

**THIRD AMENDMENT
TO
AMENDED MEMORANDUM OF AGREEMENT
BETWEEN
COUNTY OF SAN BERNARDINO
AND
THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

This Third Amendment to the Amended Memorandum of Agreement ("THIRD AMENDMENT"), made on the date of the signature of the last party to this THIRD AMENDMENT, is entered into by and among the County of San Bernardino (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 Parties entered into an Amended Memorandum of Agreement ("MOA"), effective May 11, 2007, for expedited and priority review of County-designated priority projects by the Corps; and

WHEREAS, the Parties entered into a First Amendment to the MOA, effective May 7, 2010, and a Second Amendment to the MOA, effective April 7, 2015, to extend the duration of the MOA and to revise the terms and conditions of the MOA; and

WHEREAS, section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000") as amended and codified at 33 U.S.C. 2352, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army; and

WHEREAS, the Assistant Secretary of the Army for Civil Works, by memorandum dated January 19, 2018, has authorized the Corps to accept and expend funds contributed by County subject to certain limitations; and

WHEREAS, the County has deposited \$812,000 with the Corps pursuant to the MOA, and approximately \$757,201 has been expended under the MOA, leaving a balance of \$54,799 in available funds as of April 23, 2019; and

WHEREAS, the Parties desire to amend the MOA to extend the duration of the MOA from September 30, 2020 to September 30, 2025, and to further revise the terms and conditions of the MOA.

NOW, THEREFORE, the Parties agree as follows:

THIRD AMENDMENT

1. Article VI. – FUNDING. This Article is replaced in its entirety to read:

“A. It is anticipated that additional funds are needed beginning October 1, 2019 to fund all work anticipated under this MOA through September 30, 2025. The total amount payable by the County under this MOA, including the \$812,000 in previous deposit amounts made by the County to the Corps, shall not exceed \$1,447,000 without a written amendment to the MOA approved by the Parties pursuant to Article XI.A.

B. No later than July 1, 2019, and July 1 of each subsequent year that this MOA remains in effect, the Corps will provide the County with an anticipated cost invoice (“Invoice”) that provides a budget estimate of costs for the upcoming Federal fiscal year, including any proposed changes in the level of staffing. Revisions agreed to by the Parties will be incorporated into a revised budget estimate. The County’s Director of Public Works may exercise the County’s rights under this Paragraph. Invoices shall be submitted by the Corps to:

County of San Bernardino
Department of Public Works
Administrative Services Division #201
825 E. Third Street
San Bernardino, CA 92415

C. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, and upon receipt of the Corps’ Invoice(s), the County will make an annual lump sum payment, in advance, of the total amount specified in the Invoice(s), in accordance with normal County payment procedures. The County’s Director of Public Works may authorize lump sum payments under this MOA up to the total not-to-exceed amount identified in Paragraph A of this Article.

D. Expediting of permit evaluation related activities as specified in this MOA will be undertaken by the Corps only after funds have been transferred to the Corps. Payments by the County are to be made payable to the Finance and Accounting Officer and will be sent to the following address:

U.S. Army Corps of Engineers, Los Angeles District
Finance and Accounting Officer
915 Wilshire Blvd., Suite 930
Los Angeles, CA 90017
Attn: Carlos M. Tabares

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

F. If the Corps’ actual costs for providing the agreed upon level of service will at any time during the term of this MOA exceed the amount of funds available, the Corps will

notify the County at least ninety (90) calendar days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. The County will increase the funding amount, agree to a reduced level of service, or exercise its right to terminate the MOA under Article XI.B.”

2. Article XII. EFFECTIVE DATE. This Article is modified in its entirety to read:

“Article XII - EFFECTIVE DATE AND DURATION

This MOA and any amendments will become effective on the date of signature by the last Party. Unless amended or modified pursuant to Article XI.A., this MOA shall remain in force until whichever of these events occurs first: 1) September 30, 2025; or 2) the MOA is terminated pursuant to Article XI.B.”

3. Integration. This THIRD AMENDMENT represents the entire understanding of the Parties regarding the changes to the MOA. All other terms and conditions of the MOA and the First and Second Amendments remain in full force and effect.

4. Recitals. The recitals of this THIRD AMENDMENT are incorporated into the MOA by this reference.

Signatures Follow on Next Page

IN WITNESS WHEREOF, the THIRD AMENDMENT is executed by the County of San Bernardino, pursuant to Board action authorizing such execution, and by the Los Angeles District U.S. Army Corps of Engineers, through its authorized officer.

COUNTY OF SAN BERNARDINO

_____, 2019 By: _____

Curt Hagman, Chairman, Board of Supervisors

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

24-May, 2019

By: _____

Aaron C. Barta
Colonel, US Army
Commander and District Engineer

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIRMAN OF THE BOARD

Laura H. Welch, Clerk of the Board
of Supervisors

By: _____
Deputy

Date: _____

Approved as to Legal Form:
Michelle D. Blakemore, County Counsel

By: _____
Scott Runyan, Deputy County Counsel

Dated: _____