

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

This First Amendment to Memorandum of Agreement ("FIRST AMENDMENT"), is entered into by and 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, pursuant to section 14 of the Rivers and Harbors Act ("RHA") of 1899, codified at 33 U.S.C. § 408 ("Section 408"), as amended, the Corps has jurisdiction over requests to alter or modify completed federal flood risk management facilities ("Section 408 Proposals"); and

WHEREAS, the Parties entered into a Memorandum of Agreement ("MOA"), effective March 18, 2014, for expedited permit evaluation-related services by the Corps for County-designated priority Section 408 Proposals; and

WHEREAS, the MOA is set to expire December 31, 2016; and

WHEREAS, section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000") as amended and codified at 33 U.S.C. 2352 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 Chief of Engineers, in Engineer Circular ("EC") 1165-2-216, 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 Parties desire to extend the duration of the MOA an additional two years; and

WHEREAS, the Corps has determined additional funding from the County is necessary to continue to fund permit evaluation-related activities for Section 408 Proposals through December 31, 2018; and

NOW, THEREFORE, the Parties hereby agree to amend the MOA as follows:

SUBJECT: First Amendment to Memorandum of Agreement between the County of Los Angeles and the U.S. Army Corps of Engineers' Los Angeles District – Expedited Permit Evaluation-Related Services for Section 408 Proposals

1. Article III. – INTERAGENCY COMMUNICATIONS. The third sentence of this Article is amended to read:

“For the purposes of this MOA, the County’s Principal Representative will be Frank Wu, Senior Civil Engineer, Watershed Management and the Corps’ Principal Representative will be Stephen Vaughn, Design Branch, Engineering Division, Los Angeles District.”

2. Article IV. – RESPONSIBILITIES OF THE PARTIES. Subparagraph A.1 of this Articles is amended to read as follows:

“1. Provide adequate information regarding County-designated priority Section 408 Proposals, 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 EC 1165-2-216. Upon request, the County shall provide supplemental information necessary to complete the permit application. Additional information 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, County shall provide such additional information so as to ensure the Corp scan effectively accomplish the required review.”

3. Article V. – FUNDING. Paragraphs A , B, and G of this Article are amended to read as follows:

“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
4. Fourth funding period: January 1, 2017 - December 31, 2017
5. Fifth funding period: January 1, 2018 – December 31, 2018

B. Funding amounts:

1. Total estimated costs for the first funding period are \$370,000.00.
2. Total estimated costs for the second funding period are \$43,000.00.
3. Total estimated costs for the third funding period are \$0.00.
4. Total estimated costs for the fourth funding period are \$465,000.00.

SUBJECT: First Amendment to Memorandum of Agreement between the County of Los Angeles and the U.S. Army Corps of Engineers' Los Angeles District – Expedited Permit Evaluation-Related Services for Section 408 Proposals

5. Total estimated costs for the fifth funding period are \$0.00
6. Total funding for this MOA is \$878,000.00.
- G. The County may elect to extend the services of the Corps beyond December 31, 2018, subject to: 1) additional funding provided by the County and 2) written amendment to this MOA.”
4. Article VI. - NOTICES. The address for the County in the first paragraph of Article VI is amended to read as follows:

“If to County:


Los Angeles County
Department of Public Works
Watershed Management Division
900 South Fremont Ave, 11th Floor
Alhambra, CA 91803-1331”
5. Article XII- EFFECTIVE DATE AND DURATION. This Article is amended in its entirety to read:

“This MOA and any amendments will become effective on the date of signature by the last Party. Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2018; or 2) the MOA is terminated pursuant to Article X.B.”
6. Integration. This FIRST AMENDMENT represents the entire understanding of the Parties regarding the changes to the MOA. Unless expressly amended herein, all terms and conditions of the MOA remain in full force and effect.

SUBJECT: First Amendment to Memorandum of Agreement between the County of Los Angeles and the U.S. Army Corps of Engineers' Los Angeles District – Expedited Permit Evaluation-Related Services for Section 408 Proposals

IN WITNESS WHEREOF, the FIRST AMENDMENT is executed by the County, acting by and through its Department of Public Works Director and by the Corps, through its authorized officer.

THE COUNTY OF LOS ANGELES


By:  Date: 11-14-16
for Gail Farber
Director
Department of Public Works

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel


Deputy

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

By:  Date: 12-7-16
Kirk E. Gibbs
Colonel, US Army
Commander and District Engineer

**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 “County”) and the Los Angeles District of the United States Army Corps of Engineers (hereinafter “Corps”), collectively referred to as the “Parties.”

