

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

REPLY TO
ATTENTION OF:

August 2, 2007

Office of the Chief
Regulatory Division

Ms. Esther Daigneault, Environmental Planning Manager
County of San Diego, Department of Public Works
5469 Kearny Villa Road, Suite 305
San Diego, CA 92123

RE: PURCHASE ORDER NUMBER 520400

Dear Ms. Daigneault:

This is in reference to the enclosed fully executed Water Resources Development Act (WRDA) 214 agreement between the U.S. Army Corps of Engineers (Corps) and the County of San Diego, dated July 6, 2007.

Pursuant to Article VI (A) of the MOA, please provide funding to the Corps in the amount of \$200,000. The funds are to be used by the Corps Regulatory Division for the evaluation of projects as anticipated in the MOA.

Please send payment to: U.S. Army Corps of Engineers, Finance and Accounting Office, Attn: Mr. Jerry Apo, P.O. Box 532711, Los Angeles CA 90053-2325. The check should be made out to the "U.S. Army Corps of Engineers." Please attach a brief memo to the check referencing the WRDA 214 MOA between the Corps and San Diego County. Please also reference me (Mark Cohen, Regulatory Division) as the POC.

We appreciate your cooperation in expediting this payment, as we will need to process the funds into our system by the end of our fiscal year (September 30, 2007).

If you have any questions, please contact me at (213) 452-3413.

Sincerely,

Mark D. Cohen
Senior Regulatory Project Manager
Los Angeles District

**MEMORANDUM OF AGREEMENT
BETWEEN THE COUNTY OF SAN DIEGO
AND THE UNITED STATES ARMY CORPS OF ENGINEERS,
LOS ANGELES DISTRICT**

THIS AGREEMENT is entered into as of this 6 day of July, 2007 between the County of San Diego, (hereinafter the "County") 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, section 214 of the federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000") provides as follows:

(a) IN GENERAL. - In Fiscal Years 2001 through 2003, the Secretary of the Army (Secretary), after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army.

(b) EFFECT ON PERMITTING. - In carrying out section 214, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision-making with respect to permits, either substantively or procedurally.

WHEREAS, Public Law 108-137, signed into law on December 1, 2003, extended the sunset clause for section 214 of the WRDA 2000 to September 30, 2005; and

WHEREAS, Public Law 109-99, signed into law on November 11, 2005, extends through March 31, 2006, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite permit processing; and

WHEREAS, Public Law 109-209, signed into law on March 24, 2006, extended through December 31, 2006, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite permit processing; and

WHEREAS, Public Law 109-434, signed into law on December 20, 2006, extended through December 31, 2008, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite permit processing; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out section 214 of WRDA 2000 to the United States Army Corps, Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers by memorandum dated March 29, 2004 authorized the Corps' District and Division Engineers to accept and expend funds contributed by non-federal entities subject to certain limitations including the publishing of public notices; and

WHEREAS, the Corps issued an initial Public Notice dated February 5, 2007, regarding its intent to accept and expend funds contributed by non-Federal public entities for such purposes; and

WHEREAS, the Corps' District Engineer has determined that expenditure of funds received from the County will be in compliance with section 214 of WRDA 2000, and a public notice dated April 9, 2007, regarding the District Engineers' decision has been issued; and

WHEREAS, it is understood and acknowledged by all Parties that the Corps' review of permit applications for County-designated priority projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, the County is a non-Federal public entity; and

WHEREAS, the County is willing to provide funds to the Corps for the purpose of receiving expedited permit evaluation-related services for County designated priority projects as more fully described in this Memorandum of Agreement; and

WHEREAS, the Corps is willing to provide expedited permit evaluation-related services for County designated priority projects upon receipt of funding from the County as more fully described in this Memorandum of Agreement.

NOW, THEREFORE, the County and the Corps agree as follows:

Article I - PURPOSE AND AUTHORITIES

A. Pursuant to section 214 of WRDA 2000 (Public Law 106-541), as amended, this Memorandum of Agreement ("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 the County to expedite the evaluation of permits under the jurisdiction of the Department of the Army.

B. This MOA is not intended as the exclusive means of obtaining Corps review of County projects. This MOA is a vehicle by which the County may obtain expedited review of County projects designated as priorities, outside of the ordinary Corps review process.

