



COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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Telephone: (626) 458-5100
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ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

GAIL FARBER, Director

December 10, 2013

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

19 January 14, 2014

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

**MEMORANDA OF AGREEMENT FOR EXPEDITING PERMIT REVIEW BETWEEN
THE COUNTY OF LOS ANGELES AND THE U.S. ARMY CORPS OF ENGINEERS
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

SUBJECT

This action is to authorize the Director of Public Works or her designee on behalf of the County of Los Angeles to enter into two Memoranda of Agreement with the U.S. Army Corps of Engineers, Los Angeles District, to provide funds to expedite the U.S. Army Corps of Engineers' permitting review process pursuant to Section 404 of the Clean Water Act and 33 U.S.C. Section 408. The estimated total cost of the two Memoranda of Agreement for the County of Los Angeles is \$1,495,000.

IT IS RECOMMENDED THAT THE BOARD:

1. Authorize the Director of Public Works or her designee to enter into two Memoranda of Agreement with the U.S. Army Corps of Engineers, Los Angeles District, to provide funds in the total amount of \$1,495,000 over a 3-year term, for expedited permit evaluation and related services by the U.S. Army Corps of Engineers for County-designated priority projects under the U.S. Army Corps of Engineers' Clean Water Act Section 404 and 33 U.S.C. Section 408 permitting jurisdiction, and to act as the County's Principal Representative under the Memoranda of Agreement.
2. Authorize the Director of Public Works or her designee to execute amendments to the two Memoranda of Agreement with the U.S. Army Corps of Engineers to increase the amount of funds to be provided by the County, not to exceed a total amount of \$1,800,000 for both Memoranda over the 3-year term, to revise the list of priority projects for each Memoranda, and to make other minor modifications to each Memoranda, if she determines that any such amendment is in the best interests of the County of Los Angeles or its special districts.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The County of Los Angeles Department of Public Works (Public Works) has many high-priority and urgent projects subject to permitting by the U.S. Army Corps of Engineers, Los Angeles District (Corps) under various Federal laws, including Section 404 of the Clean Water Act (CWA), which requires the Corps' approval of filling, grading, mechanized land clearing, and other activities in Waters of the U.S. and 33 U.S.C. Section 408, which requires the Corps' approval of proposed modifications to federally-constructed flood control facilities. However, the Corps' permit process requires substantial amounts of their time, effort, and resources that can create delays in obtaining required permits. The delays continue to grow as a result of increased regulatory complexity and restrictive alterations to the permitting process. This has led to the implementation of Section 214 of the Water Resources Development Act of 2000 (WRDA 2000), which allows the Corps to accept and expend funds from non-Federal public agencies in order to expedite the permitting process.

The purpose of the recommended actions is to authorize the Director of Public Works or her designee to enter into two Memoranda of Agreement (MOAs) with the Corps, substantially similar in form and content to the enclosed MOAs to provide funds to the Corps to expedite the Corps' permitting review process for priority projects designated by the County of Los Angeles (County), for a total cost for both MOAs of \$1,495,000 over a 3-year period. One MOA will pertain to the Corps' permitting review process under Section 404 of the CWA and the other MOA will pertain to the Corps' permitting review process under 33 U.S.C. Section 408.

These MOAs are not intended as an exclusive means of obtaining review of a project, but to establish a mutual framework for the acceptance and expenditure of funds contributed by the County to expedite the normal permit evaluation process under the permitting jurisdiction of the Corps. Public Works believes that it is in the best interest of the public to provide funds to expedite the Corps' evaluation of priority permit applications designated by the County. Public Works currently estimates that expedited permit review costs will be approximately \$1,495,000 in total over the 3-year term of these MOAs; however, the anticipated costs are expected to vary from year-to-year. This estimate includes an initial payment upon execution of these MOAs for the current fiscal year and replenishment of the County's account according to each MOA every year thereafter. Any unspent funds deposited with the Corps from the previous year may carry over to subsequent years. Total annual expenditures by the Corps may exceed the anticipated amount stated on each MOA in some years, based on Public Works' projected permit review requests, which may require amendments to increase the total funding amount by up to 20 percent. The Corps will refund any unexpended funds if these MOAs expire or are terminated prior to expending all the funds provided to the Corps.

