

**MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF SAN DIEGO, PUBLIC UTILITIES DEPARTMENT
AND
THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into by the City of San Diego, Public Utilities Department (hereinafter the "City PUD") and the Los Angeles District of the United States Army Corps of Engineers (hereinafter the "Corps"), collectively referred to as the "Parties."

RECITALS

WHEREAS, the Corps has jurisdiction over certain activities occurring in waters of the United States, including wetlands, pursuant to section 404 of the Clean Water Act ("CWA") of 1972, as amended, and navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act ("RHA"), as amended.

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

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

WHEREAS, the Corps has indicated it is not able, without additional resources, to review or expedite the evaluation of permits of the City PUD related to projects for a public purpose; and

WHEREAS, the City PUD finds that it is in the public interest to provide funds to the Corps pursuant to this MOA to expedite Corps environmental review under section 404 of the CWA and section 10 of the RHA for designated City PUD priority projects ("PUD Priority Projects"), and that this MOA furthers the specific public policy of expediting processing of Department of the Army permit applications submitted by the City PUD to undertake the PUD Priority Projects; and

WHEREAS, the Corps issued an initial public notice dated, July 24, 2014 regarding its intent to accept and expend funds contributed by the City PUD; and

WHEREAS, in a memorandum dated May 5, 2015, the Corps' District Engineer determined that expenditure of funds received from the City PUD is appropriate, and an informational public notice will be issued on or before May 15, 2015; and

WHEREAS, the Corps complies with all federal laws, rules, and regulations regarding drug-free workplace requirements and the Americans With Disabilities Act; and

WHEREAS, it is understood and acknowledged by all Parties that the Corps' review of the City's PUD permit applications for PUD Priority Projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, this MOA establishes the responsibilities and operating procedures of the Parties with respect to priority reviews of City PUD Priority Projects requiring a Corps' permit pursuant to section 404 of the CWA and/or section 10 of the RHA; and

WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address, and protect environmental resources early in the development of proposed actions; (2) avoid conflicts late in project development through close coordination during early planning and development stages; (3) provide sufficient information to the Corps for timely analysis of project effects and to assist City in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps Regulatory Division personnel by focusing attention on projects that would most affect aquatic resources; (5) provide a mechanism for expediting project coordination when necessary; and (6) provide procedures for resolving disputes in this resource partnering effort; and

WHEREAS, in 2005, the City PUD and the Corps had entered into a Memorandum of Agreement ("2005 MOA;" City PUD Document No. RR-299611) for expedited and priority review by the Corps; and

WHEREAS, at the time the 2005 MOA expired approximately \$50,000 of advanced funds had not been spent by the Corps; and

WHEREAS, the City allowed the Corps to hold the unspent City PUD monies pending approval of a new agreement; and

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 City PUD to provide expedited permit evaluation-related services for PUD Priority Projects requiring Corps' approval pursuant to section 404 of the CWA and/or section 10 of the RHA as listed in **Appendix A** to this MOA. This MOA is not intended as the exclusive means of obtaining review of projects proposed by the City PUD but rather is a vehicle by which the City PUD will obtain expedited permit evaluation-related services outside of the ordinary Corps review process.

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

C. The City PUD enters into this MOA pursuant to its authority under San Diego Municipal Code § 22.3210.

Article II. - SCOPE OF WORK

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

B. The Corps will provide staffing resources exclusively dedicated to expediting permit evaluation-related services, as described below, for City PUD Projects and/or other programmatic efforts to support efficient decision-making related to the City CWA section 404 and RHA section 10 permitting needs.

C. The Corps will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of permit applications submitted by the City PUD for PUD Priority Projects. Corps Regulatory personnel will charge their time and expenses against the account when they perform work to either expedite resolution of permit evaluation related requests for PUD Priority Projects or undertake other programmatic efforts to support efficient decision making related to the City PUD's permitting needs. Corps Regulatory personnel will focus on the work as prioritized by the City PUD, and if the projects designated by the City PUD as priorities are insufficient to keep Corps personnel busy, Corps personnel will then work on other programmatic efforts for the City PUD. Other programmatic efforts include, but are not limited to evaluation of (1) new Regional General Permits (RGPs), (2) CWA section 404 Letters of Permission (LOP), and (3) mitigation bank efforts.

D. Funds contributed by the City PUD hereunder will be expended by the Corps to defray the costs of Regulatory Division personnel (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite PUD Priority Project permit applications. Such activities will include, but not be limited to, the following: jurisdictional determinations; site visits; travel; federal register and public notice preparation; preparation of correspondence; public interest review; preparation and review of environmental documentation; undertaking consultations pursuant to section 106 of the National Historic Preservation Act and section 7 of the Endangered Species Act; and meetings with the City and resource agencies.

E. The Corps will not expend funds contributed by City PUD for costs associated with the review of Regulatory Project Managers' work 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, decision-making oversight, funds may be used.

F. The Corps will not expend funds contributed by the City PUD to defray the costs of activities related to the Corps' enforcement functions, but may use funds provided by City PUD to defray costs of activities related to permit compliance functions.

