

**MEMORANDUM OF AGREEMENT
BETWEEN
COUNTY SANITATION DISTRICT NO. 2 OF LOS ANGELES COUNTY,
AND
THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

THIS MEMORANDUM OF AGREEMENT (“MOA”) is entered into by County Sanitation District No. 2 of Los Angeles County (“District No. 2”) and the Los Angeles District of the United States Army Corps of Engineers (“Corps”), collectively referred to as the “Parties.”

RECITALS

WHEREAS, the Parties entered into a memorandum of agreement, dated October 9, 2008, amended in October 2010 (“2008 MOA”), for expedited and priority review of District No. 2-designated priority projects by the Corps; and

WHEREAS, the previous agreement expired October 23, 2012, leaving an unexpended balance of \$100,512.37 of funds advanced by District No. 2, and for which has not yet been returned to District No. 2; and

WHEREAS, it is the intent of the Parties that the Corps retain and use the balance of the funds in support of this MOA; and

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

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 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 of permits of District No. 2 related to projects for a public purpose; and

WHEREAS, District No. 2 believes it is in the best interests of its ratepayers to provide funds to the Corps pursuant to this MOA to expedite Corps environmental review under section 404 of the CWA for District No. 2-designated priority projects as more fully described in this MOA; and

WHEREAS, the Corps issued an initial Public Notice dated September 5, 2008, regarding its intent to accept and expend funds contributed by District No. 2; and

WHEREAS, in a memorandum dated October 10, 2008, the Corps determined expenditure of funds received from District No. 2 is appropriate, and an informational public notice dated October 10, 2008, regarding the decision has been issued; and

WHEREAS, it is understood and acknowledged by the Parties that the Corps' review of District No. 2's permit applications for District No. 2-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 priority reviews; 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 District No. 2 in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps Regulatory Division personnel 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 acceptance and expenditure of funds contributed by District No. 2 to provide expedited permit evaluation-related services for District No. 2-designated priority projects under the jurisdiction of the Corps. This MOA is not intended as the exclusive means of obtaining review of projects proposed by District No. 2. This MOA is a vehicle by which District No. 2 will obtain expedited permit evaluation-related services outside of the ordinary Corps review process.

B. District No. 2 enters into this MOA pursuant to its authority under County Sanitation District Act of 1923.

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

Article II. - SCOPE OF WORK

A. District No. 2 will provide funds to the Corps to expedite permit evaluation related services for District No. 2-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. Funds received from District No. 2 will be added to the Corps' Regulatory Program budget 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 District No. 2-designated priority projects and/or other programmatic efforts to support efficient decision-making related to District No. 2's CWA section 404 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 District No. 2. Corps Regulatory personnel will charge their time and expenses against the account when they perform work to either expedite resolution of permit requests designated by District No. 2 as a priority or undertake other programmatic efforts to support efficient decision making related to District No. 2's permitting needs. Corps Regulatory personnel will focus on the work as prioritized by District No. 2, and if the projects designated by District No. 2 as priorities are insufficient to keep Corps Regulatory personnel busy, Corps Regulatory personnel will then work on other programmatic efforts for District No. 2.

D. Funds contributed by District No. 2 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 permit applications designated by District No. 2. Such activities will include, but not be limited to, the following: jurisdictional determinations; site visits; travel; federal register and public notice preparation; preparation of correspondence; public interest review; preparation and review of environmental documentation; meetings with District No. 2 and resource agencies; and any other permit evaluation related responsibilities including but not limited to consultations under Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act, that may be mutually agreed upon.

E. The Corps may expend District No. 2 funds to utilize other Corps employees or 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 priority projects and activities designated by District No. 2. If such expenditures, when combined with the costs of the Regulatory Division personnel specified in Article II.D, require funding in excess of the amount available under this MOA, then said contractors or other Corps employees shall not be utilized by the Corps until and unless additional funds are provided by District No. 2, and the Parties execute a written amendment to this MOA.

F. The Corps will *not* expend District No. 2 funds for costs associated with the review of Regulatory Project Managers' work 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, decision-making oversight, funds may be used. The Corps will *not* expend funds contributed by District No. 2 to defray the costs of activities related to the Corps' enforcement functions, but *may* use District No. 2 funds to defray costs of activities related to compliance functions.

