

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

THIS MEMORANDUM OF AGREEMENT (“MOA”) is entered into between the County of Los Angeles (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 Corps has jurisdiction over certain activities occurring in waters of the United States, including wetlands, 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 of 2000, Public Law 106-541 (“WRDA 2000”), as amended by Public Law 111-315, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army; and

WHEREAS, the authority provided under Section 214 of the WRDA 2000 is presently in effect until December 31, 2016; and

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

WHEREAS, the Chief of Engineers, by memorandum dated March 29, 2004, as modified October 1, 2008, has authorized the District and Division Engineers of the Corps to accept and expend funds contributed by non-Federal entities subject to certain limitations; and

WHEREAS, the Corps has indicated it is not able, without additional resources, to expedite the evaluation of County permit applications that have a public purpose; 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 County-designated priority projects, as more fully described in this MOA; and

WHEREAS, the Corps issued an initial public notice dated July 1, 2013, regarding its intent to accept and expend funds contributed by the County; and

WHEREAS, in a memorandum dated August 23, 2013, the Corps' District Engineer determined that expenditure of funds received from the County is appropriate, and an informational public notice dated September 18, 2013, regarding the decision has been issued; and

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

WHEREAS, this MOA establishes the responsibilities and operating procedures of the Parties with respect to the Corps' priority review of County-designated priority projects requiring a Corps' permit pursuant to Section 404 of the CWA and/or section 10 of the RHA; 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 evaluation-related services for County-designated 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 ("Priority Projects"). This MOA is not intended as the exclusive means of obtaining review of Priority Projects proposed by the County. This MOA is a vehicle by which the County will obtain expedited permit evaluation-related services, outside of the ordinary Corps review process.

B. The County enters into this MOA pursuant to its authority under, inter alia, Section 23004 of the California Government Code.

C. The Corps enters into this MOA pursuant to its authority under Section 214 of the WRDA 2000, as amended.

D. This MOA is specific to Section 404 of the CWA and/or Section 10 of the RHA permit reviews only. A separate agreement may be required between County and the Corps to

expedite environmental technical assistance, coordination services, review, and concurrence of documentation prepared to comply with Section 14 of the RHA, as amended.

Article II. - SCOPE OF WORK

A. The County will provide funds to the Corps to expedite permit evaluation related services for County-designated Priority Projects under the jurisdiction of the Corps. The Corps' Regulatory Program is funded as a Congressionally appropriated line item in the annual Federal budget. The County will provide the Corps with funds in accordance with the provisions of Section 214 of WRDA 2000, as amended.

B. The Corps will provide staffing resources exclusively dedicated to expediting permit evaluation related services, as described below, for County-designated Priority Projects and/or other programmatic efforts to support efficient decision-making related to the County's 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 evaluation related requests for Priority Projects or undertake other programmatic efforts to support efficient decision-making related to the County's permitting needs.

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. Such activities 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 the County and other agencies.

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 County-designated 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.

G. 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.

H. If the funds provided by the County are expended and not replenished, any remaining County-designated 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. Additional representatives may also be appointed to serve as points of contact on specific actions or issues. For the purposes of this MOA, the County's Principal Representative will be Menerva Ariki, Senior Civil Engineer, Watershed Management and the Corps' Principal Representative will be Dr. Daniel Swenson, Chief, Los Angeles and San Bernardino Section, Regulatory Division. Either Principal Representative may be changed upon written notification to the other party.

Article IV. - NOTICES

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:

Los Angeles County
Department of Public Works
Water Resources Division
900 South Fremont Ave, 2nd Fl
Alhambra, CA 91803-1331

If to the Corps:

Chief, Los Angeles and San Bernardino Section
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.

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.

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 County-designated Priority Projects and other identified activities. To facilitate the Corps' reviews and activities, the County will:

1. Provide adequate information regarding County-designated Priority Projects, scheduling requirements, and other specific activities to initiate permit evaluation. Information required for the Corps to deem a permit application complete thereby allowing initiation of the permit review process can be found in Corps regulations at 33 C.F.R. §§ 325.1(d), 325.3(a), and in General Condition 31 of the Nationwide Permit Program. Upon request, the 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 the County-designated Priority Projects as listed in **Appendix A** to this MOA. The County-designated Priority Projects included in Appendix A and the order of priority of those County-designated Priority Projects may be changed by the County's 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's 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 supplement or reassign its existing Regulatory Division personnel, which currently reviews County projects on a routine basis, with qualified personnel within

projected funding levels provided by the County. 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. Expedite review of the County-designated Priority Projects as identified in Appendix A (or any amendments thereto) 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. Render decisions for non-notifying Nationwide Permit verification applications for Priority Projects submitted by County within 45 calendar days of receipt of a complete application, to the greatest extent possible.