The current lists of projects that are anticipated to require expedited permit processing from the Corps, which are included as appendices to the enclosed MOAs, were developed based on several factors including: (1) the importance of the project to the community; (2) the proposed construction start date; (3) the anticipated length and complexity of the Corps' permit review; and (4) any circumstances that make the project urgent from a public health and safety perspective. As the County's Principal Representative under these MOAs, the Director of Public Works or her designee would have the authority to revise the list of projects and adjust the project priorities to accommodate any changed or unanticipated circumstances that may arise in the future.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the County agencies to maximize the effectiveness of their

processes to support timely delivery and efficient public service (Goal 1) and to maximize opportunities to measurably improve client and community outcomes (Goal 3). The recommended MOAs will enhance Public Works' ability to perform its necessary functions in an expeditious manner thereby providing a safer environment and enriching the lives for the residents of the County.

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund.

The total cost of these MOAs is estimated to be \$1,495,000 over a 3-year period: \$630,000 for the CWA Section 404 MOA and \$865,000 for the 33 U.S.C. Section 408 MOA. The cost of these MOAs and any amendments shall not exceed a total of \$1.8 million. The current list of projects, which are anticipated to require expedited permit processing from the Corps, are all Flood Fund projects. Sufficient funding is available in the Fiscal Year 2013-14 Flood Fund Budget to cover costs for the first year of the proposed MOAs up to \$580,000. Funds to finance future years will be incorporated into the annual budget process. Should any non-Flood Fund priority project(s) be identified and need expediting under these MOAs, the appropriate fund source will be used to pay the Corps for the expedited permit processing related to those non-Flood Fund projects. No funds will be expended after December 31, 2016.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Corps has regulatory jurisdiction and permitting authority over certain activities, including the discharge of dredge or fill material into the Waters of the U.S., pursuant to Section 404, of the CWA and the modification to any federally constructed flood control facility, pursuant to 33 U.S.C. Section 408.

On December 11, 2000, Congress passed into law, Section 214 of the WRDA 2000, allowing the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the permit evaluation process. As a result of this program, the Corps is able to enter into agreements with local agencies to assign well-qualified and more experienced project managers to the projects designated by the local agencies, in exchange for the funding provided by the local agencies.

The enclosed MOAs have been reviewed and approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

The recommended actions are not a project pursuant to CEQA because they are activities that are excluded from the definition of a project by Section 15378(b) of the CEQA Guidelines. The proposed action to establish MOAs to expedite permitting of anticipated future projects is an administrative activity of government, which will not result in direct or indirect changes to the environment. We will return to the Board as necessary for consideration of appropriate environmental documentation pursuant to CEQA prior to any commencement of any activities under these MOAs that may constitute a project.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no negative impact on current services. This action allows Public Works to reduce the time required to implement priority projects, which may be critical to public safety.

CONCLUSION

Please return one adopted copy of this letter to the Department of Public Works, Watershed Management Division.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gail Farber".

GAIL FARBER
Director

GH:GF:sw

Enclosures

c: Chief Executive Office (Rita Robinson)
County Counsel
Executive Office

**MEMORANDUM OF AGREEMENT
BETWEEN
COUNTY OF LOS ANGELES
AND
U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

THIS MEMORANDUM OF AGREEMENT (“MOA”) is entered into between the County of Los Angeles (hereinafter the “County”) and the United States Army Corps of Engineers, Los Angeles District (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 (“CWA”) of 1972, as amended, and navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899 (“RHA”), as amended; 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, the authority provided under Section 214 of the WRDA 2000 is presently in effect until December 31, 2016; and

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

WHEREAS, the Chief of Engineers, by memorandum dated March 29, 2004, as modified October 1, 2008, has authorized the District and Division Engineers of the Corps to accept and expend funds contributed by non-Federal entities subject to certain limitations; and

WHEREAS, the Corps has indicated it is not able, without additional resources, to expedite the evaluation permits of the County related to projects for a public purpose; and

WHEREAS, the County is a non-Federal entity and believes it is in its best interest to provide funds to the Corps pursuant to this MOA to streamline and expedite Corps’ review under Section 404 of the CWA and/or Section 10 of the RHA for County-designated priority projects, as more fully described in this MOA; and

WHEREAS, the Corps issued an initial public notice dated July 1, 2013, regarding its intent to accept and expend funds contributed by the County; and

WHEREAS, in a memorandum dated August 23, 2013, the Corps' District Engineer determined that expenditure of funds received from the County is appropriate, and an informational public notice dated September 18, 2013, regarding the decision has been issued; and

