



COUNTY SANITATION DISTRICTS  
OF LOS ANGELES COUNTY

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REGULATOR  
LOS ANGELES

STEPHEN R. MAGUIRE  
Chief Engineer and General Manager

# TRANSMITTAL

**DATE:** October 31, 2008

**TO:** Dan Swenson, Regulatory Branch

**COMPANY:** U.S. Army Corps of Engineers, L.A. District

**ADDRESS:** 915 Wilshire Blvd.  
Los Angeles, CA 90017

**FROM:** Steve Highter, Planning Section

**SUBJECT:** Signed WRDA MOA

**We are sending you the following:**

- |   |   |                                   |
|---|---|-----------------------------------|
| <input type="checkbox"/> Copy of Letter       | <input type="checkbox"/> Check          | <input type="checkbox"/> Receipt  |
| <input checked="" type="checkbox"/> Originals | <input type="checkbox"/> Specifications | <input type="checkbox"/> Drawings |
| <input type="checkbox"/> Other: _____         |   |                                   |

**Transmitted as checked below:**

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Per Your Request   | <input type="checkbox"/> For Your Information | <input checked="" type="checkbox"/> Per Our Conversation |
| <input type="checkbox"/> Review and Comment | <input type="checkbox"/> Call to Discuss      | <input type="checkbox"/> For Your Approval               |

**COMMENTS:** Dan, We will be submitting the check once I receive instructions from Mark Cohen. -Steve

**MEMORANDUM OF AGREEMENT  
BETWEEN  
COUNTY SANITATION DISTRICT NO. 2 OF LOS ANGELES COUNTY  
AND  
THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

THIS AGREEMENT is entered into as of this 9th day of October, 2008 between the County Sanitation District No. 2 of Los Angeles County (the "District") and the Department of the Army, represented by the United States Army Corps of Engineers, Los Angeles District (hereinafter the "Corps"), collectively referred to as "the Parties."

**RECITALS**

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

(a) **IN GENERAL.** - In Fiscal Years 2001 through 2003, the Secretary (of the Army), after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army.

(b) **EFFECT ON PERMITTING.** - In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision-making with respect to permits, either substantively or procedurally; and

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

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

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

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

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

WHEREAS, 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 memoranda dated 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 District is a non-Federal entity and requires expedited and priority review of certain projects by the Corps; and

WHEREAS, the Corps issued an initial Public Notice dated September 5, 2008, regarding its intent to accept and expend funds contributed by the District; and

WHEREAS, the Corps' Los Angeles District Engineer has determined that expenditure of funds received from the District is appropriate, and an informational public notice dated 9 October 2008, regarding the District Engineer's decision has been issued; and

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

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

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

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

## **AGREEMENT**

### **Article I. - PURPOSE AND AUTHORITIES**

Pursuant to Section 214 of the WRDA 2000, as extended, this MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by the District to provide expedited permit evaluation-related services for District-designated priority projects under the jurisdiction of the Corps. This MOA is not intended as the exclusive means of obtaining review of projects of the District. This MOA is a vehicle by which the District will obtain expedited permit evaluation-related services, outside of the ordinary Corps review process.

### **Article II. - SCOPE**

A. The District will provide funds to the Corps to expedite permit evaluation-related services for District-designated priority projects under the jurisdiction of the Corps for two years. The District may elect to extend the funding beyond two years, subject to written amendment to this MOA. The Corps' regulatory program is funded as a congressionally appropriated line item in

the annual Federal budget. Funds received from the District will be used to augment the Corps' regulatory budget in accordance with the provisions of WRDA 2000.

B. The Corps will provide staffing resources exclusively dedicated to expediting permit evaluation-related services, as described in Article IID, below, for priority projects and activities designated by the District.

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

D. Funds contributed by the District 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 permit applications submitted by the District. Such activities will include, but not be limited to, the following: jurisdictional determinations; site visits; federal register and public notice preparation; preparation of correspondence; public interest review; preparation and review of NEPA documentation; meetings with the District and resource agencies; and any other permit evaluation-related responsibilities that may be mutually agreed upon. Funds will *not* be expended for review of Regulatory Project Managers' work by supervisors or other persons or elements of the Corps in the decision-making chain of command. Enforcement activities will not be paid for from the funds contributed by the District, 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, including but not limited to site visits; preparing and providing technical materials, including environmental documentation; GIS-related services; and meeting coordination; for the purpose of augmenting the resources available to the Corps for expediting priority projects and activities designated by the District. If such expenditures, when combined with the costs of the regulatory staff specified in Article II.D, require funding in excess of the amount available under this MOA, then said contractors shall not be hired by the Corps until and unless additional funds are provided by the District and a written amendment to this MOA is executed.

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

### **Article III. - INTERAGENCY COMMUNICATIONS**

To provide for consistent and effective communication between the Corps and the District, 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 District shall:**

1. Provide adequate information regarding priority projects and other specific activities to initiate permit evaluation. Upon request, the District shall provide supplemental information necessary to assure the Corps can effectively accomplish the required review.
2. To the best of its ability, ensure the participation of all essential personnel, customers, and decision makers during the permit evaluation process.
3. Work closely with the Corps to adjust priorities and schedules in order to make optimal use of available staff resources.
4. Provide funding pursuant to the terms of this MOA.