3. 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 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 below.

4. Consult with the County regarding an adjustment of priorities or amendments to Appendix A if the current and/or projected workload of Priority Projects and activities exceeds the Corps' ability to provide the services specified herein or negotiate additional funding in accordance with Article VI below.

5. Provide the County a brief quarterly summary report of progress made under this MOA within twenty one (21) calendar days of the end of each quarter. Progress will be itemized for each permit decision rendered for Priority Projects during the quarter and for each permit application for Priority Projects submitted by the County pending at the end of the quarter. This report will describe achievements, including any improvements the Corps has documented in coordinating and improving the efficiency of environmental reviews, and will summarize expenditures for each Priority Project to date. The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOA and will provide an estimate of costs expected for the ensuing quarter. The report shall not be in excess of five (5) pages of narrative per report.

6. Designate and identify to the County 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.

7. Meet with County as needed to discuss progress under this MOA.

8. Prior to expiration of the MOA, hold a final meeting with the County to review a summary of permit streamlining and other activities under this MOA, as well as provide recommendations for future coordination between the Parties.

Article VI. - FUNDING

A. Funding Periods.

1. First funding period: March 1, 2014 - December 31, 2014
2. Second funding period: January 1, 2015 – December 31, 2015
3. Third funding period: January 1, 2016 – December 31, 2016

B. Funding amounts.

1. Total estimated costs for the first funding period are \$175,000.00.
2. Total estimated costs for the second funding period are \$210,000.00.
3. Total estimated costs for the third funding period are \$210,000.00.
4. Total funding for this MOA is \$595,000.00.

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 in the total amount specified in subparagraph B, above. Payments by County shall be made payable to the Finance and Accounting Officer and submitted to:

U.S. Army Corps of Engineers, Los Angeles District
Finance and Accounting Officer
915 Wilshire Boulevard, Suite 930
Los Angeles, CA 90017-3401
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 either initiate an amendment to this MOA to increase the funding amount, or agree 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'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 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.

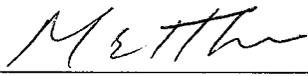
Article XII. - EFFECTIVE DATE AND DURATION .

This MOA and any amendments will be effective on the date of execution by the last party. Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2016 or 2) the MOA is terminated pursuant to Article X.B.

[REMAINDER LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by the County, acting by and through its Department of Public Works Director and by the Corps, through its authorized officer.

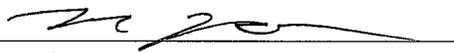
FOR THE COUNTY OF LOS ANGELES

By: 

Date: 3/12/14

Prof Gail Farber
Director
Department of Public Works

APPROVED AS TO FORM:
JOHN F. KRATTLI
County Counsel


Deputy

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

By: 

Date: 3/18/14

Kimberly M. Colloton, PMP
Colonel, US Army
Commander and District Engineer

Appendix A: County-designated Priority Projects

(Dated: January 14, 2014)

The list of County-designated Priority Projects under this MOA includes the following proposed projects:

1. Oxford Retention Basin Multiuse Enhancement Project
2. Ballona Wetlands Restoration Project
3. Concrete-lined Channels Maintenance Project
4. Los Angeles River Low Flow Inspection
5. Los Angeles River Headwaters Project
6. Amendment/Renewal of SBC Maintenance Permit
7. Renewal of RGP 45 - Debris Basin Maintenance
8. Dams/Reservoir Maintenance Agreement
9. Pacoima Rubber Dam Project (Pacoima Spreading Grounds)
10. Halls, Pickens, Dunsmuir, Goss, & Shields Crib Dam repairs
11. Mint Canyon Channel - Reinforced Concrete Invert Access Ramp
12. Strathern Wetlands Park Project