

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE SOLANO COUNTY WATER AGENCY  
AND  
THE UNITED STATES ARMY CORPS OF ENGINEERS,  
SAN FRANCISCO DISTRICT**

THIS MEMORANDUM OF AGREEMENT (MOA) is entered into this 13<sup>th</sup> day of August, 2013, between the Solano County Water Agency (SCWA), and the Department of the Army, represented by the United States Army Corps of Engineers, San Francisco District (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, and issuance of permits for these activities typically requires consultation with other federal agencies; and

WHEREAS, Section 214 of the Federal Water Resources Development Act (WRDA) of 2000, Pub. L. 106-541 ("WRDA 2000"), as amended by the WRDA Amendment, Pub. L. No. 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, the Secretary of the Army has delegated the responsibility of carrying out Section 214 of the WRDA 2000, as amended by Pub. L. No. 111-315, 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 public entities subject to certain limitations; and

WHEREAS, the SCWA anticipates numerous construction and operations and maintenance activities that will need to be completed in the next several years by or under the authority of agencies participating in the Solano Habitat Conservation Plan (HCP Plan Participants). The majority of these activities will be proposed within the jurisdiction of the Corps and will need authorization under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act; and

WHEREAS, the SCWA, acting as the lead agency for the HCP Plan Participants, wishes to pursue avenues through the Department of the Army to create, review, and manage a streamlined permitting process for activities in accordance with the Solano Habitat Conservation Plan (Process) which will provide an expedited review of permit applications submitted by SCWA and HCP Plan Participants; and

WHEREAS, the Corps recognizes that the aforementioned Process would encourage greater Clean Water Act and Rivers and Harbors Act compliance in Solano County and would aid in streamlining the federal permit review process; and

WHEREAS, the Corps anticipates additional workload to manage the aforementioned permitting Process and application review; and

WHEREAS, the Corps cannot provide such review without additional resources; and

WHEREAS, it is understood and acknowledged by all parties that the Corps' establishment of the Process will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, the Corps has determined that expenditure of funds received from the SCWA will be in compliance with Section 214 of WRDA 2000, as amended by the WRDA-Amendment of 2010, Pub. L. No. 111-315, and a public notice dated **August 7, 2013**, regarding the District Engineer's decision has been issued; and

WHEREAS, the Corps' South Pacific Division designated its San Francisco District as the lead Corps' district for this action on October 30, 2007; and

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

NOW, THEREFORE, the Parties agree as follows:

## AGREEMENT

### ARTICLE I - PURPOSE AND AUTHORITIES

The purpose of this MOA is to establish a mutual framework governing the respective responsibilities of the parties for the provision and expenditure of SCWA funds to expedite the establishment and implementation of the Process. The Corps, pursuant to Section 214 of the Water Resources Development Act of 2000, as amended, enters into this MOA with SCWA. Section 214 of WRDA 2000, as amended by the WRDA Amendment, Pub. L. No. 111-315 provides that the Corps may accept and expend funds contributed by non-Federal public entities to expedite the evaluation by the Corps of permit applications under the jurisdiction of the Department of the Army. Section 214 of WRDA 2000 and Section 1 of Pub. L. No. 111-315 also stipulate that use of such funds will not impact the impartial decision-making of the Corps either substantively or procedurally.

### ARTICLE II- SCOPE OF WORK

A. The SCWA will provide funds to the Corps to expedite the establishment of the Process. The Corps' regulatory program is funded as a Congressionally-appropriated line item in the annual Federal budget. Funds received from the SCWA will be added to the Corps' regulatory budget in accordance with the provisions of Section 214 of WRDA 2000.

The Corps, in both its San Francisco and Sacramento Districts, will provide staffing resources dedicated to expediting permit evaluation-related services, as described in Article II.D., below, for the establishment and implementation of the Process.

B. The Corps' San Francisco District will establish a separate internal financial account to track receipt and expenditure of the funds associated with development of the Process and review

of permit applications submitted by the SCWA. The Corps' San Francisco District will provide funds at least once annually to the Sacramento District based on projected workload on SCWA actions. Corps regulatory personnel will charge their time and expenses against the account when they perform work on the establishment of the Process and subsequent permit application review. Corps regulatory personnel will focus on the work as prioritized by the SCWA.

