

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

**AGREEMENT NO. WPD-2-2012-3**

THIS AGREEMENT is entered into as of this 13<sup>th</sup> day of JULY, 2012, between the Ventura County Watershed Protection District, (hereinafter "Agency") and the Los Angeles District of the United States Army Corps of Engineers (hereinafter "Corps"), collectively referred to as "the Parties."

**RECITALS**

WHEREAS, the Corps has jurisdiction over requests to alter or modify completed Corps projects, including but not limited to, federal flood risk management facilities;

WHEREAS, Section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000"), as amended by Public Law 111-120, provides as follows:

(a) IN GENERAL. - 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.

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 Agency projects;

WHEREAS, Agency believes it is in the best interests of the taxpayers of Ventura County to provide funds to the Corps pursuant to this MOA to streamline and expedite Corps permit review under section 14 of the Rivers and Harbors Act of 1899, as amended, codified at 33 U.S.C. § 408 (hereinafter "Section 408") for Agency-designated priority projects as more fully described in Article II.D. of this MOA; and

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' projects or improvements, 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 Agency in developing appropriate avoidance, minimization or mitigation measures; (4) maximize the effective use of limited Corps resources by focusing attention on projects that would have the most effect on completed Corps' project or improvements; (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 acceptance and expenditure of funds contributed by Agency to provide expedited permit evaluation-related services for Agency-designated priority projects under the jurisdiction of the Corps. This MOA is not intended as the exclusive means of obtaining review of projects proposed by Agency. This MOA is a vehicle by which Agency will obtain expedited permit evaluation related services, outside of the ordinary Corps review process.

B. Agency enters into this MOA pursuant to Chapter 46 of the California Water Code Appendix. The Corps enters into this MOA pursuant to its authority under section 214 of the WRDA 2000, as amended.

C. This MOA is specific to Section 408 permit application review only. A separate agreement may be required between Agency 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).

### Article II. - SCOPE OF WORK

A. Agency will provide funds to the Corps to expedite permit evaluation related services for Agency-designated priority projects under the jurisdiction of the Corps.

B. The Corps' operations and maintenance expenses are funded as a Congressionally appropriated line item in the annual Federal budget. Funds received from Agency will be added to the Corps' Operations budget in accordance with the provisions of section 214 of WRDA 2000. The Corps will provide staffing resources dedicated to expediting permit evaluation related services, as described in Article II.D., below, for Agency-designated priority projects and/or other programmatic efforts to support efficient decision-making related to Agency's Section 408 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 Agency. Corps' personnel will charge their time and expenses against the account when they perform work to either expedite Section 408 permit evaluation related requests designated by Agency as a priority or undertake other programmatic efforts to support efficient decision-making related to Agency's permitting needs. Corps personnel will focus on the work as prioritized by the Agency, and if no or few projects are designated by the Agency as a priority, Corps personnel will then work on other programmatic efforts for the Agency.

D. Funds contributed by Agency 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 priority permit applications designated by the Agency. The Corps may expend Agency 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), environmental documentation preparation and review; any other permit evaluation related responsibilities that may be mutually agreed upon; and meeting coordination for the purpose of augmenting resources available to the Corps for expediting priority projects and activities designated by the Agency.

E. The Corps will *not* expend Agency's funds for costs of supervisor labor associated with the review of the Corps' work or for review by 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.

F. If the funds provided by the Agency are expended and not replenished, any remaining priority permit applications 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. 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. Agency will provide adequate resources, to fund existing or additional Corps personnel for the purpose of timely review of designated priority projects and other identified activities. To facilitate the Corps' reviews and activities, the Agency will:

1. Provide adequate information regarding projects, scheduling requirements, and other specific activities to initiate permit evaluation. Information required for the Corps to

initiate 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 Agency. Upon request, the Agency 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, the Agency shall provide such additional information so as to ensure the Corps can effectively accomplish the required review.

2. In consultation with the Corps, schedule the Corps' involvement in the priority projects identified by the Agency. The project(s) designated as a priority by the Agency are listed in **Appendix A** to this MOA. The list may be changed by the Agency's Principal Representative without requiring an amendment to this MOA. Such changes shall be submitted to the Corps' Principal Representative in writing 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 priority projects, then the Agency will work with the Corps to identify procedures to handle such overlaps or resolve the conflicts.