RECITALS

WHEREAS, pursuant to section 14 of the Rivers and Harbors Act (“RHA”) of 1899, codified at 33 U.S.C. § 408 (“Section 408”), as amended, the Corps has jurisdiction over requests to alter or modify completed federal flood risk management facilities (“Section 408 Proposals”);

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;

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

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;

WHEREAS, the Chief of Engineers, by memorandum dated June 18, 2010, authorized the District and Division Engineers of the Corps to accept and expend funds contributed by non-Federal public entities subject to certain limitations;

WHEREAS, the Corps has indicated it is not able, without additional resources, to expedite the evaluation of County Section 408 Proposals that have a public purpose;

WHEREAS, the County is a non-Federal 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 408 of Section 408 Proposals designated by the County’s Department of Public Works for priority review (“County-designated priority Section 408 Proposals”), as more fully described in this MOA;

WHEREAS, the Corps issued an initial public notice dated June 15, 2012, regarding its intent to accept and expend funds contributed by the County’s Department of Public Works;

WHEREAS, in a memorandum dated September 6, 2012, the District Engineer of the Corps’ Los Angeles District determined that expenditure of funds received from the County’s

Department of Public Works is appropriate, and an informational public notice dated September 11, 2012, regarding the decision has been issued;

WHEREAS, it is understood and acknowledged by all Parties that the Corps' review of the County's permit applications for County-designated priority Section 408 Proposals will be completely impartial and in accordance with all applicable Federal laws and regulations;

WHEREAS, this MOA establishes the responsibilities and operating procedures of the Parties with respect to the Corps' priority review of County-designated priority Section 408 Proposals requiring a Corps' permit pursuant to Section 408;

WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address, and protect environmental resources, including but not limited to impacts to existing and completed Corps' flood risk management systems or facilities, 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 County in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps resources by focusing attention on projects that would have the most effect on completed federal flood risk management facilities; (5) provide a mechanism for expediting Section 408 Proposal permit 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 County to provide expedited permit evaluation-related services for County-designated priority Section 408 Proposals. The County-designated priority Section 408 Proposals are listed in **Appendix A** to this MOA. This MOA is not intended as the exclusive means of obtaining permit review of County Section 408 Proposals. This MOA is a vehicle by which County will obtain expedited permit evaluation-related services outside of the ordinary Corps review process.

B. The County enters into this MOA pursuant to 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 408 Proposal 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 404 of the Clean Water Act of 1972, as amended, and/or section 10 of the Rivers and Harbors Act of 1899, as amended.

Article II. - SCOPE OF WORK

A. County will provide funds to the Corps to expedite permit evaluation related services for County-designated priority Section 408 Proposals as identified in **Appendix A**.

B. The Corps' operations and maintenance expenses are 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.

C. The Corps will provide staffing resources dedicated to expediting permit evaluation related services, as described in Article II.D., below, for County-designated priority Section 408 Proposals and/or other programmatic efforts to support efficient decision-making related to County's Section 408 permitting needs.

D. The Corps will establish a separate internal financial account to track receipt and expenditure of funds associated with its review of permit applications submitted by County for County-designated priority Section 408 Proposals. Corps' personnel will charge their time and expenses against the account when they perform work to either expedite Section 408 permit evaluation related requests for County-designated priority Section 408 Proposals or undertake other programmatic efforts to support efficient decision-making related to County's permitting needs.

E. Funds contributed by County hereunder will be expended by the Corps to defray the costs of its staff (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the evaluation of County-designated priority Section 408 Proposals.

F. The Corps may expend County funds to perform select duties, including but not limited to technical analyses and writing, Agency Technical Review, real estate evaluation, risk analysis, copying or other clerical/support tasks, acquisition of data, site visits, training, travel, coordination activities, additional personnel (including support/clerical staff), contracting for technical services (e.g., structural risk evaluation, geotechnical analysis, hydraulic and hydrological engineering review), construction quality assurance and control, environmental documentation preparation and review; any other permit evaluation related responsibilities that may be mutually agreed upon; and meeting coordination.

G. 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.

H. 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.

I. If the funds provided by the County are expended and not replenished, any remaining County-designated priority Section 408 Proposals 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 Phillip J. Serpa, Asset Management Division, Los Angeles District. The Principal Representative for each party may be changed upon written notification to the other party.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. County will provide adequate resources, to fund existing or additional Corps personnel for the purpose of expediting the review of County-designated priority Section 408 Proposals and other identified activities. To facilitate the Corps' reviews and activities, the County will:

1. Provide adequate information regarding County-designated priority Section 408 Proposals, 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 applicable Section 408 guidance, including but not limited to the Memorandum for Subordinate Commands, *Policy and Procedural Guidance for the Approval of Modification and Alteration of Corps of Engineer Projects*, dated October 23, 2006, and the Memorandum for Major Subordinate Commands, *Clarification Guidance on the Policy and Procedural Guidance for the Approval of Modification and Alteration of Corps of Engineer Projects*, dated November 17, 2008, copies of which have been provided to the County. Upon request, the County shall provide supplemental information necessary to complete the permit application. Additional information 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, 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 Section 408 Proposals listed in **Appendix A** to this MOA. The Section 408 Proposals included in **Appendix A** and the order of priority of those Section 408 Proposals may be changed by 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 VI 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 process.

4. Work closely with the Corps to adjust priorities and schedules in order to optimize available Corps staff resources. If overlaps or conflicts occur among County-designated priority Section 408 Proposals, then County will work with the Corps to prioritize such overlaps.

