitment that the USACE would provide expedited permit processing services. The Amended MOA states that, in order to utilize the services under the MOA, the County must provide funding and a list of projects that it considers a priority. Essentially, the Amended MOA makes it possible for any County department in need of expedited environmental permitting processing through the USACE, to provide funds and a project list to the USACE.

On September 5, 2007, in accordance with the terms and conditions of use of the Amended MOA, the Department of Public Works (Department) replenished funding in the amount of \$187,000 to the USACE for the intended purpose. The authorization of this expenditure was within the Director's signature authority at the time, and no Board authorization was required.

On April 27, 2010 (Item No. 56), the Board approved Amendment No. 2 to the MOA to extend the term of the agreement to December 31, 2010, or, if there was a statutory extension that continued to authorize the WRDA until the expiration of the statutory extension or April 30, 2015, whichever occurred first.

The Department made two additional deposits of \$100,000 each on August 20, 2012 and February 24, 2014, for a total of \$562,000. The USACE has spent approximately \$469,000 to date, according to the financial reporting records provided by the USACE and in accordance with the terms and conditions of the Amended MOA.

If approved, the Amended MOA can be utilized by any County department that has a project requiring environmental permitting and processing through the USACE, provided that the individual County department provides its own funding and project priority list to the USACE.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Scott M. Runyan, Deputy County Counsel, 387-5455) on February 20, 2015; the Purchasing Department (Leo Gomez, Buyer, 387-2063) on February 18, 2015; Finance (Deborah Garth, Administrative Analyst, 387-5426) on March 17, 2015; and County Finance and Administration (Mary Jane Olhasso, Assistant Executive Officer, 387-4599) on March 17, 2015.



County of San Bernardino

F A S

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

<input type="checkbox"/> New	FAS Vendor Code		SC		Dept.	Contract Number			
<input checked="" type="checkbox"/> Change	USARMYC142		TRA		A	06-488 A-3			
<input type="checkbox"/> Cancel	ePro Vendor Number				ePro Contract Number				
00005968									
County Department			Dept.	Orgn.	Contractor's License No.				
Public Works, Environmental Mgmt. Div.			TRA	TRA					
County Department Contract Representative				Telephone		Total Contract Amount			
Annesley Ignatius, P.E., Deputy Director				(909)387-8109		\$812,000			
Contract Type									
<input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:									
If not encumbered or revenue contract type, provide reason: _____									
Commodity Code		Contract Start Date	Contract End Date	Original Amount	Amendment Amount				
		4/30/2015	9/30/2020	\$562,000	\$250,000				
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount			
SAA	TRA	TRA	200	2135	01H14202	250,000			
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount			
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount			
Project Name				Estimated Payment Total by Fiscal Year					
Memorandum of				FY	Amount	I/D	FY	Amount	I/D
Agreement (MOA) with				2015/16	75,000	I	2018/19	40,000	I
United States Army Corps				2016/17	75,000	I	2019/20	10,000	I
Of Engineers				2017/18	50,000	I			

CONTRACTOR U.S. Army Corps of Engineers (USACE)

Federal ID No. or Social Security No. 62-1642142

Contractor's Representative Colonel Kimberly M. Colloton, U.S. Army Corps of Engineers

Address 915 Wilshire Blvd., Los Angeles, CA 90017 Phone (213) 452 - 3294

Nature of Contract: *(Briefly describe the general terms of the contract)*

Amendment No. 3 to Agreement No. 06-488, which is the Second Amendment to the Amended Memorandum of Agreement (MOA), extends the terms of this MOA from April 30, 2015 to September 30, 2020.

Amendment No. 3 also authorizes a deposit of up to \$250,000 in additional funds, such that the total amount payable to the USACE under the MOA shall not exceed \$812,000.

