

**MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF SAN DIEGO
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 (hereinafter the “City”) 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 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; and

WHEREAS, 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. However, this date may be extended by Federal law; 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 District and the County related to projects for a public purpose; and

WHEREAS, the City 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 priority projects as more fully described in this MOA, and that this MOA furthers the specific public policy of expediting processing of Department of the Army permit applications submitted by the City to undertake designed priority projects associated with maintenance of the City’s flood control and drainage facilities; and

WHEREAS, the Corps issued an initial public notice dated, April 30, 2013 regarding its intent to accept and expend funds contributed by the City; and

WHEREAS, in a memorandum dated December 30, 2013, the Corps' District Engineer determined that expenditure of funds received from the City is appropriate, and an informational public notice will be issued on or before January 8, 2014; 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 permit applications for City-designated 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-designated 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.

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 to provide expedited permit evaluation-related services for City-designated 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 ("Priority Projects"). This MOA is not intended as the exclusive means of obtaining review of projects proposed by the City. This MOA is a vehicle by which the City 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 enters into this MOA pursuant to its authority under San Diego Municipal Code § 22.3210.

Article II. - SCOPE OF WORK

A. The City will provide funds to the Corps to expedite permit evaluation related services for designated 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 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-designated Priority 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 for 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 Priority Projects or undertake other programmatic efforts to support efficient decision making related to the City's permitting needs. Corps Regulatory personnel will focus on the work as prioritized by the City, and if the projects designated by the City as priorities are insufficient to keep Corps personnel busy, Corps personnel will then work on other programmatic efforts for the City.

D. Funds contributed by the City 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 the evaluation of 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 may expend funds contributed by City to hire contractors to perform select duties, including but not limited to site visits; preparing and providing technical materials, including environmental documentation; GIS-related services; and meeting coordination for the purpose of augmenting the resources available to the Corps for expediting City-designated Priority Projects and activities. If such expenditures, when combined with the costs of the Regulatory Division personnel specified in Article II.D, require funding in excess of the amount available under this MOA, then said contractors shall not be hired by the Corps until and unless additional funds are provided by the City, and the Parties execute a written amendment to this MOA.

F. The Corps will not expend funds contributed by City 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.

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

H. If the funds provided by the City are expended and not replenished, any remaining City-designated 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's Principal Representative will be Kris McFadden, Deputy Director, City of San Diego Transportation & Storm Water 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

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, Transportation & Storm Water Department
Kris McFadden, Deputy Director, Storm Water Division
9370 Chesapeake Drive, Suite 100, MS 1900
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 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 will provide adequate resources to fund existing or additional Corps Regulatory personnel for the purpose of timely review of City-designated Priority Projects and other identified activities. To facilitate the Corps' review and activities, the City 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 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 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 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 City-designated Priority Projects. The list of initial Priority Project is shown 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 will make

every effort not to overlap project schedules, occasional overlaps may occur and the City 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 projects on a routine basis, with qualified personnel within projected funding levels provided by the City. 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 City-designated 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, permit applications related to non-priority projects submitted by the City through the standard Corps review process.

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 with an estimated schedule and budget to complete the permit evaluation process for each application submitted. The City shall be able to comment on these schedules and adjust priorities per Appendix A, or provide additional resources per Article VI.D.

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

4. Provide the City 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.

Article VI. - FUNDING

A. The total amount of funding authorized by this MOA is \$400,000.

B. Within 30 days of execution of this MOA, the City shall pay the anticipated costs expected to be incurred through September 30, 2014 at the level specified in the Corps' budget estimate, which is included as Appendix B to this MOA and incorporated herein by reference.

C. No later than July 1 of each year that this MOA remains in effect, the Corps will provide the City 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. For Federal fiscal year 2017, unless the sunset provision of section 214 of WRDA 2000 is extended, the Corps shall provide the City with an Invoice that provides an updated budget estimate of anticipated costs through the sunset date of December 31, 2016. 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
Accounts Payable
Attn: Transportation & Storm Water Department, Storm Water Division
9370 Chesapeake Drive, Suite 100, MS 1900
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 will make an annual lump sum payment to the Corps of the total amount specified in the Invoice(s). Payments by the City are to be made 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
P.O. Box 532711
Los Angeles, CA 90053-2325
Attn: Carlos M. Tabares

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 at least ninety (90) days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. The City will either increase the total funding amount through an amendment to this MOA, or 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.

G. The Corps will neither accept nor expend funds under this MOA after December 31, 2016, unless Federal law extends the Corps authority under section 214 of WRDA 2000, to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

Article VII. - APPLICABLE LAWS

The applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by

law, all expediting of permit applications undertaken by the Corps will be governed by Corps regulations, policies and procedures.

Article VIII. - DISPUTE RESOLUTION

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 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, 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 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 the unexpended balance of the advance payments, if any. Funds may be provided to the City 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 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 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 (the "City's Right"). The City'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 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 in its sole discretion. This information shall be kept by the City 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) December 31, 2016, unless the sunset clause of section 214 of WRDA 2000 is extended or made the authority made permanent, in which case the MOA will remain in effect for the duration of the statutory extension but not to exceed an amount of time equal to five (5) years from the effective date of this MOA; or 2) the MOA is terminated pursuant to Article X.

[REMAINDER LEFT INTENTIONALLY BLANK]

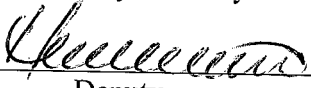
IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by the City, acting by and through its authorized officer, and by the Corps, through its authorized officer.

CITY OF SAN DIEGO, a municipal corporation

Date: 27 NOV 13

By 

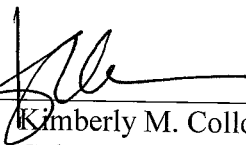
APPROVED AS TO FORM:
Office of the City Attorney

By: 
Deputy

Date: December 4, 2013

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

Date: December 31, 2013

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

Appendix A: City-Designated Priority Projects

The list of City-designated Priority Projects under this MOA includes the following proposed projects:

Category A – Priority Projects for 2013 - 2014

1. Tijuana River Valley Pilot Channel and Smuggler’s Gulch Maintenance and Wetlands Enhancement (File No. SPL-2009-00719-RRS)
2. Sorrento Creek Channel Maintenance (File No. SPL-2013-00432-MBS)
3. Murphy Canyon Creek Channel Maintenance (File No. SPL-2013-00494-MBS)
4. El Cuervo Del Sur Wetlands Creation
5. Los Penasquitos Wetlands Enhancement
6. Stadium Wetlands Mitigation Project

Category B – Priority Projects for 2014 – 2015

1. Sorrento Creek Channel Maintenance (SPL-2010-00985-MBS)
2. Mission Bay High School Channel Maintenance
3. Alvarado Creek Channel Maintenance
4. Jamacha Channel Maintenance and Wetlands Mitigation
5. Auburn Creek Channel Maintenance and Wetlands Mitigation

Category C – Programmatic Permit for City of San Diego’s Master Storm Water System Maintenance Program (Master Maintenance Program) Channels

Appendix B: Corps' Fiscal Year 2014 Budget Estimate

TASK	COST
Pre-application Meetings	\$ 30,000
Project Review and Analysis	\$ 80,000
Administrative	\$ 10,000
Monitoring	\$ 10,000
Subtotal Personnel Costs	\$130,000
Travel and Training	\$ 15,000
Subtotal Direct Costs:	\$15,000
Total:	\$145,000