B. The Corps shall assign qualified personnel to evaluate the County-designated priority Section 408 Proposals and prioritize associated tasks within projected funding levels provided under this MOA. 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 County- designated priority Section 408 Proposals 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 Section 408 Proposals 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 County with an estimated schedule to the best of its ability within fourteen (14) calendar days of receiving the County's scheduling requirements as described in subparagraph A(1) of this Article to complete the permit evaluation process for each application submitted. County shall be able to comment on these schedules and adjust the order of Section 408 Proposals included in Appendix A, or provide additional resources per Article V. E, below.

3. Consult on a monthly basis with County regarding an adjustment of priorities or amendments to Appendix A if the current and/or projected workload of priority Section 408 Proposals and activities exceeds the Corps' ability to provide the services specified herein or negotiate additional funding in accordance with Article V.E, below.

4. If a Section 408 permit is issued, provide construction quality assurance and quality control support for permit compliance purposes, which shall consist of reviewing technical submittals and requests for information, field inspections at critical construction milestones, review of proposed change orders that involve the design or design intent of any Corps permit issued pursuant to Section 408, providing technical assistance during construction as requested by the County on a case by case basis and review of construction and Section 408 closeout documentation as applicable.

5. Provide the County with a brief quarterly summary report of progress made under this MOA within twenty one (21) calendar days of the end of each quarter (January 21, April 21, July 21, and October 21). Progress will be itemized for each Section 408 permit application during the quarter for each Section 408 Proposal 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 Section 408 permit application reviews, and will summarize expenditures for each permit application 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. Meet with the County as needed to discuss progress under this MOA.

7. Prior to expiration of the MOA, hold a final meeting with the County's Principal Representative 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 V. - 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 \$370,000.00.
2. Total estimated costs for the second funding period are \$370,000.00.
3. Total estimated costs for the third funding period are \$125,000.00.
4. Total funding for this MOA is \$865,000.00.

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 as specified in subparagraph A of this Article in the total amount specified in subparagraph B of this Article. Payments by the County shall be submitted to:

U.S. Army Corps of Engineers, Los Angeles District
Finance and Accounting Officer
915 Wilshire Boulevard, Suite 930
Los Angeles, California 90017-3401
Attn: Carlos M. Tabares

D. The Corps will carry over any unexpended funds from year to year, or will refund such unobligated funds if this MOA is terminated or expires in accordance with Article X.

E. The Corps will provide County with written notice when 80% of the funding has been expended. If the Corps' actual costs for providing the agreed upon level of service will exceed the amount of funds available, County will either initiate an amendment to this MOA to increase the funding amount, or agree to a reduced level of service.

F. Additional payments by County to the Corps, in an amount and schedule mutually agreed to by the Parties, may be made when County-designated priority Section 408 Proposals are added to **Appendix A**.

G. County may elect to extend the services of the Corps beyond September 30, 2016, subject to: 1) additional funding being provided by the County and 2) written amendment to this MOA.

Article VI. - NOTICES

A. Any notice, 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 telegram or mailed by first-class, registered, or certified mail, as follows:

If to the 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:

DEPARTMENT OF THE ARMY
Los Angeles District, U.S. Army Corps of Engineers
Asset Management Division
915 Wilshire Boulevard, Suite 930
Los Angeles, California 90017-3401
ATTN: Phil Serpa

With a copy in all instances to:

DEPARTMENT OF THE ARMY
Los Angeles District, U.S. Army Corps of Engineers
District Counsel
915 Wilshire Boulevard, Suite 930
Los Angeles, California 90017-3401

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 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 County's programs or projects related to or arising out of County's Section 408 Proposals 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 or transferring 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 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, codified at 31 U.S.C. 1341 *et seq.*, shall directly remit to County the unexpended balance of the advance payment, 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 the Parties.

B. The Corps' participation in this MOA does not imply endorsement of the County-designated priority Section 408 Proposals 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

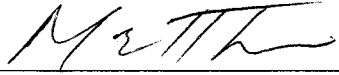
This MOA will be effective on the date of signature by the last party. Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first:

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, acting by and through its authorized officer.

COUNTY OF LOS ANGELES, DEPARTMENT OF PUBLIC WORKS

By: 

Date: 3/12/14

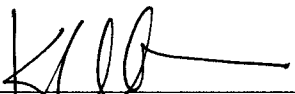
for Gail Farber
Director

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 Section 408 Priority Proposals

(Dated: January 1, 2014)

The list of County-designated Section 408 Proposals under this MOA includes the following Section 408 Proposals:

1. Ballona Wetlands Restoration Project
2. Tujunga Spreading Grounds
3. Tujunga Spreading Grounds Intake Improvements
4. Pacoima Spreading Grounds Intake Improvements
5. Santa Anita Spreading Grounds
6. Walnut Spreading Basin Pump Station Project
7. Bradbury Channel & Big Dalton Wash Invert Access Ramps - Combined project
8. Verdugo Wash Invert and Wall Joint Repair
9. Eaton Wash Channel Improvement
10. Peck Water Conservation Improvement Project
11. Lopez Spreading Grounds Improvement Project