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink)	Reviewed as to Contract Compliance	Presented to BOS for Signature
Scott Runyan, Deputy County Counsel	Grant C. Mann, P.E, Chief	Department Head - Gerry Newcombe, Director
Date <u>4/2/15</u>	Date <u>4/2/15</u>	Date <u>4/2/15</u>

Auditor-Controller/Treasurer/Tax Collector Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

**SECOND AMENDMENT
TO
AMENDED MEMORANDUM OF AGREEMENT
BETWEEN
COUNTY OF SAN BERNARDINO
AND
THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

This Second Amendment to the Amended Memorandum of Agreement (“SECOND AMENDMENT”), made on the date of the signature of the last party to this SECOND AMENDMENT, is entered into by and among the County of San Bernardino (hereinafter the “County”), and 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 an Amended Memorandum of Agreement (“MOA”), effective May 11, 2007, for expedited and priority review of County-designated priority projects by the Corps; and

WHEREAS, the Parties entered into a First Amendment to the MOA, effective May 7, 2010, to extend the duration of the MOA and to revise the terms and conditions of the MOA; and

WHEREAS, the MOA is set to expire April 30, 2015; and

WHEREAS, section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 (“WRDA 2000”) as amended by Public Law 113-121, 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 113-121, signed into law on June 10, 2014, made the authority permanent; and

WHEREAS, the County has deposited \$562,000 with the Corps pursuant to the MOA, and approximately \$466,695.51 has been expended under the MOA, leaving a balance of \$95,304.49 in available funds as of January 27, 2015; and

WHEREAS, the Parties desire to amend the MOA to extend the duration of the MOA to September 30, 2020, and to further revise the terms and conditions of the MOA.

NOW, THEREFORE, the Parties agree as follows:

SECOND AMENDMENT

1. Article V. – IMPARTIAL DECISION-MAKING. This Article is deleted in its entirety.

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

“A. It is anticipated that \$250,000 in additional funds are needed beginning October 1, 2016, to fund all work anticipated under this MOA through September 30, 2020. The total amount payable by the County under this MOA, including the \$562,000 in previous deposit amounts made by the County to the Corps, shall not exceed \$812,000 without a written amendment to the MOA approved by the Parties pursuant to Article XI.A.

B. No later than July 1, 2016, and July 1 of each subsequent year that this MOA remains in effect, the Corps will provide the County with an anticipated cost invoice (“Invoice”) that provides an updated budget estimate of costs for the upcoming 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. The County’s Director of Public Works may exercise the County’s rights under this Paragraph. Invoices shall be submitted by the Corps to:

County of San Bernardino
Department of Public Works
Administrative Services Division #201
825 E. Third Street
San Bernardino, CA 92415

C. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, and upon receipt of the Corps’ Invoice(s), the County will make an annual lump sum payment, in advance, of the total amount specified in the Invoice(s), in accordance with normal County payment procedures. The County’s Director of Public Works may authorize lump sum payments under this MOA up to the total not-to-exceed amount identified in Paragraph A of this Article.

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 County are to be made payable to the Finance and Accounting Officer and will be sent to the following address:

U.S. Army Corps of Engineers, Los Angeles District
Finance and Accounting Officer
915 Wilshire Blvd., Suite 930
Los Angeles, CA 90053-2325
Attn: Carlos M. Tabares

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 in accordance with Article XII.

F. 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 County at least ninety (90) calendar days prior to fund exhaustion of the incremental amount of funds needed to defray theremaining anticipated costs. The County will increase the funding amount, agree to a reduced level of service, or exercise its right to terminate the MOA under Article XI.B.”

3. Article X.- MISCELLANEOUS. Paragraph B is deleted in its entirety.

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

“A. This MOA may be modified or amended only by written, mutual agreement of the Parties. The Parties recognize and agree that only the Board of Supervisors may approve a modification or amendment to the MOA on behalf of the County.

B. Any party reserves the right to terminate its participation in this MOA without cause upon thirty (30) calendar days' written notice to the other party. In the event of termination, the County 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 any ongoing contracts in support of the provision of services by the Corps under this MOA. The Parties recognize and agree that only the Board of Supervisors may terminate the MOA on behalf of the County.

C. Within ninety (90) calendar days of termination of the MOA, or the expiration of the MOA, the Corps shall provide the County 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 County the unexpended balance of the advance payments, if any. Funds may be provided to the County either by check or electronic funds transfer.”

