



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

LOS ANGELES DISTRICT CORPS OF ENGINEERS
P.O. BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

December 18, 2012

Office of the Commander
and District Engineer

Larry Purcell
Environmental Manager
San Diego County Water Authority
4677 Overland Drive
San Diego, California 92123-1233

Dear Mr. Purcell:

I am pleased to provide you the enclosed First Amendment to the Memorandum of Agreement (MOA) between the U.S. Army Corps of Engineers (Corps) and the San Diego County Water Authority (SDCWA) pursuant to Section 214 of the Water Resources Development Act (WRDA) dated December 10, 2012.

The purpose of this amendment to the MOA is to extend the expiration of the original agreement from December 18, 2012 to December 31, 2016 or until all existing funds are expended. This extension allows the Corps to continue using funds in order to prioritize SDCWA projects and regional planning efforts until, and if needed a new MOA with an updated funding agreement is coordinated.

I look forward to continuing our partnership in the coming years. If you should have any questions, you may contact me at (760) 602-4832, or your staff can contact Ms. Therese O. Bradford, South Coast Branch Chief of our Regulatory Division at (760) 602-4850 or via email at therese.o.bradford@usace.army.mil.

"Building Strong and Taking Care of People!"

Sincerely,

A handwritten signature in black ink, appearing to read "R. Mark Toy".

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

**FIRST AMENDMENT
TO
MEMORANDUM OF AGREEMENT
BETWEEN
SAN DIEGO COUNTY WATER AUTHORITY
AND THE
UNITED STATES ARMY CORPS OF ENGINEERS,
LOS ANGELES DISTRICT**

This First Amendment to Memorandum of Agreement (“FIRST AMENDMENT”), made the 18 day of DEC, 2012, is entered into by the San Diego County Water Authority (hereinafter the “Water Authority”) 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”), effective December 18, 2009, for expedited and priority review of Water Authority-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 18, 2012; and

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

NOW, THEREFORE, the Parties agree as follows:

FIRST AMENDMENT

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

“A. The Water Authority shall:

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 (77 Fed. Reg. 10184, dated February 21, 2012). Upon request, the Water Authority 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 Water Authority shall provide such additional information so as to ensure the Corps can effectively accomplish the required review.”

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

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

“ARTICLE VI. - FUNDING

A. Funds already in the account are anticipated to be adequate to cover costs expected to be incurred through September 30, 2013.

B. No later than July 1 of each year that this MOA remains in effect, the Corps will provide the Water Authority 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. For Federal fiscal year 2017, unless the sunset provision of Section 214 of WRDA 2000 is extended, the Corps shall provide the Water Authority with an Invoice that provides an updated budget estimate of anticipated costs through the sunset date of December 31, 2016. Invoices shall be submitted by the Corps to:

Mr. Ken Weinberg
Director of Water Resources
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123

C. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, the Water Authority will make an annual lump sum payment to the Corps of the total amount specified in the Invoice(s). Payments by the Water Authority 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

D. If the Corps' actual costs for providing the agreed upon level of service will exceed the amount of funds available, the Corps will notify the Water Authority at least 90 days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. The Water Authority will either increase the funding amount or agree 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.”

4. 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.”

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

“ARTICLE XI. – 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 party. In the event of termination, the Water Authority 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 of the MOA, or the expiration of the MOA, the Corps shall provide the Water Authority with a final statement of expenditures. Within thirty (30) 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 Water Authority the unexpended balance of the advance payments, if any. Funds may be provided to the Water Authority either by check or electronic funds transfer.”

6. ARTICLE XII.- EFFECTIVE DATE. This Article is modified in its entirety to read:

“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 pursuant to Article XI.A, 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 XI.B.”

7. Integration. This FIRST AMENDMENT represents the entire understanding of the Water Authority and the Corps regarding the MOA and changes to the MOA. 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 the Water Authority, acting by and through its Director of Water Resources, and by the U.S. Army Corps of Engineers, through its authorized officer.

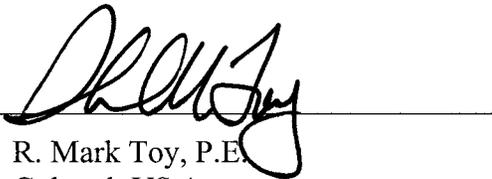
SAN DIEGO COUNTY WATER AUTHORITY

By: 

Ken Weinberg
Director of Water Resources

Date: December 12, 2012

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

By: 

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

Date: 18 DEC 2012