G. If the funds provided by the City PUD are expended and not replenished, any remaining PUD Priority Projects will be handled like those of any permit applicant.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Parties, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on specific actions or issues. For the purposes of this MOA, the City PUD's Principal Representative will be the Deputy Director of the Engineering and Program Management Division, City of San Diego Public Utilities Department and the Corps' Principal Representative will be Therese Bradford, Chief, South Coast Branch, Regulatory Division. The Principal Representative for each party may be changed upon written notification to the other parties.

Article IV. - 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 City:

City of San Diego, Public Utilities Department
Deputy Director
Engineering and Program Management Division
9192 Topaz Way
San Diego, CA 92123

If to the ACOE:

Chief, South Coast Branch
Regulatory Division
U.S. Army Corps of Engineers
Los Angeles District
5900 La Place Court, Suite 100
Carlsbad, CA 92008

With a copy in all instances to:

District Counsel
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Blvd.

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 City PUD in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

Article V. - RESPONSIBILITIES OF THE PARTIES

A. The City PUD will provide adequate resources to fund existing or additional Corps Regulatory personnel for the purpose of timely review of PUD Priority Projects and other identified activities. To facilitate the Corps' review and activities, the City PUD will:

1. Provide adequate information regarding projects and other specific activities to initiate permit evaluation. Information required for the Corps to deem a permit application complete, thereby allowing initiation of the permit review process, can be found in Corps regulations at 33 C.F.R. §§ 325.1(d), 325.3(a), and in General Condition 31 of the Nationwide Permit Program. Upon request, the City PUD shall provide supplemental information necessary to complete the permit application. Additional information [33 CFR Part 325.1(e)] required to complete the permit evaluation process may exceed what is needed to initiate the process. On a case-by-case basis, if requested by the Corps, the City PUD shall provide such additional information in a timely manner so as to ensure the Corps can effectively accomplish the required review.

2. Make a reasonable effort to provide the Corps with information on other projects with City PUD involvement to enable the Corps to most efficiently apply available staff resources and plan for workload cycles.

3. In consultation with the Corps, schedule Corps involvement in the PUD Priority Projects. The list of initial PUD Priority Project is listed in Appendix A. The list may be changed by mutual agreement of the Principal Representatives of each party 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 V and will be effective upon receipt thereof.

4. To the best of their ability, ensure the participation of all essential personnel during the permit evaluation or compliance process.

5. Work closely with the Corps to adjust priorities and schedules in order to make optimal use of available Regulatory Division staff resources. While the City PUD will make every effort not to overlap project schedules, occasional overlaps may occur and the City PUD Principal Representative will work with the Corps to prioritize such overlaps.

6. Provide funding pursuant to the terms of this MOA.

B. The Corps shall supplement or reassign its existing Regulatory Division personnel, which currently reviews City PUD projects on a routine basis, with qualified personnel within projected funding levels provided by the City PUD. The Corps shall use the funds provided to defray the costs of salaries and associated benefits and to reimburse travel expenses in order to:

1. Expedite review of the PUD Priority Projects in accordance with the purpose, terms, and conditions of this MOA or any amendments thereto.

2. Upon submittal of new permit applications and following any meetings and discussions to clarify the scope of anticipated permit application review processes, Corps staff will provide the City PUD with an estimated schedule and cost estimate to complete the permit evaluation process for each application submitted. The City PUD shall be able to comment on the estimated completion date and adjust priorities in Appendix A, or provide additional resources per Article VI.E.

3. Consult with the City PUD regarding an adjustment of priorities in Appendix A if the current and/or projected workload of PUD Priority Projects and programmatic efforts exceeds Corps' ability to provide the services herein or negotiate additional funding in accordance with Article VI below.

4. Provide the City PUD a brief quarterly summary report of progress made and costs incurred under this MOA. Progress will be itemized for each permit application review completed during the quarter and 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 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 and will provide an estimate of costs expected for the ensuing quarter. The report shall not be in excess of five (5) pages.

5. Designate a Regulatory Project Manager who will make his or her best efforts to attend periodic meetings with the City PUD.

Article VI. - FUNDING

A. The total amount of funding authorized by this MOA is not to exceed \$400,000.

B. The MOA shall initially be funded by the \$49,643.88 that the City PUD has on deposit with the Corps in Fund Auth/CO: COA511 and Fund Acct. L197796, which is the balance remaining from the 2005 MOA.