5. To the best of its ability, ensure the participation of all essential personnel during the permit evaluation process.

B. The Corps shall assign qualified personnel to evaluate the Agency's priority permit applications and prioritized 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 Agency'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 non-priority projects submitted by the Agency 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 Agency with an estimated schedule to complete the permit evaluation process for each application submitted. Agency shall be able to comment on these schedules and adjust their priorities per Appendix A, or provide additional resources per Article V. C, below.

3. Consult on a monthly basis with the Agency regarding an adjustment of priorities or establishment of relative priorities 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 V.C, below.

4. Provide the Agency a brief quarterly summary report of progress made under this MOA, or in accordance with the alternative schedule as agreed by the Parties to this MOA. Progress will be itemized for each permit application review completed during the quarter for each permit application 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 the environmental reviews, and will summarize expenditures to date. The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOA. The fourth quarter report shall include a summary of the annual progress made under this MOA. All reports shall not exceed five (5) pages per report.

5. Meet with the Agency as needed to discuss progress under this MOA.

6. Prior to expiration of the MOA, hold a final meeting with the Agency'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. Within thirty (30) days of the execution of this MOA, Agency shall submit funding to the Corps in the amount of \$155,000.00, to cover the Corps' anticipated costs of permit evaluation activities, which is expected to be incurred by the Corps on or before December 31, 2013 in association with Agency's priority projects listed in Appendix A.

B. 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. Prior to the start of each funding period, the Agency shall send a check, or provide by electronic fund transfer, the amount specified in paragraph C of this Article, payable to:

U.S. Army Corps of Engineers, Los Angeles District  
Finance and Accounting Officer  
P.O. Box 532711  
Los Angeles, CA 90053-2325  
Attn: Phil Serpa

C. The Corps will provide the Agency a 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, the agency will either initiate an amendment to this MOA to increase the funding amount, or agree to a reduced level of service. If the Agency opts to increase the funding level, the Corps will expeditiously process the amendment and use the Corps' best efforts to ensure that there is no interruption to the Corps work on the Agency's priority projects.

D. Additional payments by the Agency to the Corps, in an amount and schedule mutually agreed to by the Parties, may be made when priority projects are added to Appendix A.



E. 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.

F. The Agency may elect to extend the services of the Corps beyond December 31, 2013, subject to 1) additional funding being provided by the Agency and 2) written amendment to this MOA.

#### Article VI. - APPLICABLE LAWS

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

#### Article VII.- DISPUTE RESOLUTION

In the event of a dispute, the Parties agree to use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. 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 VIII. - PUBLIC INFORMATION

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

#### Article IX – AMENDMENT, MODIFICATION, AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties.

B. Either party reserves the right to terminate its participation in this MOA without cause upon thirty (30) days' written notice to the other parties. In the event of termination, the Agency 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 Agency with a final statement of expenditures. Within sixty (60) calendar days after submittal of the Corps' final statement of expenditures, the Corps shall

directly remit to Agency the unexpended balance of the advance payment, if any. Funds may be provided to the Agency either by check or electronic funds transfer.

#### Article X. - 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 the Agency's projects nor does it diminish, modify, or otherwise affect Corps statutory or regulatory authorities.

C. Under the provisions of section 214 of the WRDA 2000 as extended, no funds may be accepted or expended by the Corps pursuant to this MOA after December 31, 2016.

D. 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.

E. 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.

#### Article XI. - EFFECTIVE DATE AND DURATION

This MOA will be effective on the date of signature by the last Party. This MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2013; or 2) the MOA is terminated pursuant to Article IX.B.

[REMAINDER LEFT INTENTIONALLY BLANK]

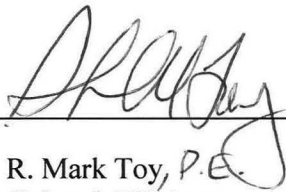
IN WITNESS WHEREOF, this MOA is executed by Corps acting by and through its authorized officer and by the Los Angeles District of the U.S. Army Corps of Engineers through its authorized officer.