5. Article XII. EFFECTIVE DATE. This Article is modified in its entirety to read:

“Article XII - 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 XI.A., this MOA shall remain in force until whichever of these events occurs first: 1) September 30, 2020; or 2) the MOA is terminated pursuant to Article XI.B.”

6. Article XIV. NOTICES. This Article is hereby added to the MOA and reads:

“Article XIV. NOTICES.

A. All notices, statements, or payments specified in this MOA shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class, registered, or certified mail, as follows:

If to County:

County of San Bernardino
Department of Public Works
Administrative Services Division #201
825 E. Third Street
San Bernardino, CA 92415

With a copy in all instances to:
San Bernardino County Counsel
Office of County Counsel
385 North Arrowhead Avenue, Fourth Floor
San Bernardino, CA 92415

If to the Corps:

Chief, North Coast Branch
Regulatory Division
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Boulevard, Suite 930
Los Angeles, CA 90017

With a copy in all instances to:
District Counsel
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Boulevard, Suite 930
Los Angeles, CA 90017

B. A party may change the address to which such communications are to be directed by giving written notice to the Corps or to the County in the manner provided in this Article. The County's Director of Public Works may exercise the County's rights under this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed."

7. Integration. This SECOND AMENDMENT represents the entire understanding of the Parties regarding the changes to the MOA. All other terms and conditions of the MOA and the First Amendment remain in full force and effect.

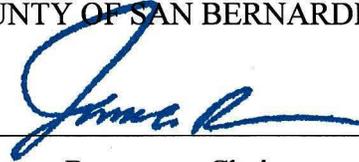
8. Recitals. The recitals of this SECOND AMENDMENT are incorporated into the MOA by this reference.

IN WITNESS WHEREOF, the SECOND AMENDMENT is executed by the County of San Bernardino, pursuant to Board action authorizing such execution, and by the Los Angeles District U.S. Army Corps of Engineers, through its authorized officer.

COUNTY OF SAN BERNARDINO

APR 07 2015, 2015

By:



James Ramos, Chairman, Board of Supervisors

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

March 23, 2015

By:



David J. Castanon
Chief, Regulatory Division

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Laura H. Welch, Clerk of the Board
of Supervisors

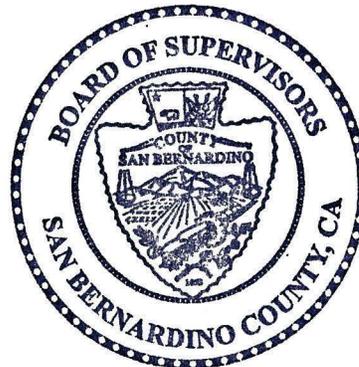
By: S. Shbbbfield
Deputy

Date: APR 07 2015

Approved as to Legal Form:
Jean-Rene Basle, County Counsel

By: Julie Surber Julie Surber
for Scott Runyan, Deputy County Counsel

Dated: 4/2/15





County of San Bernardino

F A S

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

<input type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	Vendor Code	SC	Dept. 097	A	Contract Number 06-488 A-2			
County Department Public Works, Environmental Mgmt. Div.			Dept. 097	Orgn. 097	Contractor's License No.			
County Department Contract Representative Naresh P. Varma, P.E., Division Chief				Telephone (909) 387-8109		Total Contract Amount \$187,000		
Contract Type <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:								
If not encumbered or revenue contract type, provide reason:								
Commodity Code 96132		Contract Start Date	Contract End Date 04/10/2015	Original Amount 187,000	Amendment Amount \$0			
Fund AAA	Dept. ADV	Organization ADV	Appr. 200	Obj/Rev Source 2445	GRC/PROJ/JOB No.	Amount 187,000		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount \$		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount \$		
Project Name Memorandum of Agreement (MOA) with United States Army Corps Of Engineers			Estimated Payment Total by Fiscal Year					
			FY	Amount	I/D	FY	Amount	I/D
			2007/08	187,000				

CONTRACTOR U.S. Army Corps of Engineers (USACE)

Federal ID No. or Social Security No. 62-1642142

Contractor's Representative Colonel Alex C. Dornstaeder, District Engineer, U.S. Army Corps of Engineers

Address 915 Wilshire Blvd., Los Angeles, CA 90017 Phone (213) 452-3294

Amendment No. 2 to Agreement No. 06-488, which is the First Amendment to the Amended Memorandum of Agreement (MOA), extends the term of this MOA until whichever of these events occurs first: 1) December 31, 2010, unless the sunset clause of section 214 of WRDA 2000 is extended or section 214 is made permanent, in which case the MOA, as amended, will remain in effect for the duration of the statutory extension or until April 30, 2015, whichever date is earlier; or 2) the MOA, as amended, is terminated pursuant to this Article.