##### **B. The Corps shall:**

1. Expedite review of District's priority projects in accordance with the purpose, terms, and conditions of this MOA or any amendments thereto. The Corps shall not redirect resources from, or otherwise postpone, other projects submitted by the District through the standard Corps review process.
2. Consult with the District regarding an adjustment of priorities or establishment of relative priorities if the current and/or projected workload of the priority projects and activities exceeds Corps' ability to provide the services specified in this MOA.
3. Provide the District a quarterly summary report of progress made under this MOA. 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.
4. Designate a Regulatory Project Manager who will make his or her best efforts to attend periodic meetings with the District, but not less than quarterly.
5. Expend funds pursuant to the terms of this MOA.

#### **Article V. - IMPARTIAL DECISION-MAKING**

It is understood and agreed that in order to ensure that the funds will not impact impartial decision-making with respect to permit evaluation-related services for District-designated priority projects under the jurisdiction of the Corps with respect to the District's permit applications, the following procedures, mandated from Headquarters, U.S. Army Corps of

Engineers, will apply to all cases using additional funds provided by the District as a participating non-Federal public entity:

1. In all cases where funds are used, all final permit decisions must be reviewed and signed by at least one level above the decision-maker (person with signature authority), unless the decision maker is the District Commander.
2. All documents involved in the decision making process (e.g., decision document and permit instrument, if applicable) must be reviewed and signed by the one-level-above reviewer as defined above.
3. All jurisdictional determinations made on projects where funds are used must have documentation that a non-funded, Regulator reviewed and agreed with the determination (e.g. peer review). This review does not need to be a field review.
4. In all cases where funds are used, all final permit decisions will be made available and updated monthly on the Corps' Regulatory web page in an area separate from any other final actions, clearly identifiable as being for projects funded by through this authority.
5. Any procedures or decisions that would otherwise be required for a specific type of project or permit under consideration cannot be eliminated; however, process improvements that are developed can be shared in order for all members of the regulated public to benefit.
6. The Corps must comply with all applicable laws and regulations.
7. Funds will not be expended for the review of the decision maker's decision. If contracts are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Corps 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.

## Article VI – FUNDING

A. The District will pay the Corps an initial amount not to exceed \$210,000.00 and an additional \$210,000.00 twelve months from the effective date of this MOA (subject to potential increase as provided below), for purposes of funding one additional Regulatory Project Manager, including overhead, and associated support personnel; and any additional services that may be required pursuant to Article II.E for the term of this MOA (“Funding”). Additional payments by the District 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. The District may elect to extend the services of the project manager beyond two years. Funding required under this MOA may be increased by the Corps annually to account for the Federal Government's General Schedule increases and locality

adjustments. Any carry-over funds from year to year would be credited to the following fiscal year's payment, or refunded if this MOA is terminated or expires.

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

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

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

#### **Article VII. - APPLICABLE LAWS**

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

#### **Article VIII. - DISPUTE RESOLUTION**

The Parties agree that, in the event of a dispute, the District 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. - MISCELLANEOUS**

##### **A. Other Relationships or Obligations**

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

##### **B. Survival**

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

##### **C. Severability**

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

#### Article X. - AMENDMENT, MODIFICATION AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties. Either party may terminate this MOA prior to its expiration date by providing written notice to the other party. Such termination shall be effective upon the sixtieth (60<sup>th</sup>) calendar day following notice, unless a later date is set forth. In the event of termination, the Districts will continue to be responsible for all costs incurred by the Corps in performing expedited environmental permit review services up to the time of notice.

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

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

#### Article XI. - EFFECTIVE DATE

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

#### Article XII – INTEGRATION

This MOA, including any documents incorporated by reference or attachments thereto, constitute the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

[Remainder Left Intentionally Blank]

IN WITNESS WHEREOF, this MOA is executed as of the date stated in the introductory clause by County Sanitation District No. 2 of Los Angeles County, acting by and through its Board of Directors and by the U.S. Army Corps of Engineers, through its authorized officer.

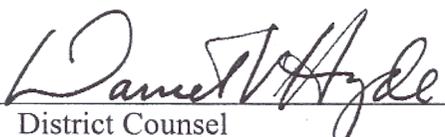
COUNTY SANITATION DISTRICT NO. 2  
OF LOS ANGELES COUNTY

By:   
Chairperson  
OCT 22 2008

ATTEST:

By:   
Secretary

APPROVED AS TO FORM:  
Lewis Brisbois Bisgaard & Smith LLP

By:   
District Counsel

Date: OCT 22 2008

U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT

By:   
Thomas H. Magness  
Colonel, US Army  
District Commander

## **Appendix A: Priority Projects**

- 1) **Preparation, coordination, and review of an environmental impact statement (EIS) for the Clearwater Program Master Facilities Plan.**