VENTURA COUNTY WATERSHED PROTECTION DISTRICT

By:   
Sergio Vargas  
Interim Director

Date: 6/25/2012

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

By:   
R. Mark Toy, P.E.  
Colonel, US Army  
District Commander

Date: 13 JUL 2012



### **Appendix A: Agency's Priority Projects**

(Dated: May 4, 2012)

The list of Agency's Priority Projects under this MOA includes the following proposed projects:

1. Sespe Creek Levee from California State Highway 126 to Old Telegraph Road (SC-2)





REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY

LOS ANGELES DISTRICT CORPS OF ENGINEERS

P.O. BOX 532711

LOS ANGELES, CALIFORNIA 90053-2325

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

**AGREEMENT NO. WPD-2-2012-3**

SUBJECT: First Amendment to Memorandum of Agreement ("MOA") between the Ventura County Watershed Protection District and the U.S. Army Corps of Engineers, Los Angeles District

This First Amendment to Memorandum of Agreement ("FIRST AMENDMENT") is entered into by the Ventura County Watershed Protection District (hereinafter "Agency") and the Los Angeles District of the United States Army Corps of Engineers (hereinafter "Corps"), collectively referred to as the "Parties."

**RECITALS**

WHEREAS, the United States Army Corps of Engineers ("Corps") has jurisdiction pursuant to Section 14 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. 408) ("Section 408") regarding taking possession of, use of, injury to harbor and river improvement projects constructed by the Corps;

WHEREAS, the Parties entered into a MOA, effective July 13, 2012, for expedited and priority permit application reviews of Agency-designated priority projects by the Corps;

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 application of that entity related to a project or activity for a public purpose under the jurisdiction of the Corps;

WHEREAS, under the provisions of section 214 of the WRDA 2000 as extended, no funds may be accepted or expended by the Corps after December 31, 2016. However, this date may be extended by Federal law;

WHEREAS, the MOA is set to expire December 31, 2013;

WHEREAS, the Parties desire to modify the MOA to extend the duration of the MOA;  
and

SUBJECT: First Amendment to Memorandum of Agreement between the Ventura County Watershed Protection District and the U.S. Army Corps of Engineers' Los Angeles District

WHEREAS, the Corps has determined additional funding from the Agency is not necessary to continue to fund the section 214 of WRDA 2000 activities through December 31, 2016.

NOW, THEREFORE, the Parties agree as follows:

#### FIRST AMENDMENT

1. Article I. – PURPOSE AND AUTHORITIES. Article I.C. is modified in its entirety to read:

“C. This MOA is specific to Section 408 permit application reviews only. A separate agreement may be required between the Agency 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.”

2. Article V- FUNDING. Article V.A is modified in its entirety to read:

“A. Funding periods.

1. First funding period: July 13, 2012 - December 31, 2013
2. Second funding period: January 1, 2014 - December 31, 2016”

3. Article V. – FUNDING. Article V.F. is modified in its entirety to read:

“The Agency may not extend the services of the Corps beyond December 31, 2016 unless the sunset clause of section 214 of WRDA 2000 is extended in which case the Agency may request to extend services subject to 1) additional funding being provided by the Agency and 2) written amendment to this MOA.”

4. Article XI- EFFECTIVE DATE AND DURATION. Article XI is modified in its entirety to read:

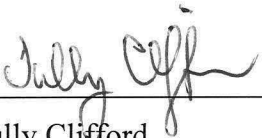
“This MOA and any amendments will become effective on the date of signature by the last party. Unless amended or modified pursuant to Article IX.A., this MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2016, or 2) the MOA is terminated pursuant to Article IX.B.”

5. Integration. This FIRST AMENDMENT represents the entire understanding of the Agency and the Corps regarding the MOA and changes to the MOA. All other terms and conditions of the MOA remain in full force and effect.

SUBJECT: First Amendment to Memorandum of Agreement between the Ventura County Watershed Protection District and the U.S. Army Corps of Engineers' Los Angeles District

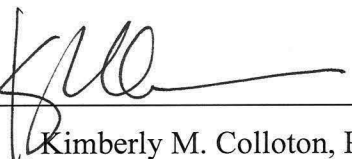
IN WITNESS WHEREOF, this FIRST AMENDMENT is executed by the Ventura County Watershed Protection District, acting by and through its authorized officer, and by the U.S. Army Corps of Engineers' Los Angeles District, through its authorized officer.

**VENTURA COUNTY WATERSHED PROTECTION DISTRICT**

By:   
Tully Clifford  
Director

Date: 11/27/2013

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

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

Date: 12/20/2013