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

WHEREAS, this MOA establishes the responsibilities and operating procedures of the Parties with respect to the Corps' priority review of County-designated priority projects requiring a Corps' permit pursuant to Section 404 of the CWA and/or section 10 of the RHA; and

WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address, and protect environmental resources early in the development of proposed actions; (2) avoid conflicts late in project development through close coordination during early planning and development stages; (3) provide sufficient information to the Corps for timely analysis of project effects and to assist the County in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps personnel resources by focusing attention on projects that would most affect aquatic resources; (5) provide a mechanism for expediting project coordination when necessary; and (6) provide procedures for resolving disputes in this resource partnering effort.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

A. This MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the Corps' acceptance and expenditure of funds contributed by the County to provide expedited permit evaluation-related services for County-designated priority projects requiring Corps' approval pursuant to Section 404 of the CWA and/or Section 10 of the RHA, as listed in **Appendix A** to this MOA ("Priority Projects"). This MOA is not intended as the exclusive means of obtaining review of Priority Projects proposed by the County. This MOA is a vehicle by which the County will obtain expedited permit evaluation-related services, outside of the ordinary Corps review process.

B. The County enters into this MOA pursuant to its authority under, inter alia, Section 23004 of the California Government Code.

C. The Corps enters into this MOA pursuant to its authority under Section 214 of the WRDA 2000, as amended.

D. This MOA is specific to Section 404 of the CWA and/or Section 10 of the RHA permit reviews only. A separate agreement may be required between County and the Corps to

expedite environmental technical assistance, coordination services, review, and concurrence of documentation prepared to comply with Section 14 of the RHA, as amended.

Article II. - SCOPE OF WORK

A. The County will provide funds to the Corps to expedite permit evaluation related services for County-designated Priority Projects under the jurisdiction of the Corps. The Corps' Regulatory Program is funded as a Congressionally appropriated line item in the annual Federal budget. The County will provide the Corps with funds in accordance with the provisions of Section 214 of WRDA 2000, as amended.

B. The Corps will provide staffing resources exclusively dedicated to expediting permit evaluation related services, as described below, for County-designated Priority Projects and/or other programmatic efforts to support efficient decision-making related to the County's CWA Section 404 and/or RHA Section 10 permitting needs.

C. The Corps will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of permit applications submitted by the County for Priority Projects. Corps Regulatory personnel will charge their time and expenses against the account when they perform work to either expedite permit evaluation related requests for Priority Projects or undertake other programmatic efforts to support efficient decision-making related to the County's permitting needs.

D. Funds contributed by the County hereunder will be expended by the Corps to defray the costs of Regulatory Division personnel (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the evaluation of Priority Project permit applications. Such activities will include, but not be limited to, the following: application intake review, permit database entry, drawing correction, jurisdictional determinations, site visits, travel, preparing and distributing public notices, preparing and conducting public hearings, preparing correspondence, performing the public interest review, preparing draft permit decision documents, meetings with the County and other agencies.

E. The Corps may expend funds provided by the County to hire contractors to perform select duties, including but not limited to site visits; preparing and providing technical materials, including environmental documentation; GIS-related services; and meeting coordination for the purpose of augmenting the resources available to the Corps for expediting its review of County-designated Priority Projects. If such expenditures when combined with the costs of the Regulatory Division personnel require funding in excess of the amount available under this MOA, then the Corps, as appropriate, shall not hire said contractors until and unless additional funds are provided by the County and the Parties execute a written amendment to this MOA.

F. The Corps will not expend funds provided by the County for costs associated with the review of the Corps' work undertaken by supervisors or other persons or elements of the Corps in the decision-making chain of command. However, if a supervisor is performing staff work and not supervisory oversight, funds may be used.

G. The Corps will not expend funds provided by the County to defray the costs of activities related to the Corps' enforcement functions, but may use funds provided by the County to defray costs of activities related to permit compliance functions.

H. If the funds provided by the County are expended and not replenished, any remaining County-designated Priority Projects will be handled like those of any permit applicant.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Parties, 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 actions or issues. For the purposes of this MOA, the County's Principal Representative will be Menerva Ariki, Senior Civil Engineer, Watershed Management and the Corps' Principal Representative will be Dr. Daniel Swenson, Chief, Los Angeles and San Bernardino Section, Regulatory Division. Either Principal Representative may be changed upon written notification to the other party.