Article II - SCOPE

A. The County will provide funds to the Corps to expedite the evaluation of various County priority permit applications under the jurisdiction of the Corps' Los Angeles District. The Corps' regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received from the County will be used to augment the Corps' regulatory budget in accordance with the provisions of WRDA 2000.

B. The Corps will provide staffing resources exclusively dedicated to expediting the processing of permits, as described in Article II.D, below, for County designated priority projects and activities.

C. The Corps will establish a separate internal account to track receipt and expenditure of the funds associated with its review of County permit applications (Account). Corps regulatory employees will charge their time against the Account when they do work to expedite resolution of permit requests designated by the County as a priority. The project(s) designated as a priority by the County are listed in **Attachment A** to this MOA. The list may be changed by the County's Principal Representative without requiring an amendment to this MOA. Such changes shall be submitted to the Corps in writing and will be effective upon receipt thereof. Corps regulatory employees will not charge the Account for work performed on project(s) not designated as a priority by the County.

D. Funds contributed by the County hereunder will be expended by the Corps to defray the costs of an exclusively dedicated and additional Corps Regulatory Project Manager(s) (including salary, associated benefits, overhead, administrative support, information technology equipment, local travel costs, and temporary duty travel and per diem expenses) and other costs in order to expedite the evaluation of permit applications submitted by the County. Such activities will include, but not be limited to, the following: application intake review, permit database entry, drawing correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, conduct of the public interest review, preparation of draft permit decision documents, meetings with the County and other agencies, and any other permit evaluation-related responsibilities that may be mutually agreed upon.

E. Funds may also be expended by the Corps to hire contractors to perform select duties, such as site visits, technical writing, copying, reviewing technical materials, preparing regional general permits for use by the County and others, Essential Fish Habitat assessments, and other technical documents, including draft environmental documents for the purpose of augmenting the resources available to the Corps' designated Regulatory Project Manager for expediting priority permit applications submitted by the County. If such expenditures, when combined with the costs of the Corps' Regulatory Project Manager(s) 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 County and a written amendment to this MOA is executed.

F. Funds will *not* be expended for review of Regulatory Project Manager's work by supervisors or other persons or elements of the Corps in the decision-making chain of command. Enforcement or compliance activities will not be paid for from the funds contributed by the County, nor will such funds be used for paying the costs of public hearings and distribution of public notices.

G. If the funds provided by the County are expended and not replenished, any remaining County priority permit applications will be handled in the same manner as other applicants, as generally determined by the designated Regulatory Project Manager and his or her supervisor.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Corps and the County, 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 permit actions. Each party will issue a letter to the other designating the Principal Representative for each agency within fifteen (15) days of execution of this MOA. The Principal Representative for each party may be changed upon written notification to the other party.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. The County shall:

1. Provide adequate information regarding projects and other specific activities to initiate permit evaluation. Upon request, the County shall provide supplemental information necessary to complete the permit application. On a case-by-case basis, if requested by the Corps, the County shall provide such additional information 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 County 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 priority projects identified by the County. The list of initial priority projects is shown on Attachment A; the County will periodically identify additional priority project in writing as necessary. If the County fails to identify its priority projects, the Corps shall establish its own priorities in accordance with the objectives of this MOA.
4. To the best of its ability, ensure the participation of all essential personnel, customers and decision makers during the permit evaluation process.
5. Work closely with the Corps to adjust priorities and schedules in order to make optimal use of available staff resources.
6. Provide funding pursuant to the terms of this MOA.

B. The Corps shall:

1. Expedite review of County permit requests in accordance with the purpose, terms, and conditions of this MOA. The Corps shall not redirect resources from, or otherwise postpone, other County projects submitted 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 County with an estimated schedule to complete the permit evaluation process for each application submitted.

3. Consult with the County regarding an adjustment of priorities or establishment of relative priorities if the current and/or projected workload of priority projects and activities exceeds Corps' ability to provide the services specified in this MOA.

4. Provide the County a quarterly summary report of progress made 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.

5. Designate a Regulatory Project Manager who will make his or her best efforts to attend periodic meetings with the County.