C. Funds contributed by the SCWA 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 SCWA. Such activities will include, but not be limited to, the following: jurisdictional determinations; site visits; travel; federal register preparation; public notice preparation and distribution; public hearings; preparation of correspondence; public interest review; preparation and review of environmental documentation; meetings with the SCWA and resource agencies; and any other permit evaluation related responsibilities that may be mutually agreed upon.

D. The Corps will *not* expend SCWA funds for costs associated with the 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. The Corps will *not* expend funds contributed by the SCWA to defray the costs of activities related to the Corps' enforcement functions, but *may* use SCWA funds to defray costs of activities related to compliance functions for the Process.

E. If the funds provided by the SCWA are expended and not replenished, any remaining priority permit applications will be handled like those of any permit applicant, 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 Parties, 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 SCWA will provide adequate resources to fund Corps staff for the purpose of creating the Process and managing the ongoing implementation of that Process, including timely review of designated priority projects and other identified activities. To facilitate the Corps' reviews and activities, the SCWA will:

1. Identify individual projects and other activities requiring priority involvement by the Corps under this MOA. A list and accompanying statement of priority will be provided at an initial meeting between the Parties. The Parties will review the list and revise it on an as-needed basis.

2. Actively engage Corps personnel in scoping, planning, and development of the Process, including, but not limited to, meetings, field visits, conference calls, video teleconferencing, and electronic correspondence.

3. 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). Upon request, SCWA shall provide additional information necessary to complete the application and/or pre-construction notification. If additional information [33 C.F.R. § 325.1(e)] is requested by the Corps, SCWA shall provide such additional information necessary to ensure the Corps can effectively accomplish the required review.

4. In consultation with the Corps, establish realistic schedules for the Corps' involvement in designated priority projects. Work closely with the Corps to resolve workload conflicts and adjust project priorities and schedules in order to make optimal use of available Regulatory Program staff resources. If overlaps or conflicts occur in the schedules for designated priority projects, the SCWA will work with the Corps to resolve such overlaps or schedule conflicts.

5. Request meetings in writing to the Corps by mail or e-mail. Meeting requests must provide sufficient lead-time for scheduling. Such requests must include an agenda that clearly characterizes what is expected from the Corps' participation and the desired outcome of the meeting. Written materials attached to the request must contain sufficient information to enable the Corps staff to prepare for, and actively participate in the meeting.

6. Use Department of the Army Engineering Form ENG-4346 (or a letter containing the same information) for all permit applications.

B. The Corps shall supplement or reassign its existing Regulatory Program personnel within projected funding levels provided by the SCWA. The Corps shall use the funds provided to defray the costs of salaries and associated benefits and to reimburse travel expenses in order to:

1. Participate actively in the scoping, planning, and establishment of the Process by attending meetings and field reviews, when requested, and identifying critical issues, key decision points, and potential conflicts as early as possible. Participation includes sharing, when appropriate, the most current regulatory and aquatic resources information.

2. Participate with other federal, state, and local agencies to facilitate early coordination of projects.

3. Consult with the SCWA regarding an adjustment of priorities if the current and/or projected workload of projects and activities exceeds the Corps' ability to provide the services specified herein or negotiate additional funding in accordance with paragraph V.E.

4. Provide quarterly progress reports to the SCWA documenting all updates regarding the establishment of the Process and, upon its completion, all subsequent permit decisions completed during the quarter. For the list of completed actions, the processing time for each permit application will also be included. In addition, these progress reports shall include a summary of expenditures under this MOA, for the period covered by the progress report and cumulatively for both the current federal fiscal year and for the life of the MOA.