Amendment No. 2 also updates Article V of the Amended MOA, entitled "Impartial Decision-Making", which ensures that the funds will not impact the USACE's impartial decision-making process.

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink) County Counsel Date <u>4-12-10</u>	Reviewed as to Contract Compliance Date <u>4/13/10</u>	Presented to BOS for Signature Department Head Date <u>4/15/10</u>
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Auditor/Controller-Recorder Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

**FIRST AMENDMENT TO
AMENDED MEMORANDUM OF AGREEMENT
BETWEEN THE
COUNTY OF SAN BERNARDINO
AND THE
UNITED STATES ARMY CORPS OF ENGINEERS,
LOS ANGELES DISTRICT**

This FIRST AMENDMENT, made the 7th day of May, 2010, is entered into by the County of San Bernardino (hereinafter the "County") 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 an Amended Memorandum of Agreement ("MOA") for expedited and priority review of County-designated priority projects by the Corps; and

WHEREAS, Public Law 111-120, signed into law on December 22, 2009, extends through December 31, 2010, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits; and

WHEREAS, the MOA is set to expire May 11, 2010; 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 DECISION-MAKING. This Article is replaced in its entirety to read:

"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 County-designated priority projects under the jurisdiction of the Corps, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, will apply to all cases using additional funds provided by the County 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 a supervisor 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 funds are used, 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 program.

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 contractors are used to develop decision documents, such decision documents must be drafts only and shall be reviewed and adopted by the Corps before the 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.”

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

“The Corps will neither accept nor expend funds under this MOA, as amended, after December 31, 2010, unless Federal law extends or makes permanent the Corps' authority under section 214 of WRDA 2000 to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.”

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, 2010. However, if prior to this date, this statutory authority is extended, then provisions of this MOA shall remain in force until the earlier of the sunseting of section 214 of WRDA 2000, as further extended, or until the expiration date as provided in this MOA, as amended.”

4. Article XI. – AMENDMENT, MODIFICATION AND TERMINATION. Paragraph B is modified in its entirety to read:

“This MOA, as amended, shall remain in force until whichever of these events occurs first: 1) December 31, 2010, unless the sunset clause of section 214 of WRDA 2000 is extended or section 214 is made permanent, in which case the MOA, as amended,

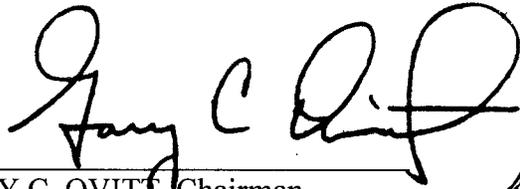
will remain in effect for the duration of the statutory extension or until April 30, 2015, whichever date is earlier; or 2) the MOA, as amended, is terminated pursuant to this Article.”

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

IN WITNESS WHEREOF, the First Amendment is executed by the County of San Bernardino, pursuant to Board action authorizing such execution, and by the U.S. Army Corps of Engineers, through its authorized officer, effective after execution by the last Party.