Article IV. - NOTICES

All notices, statements, or payments specified in this MOA shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class, registered, or certified mail, as follows:

If to County:

Los Angeles County
Department of Public Works
Water Resources Division
900 South Fremont Ave, 2nd Fl
Alhambra, CA 91803-1331

If to the Corps:

Chief, Los Angeles and San Bernardino Section
Regulatory Division
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Blvd.
Los Angeles, CA 90017

With a copy in all instances to:

District Counsel
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Blvd.
Los Angeles, CA 90017

B. A party may change the address to which such communications are to be directed by giving written notice to the Corps or to the County in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

Article V. - RESPONSIBILITIES OF THE PARTIES

A. The County will provide adequate resources to fund existing or additional Corps Regulatory personnel for the purpose of expediting the review of County-designated Priority Projects and other identified activities. To facilitate the Corps' reviews and activities, the County will:

1. Provide adequate information regarding County-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 County 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 County shall provide such additional information so as to ensure the Corps can effectively accomplish the required review.

2. In consultation with the Corps, establish the specific order of priority of the County-designated Priority Projects as listed in **Appendix A** to this MOA. The County-designated Priority Projects included in Appendix A and the order of priority of those County-designated Priority Projects may be changed by the County's Principal Representative without requiring an amendment to this MOA. Such changes shall be submitted to the Corps' Principal Representative in writing in the manner provided by Article IV and will be effective upon receipt thereof.

3. To the best of its ability, ensure the participation of all essential personnel during the permit evaluation or compliance process.

4. Work closely with the Corps to adjust priorities and schedules in order to optimize available Regulatory Division staff resources. While the County will make every effort not to overlap project schedules, occasional overlaps may occur and the County's Principal Representative will work with the Corps to prioritize such overlaps.

5. Provide funding pursuant to the terms of this MOA.

B. The Corps shall supplement or reassign its existing Regulatory Division personnel, which currently reviews County projects on a routine basis, with qualified personnel within

projected funding levels provided by the County. The Corps shall use the funds provided to defray the costs of salaries and associated benefits and to reimburse travel expenses in order to:

1. Expedite review of the County-designated Priority Projects as identified in Appendix A (or any amendments thereto) in accordance with the purpose, terms, and conditions of this MOA or any amendments thereto. The Corps shall not redirect resources from, or otherwise postpone, permit applications related to non-priority projects submitted by the County through the standard Corps review process.

2. Render decisions for non-notifying Nationwide Permit verification applications for Priority Projects submitted by County within 45 calendar days of receipt of a complete application, to the greatest extent possible.

3. Following any pre-application meetings and/or discussions to clarify the scope of anticipated permit application review processes, provide the County with an estimated completion date for the permit evaluation process for each application submitted. The County shall be able to comment on the estimated completion date and adjust the order or list of Priority Projects per Appendix A, or provide additional resources per Article VI below.

4. Consult with the County regarding an adjustment of priorities or amendments to Appendix A if the current and/or projected workload of Priority Projects and activities exceeds the Corps' ability to provide the services specified herein or negotiate additional funding in accordance with Article VI below.

5. Provide the County a brief quarterly summary report of progress made under this MOA within twenty one (21) calendar days of the end of each quarter. Progress will be itemized for each permit decision rendered for Priority Projects during the quarter and for each permit application for Priority Projects submitted by the County 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 for each Priority Project 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. The report shall not be in excess of five (5) pages of narrative per report.

6. Designate and identify to the County a Regulatory Project Manager(s) and his/her specific responsibilities for each Priority Project. If possible, the Corps will designate the same Project Manager for all major County-designated Priority Project permit applications to ensure consistency and maintain efficiency of the review process.

7. Meet with County as needed to discuss progress under this MOA.

8. Prior to expiration of the MOA, hold a final meeting with the County to review a summary of permit streamlining and other activities under this MOA, as well as provide recommendations for future coordination between the Parties.

Article VI. - FUNDING

A. Funding Periods.

1. First funding period: January 1, 2014 – December 31, 2014
2. Second funding period: January 1, 2015 – December 31, 2015
3. Third funding period: January 1, 2016 – December 31, 2016

B. Funding amounts.

1. Total estimated costs for the first funding period are \$210,000.00.
2. Total estimated costs for the second funding period are \$210,000.00.
3. Total estimated costs for the third funding period are \$210,000.00.
4. Total funding for this MOA is \$630,000.00.

C. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, County will make a lump sum payment to the Corps for each funding period specified in subparagraph A in the total amount specified in subparagraph B, above. Payments by County shall be made payable to the Finance and Accounting Officer and submitted 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. 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 in accordance with Article X.

E. 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 County at least ninety (90) days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. The County will either initiate an amendment to this MOA to increase the funding amount, or agree to a reduced level of service.

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

In the event of a dispute, the Parties agree to 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

Justification and explanation of the County's 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, as appropriate, advance notice before making formal, official statements regarding activities funded under this MOA.

Article X. – 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 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 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 County 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 County the unexpended balance of the advance payments, if any. Funds may be provided to the County either by check or electronic funds transfer.

Article XI. - MISCELLANEOUS

A. This MOA will not affect any pre-existing or independent relationships or obligations between Parties.

B. The Corps' participation in this MOA does not imply endorsement of County projects nor does it diminish, modify, or otherwise affect Corps statutory or regulatory authorities.

C. 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.

D. This MOA, including any documents incorporated by reference or attachments thereto, but excluding the pre-existing relationships or obligations between the Parties referenced in subparagraph A above, 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.

Article XII. - EFFECTIVE DATE AND DURATION

This MOA and any amendments will be effective on the date of execution by the last party. Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first: 1) September 30, 2016 or 2) the MOA is terminated pursuant to Article X.B.

[REMAINDER LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by the County, acting by and through its Department of Public Works Director and by the Corps, through its authorized officer.

FOR THE COUNTY OF LOS ANGELES

By: _____

Date: _____

Gail Farber
Director
Department of Public Works

APPROVED AS TO FORM:
JOHN F. KRATTLI
County Counsel

Deputy

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

By: _____

Date: _____

Kimberly M. Colloton, PMP
Colonel, US Army
Commander and District Engineer

Appendix A: County-designated Priority Projects

(Dated: January 1, 2014)

The list of County-designated Priority Projects under this MOA includes the following proposed projects:

1. Oxford Retention Basin Multiuse Enhancement Project
2. Ballona Wetlands Restoration Project
3. Concrete-lined Channels Maintenance Project
4. Los Angeles River Low Flow Inspection
5. Los Angeles River Headwaters Project
6. Amendment/Renewal of SBC Maintenance Permit
7. Renewal of RGP 45 - Debris Basin Maintenance
8. Dams/Reservoir Maintenance Agreement
9. Pacoima Rubber Dam Project (Pacoima Spreading Grounds)
10. Halls, Pickens, Dunsmuir, Goss, & Shields Crib Dam repairs
11. Mint Canyon Channel - Reinforced Concrete Invert Access Ramp
12. Strathern Wetlands Park Project

**MEMORANDUM OF AGREEMENT
BETWEEN
COUNTY OF LOS ANGELES AND
U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

THIS MEMORANDUM OF AGREEMENT (“MOA”) is entered into between the County of Los Angeles (hereinafter “County”) and the Los Angeles District of the United States Army Corps of Engineers (hereinafter “Corps”), collectively referred to as the “Parties.”

RECITALS

WHEREAS, pursuant to section 14 of the Rivers and Harbors Act (“RHA”) of 1899, codified at 33 U.S.C. § 408 (“Section 408”), as amended, the Corps has jurisdiction over requests to alter or modify completed federal flood risk management facilities (“Section 408 Proposals”);

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;

WHEREAS, the authority provided under section 214 of the WRDA 2000 is presently in effect until December 31, 2016;

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

WHEREAS, the Chief of Engineers, by memorandum dated June 18, 2010, authorized the District and Division Engineers of the Corps to accept and expend funds contributed by non-Federal public entities subject to certain limitations;

WHEREAS, the Corps has indicated it is not able, without additional resources, to expedite the evaluation of County Section 408 Proposals that have a public purpose;

WHEREAS, the County is a non-Federal entity and believes it is in its best interest to provide funds to the Corps pursuant to this MOA to streamline and expedite Corps’ review under Section 408 of Section 408 Proposals designated by the County’s Department of Public Works for priority review (“County-designated priority Section 408 Proposals”), as more fully described in this MOA;

WHEREAS, the Corps issued an initial public notice dated June 15, 2012, regarding its intent to accept and expend funds contributed by the County’s Department of Public Works;

