

**FIRST AMENDMENT  
TO  
MEMORANDUM OF AGREEMENT  
BETWEEN  
CITY OF SAN MARCOS, CA  
AND THE  
UNITED STATES ARMY CORPS OF ENGINEERS,  
LOS ANGELES DISTRICT**

RECEIVED

DEC 07 2011

REGULATORY BRANCH  
CARLSBAD FIELD OFFICE

This First Amendment to Memorandum of Agreement (“FIRST AMENDMENT”), made the 22nd day of November, 2011, is entered into by the City of San Marcos, CA (hereinafter the “City”) and the Department of the Army, represented by the United States Army Corps of Engineers, Los Angeles District (hereinafter the “Corps”), collectively referred to as “the Parties.”

RECITALS

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, 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, Public Law 111-315, signed into law on December 18, 2010, extended the sunset clause of section 214 of WRDA 2000 to December 31, 2016; and

WHEREAS, the MOA is set to expire December 4, 2011; and

WHEREAS, the Parties desire to extend the duration of the MOA.

NOW, THEREFORE, the Parties agree as follows:

FIRST AMENDMENT

1. Article V. - IMPARTIAL DECISIONMAKING. This Article is deleted in its entirety.

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

“ARTICLE VI. - FUNDING

A. Within 30 days of execution of this MOA, City shall pay the anticipated costs expected to be incurred through September 30, 2012, at the level specified in the Corps’ budget estimate, which is included as **Appendix B** to this MOA and incorporated herein by reference.

B. 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. Revisions agreed to by the Parties will be incorporated into a revised budget estimate. Invoices shall be submitted by the Corps to:

Mike Edwards  
1 Civic Drive  
San Marcos, CA 92069-2918

C. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, the City will each make an annual lump sum payment to the Corps. Upon receipt of the Corps’ Invoice(s) and in accordance with normal City payment procedures, the City make an annual lump sum payment, in advance, of the total amount specified in the Invoice(s).

D. 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. Payments by the City are to be made to:

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 exceed the amount of funds available, the Corps will promptly notify the City of the incremental amount of funds needed to defray the costs. The City will either increase the funding amount 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.”

3. Article X. – MISCELLANEOUS. Paragraph B, Survival, is modified in its entirety to read:

“Under the provisions of section 214 of WRDA 2000 as extended, no funds may be expended pursuant to this MOA after December 31, 2016. However, if prior to this date, this statutory authority is extended or made permanent, then provisions

of this MOA shall remain in force until the earlier of the sunseting of section 214 of WRDA 2000, as further extended or made permanent, or until the expiration date as provided in this MOA.”

4. Article IX. – AMENDMENT, MODIFICATION AND TERMINATION. This Article is modified in its entirety to read:

“ARTICLE IX. – 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 City 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 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.”

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

“ARTICLE X - EFFECTIVE DATE AND DURATION

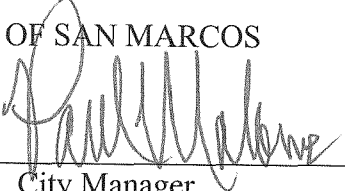
This MOA and any amendments will become effective on the date of signature by the last Party. This MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2016 or 2) the MOA is terminated pursuant to Article IX.B.”

6. Integration. This First 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]

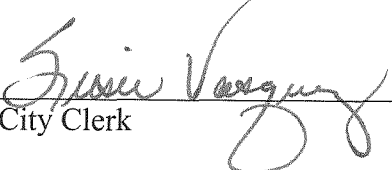
IN WITNESS WHEREOF, this FIRST AMENDMENT is executed by City of San Marcos, CA, acting by and through its City Council or designated management authority, and by the U.S. Army Corps of Engineers, through its authorized officer.

CITY OF SAN MARCOS

By:   
City Manager

Date: 11/21/11

ATTEST:


By:   
City Clerk

APPROVED AS TO FORM:

By:   
Counsel

Date: 11.22.2011

U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT

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

Date: 23 NOV 2011

Cost Proposal:

APPENDIX B

City of San Marcos - U.S. Army Corps of Engineers, Regulatory Division Technical Assistance  
and Environmental Coordination Agreement for Section 214 of WRDA 2000 Activities

November 21, 2011

Los Angeles District

Personnel Costs

Federal Fiscal Year 2012

(Oct 1, 2011 - Sept 30, 2012)

Tasks

Staff

Days

Rate

Cost

Task 1 Pre-Application Mtgs	19.00	\$1,097	\$20,843
Task 2 Project Review and Analysis	140.00	\$1,097	\$153,580
Task 3 Monitoring and Compliance	19.00	\$1,097	\$20,843

Support work of GS-12/13	149.54	\$0	\$0
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<b>Subtotal Personnel Costs</b>	<b>327.54</b>		<b>\$195,266</b>
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<b>Direct Costs:</b>			
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Travel, Training, and Supplies @ \$200			\$5,001
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<b>Subtotal Direct Costs</b>			<b>\$5,001</b>
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<b>Total:</b>	<b>327.54</b>		<b>\$200,267</b>
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Rate Calculations

(all costs above for GS11/12 unless otherwise noted)

Federal Fiscal Year 2011

Based on 2010 Locality Pay Tables

Basic Hourly Rate

Daily Rate (hourly rate x 8 hours)

Effective Daily Rate (w/ benefits @ 54%)

Overhead (Department 34% + District 39% = 73% total)

**Total Daily Rate (Effective Daily Rate + OH)**