

**MEMORANDUM OF AGREEMENT
BETWEEN
COUNTY OF SAN DIEGO
AND
U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

SUBJECT: Memorandum of Agreement between the County of San Diego and the U.S. Army Corps of Engineers, Los Angeles District.

THIS MEMORANDUM OF AGREEMENT (“MOA”) is entered into between the County of San Diego (hereinafter the “County”) and the U.S. Army Corps of Engineers, Los Angeles District (hereinafter the “Corps”), collectively referred to as the “Parties.”

RECITALS

WHEREAS, the Corps has regulatory jurisdiction over certain activities occurring in waters of the United States pursuant to Section 404 of the Clean Water Act (“CWA”) of 1972, as amended, and navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899 (“RHA”), as amended; and

WHEREAS, Section 214 of the Federal Water Resources Development Act (WRDA) of 2000, as amended, codified at 33 U.S.C. 2352, authorizes the Secretary of the Army, after public notice, to accept and expend funds to expedite the permit application review process; 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 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, the Corps has indicated it is not able, without additional resources, to expedite the evaluation of County permit applications; and

WHEREAS, the Parties entered into a funding agreement in July 6, 2007 (“2007 Agreement”) to accept and expend funds in accordance with section 214 of WRDA 2000, as amended; and

WHEREAS, the 2007 Agreement, the duration of which was extended twice, expires December 31, 2016; and

WHEREAS, the County is a non-Federal public entity, and believes it is in its best interest to provide funds to the Corps pursuant to this MOA to streamline and expedite Corps’ review under Section 404 of the CWA and/or Section 10 of the RHA for designated priority projects (“Priority Projects”), as listed in **Appendix A** and modified in accordance with procedures described herein; and

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

WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address, and protect environmental resources early in the development of proposed actions; (2) avoid conflicts late in project development through close coordination during early planning and development stages; (3) provide sufficient information to the Corps for timely analysis of project effects and to assist the County in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps personnel resources by focusing attention on projects that would most affect aquatic resources; (5) provide a mechanism for expediting project coordination when necessary; and (6) provide procedures for resolving disputes in this resource partnering effort.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

A. 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 Corps' acceptance and expenditure of funds contributed by the County to provide expedited permit application evaluation-related services for Priority Projects requiring Corps' approval pursuant to Section 404 of the CWA and/or Section 10 of the RHA, as listed in **Appendix A** to this MOA. This MOA is not intended as the exclusive means of obtaining review of Priority Projects proposed by the County; it is a vehicle by which the County will obtain expedited permit application evaluation-related services, outside of the ordinary Corps review process for Priority Projects.

B. The County enters into this MOA as authorized by the County Board of Supervisors pursuant to its authority as a non-federal public entity.

C. The Corps enters into this MOA pursuant to its authority under 33 U.S.C. 2352.

Article II. - SCOPE OF WORK

A. The Corps will expedite County permit application evaluation-related services for Priority Projects under the jurisdiction of the Corps in exchange for funds provided by the County as set forth below. The Corps' Regulatory Program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from the County will be added to the Regulatory budget of the Corps, in accordance with the provisions of 23 U.S.C.2352.

B. The Corps will provide staffing resources exclusively dedicated to expediting permit application evaluation-related services, as described below, for Priority Projects and/or other programmatic efforts to support efficient decision-making related to the County CWA Section 404 and/or RHA Section 10 permitting needs.

C. The Corps will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of permit applications submitted by the County for Priority Projects. Corps Regulatory personnel will charge their time and expenses against the account when they perform work to either expedite permit application evaluation-related requests for Priority Projects or undertake other programmatic efforts to support efficient decision-making related to the County's permitting needs with prior approval of the County.

D. Funds contributed by the County hereunder will be expended by the Corps to defray the costs of Regulatory Division personnel (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the evaluation of Priority Project permit applications. Activities covered by this MOA will include, but not be limited to, the following: application intake review, permit database entry, drawing correction, jurisdictional determinations, site visits, travel, preparing and distributing public notices, preparing and conducting public hearings, preparing correspondence, performing the public interest review, preparing draft permit decision documents, meetings with County staff and other agencies, and relevant training with prior approval of the County.

E. The Corps may expend funds provided by the County 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 its review of Priority Projects. If such expenditures when combined with the costs of the Regulatory Division personnel require funding in excess of the amount available under this MOA, then the Corps, as appropriate, shall not hire said contractors until and unless additional funds are provided by the County and the Parties execute a written amendment to this MOA.

F. The Corps will not expend funds provided by the County for costs associated with the review of the Corps' work undertaken 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. The Corps will not expend funds provided by the County to defray the costs of activities related to the Corps' enforcement functions, but may use funds provided by the County to defray costs of activities related to permit compliance functions of Priority Project permit decisions. Enforcement functions are defined as activities not permitted by the Corps but requiring Corps authorization. Permit compliance functions are defined as Corps oversight of Corps-permitted activities.

G. If the funds provided by the County are expended and not replenished, any remaining Priority Projects will be handled like those of any permit applicant.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Parties, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. The Principal Representatives are identified in Article IV. B. Additional representatives may also be appointed to serve as points of contact on specific actions or issues. Principal Representatives may be changed upon written notification to the other party.