WHEREAS, in a memorandum dated September 6, 2012, the District Engineer of the Corps’ Los Angeles District determined that expenditure of funds received from the County’s

Department of Public Works is appropriate, and an informational public notice dated September 11, 2012, regarding the decision has been issued;

WHEREAS, it is understood and acknowledged by all Parties that the Corps' review of the County's permit applications for County-designated priority Section 408 Proposals will be completely impartial and in accordance with all applicable Federal laws and regulations;

WHEREAS, this MOA establishes the responsibilities and operating procedures of the Parties with respect to the Corps' priority review of County-designated priority Section 408 Proposals requiring a Corps' permit pursuant to Section 408;

WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address, and protect environmental resources, including but not limited to impacts to existing and completed Corps' flood risk management systems or facilities, early in the development of proposed actions; (2) avoid conflicts late in project development through close coordination during early planning and development stages; (3) provide sufficient information to the Corps for timely analysis of project effects and to assist County in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps resources by focusing attention on projects that would have the most effect on completed federal flood risk management facilities; (5) provide a mechanism for expediting Section 408 Proposal permit coordination when necessary; and (6) provide procedures for resolving disputes in this resource partnering effort.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

A. This MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the Corps' acceptance and expenditure of funds contributed by County to provide expedited permit evaluation-related services for County-designated priority Section 408 Proposals. The County-designated priority Section 408 Proposals are listed in **Appendix A** to this MOA. This MOA is not intended as the exclusive means of obtaining permit review of County Section 408 Proposals. This MOA is a vehicle by which County will obtain expedited permit evaluation-related services outside of the ordinary Corps review process.

B. The County enters into this MOA pursuant to Authority under, inter alia, section 23004 of the California Government Code.

C. The Corps enters into this MOA pursuant to its authority under section 214 of the WRDA 2000, as amended.

D. This MOA is specific to Section 408 Proposal reviews only. A separate agreement may be required between County and the Corps to expedite environmental technical assistance, coordination services, review, and concurrence of documentation prepared to comply with

section 404 of the Clean Water Act of 1972, as amended, and/or section 10 of the Rivers and Harbors Act of 1899, as amended.

Article II. - SCOPE OF WORK

A. County will provide funds to the Corps to expedite permit evaluation related services for County-designated priority Section 408 Proposals as identified in **Appendix A**.

B. The Corps' operations and maintenance expenses are funded as a congressionally appropriated line item in the annual Federal budget. The County will provide the Corps with funds in accordance with the provisions of section 214 of WRDA 2000, as amended.

C. The Corps will provide staffing resources dedicated to expediting permit evaluation related services, as described in Article II.D., below, for County-designated priority Section 408 Proposals and/or other programmatic efforts to support efficient decision-making related to County's Section 408 permitting needs.

D. The Corps will establish a separate internal financial account to track receipt and expenditure of funds associated with its review of permit applications submitted by County for County-designated priority Section 408 Proposals. Corps' personnel will charge their time and expenses against the account when they perform work to either expedite Section 408 permit evaluation related requests for County-designated priority Section 408 Proposals or undertake other programmatic efforts to support efficient decision-making related to County's permitting needs.

E. Funds contributed by County hereunder will be expended by the Corps to defray the costs of its staff (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the evaluation of County-designated priority Section 408 Proposals.

F. The Corps may expend County funds to perform select duties, including but not limited to technical analyses and writing, Agency Technical Review, real estate evaluation, risk analysis, copying or other clerical/support tasks, acquisition of data, site visits, training, travel, coordination activities, additional personnel (including support/clerical staff), contracting for technical services (e.g., structural risk evaluation, geotechnical analysis, hydraulic and hydrological engineering review), construction quality assurance and control, environmental documentation preparation and review; any other permit evaluation related responsibilities that may be mutually agreed upon; and meeting coordination.

G. The Corps will not expend funds provided by the County for costs associated with the review of the Corps' work undertaken by supervisors or other persons or elements of the Corps in the decision-making chain of command. However, if a supervisor is performing staff work and not supervisory oversight, funds may be used.

H. The Corps will not expend funds provided by the County to defray the costs of activities related to the Corps' enforcement functions, but may use funds provided by the County to defray costs of activities related to permit compliance functions.

