



### 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

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Chief Executive Officer

**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	<u>ABSENT</u>	<u>AYE</u>	<u>AYE</u>	<u>MOVE</u>	<u>SECOND</u>
	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

FAS

**CONTRACT TRANSMITTAL**

**FOR COUNTY USE ONLY**

<input type="checkbox"/> New	FAS Vendor Code		<b>SC</b>	Dept.	<b>A</b>	Contract Number	
<input checked="" type="checkbox"/> Change	USARMYC142			TRA		06-488 A-3	
<input type="checkbox"/> Cancel							
ePro Vendor Number 00005968					ePro Contract Number		
County Department Public Works, Environmental Mgmt. Div.				Dept.	Orgn.	Contractor's License No.	
				TRA	TRA		
County Department Contract Representative Annesley Ignatius, P.E., Deputy Director					Telephone (909)387-8109		Total Contract Amount \$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 4/30/2015	Contract End Date 9/30/2020	Original Amount \$562,000	Amendment Amount \$250,000	
Fund SAA	Dept. TRA	Organization TRA	Appr. 200	Obj/Rev Source 2135	GRC/PROJ/JOB No. 01H14202	Amount 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 Memorandum of Agreement (MOA) with United States Army Corps Of Engineers				Estimated Payment Total by Fiscal Year			
			FY	Amount	I/D	FY	Amount
			2015/16	75,000	I	2018/19	40,000
			2016/17	75,000	I	2019/20	10,000
			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)  Scott Runyan, Deputy County Counsel Date <u>4/2/15</u>	Reviewed as to Contract Compliance  Grant C. Mann, P.E. Chief Date <u>4/2/15</u>	Presented to BOS for Signature  Department Head - Gerry Newcombe, Director Date <u>4/2/15</u>
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**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 the remaining 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.

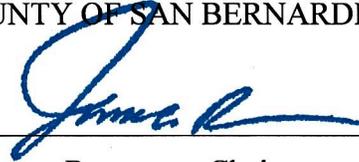
8. Recitals. The recitals of this SECOND AMENDMENT are incorporated into the MOA by this reference.

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:



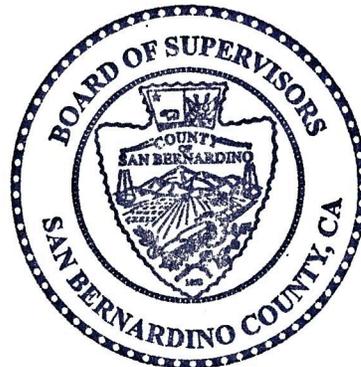
David J. Castanon  
Chief, Regulatory Division

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. Shabbfield  
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