5. At the conclusion of services under this MOA, the Corps shall provide a final statement of expenditures for the MOA including a summary report of progress made under this MOA to the SCWA. This summary report will be submitted no later than sixty (60) days after the WRDA authority expires, or in the event the Parties terminate the MOA prior to that date, within sixty (60) days of the date of termination. The summary report will also identify any recommendations for improving consultation and coordination among the Parties. To avoid duplicative reporting, the Corps may use the final statement of expenditures and summary report to meet its quarterly progress reporting requirement for the final quarter of the period covered by this MOA.

6. Meet with staff and management representatives from the SCWA on a quarterly or other mutually agreed upon schedule to review commitments, to collaborate on issues, to remedy outstanding concerns, to consider revisions to the provisions of this MOA, and to monitor activities under this MOA.

#### ARTICLE V. – FUNDING

A. Within 30 days of execution of this MOA, the SCWA shall pay the anticipated costs expected to be incurred through September 30, 2013, at the level specified in the Corps' budget estimate, which is included as **Appendix A** to this MOA and incorporated herein by reference.

B. The Corps' budget estimate will be revised to reflect costs for subsequent years that this agreement remains in effect by mutual agreement of the Parties without necessitating a formal revision or amendment to this MOA.

C. No later than September 22 of each year, the Corps will provide the SCWA with an invoice and updated budget estimate that provides an 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.

D. Prior to incurring any expenditure, the SCWA will make the lump sum payment to the Corps. Upon receipt of the Corps' invoice and updated budget estimate and in accordance with normal SCWA payment procedures, the SCWA will make the lump sum payment, in advance, of the total amount specified in the invoice and updated budget estimate.

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

F. The Corps will expedite the evaluation of permit applications as specified in this MOA only after funds have been transferred to the Corps. Payments by the SCWA are to be made out to "F&A Officer" and mailed to:

U.S. Army Corps of Engineers, San Francisco District  
1455 Market Street  
San Francisco, CA 94103-1398

Attention: Karen Lincoln, Programs Branch

G. The Corps will neither accept nor expend funds under this MOA after December 31, 2016, unless Federal law extends or makes permanent 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 VI – 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 VII – 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.

#### ARTICLE VIII – PUBLIC INFORMATION

A. Justification and explanation of the SCWA's 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 SCWA, 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 SCWA will give the Corps advance notice before making formal, official statements regarding Corps activities funded under this MOA.

B. The Corps shall notify the SCWA in the event it receives a request under the Freedom of Information Act for information designated by SCWA as confidential. The Corps shall immediately notify SCWA's Principal Representative upon receipt of any such request and will forward a copy of the request to SCWA's Principal Representative.

#### ARTICLE IX – MISCELLANEOUS

##### A. Other Relationships or Obligations

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

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

##### B. 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 X – AMENDMENT, MODIFICATION AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties. Either party reserves the right to terminate this MOA without cause upon thirty (30) days written notice to the other party, or sooner by mutual written agreement, or immediately in the event of a material breach. In the event of termination, the SCWA 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.

B. Upon termination or expiration of the MOA, the Corps shall immediately provide the SCWA with a final statement of expenditures. The Corps agrees to remit to the SCWA the unexpended balance of the advance payment within sixty (60) calendar days after the final statement of expenditures, if so requested by the SCWA, and subject to the availability of funds. Funds may be provided to the SCWA either by check or electronic funds transfer.

ARTICLE XI – EFFECTIVE DATE AND DURATION

This MOA 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, unless the sunset clause of section 214 of WRDA 2000 is extended or section 214 is made permanent, or 2) the MOA is terminated pursuant to Article X.

ARTICLE XII - NOTICES

All notices required under this Agreement shall be effective only if in writing and sent to the following contacts for each party:

SCWA: Chair, Board of Directors  
Solano County Water Agency  
810 Vaca Valley Parkway, Suite 203  
Vacaville, CA 95688

USACE: District Engineer  
San Francisco District of the U. S. Army Corps of Engineers  
1455 Market Street  
San Francisco, CA 94103-1398

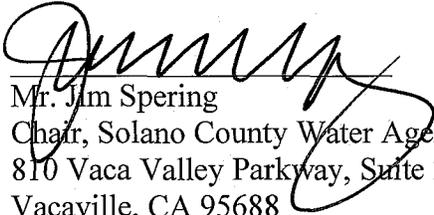
With copy to: Regulatory Division Chief  
San Francisco District of the U. S. Army Corps of Engineers  
1455 Market Street  
San Francisco, CA 94103-1398