I. If the funds provided by the County are expended and not replenished, any remaining County-designated priority Section 408 Proposals will be handled like those of any permit applicant.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Parties, 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 actions or issues. For the purposes of this MOA, the County's Principal Representative will be Menerva Ariki, Senior Civil Engineer, Watershed Management and the Corps' Principal Representative will be Phillip J. Serpa, Asset Management Division, Los Angeles District. The Principal Representative for each party may be changed upon written notification to the other party.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. County will provide adequate resources, to fund existing or additional Corps personnel for the purpose of expediting the review of County-designated priority Section 408 Proposals and other identified activities. To facilitate the Corps' reviews and activities, the County will:

1. Provide adequate information regarding County-designated priority Section 408 Proposals, 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 applicable Section 408 guidance, including but not limited to the Memorandum for Subordinate Commands, *Policy and Procedural Guidance for the Approval of Modification and Alteration of Corps of Engineer Projects*, dated October 23, 2006, and the Memorandum for Major Subordinate Commands, *Clarification Guidance on the Policy and Procedural Guidance for the Approval of Modification and Alteration of Corps of Engineer Projects*, dated November 17, 2008, copies of which have been provided to the County. Upon request, the County shall provide supplemental information necessary to complete the permit application. Additional information 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, County shall provide such additional information so as to ensure the Corps can effectively accomplish the required review.

2. In consultation with the Corps, establish the specific order of priority of the Section 408 Proposals listed in **Appendix A** to this MOA. The Section 408 Proposals included in **Appendix A** and the order of priority of those Section 408 Proposals may be changed by County's Principal Representative without requiring an amendment to this MOA. Such changes shall be submitted to the Corps' Principal Representative in writing in the manner provided by Article VI and will be effective upon receipt thereof.

3. To the best of its ability, ensure the participation of all essential personnel during the permit evaluation process.

4. Work closely with the Corps to adjust priorities and schedules in order to optimize available Corps staff resources. If overlaps or conflicts occur among County-designated priority Section 408 Proposals, then County will work with the Corps to prioritize such overlaps.

B. The Corps shall assign qualified personnel to evaluate the County-designated priority Section 408 Proposals and prioritize associated tasks within projected funding levels provided under this MOA. The Corps shall use the funds provided to defray the costs of salaries and associated benefits and to reimburse travel expenses in order to:

1. Expedite review of County-designated priority Section 408 Proposals as identified in **Appendix A** (or any amendments thereto) in accordance with the purpose, terms, and conditions of this MOA or any amendments thereto. The Corps shall not redirect resources from, or otherwise postpone, permit applications related to non-priority Section 408 Proposals submitted by the County through the standard Corps review process.

2. Following any pre-application meetings and/or discussions to clarify the scope of anticipated permit application review processes, provide County with an estimated schedule to the best of its ability within fourteen (14) calendar days of receiving the County's scheduling requirements as described in subparagraph A(1) of this Article to complete the permit evaluation process for each application submitted. County shall be able to comment on these schedules and adjust the order of Section 408 Proposals included in Appendix A, or provide additional resources per Article V. E, below.

3. Consult on a monthly basis with County regarding an adjustment of priorities or amendments to Appendix A if the current and/or projected workload of priority Section 408 Proposals and activities exceeds the Corps' ability to provide the services specified herein or negotiate additional funding in accordance with Article V.E, below.

4. If a Section 408 permit is issued, provide construction quality assurance and quality control support for permit compliance purposes, which shall consist of reviewing technical submittals and requests for information, field inspections at critical construction milestones, review of proposed change orders that involve the design or design intent of any Corps permit issued pursuant to Section 408, providing technical assistance during construction as requested by the County on a case by case basis and review of construction and Section 408 closeout documentation as applicable.

5. Provide the County with a brief quarterly summary report of progress made under this MOA within twenty one (21) calendar days of the end of each quarter (January 21, April 21, July 21, and October 21). Progress will be itemized for each Section 408 permit application during the quarter for each Section 408 Proposal 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 Section 408 permit application reviews, and will summarize expenditures for each permit application 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. The report shall not be in excess of five (5) pages of narrative per report.

6. Meet with the County as needed to discuss progress under this MOA.

7. Prior to expiration of the MOA, hold a final meeting with the County's Principal Representative to review a summary of permit streamlining and other activities under this MOA, as well as provide recommendations for future coordination between the Parties.