Article IV. - NOTICES

A. Any notices, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and delivered personally, or sent by email, or mailed by first-class, registered, or certified mail to the applicable Principal Representative. 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 (7) business days after it is mailed.

B. All inquiries during the term of this MOA will be directed to the Principal Representatives listed below:

If to County:

County of San Diego, Department of Public Works
Thomas Duffy, Environmental Planning Manager
Environmental Services Unit (MS 0385)
5510 Overland Avenue Suite 410
San Diego, CA 92123

If to the Corps:

Regulatory Division, South Coast Branch
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

Article V. - RESPONSIBILITIES OF THE PARTIES

A. The County will provide adequate resources to fund existing or additional Corps Regulatory personnel for the purpose of expediting the review of Priority Projects and other identified activities. To facilitate the Corps' reviews and activities, the County will:

1. Provide adequate information regarding 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 County 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 County shall provide such additional information so as to ensure the Corps can effectively accomplish the required review.

2. In consultation with the Corps, establish the specific order of priority of Priority Projects as listed in **Appendix A** to this MOA. The designation and the order of priority of Priority Projects included in Appendix A may be changed by the County Principal Representative without requiring an amendment to this MOA. Such changes shall be submitted to the Corps' Principal Representative in writing in the manner provided by Article IV and will be effective upon receipt thereof.

3. To the best of its ability, ensure the participation of all essential personnel during the permit evaluation or compliance process.

4. Work closely with the Corps to adjust priorities and schedules in order to optimize available Regulatory Division staff resources. While the County will make every effort not to overlap project schedules, occasional overlaps may occur and the county Principal Representative will work with the Corps to prioritize such overlaps.

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

B. The Corps shall use the funds provided to defray the costs of salaries and associated benefits, relevant training, and to reimburse travel expenses in order to:

1. Expedite review of the 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, permit applications related to non-Priority Projects submitted by the County through the standard Corps review process.

2. Following any pre-application meetings and/or discussions to clarify the scope of anticipated permit application review processes, provide the County with an estimated completion date for the permit evaluation process for each complete application submitted. The County shall be able to comment on the estimated completion date and adjust the order or list of Priority Projects per Appendix A, or provide additional resources per Article VI.

3. Consult with the County regarding an adjustment of priorities or establishment of relative priorities if the current or projected workload of Priority Projects and activities exceeds the Corps' ability to provide the services specified herein.

4. Provide the County 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.

5. Designate a Regulatory Project Manager(s) and his/her specific responsibilities for each Priority Project. If possible, the Corps will designate the same Project Manager for all major County-designated Priority Project permit applications to ensure consistency and maintain efficiency of the review process.

Article VI. - FUNDING

A. Funding Periods.

1. First funding period: January 1, 2017 - December 31, 2017
2. Second funding period: January 1, 2018 – December 31, 2019
3. Third funding period: January 1, 2020 – December 31, 2021

B. Funding amounts.

1. Total estimated costs for the first funding period are \$75,000.00.
2. Total estimated costs for the second funding period are \$75,000.00.
3. Total estimated costs for the third funding period are \$75,000.00.
4. Total funding for this MOA is \$225,000.00.

C. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, County will make a lump sum payment to the Corps for each funding period specified in subparagraph A up to the amount specified in subparagraph B, above or the amount necessary to bring the balance of the account to \$150,000 (whichever amount is less). Payments by County shall be made by electronic funds transfer in accordance with Standard Operating Procedure UFC 08 (**Appendix B**) or 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. 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 X.

E. 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) days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. The County will have the option of (1) making a payment to the Corps for the incremental amount, provided the total amount of payments does not exceed the total funding amount, (2) increasing the total funding amount through an amendment to this MOA, or (3) agreeing to a reduced level of service.

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

In the event of a dispute, the Parties agree to use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The Parties agree that, in the event such measures fail to resolve the dispute, they shall refer the dispute for resolution to an appropriate forum in accordance with Federal law.

Article IX. - PUBLIC INFORMATION

Justification and explanation of the 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. In general, the Corps is responsible only for public information regarding Corps regulatory activities. The County will give the Corps, as appropriate, advance notice before making formal, official statements regarding activities funded under this MOA.

Article X. - 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 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.

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.

Article XI. - MISCELLANEOUS

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

B. The Corps' participation in this MOA does not imply endorsement of County projects nor does it diminish, modify, or otherwise affect Corps statutory or regulatory authorities.

C. 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.

D. This MOA, including any documents incorporated by reference or attachments thereto, but excluding the pre-existing relationships or obligations between the Parties referenced in subparagraph A above, 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.

Article XII. - EFFECTIVE DATE

This MOA and any amendments will be effective on the date of execution by the last party or January 1, 2017, whichever of these events occurs later. Any amendments to this MOA will be effective on the date of execution by the last party.

Article XIII. DURATION

Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2021 or 2) the MOA is terminated pursuant to Article X.B.

[REMAINDER LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by the County of San Diego, acting by and through its duly authorized officer, and by the Corps, through its authorized officer.

COUNTY OF SAN DIEGO

By: Kathleen A. Flannery Date: 12-20-16

Kathleen A. Flannery
Deputy Director
Department of Public Works

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

By: [Signature] Date: 12-29-16

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