For the County of San Bernardino:

For the U.S. Army Corps of Engineers


GARY C. OVITT, Chairman

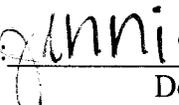

THOMAS H. MAGNESS
Colonel, US Army
District Commander

Date: APR 27 2010

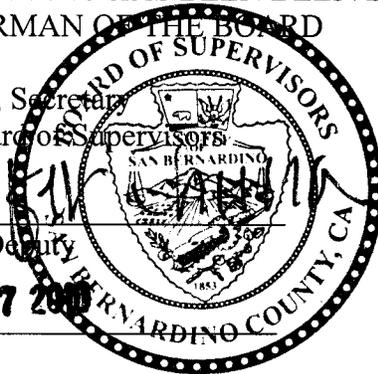
Date: 7 May 2010

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

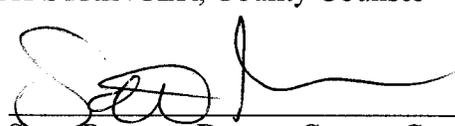
Laura H. Welch, Secretary
Clerk of the Board of Supervisors

By: 
Janni
Deputy

Date: APR 27 2010



Approved as to Legal Form:
RUTH STRINGER, County Counsel

By: 
Scott Runyan, Deputy County Counsel

Dated: 4-26-10

**AMENDED MEMORANDUM OF AGREEMENT
BETWEEN THE COUNTY OF SAN BERNARDINO
AND THE UNITED STATES ARMY CORPS OF ENGINEERS,
LOS ANGELES DISTRICT**

THIS AMENDED AGREEMENT is entered into as of this 10th day of April, 2007 between the County of San Bernardino, located at 385 North Arrowhead Avenue, San Bernardino, California 92415 (hereinafter the “**County**”) and the Department of the Army, represented by the United States Army Corps of Engineers, Los Angeles District with offices located at 915 Wilshire Boulevard, Los Angeles, California, 90017 (hereinafter the “**Corps**”). Collectively, the County and the Corps shall be referred to as the “**Parties.**”

RECITALS

WHEREAS, the Parties entered into a Memorandum of Agreement (“**MOA**”), dated September 8, 2006, for expedited and priority review of County-designated projects by the Corps; and

WHEREAS, the Parties desire to amend the MOA by replacing it in its entirety; and

WHEREAS, the Parties desire to extend the duration of the MOA; and

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.

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, signed into law on November 11, 2005, extends through March 31, 2006, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits; and

WHEREAS, Public Law 109-209, signed into law on March 24, 2006, extends through December 31, 2006, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits; and

WHEREAS, Public Law 109-434, signed into law on December 20, 2006, extends through December 31, 2008, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits; and

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

WHEREAS, the Chief of Engineers by memorandum dated March 29, 2004 authorized the Corps' District and Division Engineers to accept and expend funds contributed by non-federal entities subject to certain limitations including the publishing of public notices; and

WHEREAS, the Los Angeles District issued an initial Public Notice dated June 16, 2006, regarding its intent to accept and expend funds contributed by non-Federal public entities for such purposes; and

WHEREAS, the Los Angeles District Engineer has determined that expenditure of funds received from the County will be in compliance with section 214 of WRDA 2000, and a public notice dated August 21, 2006, regarding the District Engineers' decision has been issued; and

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

WHEREAS, the County is a non-Federal public entity; and

WHEREAS, the County is willing to provide funds to the Corps for the purpose of receiving expedited permit evaluation-related services for County designated priority projects as more fully described in this MOA, as amended; and

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

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

Article I. - PURPOSE AND AUTHORITIES

Pursuant to section 214 of WRDA 2000, this MOA, as amended, 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 County to expedite the evaluation of permits under the jurisdiction of the Department of the Army. This MOA, as amended, is not intended as the exclusive means of obtaining Corps review of County projects. This MOA, as amended, is a vehicle by which the County may obtain expedited review of the projects within the County designated as a priority, outside of the ordinary Corps review process.

Article II. - SCOPE

A. The County will provide funds to the Corps to expedite the evaluation of County designated priority projects under the jurisdiction of the Corps' Los Angeles District. The Corps' regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received from the County 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 the processing of permits, as described in Article II.D, below, for County designated priority projects and activities.

C. The Corps will establish a separate internal account to track receipt and expenditure of the funds associated with its review of County permit applications. Corps regulatory employees will charge their time against the account when they do work to expedite resolution of permit requests designated by the County as a priority. Corps employees will not charge the account for work performed on project(s) not designated as a priority by the County. The project(s) designated as a priority by the County are listed in **Attachment A** to this MOA, as amended. The list may be changed by the County's Principal Representative without requiring an amendment to this amended MOA. Such changes shall be submitted to the Corps in writing and will be effective upon receipt thereof.