C. No later than August 15, 2015, and August 15 of each subsequent year that this MOA remains in effect, the Corps will provide the City PUD with an anticipated cost invoice ("Invoice") that provides an updated budget estimate of costs for the next Federal fiscal year, including any proposed changes in the level of staffing, less any estimated carry-over of unobligated funds from the prior Federal fiscal year. Revisions agreed to by the Parties will be incorporated into a revised budget estimate. Each Invoice shall be provided on Corps letterhead, have a unique number, and include (1) the Corps' name and address, (2) Corps' remittance

address, if different, (3) name of City agency/department, (4) delivery/service address, (5) service dates, (6) description of services, (7) total amount, and (8) taxpayer ID number. Invoices shall be submitted by the Corps to:

City of San Diego
Public Utilities Department
Attn: Accounts Payable
9192 Topaz Way
San Diego, CA 92123

D. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, the City PUD will make a lump sum payment to the Corps of the total amount specified in the Corps' revised budget estimate. Payments by the City PUD are to be made to check payable to the Finance and Accounting Officer and sent to the following address:

U.S. Army Corps of Engineers, Los Angeles District
Finance and Accounting Officer
915 Wilshire Blvd.
Los Angeles, CA 90053-2325
Attn: Carlos M. Tabares

or by electronic funds transfer in accordance with Standard Operating Procedure UFC 08 **Appendix B**).

E. If the Corps' actual costs for providing the agreed upon level of service will at any time during the term of this MOA exceed the amount of funds available, the Corps will notify the City PUD at least ninety (90) days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. The City PUD will have the option of (i) making a payment to the Corps for the incremental amount, provided the total amount of payments to the Corps does not exceed the total funding amount, (ii) increasing the total funding amount through an amendment to this MOA, or (iii) agree to a reduced level of service.

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

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 proceed in accordance with applicable Federal law.

Article IX.- PUBLIC INFORMATION

Justification and explanation of City PUD 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 City PUD, 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.

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 parties. In the event of termination, the terminating party will continue to be responsible for all costs incurred by the Corps or its contractors in performing expedited environmental permit review services up to the time of notice and for the costs of closing out any ongoing contracts in support of the provision of services by the Corps under this MOA.

C. Within ninety (90) calendar days of termination or expiration of the MOA, the Corps shall provide the City PUD 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 City PUD the unexpended balance of the advance payments, if any. Funds may be provided to the City PUD 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. 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.

C. The Corps' participation in this MOA does not imply endorsement of City PUD projects nor does it diminish, modify, or otherwise affect Corps statutory or regulatory authorities.

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.

E. To the extent not inconsistent with Federal law, rules, and regulations, the City PUD shall have the right to review and audit, and the reasonable right of access to the Corps' premises during normal business hours to review and audit the Corps' compliance with the provisions of this MOA ("City PUD's Right"). The City PUD's Right includes the right to inspect and photocopy any and all books, records, documents, accounting records, and any other evidence of procedures and practices that the City PUD determines are necessary to discover and verify that the Corps is in compliance with all requirements under this MOA, and to retain copies, outside of the Corps' premises, of any and all records related to the expedited permit evaluation services provided hereunder with appropriate safeguards, if such retention is deemed necessary by the City PUD in its sole discretion. This information shall be kept by the City PUD in the strictest confidence allowed by law.

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, this MOA shall remain in force until whichever of these events occurs first: 1) five (5) years from the effective date of this MOA; or 2) the MOA is terminated pursuant to Article X.

[REMAINDER LEFT INTENTIONALLY BLANK]

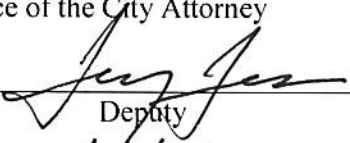
IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by the City PUD, acting by and through its authorized officer, and by the Corps, through its authorized officer.

CITY OF SAN DIEGO, a municipal corporation

Date: 3/24/15

By: 
Dennis Gakunga
Director
Purchasing & Contracting

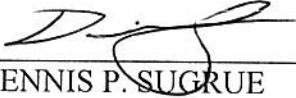
APPROVED AS TO FORM:
Office of the City Attorney

By: 
Deputy

Date: 3/26/15

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

Date: 5/9/15

By: 
DENNIS P. SUGRUE
Major, US Army
Acting Commander and
Acting District Engineer

Appendix A

The list of City PUD-designated priority projects under this MOA includes the following proposed projects:

Federal Fiscal Year 2015

Black Mountain Access Road Repair
Stadium Mitigation Site
East Tecolote Canyon Long Term Access
Mount Elbrus Long Term Access

Federal Fiscal Year 2015 and Future Federal Fiscal Years

PUD Pure Water San Diego Program
Emergency Maintenance (Sewer & Water)
General (Nationwide) – Access, pipe and manhole protection, manhole replacement, spot and pipe repair etc.
Operations and Maintenance
EMTS Boat Dock
PUD Mitigation Site (other)
PUD Long Term Access (general/other)
Tecolote Cyn Trunk Sewer
Alvarado PH IV
Lake Hodges Dam
Morena Reservoir
Otay Valley Manhole Repairs
GJ 966
GJ 963
GJ 955 (vernal pools)
GJ 836
Rose Canyon Trunk Sewer Joint Repair
Manning Canyon Abandonment
PUD CIP Projects

Future Federal Fiscal Years

Pure Water San Diego Program
Black Mountain Mitigation Site
South Chollas Long Term Access
Van Nuys Long Term Access
PUD CIP Projects