6. Expend funds pursuant to the terms of this MOA.

Article V. - IMPARTIAL DECISIONMAKING

It is understood and acknowledged by the Parties that the Corps' review of County-designated priority projects will be completely impartial and in accordance with all applicable Federal laws and regulations. It is further understood and agreed that in order to ensure that the funds will not impact impartial decision-making with respect to County permit applications, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, will apply to all cases using additional funds provided by the County as a participating non-Federal public entity:

1. All final permit decisions for cases where these funds are used must be reviewed by at least one level above the decision-maker, unless the decision-maker is the District Engineer. For example, if the decision-maker would be the Chief, Regulatory Branch, then the reviewer would be the Chief, Construction-Operations Division.

2. All final permit decisions for cases where these funds are used will be made available on the Los Angeles District Regulatory web page.

3. The Corps will not eliminate any procedures or decision criteria that would otherwise be required for that type of project and permit application under consideration.

4. The Corps must comply with all applicable laws and regulations.

5. Funds will only be expended to expedite the final decision on the permit application according to the terms and conditions of this MOA. Funds will not be expended for the review of

the decision-maker's decision. If contractors are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Corps regulatory program employees before the final permit decision is made.

Article VI. - FUNDING

A. The County will pay the Corps an amount not to exceed \$200,000.00 for purposes of funding a designated and additional Regulatory Project Manager(s), associated support personnel, and any additional services that may be required pursuant to Article II.E. for the term of this MOA. Additional payments by the County to the Corps, in an amount and schedule mutually agreed to by the Parties, may be made when priority projects are added to Attachment A. Replenishment funding may occur repeatedly throughout the term of this MOA. Funding required under this MOA may be increased by the Corps annually to account for the Federal Government's General Schedule increases and locality adjustments. Any carry-over funds from year to year would be credited to the following fiscal year's payment, or refunded if this MOA is terminated or expires.

B. Expediting of permit actions by the Corps will be provided under this MOA only after funds have been transferred to the Corps.

C. Funds will be payable in one lump sum in advance of the Corps incurring any financial obligations under this MOA. Payment will be made to the Finance and Accounting Officer, U.S. Army Corps of Engineers, Los Angeles District.

D. The Corps will neither accept nor expend funds under this MOA after December 31, 2008 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

The Parties agree that, in the event of a dispute between the Parties, the County and the Corps shall 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 refer the dispute for resolution to an appropriate forum in accordance with Federal law.

Article IX. - PUBLIC INFORMATION

A. Justification and explanation of County 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 County, 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. The County will give the Corps at least three (3) days advance notice before making formal, official statements regarding the Corps' activities funded under this MOA.

B. Nothing in this MOA will preclude the County from complying with the California Public Records Act, Government Code §§ 6250, et. seq., as the County deems appropriate in its sole and absolute discretion.

Article X. - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA will not affect any pre-existing or independent relationships or obligations between the County and the Corps.

B. Survival

Under the provisions of section 214 of WRDA 2000 as extended, no funds may be expended pursuant to this MOA after December 31, 2008. However, if prior to this date, this statutory authority is extended, then provisions of this MOA shall remain in force consistent with the provisions of the statutory extension until the expiration date as provided in this MOA.

C. Severability

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.

Article XI. - AMENDMENT, MODIFICATION AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties. Either party may terminate this MOA by providing written notice to the other party. Such termination shall be effective upon the sixtieth (60th) calendar day following notice, unless a later date is set forth. In the event of termination, the County 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.

B. This MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2008, unless the sunset clause of WRDA 2000 is extended, 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 three (3) years from the effective date of this MOA, or 2) the MOA is terminated pursuant to this Article.

C. Within ninety (90) days of termination or expiration of the MOA, the Corps shall conduct an accounting to determine the actual costs of the work completed by the Corps and to determine

the amount of any unused funds. Within thirty (30) days of completion of this accounting, any remaining funds shall be returned to the County by check or by electronic funds transfer.

Article XII - EFFECTIVE DATE

This MOA will become effective on July 1, 2007.

Article XIII - INTEGRATION

This MOA, including any documents incorporated by reference or attachments thereto, 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.

IN WITNESS WHEREOF, the County of San Diego, acting by and through its Public Works Director and the U.S. Army Corps of Engineers, acting by and through its authorized officer, the District Engineer, executes the MOA.

For the County of San Diego
Department of Public Works:



JOHN L. SNYDER
Director

Date: 6/14/2007

APPROVED AS TO FORM:




John J. Jansone
County Counsel



Deputy

For the U. S. Army Corps of Engineers:



ALEX C. DORNSTAUDER
Colonel, US Army
District Engineer

Date: 6.14.07