G. If the funds provided by District No. 2 are expended and not replenished, any remaining priority permit applications 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 District No. 2's Principal Representative will be Steven W. Highter, and the Corps' Principal Representative will be Daniel P. Swenson. The Principal Representative for each party may be changed upon written notification to the other party.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. District No. 2 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' review and activities, District No. 2 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 27 of the Nationwide Permit Program. Upon request, District No. 2 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, District No. 2 shall provide such additional information in a timely manner 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 District No. 2 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 District No. 2. The list of initial priority project is shown on **Appendix A**. The list may be changed by mutual agreement of the Principal Representatives of each party without requiring an amendment to this MOA. Such changes shall be submitted to the Corps' Principal Representative in writing, including email, and will be effective upon receipt thereof.

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

5. Work closely with the Corps to adjust District No. 2 priorities and schedules in order to make optimal use of available Regulatory Division staff resources. While District No. 2 will make every effort not to overlap project schedules, occasional overlaps may occur and District No. 2 will work with the Corps to prioritize such overlaps.

6. If agreed, provide additional funding pursuant to the terms of this MOA.

B. The Corps shall supplement or reassign its existing Regulatory Division personnel, which currently reviews District No. 2 projects on a routine basis, with qualified personnel within projected funding levels provided by District No. 2. 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 District No. 2's priority projects 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, other projects submitted by District No. 2 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 District No. 2 with an estimated schedule to complete the permit evaluation process for each application submitted. District No. 2 shall be able to comment on these schedules and adjust priorities per Appendix A, or provide additional resources per Article V.E.

3. Consult with District No. 2 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 District No. 2 a brief 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. The report shall not be in excess of five (5) pages.

5. Designate a Regulatory Project Manager who will make his or her best efforts to attend periodic meetings with District No. 2.

Article V. - FUNDING

A. District No. 2 understands that funds provided by District No. 2 under the 2008 MOA are sufficient to fund all work anticipated under this MOA.

B. If the Corps' actual costs for providing the agreed upon level of service will exceed the amount of funds available, the Corps will notify District No. 2 at least 90 days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining

anticipated costs. District No. 2 will either increase the funding amount or agree to a reduced level of service.

C. 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.

Article VI. - 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 VII. - 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 proceed in accordance with applicable Federal law.

Article VIII. - PUBLIC INFORMATION

Justification and explanation of District No. 2 programs or projects before other agencies, departments and offices will not be the responsibility of the Corps. The Corps may provide, upon request from District No. 2, 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.

Article IX. - AMENDMENT, MODIFICATION, AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties.

B. Any party reserves the right to terminate its participation in this MOA without cause upon thirty (30) days' written notice to the other Party. In the event of termination, District No. 2 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 District No. 2 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 District No. 2 the unexpended balance of the advance payments, if any. Funds may be provided to District No. 2 either by check or electronic funds transfer.

Article X. - MISCELLANEOUS

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

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

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. The Corps' participation in this MOA does not imply endorsement of District No. 2 projects nor does it diminish, modify, or otherwise affect Corps statutory or regulatory authorities.

E. 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.


Article XI. - 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 IX.A, this MOA shall remain in force until whichever of these events occurs first: (1) when all available funds under Article V have been expended, (2) December 31, 2016 unless the sunset clause of section 214 of WRDA 2000 is extended or section 214 is made permanent, in which case the MOA will remain in effect for the duration of the statutory extension; or (3) the MOA is terminated pursuant to Article IX.B.

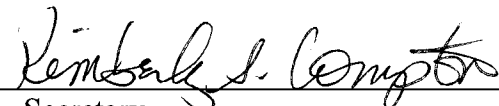
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IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by District No. 2, acting by and through its Board of Directors, and by the U.S. Army Corps of Engineers, through its authorized officer.

COUNTY SANITATION DISTRICT NO. 2
OF LOS ANGELES COUNTY

By: 
Chairperson JAN 09 2013

ATTEST:

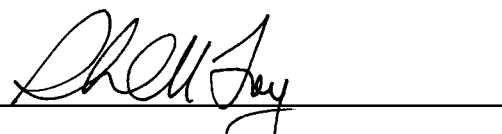
By: 
Secretary

APPROVED AS TO FORM:
Lewis Brisbois Bisgaard & Smith LLP

By: 
District Counsel

Date: 1-8-13

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

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

Date: 18 JAN 2013

Appendix A: District No. 2 Priority Projects

(Dated: December 12, 2012)

The list of priority projects under this MOA includes, but is not restricted to, the following:

Permit decision for the Clearwater Program EIS