Article V. - FUNDING

A. Funding periods.

1. First funding period: January 1, 2014 – December 31, 2014
2. Second funding period: January 1, 2015 – December 31, 2015
3. Third funding period: January 1, 2016 – December 31, 2016

B. Funding amounts.

1. Total estimated costs for the first funding period are \$370,000.00.
2. Total estimated costs for the second funding period are \$370,000.00.
3. Total estimated costs for the third funding period are \$125,000.00.
4. Total funding for this MOA is \$865,000.00.

C. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, County will make a lump sum payment to the Corps for each funding period as specified in subparagraph A of this Article in the total amount specified in subparagraph B of this Article. Payments by the County shall be submitted to:

U.S. Army Corps of Engineers, Los Angeles District
Asset Management Division
P.O. Box 532711
Los Angeles, CA 90053-2325
Attn: Phil Serpa

D. The Corps will carry over any unexpended funds from year to year, or will refund such unobligated funds if this MOA is terminated or expires in accordance with Article X.

E. The Corps will provide County with written notice when 80% of the funding has been expended. If the Corps' actual costs for providing the agreed upon level of service will exceed the amount of funds available, County will either initiate an amendment to this MOA to increase the funding amount, or agree to a reduced level of service.

F. Additional payments by County to the Corps, in an amount and schedule mutually agreed to by the Parties, may be made when County-designated priority Section 408 Proposals are added to **Appendix A**.

G. County may elect to extend the services of the Corps beyond September 30, 2016, subject to: 1) additional funding being provided by the County and 2) written amendment to this MOA.

Article VI. - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the County:

Los Angeles County
Department of Public Works
Water Resources Division
900 South Fremont Ave, 2nd Fl
Alhambra, CA 91803-1331

If to the Corps:

U.S. Army Corps of Engineers
Asset Management Division
915 Wilshire Blvd.
Los Angeles, CA 90017
ATTN: Phil Serpa

With a copy in all instances to:

District Counsel
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Blvd.
Los Angeles, CA 90017

B. A party may change the address to which such communications are to be directed by giving written notice to the Corps or to the County in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

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 V. - Article VIII. - DISPUTE RESOLUTION

In the event of a dispute, the Parties agree to 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

Justification and explanation of County's programs or projects related to or arising out of County's Section 408 Proposals 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, as appropriate, advance notice before making formal, official statements regarding activities funded under this MOA.

Article VI. - Article X - 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 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 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 County 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, codified at 31 U.S.C. 1341 *et seq.*, shall directly remit to County the unexpended balance of the advance payment, if any. Funds may be provided to the County either by check or electronic funds transfer.

Article VII. - Article XI. - MISCELLANEOUS

A. This MOA will not affect any pre-existing or independent relationships or obligations between the Parties.

B. The Corps' participation in this MOA does not imply endorsement of the County-designated priority Section 408 Proposals nor does it diminish, modify, or otherwise affect Corps statutory or regulatory authorities.

C. 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.

D. This MOA, including any documents incorporated by reference or attachments thereto, but excluding the pre-existing relationships or obligations between the Parties referenced in subparagraph A above, 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.

Article VIII. - Article XII. - EFFECTIVE DATE AND DURATION

This MOA will be effective on the date of signature by the last party. Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first:

1) September 30, 2016 or 2) the MOA is terminated pursuant to Article X.B.

[REMAINDER LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by the County, acting by and through its Department of Public Works Director and by the Corps, acting by and through its authorized officer.

COUNTY OF LOS ANGELES, DEPARTMENT OF PUBLIC WORKS

By: _____

Date: _____

Gail Farber
Director

APPROVED AS TO FORM:

JOHN F. KRATTLI
County Counsel

Deputy

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

By: _____

Date: _____

Kimberly M. Colloton, PMP
Colonel, US Army
Commander and District Engineer

Appendix A: County-Designated Section 408 Priority Proposals

(Dated: January 1, 2014)

The list of County-designated Section 408 Proposals under this MOA includes the following Section 408 Proposals:

1. Ballona Wetlands Restoration Project
2. Tujunga Spreading Grounds
3. Tujunga Spreading Grounds Intake Improvements
4. Pacoima Spreading Grounds Intake Improvements
5. Santa Anita Spreading Grounds
6. Walnut Spreading Basin Pump Station Project
7. Bradbury Channel & Big Dalton Wash Invert Access Ramps - Combined project
8. Verdugo Wash Invert and Wall Joint Repair
9. Eaton Wash Channel Improvement
10. Peck Water Conservation Improvement Project
11. Lopez Spreading Grounds Improvement Project