D. Funds contributed by the County hereunder will mainly be expended by the Corps to defray the costs of an exclusively dedicated and additional Corps Regulatory Project Manager(s) (including salary, associated benefits, overhead, and travel expenses) and other costs in order to expedite the evaluation of permit applications submitted by the County and or others conducting work in the County boundaries and designated by the County as priority projects. Such activities will include, but not be limited to, the following: application intake review, permit database entry, drawing correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, conduct of the public interest review, preparation of draft permit decision documents, meetings with the County, agencies and applicants, and any other permit evaluation-related responsibilities that may be mutually agreed upon. Funds will *not* be expended for review of Regulatory Project Manager's work by supervisors or other persons or elements of the Corps in the decision-making chain of command. Enforcement or compliance activities will not be paid for from the funds contributed by the County, nor will such funds be used for paying the costs of public hearings and distribution of public notices.

E. Funds may also be expended by the Corps to hire contractors to perform select duties, such as site visits, technical writing, copying, reviewing technical materials, preparing regional general permits for use by the County and others, and other technical documents, including draft environmental documents for the purpose of augmenting the resources available to the Corps' designated Regulatory Project Manager for expediting priority permit applications submitted by the County. If such expenditures, when combined with the costs of the Regulatory Project Manager(s) specified in Article IID, require funding in excess of the amount available under this MOA, as amended, then said contractors shall not be hired by the Corps until and unless additional funds are provided by the County and a written amendment to this amended MOA is executed.

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

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Corps and the County, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA, as amended. Additional representatives may also be appointed to serve as points of contact on specific permit actions. Each party will issue a letter to the other designating the Principal Representative for each agency within fifteen (15) days of execution of this MOA, as amended. The Principal Representative for each party may be changed upon written notification to the other party.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. The County shall:

1. Provide adequate information regarding projects and other specific activities to initiate permit evaluation. Upon request, the County shall provide supplemental information necessary to complete the permit application. On a case-by-case basis, if requested by the Corps, the County 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 County 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 County. The list of initial priority projects is shown on **Attachment A**; the County will periodically identify additional priority projects in writing as necessary. If the County fails to identify its priority projects and activities, the Corps shall establish its own priorities in accordance with the objectives of this MOA, as amended.

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.

6. Provide funding pursuant to the terms of this MOA, as amended.

B. The Corps shall:

1. Expedite review of County permit requests in accordance with the purpose, terms, and conditions of this amended MOA or any future amendments thereto. The Corps shall not redirect

resources from, or otherwise postpone, other County projects submitted through the standard Corps review process.

2. Consult with the County 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, as amended.

3. Provide the County an annual summary report of progress made under this MOA, as amended. 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, as amended.

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

5. Expend funds pursuant to the terms of this MOA, as amended.

Article V. - IMPARTIAL DECISION-MAKING

It is understood and acknowledged by the Parties that the Corps' review of County-designated priority projects will be completely impartial and in accordance with all applicable Federal laws and regulations. It is further understood and agreed that in order to ensure that the funds will not impact impartial decision-making with respect to County 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 County as a participating non-Federal public entity:

1. All final permit decisions for cases where these funds are used must be reviewed by at least one level above the decision-maker, unless the decision-maker is the District Engineer. For example, if the decision-maker would be the Chief, Regulatory Branch, then the reviewer would be the Chief, Construction-Operations Division.

2. All final permit decisions for cases where these funds are used will be made available on the Los Angeles District Regulatory web page.

3. The Corps will not eliminate any procedures or decision criteria that would otherwise be required for that type of project and permit application under consideration.

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

5. Funds will only be expended to expedite the final decision on the permit application according to the terms and conditions of this MOA, as amended. Funds will not be expended for the review of the decision-maker's decision. If contractors are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Corps regulatory program employees before the final permit decision is made.

