



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
915 WILSHIRE BOULEVARD, SUITE 930
LOS ANGELES, CALIFORNIA 90017

SECON DAMENDMENT
TO
MEMORANDUM OF AGREEMENT
BETWEEN
CITY OF SAN MARCOS
AND

THE UNITED STATES ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

SUBJECT: Second Amendment to Memorandum of Agreement between the City of San Marcos (hereinafter the "City") and the U.S. Army Corps of Engineers, Los Angeles District

This Second Amendment to Memorandum of Agreement ("SECOND AMENDMENT"), made the 16th day of December 2016, is entered into by 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 of 1972, as amended, and navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act of 1899, as amended; and

WHEREAS, the Parties entered into a Memorandum of Agreement ("MOA"), dated December 4, 2009, for expedited and priority review of City-designated priority projects by the Corps; and

WHEREAS, the Parties entered into a First Amendment to the MOA, effective November 23, 2011, to modify some terms and extend the duration of the MOA; 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, by memorandum dated September 2, 2015, 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, \$4,429.25 has been expended under the current terms of the MOA through June 2016, leaving a balance of approximately \$138,574.77 in available funds; and

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WHEREAS, the Parties desire to enter into a SECOND AMENDMENT to the MOA to further extend the duration of the MOA. The intent of the Parties is that this MOA shall remain in force for so long as the Corps is authorized to accept or expend funds under 33 U.S.C. § 2352 unless otherwise terminated by the Parties pursuant to the terms of this MOA; and

NOW, THEREFORE, the Parties agree as follows:

SECOND AMENDMENT

1. Article IV. – RESPONSIBILITIES OF THE PARTIES. Article IV.A.1 is modified in its entirety to read:

“A. The City shall:

1. Provide adequate information regarding City-designated priority projects, 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 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 C.F.R. § 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 so as to ensure the Corps can effectively accomplish the required review.”

2. Article VI. – FUNDING. This entire Article is modified in its entirety to read:

“Article VI. – FUNDING

- A. It is anticipated that previous funds provided by the City are sufficient to fund all work anticipated under this MOA through December 31, 2021.
- B. No later than October 1, 2021 and October 1 of each year thereafter 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 calendar year, including any proposed changes in the level of staffing. Revisions agreed to by the Parties will be incorporated into a revised budget estimate. Invoices shall be submitted by the Corps to:

Matt Little
Deputy City Manager/Public Works Director
City of San Marcos
1 Civic Drive
San Marcos, CA 92069-2918

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- C. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, the City will each make a lump sum payment to the Corps of the total amount specified in the Corps' Invoice(s). Payments by the City are to be made by 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 90017
Attn: Carlos M. Tabares

- D. 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 90 days prior to fund exhaustion of the incremental amount of funds needed to defray the costs. The City will have the option of (i) making a payment to the Corps for the incremental amount or (ii) agreeing to a reduced level of service.
- E. The Corps will carry over any unobligated funds from year to year, or will refund such unobligated funds if this MOA is terminated or expires.”

3. Article X.- EFFECTIVE DATE. This Article is modified in its entirety to read:

“Article X. -EFFECTIVE DATE AND DURATION

This MOA and any amendments will become effective on the date of signature by the last Party. Unless amended or modified pursuant to Article IX.A., this MOA shall remain in force until the MOA is terminated pursuant to Article IX.B.”

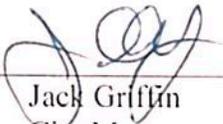
4. Integration. This SECOND AMENDMENT represents the entire understanding of the City and the Corps regarding the changes to the MOA, and all other terms and conditions of the MOA remain in full force and effect.

[REMAINDER LEFT INTENTIONALLY BLANK]

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IN WITNESS WHEREOF, this SECOND AMENDMENT is executed by the City of San Marcos, acting by and through its City Council or designated management authority, and by the U.S. Army Corps of Engineers, through its authorized officer.

CITY OF SAN MARCOS

By: 

Jack Griffin
City Manager

Date: 11/15/16

ATTEST:

By: 

Phillip Scollick
City Clerk

APPROVED AS TO FORM:

By: 

Helen Holmes Peak
City Attorney

Date: 11/15/16

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

By: 

Kirk E. Gibbs
Colonel, US Army
Commander and District Engineer

Date: 12-16-16