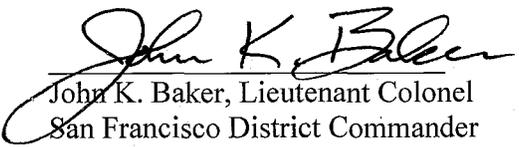
Regulatory Division Chief  
Sacramento District of the U.S. Army Corps of Engineers  
1325 J Street, Room 1350  
Sacramento, CA 95814

ARTICLE XIII – EXECUTION IN COUNTERPARTS

The Parties agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed the Agreement to be effective on the date first above written.

  
Mr. Jim Spring  
Chair, Solano County Water Agency  
810 Vaca Valley Parkway, Suite 203  
Vacaville, CA 95688  
DATE: 13 Aug 2013

  
John K. Baker, Lieutenant Colonel  
San Francisco District Commander  
U.S. Army Corps of Engineers  
DATE: 13 Aug 2013

APPENDIX A.

CORPS BUDGET ESTIMATE (2 SHEETS)

# San Francisco District Regulatory Rate Calculations

	Federal FY 13 GS-11 Step 3	Federal FY 14 GS-11 Step 4	Federal FY 15 GS-11 Step 5
Basic Hourly Rate	\$ 34.74	\$ 35.82	\$ 36.91
Daily Rate (hourly @ 8 hours)	\$ 277.92	\$ 286.56	\$ 295.28
Effective Daily Rate (w/ benefits at 56%)	\$ 433.56	\$ 447.03	\$ 451.78
Overhead (Departmental 37.90% and General & Administrative 22.3%)	\$ 261.00	\$ 257.04	\$ 259.77
<b>Total Daily Rate (Effective Daily Rate + Overhead)</b>	<b>\$ 694.56</b>	<b>\$ 704.08</b>	<b>\$ 711.55</b>

FY 2013 (1 Mar 2013 - 30 Sep 2013)			
	Staff Days	Rate	Cost
<b>Labor Costs</b>			
GS-11 Regulatory Support	40	\$ 694.56	\$ 27,782.40
In-house support service (e.g. legal, engineering, GS-0401/0408 Regulatory Support)	5	\$ 694.56	\$ 3,472.80
<b>Other Direct Costs</b>			
Govt Vehicle	10	\$ 35.00	\$ 350.00
<b>Total FY 2013</b>			<b>\$ 31,605.20</b>

FY 2014 (1 Oct 2013 - 30 Sep 2014)			
	Staff Days	Rate	Cost
<b>Labor Costs</b>			
GS-11 Regulatory Support	66	\$ 704.08	\$ 46,469.28
In-house support service (e.g. legal, engineering, GS-0401/0408 Regulatory Support)	5	\$ 704.08	\$ 3,520.40
<b>Other Direct Costs</b>			
Govt Vehicle	12	\$ 35.00	\$ 420.00
<b>Total FY 2014</b>			<b>\$ 50,409.68</b>

FY 2015 (1 Oct 2014 - 30 Sep 2015)			
	Staff Days	Rate	Cost
<b>Labor Costs</b>			
GS-11 Regulatory Support	66	\$ 711.55	\$ 46,962.30
In-house support service (e.g. legal, engineering, GS-0401/0408 Regulatory Support)	5	\$ 711.55	\$ 3,557.75
<b>Other Direct Costs</b>			
Govt Vehicle	12	\$ 35.00	\$ 420.00
<b>Total FY 2015</b>			<b>\$ 50,940.05</b>

## Sacramento District Regulatory Rate Calculations

NAME	% FTE	FY13	FY14	FY15	Annual Salary (Fully burdened rate)
MARC FUGLER GS-12-5/6	12.5	\$18,493	\$22,192	\$22,414	\$177,537.48/\$179,313
<b>Total Annual Estimate</b>		\$18,493	\$22,192	\$22,414	