



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

**THIRD AMENDMENT
TO
MEMORANDUM OF AGREEMENT (5001595)
BETWEEN
SAN DIEGO ASSOCIATION OF GOVERNMENTS
AND
THE UNITED STATES ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

SUBJECT: Third Amendment to Memorandum of Agreement between the San Diego Association of Governments and the U.S. Army Corps of Engineers, Los Angeles District

This Third Amendment to Memorandum of Agreement (“THIRD AMENDMENT”), made the 27 day of ~~SEPTEMBER~~ 2016, is entered into by the San Diego Association of Governments (hereinafter “SANDAG”) 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 Parties entered into a Memorandum of Agreement (“MOA”), dated December 23, 2010, for expedited and priority review of SANDAG-designated priority projects by the Corps; and

WHEREAS, the Parties entered into a First Amendment to the MOA, effective December 18, 2012, extending the duration of the MOA until December 23, 2014; and

WHEREAS, the Parties entered into a Second Amendment to the MOA, effective March 6, 2014, extending the duration of the MOA until 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, \$709,286.98 has been expended under the current terms of the MOA through September 1, 2016, leaving a balance of approximately \$90,713.02 in available funds; and

WHEREAS, the Parties desire to enter into a Third Amendment to the MOA to further extend the duration of the MOA and provide additional funding.

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NOW, THEREFORE, the Parties agree as follows:

THIRD AMENDMENT

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

“A. SANDAG will provide adequate resources to fund additional Corps Regulatory personnel for the purpose of timely review of designated priority projects and other identified activities. To facilitate the Corps’ reviews and activities, SANDAG 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 as published in the Federal Register. Upon request, SANDAG 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, SANDAG shall provide such additional information so as to ensure the Corps can effectively accomplish the required review.”

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

“Article V. – FUNDING

A. It is anticipated that previous funds provided by SANDAG are sufficient to fund all work anticipated under this MOA through December 31, 2016.

B. The total compensation paid to the Corps under this Third Amendment shall not exceed four hundred Thousand Dollars (\$400,000).

C. No later than September 1 of each year, beginning on September 1, 2016, that this MOA remains in effect, the Corps will provide SANDAG with an anticipated cost invoice (“Invoice”) that provides a budget estimate of costs for the next calendar year, including any proposed changes in the level of staffing, less any estimated carry-over of unobligated funds from the prior calendar 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) service dates, (4) description of services, and (5) total amount. Invoices shall be submitted by the Corps to:

Gary L. Gallegos, Executive Director
San Diego Association of Governments

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401 B Street, Suite 800
San Diego, California 92101-4231

D. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, SANDAG will make an annual lump sum payment to the Corps in the total amount specified in the revised budget estimate. Payments by SANDAG shall be made to:

U.S. Army Corps of Engineers, Los Angeles District
Finance and Accounting Officer
915 Wilshire Blvd.
Los Angeles, CA 90017
Attn: Carlos M. Tabares

E. The Corps will carry-over any unobligated funds from year to year, or will refund such unobligated funds if this MOA expires or is terminated pursuant to Article VIII.B.

F. 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 SANDAG at least 90 days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. SANDAG will either increase the funding amount or agree to a reduced level of service

G. Expediting of permit actions by the Corps will be provided under this MOA only after funds have been received by the Corps."

3. MISCELLANEOUS. Paragraph B is deleted in its entirety.

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

"ARTICLE IX - 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 VIII.A., this MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2020, the MOA is terminated pursuant to Article VIII.B."

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

"ARTICLE X.- INTEGRATION

This THIRD AMENDMENT represents the entire understanding of SANDAG and the Corps regarding the MOA and changes to the MOA, First Amendment, and Second Amendment. All

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other terms and conditions of the MOA, First Amendment, and Second Amendment remain in full force and effect.”

IN WITNESS WHEREOF, this THIRD AMENDMENT is executed by SANDAG, acting by and through its Board of Directors or designated management authority, and by the U.S. Army Corps of Engineers, through its authorized officer.

San Diego Association of Governments

By: 

Gary L. Gallegos
Executive Director

Date: 9-7-2016

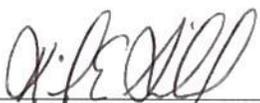
APPROVED AS TO FORM:

By: 

Shelby Tucker
Office of General Counsel

Date: 9/10/16

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

By: 

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

Date: 9/27/2016