Article VI. – FUNDING

A. The County will pay the Corps an initial amount not to exceed \$150,000 and an additional \$25,000 within thirty (30) days of execution of this MOA, as amended, for purposes of funding a designated and additional Regulatory Project Manager(s), associated support personnel and any additional services that may be required pursuant to Article II.E for the term of this MOA, as amended. Additional payments by the County to the Corps, in an amount and schedule mutually agreed to by the Parties, may be made when priority projects are added to Attachment A. Replenishment funding may occur repeatedly throughout the term of this MOA, as amended. Funding required under this MOA, as amended, 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, as amended, only after funds have been transferred to the Corps.

C. Initial funds will be payable in one lump sum in advance of the Corps incurring any financial obligations under this MOA, as amended. Payment 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, as amended, after December 31, 2008 unless federal law extends the Corps' authority, under section 214 of 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, as amended, and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of permit applications undertaken by 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 County 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

A. Justification and explanation of County 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 County, any assistance necessary to support justification or explanations of

activities conducted under this MOA, as amended. In general, the Corps is responsible only for public information regarding Corps regulatory activities. The County will give the Corps advance notice before making formal, official statements regarding the Corps' activities funded under this MOA, as amended.

B. Nothing in this MOA, as amended, will preclude the County from complying with the California Public Records Act, Government Code §§ 6250, et. seq., as the County deems appropriate in its sole and absolute discretion.

Article X. - MISCELLANEOUS

A. Other Relationships or Obligations

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

B. Survival

Under the provisions of section 214 of WRDA 2000 as extended, no funds may be expended pursuant to this MOA after December 31, 2008. 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, as amended.

C. Severability

If any provision of this MOA, as amended, 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 XI. - AMENDMENT, MODIFICATION AND TERMINATION

A. This amended MOA may be modified or amended only by written, mutual agreement of the Parties. Either party may terminate this MOA, as amended, by providing written notice to the other party. Such termination shall be effective upon the thirtieth (30th) calendar day following notice, unless a later date is set forth. In the event of termination, the County 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, as amended, shall remain in force until whichever of these events occurs first: 1) December 31, 2008, 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 three (3) years from the effective date of this MOA, as amended, or 2) the MOA, as amended, is terminated pursuant to this Article.

C. Within sixty (60) days of termination, or the expiration of this MOA, as amended, the Corps shall conduct an accounting to determine the actual costs of the work completed by the Corps and

to determine the amount of any unused funds. Within thirty (30) days of completion of this accounting, any funds in excess of actual costs shall be returned to the County either by check or by electronic funds transfer.

Article XII. - EFFECTIVE DATE

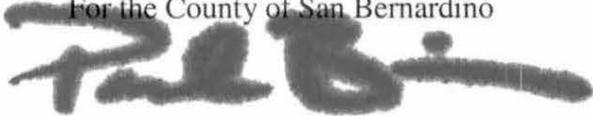
This MOA, as amended, will become effective after execution by the last Party.

Article XIII. - INTEGRATION

This MOA, as amended, 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, the County of San Bernardino, pursuant to Board action authorizing such execution, and the U.S Army Corps of Engineers, acting by and through its authorized officer, the District Engineer, executes this MOA, as amended.

For the County of San Bernardino



Paul Biane
Chairman

Date: APR 10 2007

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

Dena M. Smith, Clerk of the Board
of Supervisors

By: 
Deputy

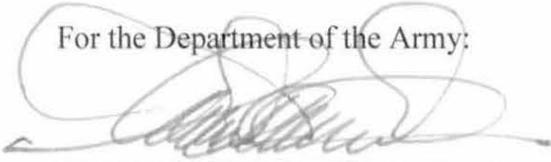
Date: APR 10 2007

Approved as to Legal Form:
RUTH STRINGER, County Counsel

By: 
Rex A. Hinesley, Chief Deputy

Dated: 4-3-07

For the Department of the Army:



ALEX C. DORNSTAUDER
Colonel, U.S. Army
District Engineer
U.S. Army Corps of Engineers, Los Angeles

Date: 5.11.07

ATTACHMENT A

List of projects designated as a priority by the Water Authority:

Priority Order	Project Name	Priority Date
1.	Carryover Storage and San Vicente Dam Raise Project	MOA execution