MEMORANDUM OF AGREEMENT BETWEEN THE CALIFORNIA DEPARTMENT OF WATER RESOURCES AND THE U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

THIS AGREEMENT is entered into as of this 6TH day of AUGUST, 2012, between the California Department of Water Resources, (hereinafter the "DWR") and the Department of the Army, represented by the United States Army Corps of Engineers, Sacramento District (hereinafter the "District"), collectively referred to as "the Parties."

WITNESSETH THAT:

WHEREAS, the United States Army Corps of Engineers ("Corps"), has jurisdiction over certain activities occurring in United States, including wetlands, 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, as amended by Public Law 111-315, 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 the non-Federal entity related to projects for a public purpose; and

WHEREAS, the DWR requires expedited and priority review of certain projects in DWR's boundaries by the District; and

WHEREAS, the District issued an initial Public Notice dated January 9, 2012, regarding its intent to accept and expend funds contributed by non-Federal public entities for such purposes; and

WHEREAS, the District has determined that expenditure of funds received from the DWR will be in compliance with Section 214 of WRDA 2000, as amended by Public Law 111-315; and

WHEREAS, it is understood and acknowledged by all Parties that District' review of DWR projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, the DWR is a non-Federal public entity.

NOW, THEREFORE, the DWR and the District agree as follows:

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

Pursuant to Section 214 of WRDA 2000, as amended by Public Law 111-315, 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 the DWR to expedite the evaluation of permits under the jurisdiction of the Department of the Army. This MOA is not intended as the exclusive means of obtaining District review of DWR projects. This MOA is a vehicle by which the DWR may obtain expedited review of DWR projects designated as a priority, outside of the ordinary District review process.

Article II. - SCOPE

A. The DWR will provide funds to the District for federal fiscal years (FY) 2012 and 2013 to expedite the evaluation of DWR projects under the jurisdiction of the District. The DWR may elect to extend the funding beyond FY 2013, subject to the terms of this MOA. The phrase "federal fiscal year" in this MOA refers to the period beginning October 1 of each year and ending on September 30 of the following year. The District' regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from the DWR will be used to augment the District regulatory budget in accordance with the provisions of WRDA.

B. The District will establish a separate account to track receipt and expenditure of the funds associated with its review of DWR priority projects. District employees will charge their time against the account when they do work to expedite resolution of DWR permit requests.

C. Funds contributed by the DWR hereunder will mainly be expended to defray the costs of salary, associated benefits, overhead, and travel expenses for existing or additional personnel (including regulatory staff, support/clerical staff, and staff of other functional areas of the District) and other costs in order to expedite the evaluation of permit requests submitted by the DWR. Such activities will include, but not be limited to, the following: application 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 DWR, agencies and applicants, permit compliance, mitigation monitoring, preparation of reports/audits of funds expended to the DWR, technical writing, training, travel, field office set up costs, copying, coordination activities, technical contracting, programmatic tool development and/or improvement, acquisition of GIS data, and any other permit evaluation-related responsibilities that may be mutually agreed upon.

Funds will *not* be expended for review by supervisors or other persons or elements of the District in the decision-making chain of command. Enforcement activities will not be paid for from the funds contributed by the DWR, nor will such funds be used to pay for the costs of public hearings and distribution of public notices.

D. Funds may also be expended to hire contract staff for the purpose of augmenting the resources available to the District regulatory staff for expediting priority permit applications submitted by the DWR. If such expenditures, when combined with the costs of the regulatory staff, require funding in excess of the amount specified in this MOA, then said contractors shall not be hired until and unless additional funds are approved by the DWR and memorialized by written amendment to this MOA.

E. If the DWR's funds are expended and are not renewed, the Parties will terminate this MOA in accordance with Article X.A and any remaining DWR priority permit applications will be processed pursuant to the standard permit application review procedures, in a manner decided by the assigned Regulatory Project Manager and his or her supervisor.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the District and the DWR, 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 delegation letter to the other designating the Principal Representative for each agency.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. The DWR shall:

1. Provide adequate information regarding priority projects and other specific activities to initiate permit evaluation. Upon request, the DWR shall provide supplemental information necessary to assure the District can effectively accomplish the required review.

2. Make a reasonable effort to provide the District with information on other projects with DWR involvement that may affect the District' workload and staff availability (e.g., schedules for projects with individual permits).

3. In consultation with the District, develop a schedule for the District's involvement in the priority projects identified by the DWR.

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 District to resolve workload conflicts and adjust priorities and schedules in order to make optimal use of available staff resources.

B. The District shall:

1. Expedite permits in accordance with the purpose, terms, and conditions of this MOA. The District shall not redirect resources from, or otherwise postpone, other DWR projects submitted through the standard District review process.

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

3. Provide the DWR an annual summary report of progress made under this MOA. This report will summarize expenditures for the fiscal year and will describe any achievements, such as any improvements the District has documented in coordinating and improving the efficiency of environmental reviews. The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOA.

4. Participate in quarterly status meetings with the DWR to discuss project progress and upcoming priorities.

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

Article V. FUNDING

A. The DWR will pay the District an amount not to exceed $100,000 for purposes of funding a project manager for federal FY 2012 and 2013, including overhead, and associated support personnel for the term of this MOA.

B. The DWR may elect to extend the services under this MOA and fund the costs of the project manager during federal fiscal years subsequent to FY 13 for as long as this MOA remains in effect. In the event the DWR elects to continue services under this MOA beyond FY 2013, no later than April 1, 2013 and annually thereafter, the DWR shall provide written notice of this decision to the District's Principle Representative. After receipt of the DWR's notice and no later than April 30, 2013 and annually thereafter, the District will provide the DWR with an updated cost estimate that provides an estimate of costs for the next federal fiscal year, including any proposed changes in the level of staffing. Upon receipt of the District's updated cost estimate and in advance of the District incurring any costs for the next federal fiscal year, the DWR will make a lump sum payment to the District in the total amount specified in the District's cost estimate.

C. Costs incurred by the District under this MOA may increase due to the Federal Government's General Schedule increases and locality pay adjustments. In the event of such increases, the District will promptly notify the DWR of the additional amount necessary to continue services under this MOA. Upon receipt of such notice, the DWR shall either make a lump sum payment for the additional amount or agree to a reduced level of service.

D. The funds specified in subparagraph A above will be payable in one lump sum in advance of the District incurring any financial obligations or performing any work under this

MOA and no later than ninety (90) days after the effective date of this MOA as defined in Article XI. Payment will be made by check or electronic funds transfer to the Finance and Accounting Officer, U.S. Army Corps of Engineers, Sacramento District.

E. 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.

Article VI. - APPLICABLE LAWS

All 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 environmental permit applications undertaken by District will be governed by District regulations, policies and procedures.

Article VII. - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute between the Parties, the DWR and the District 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 VIII. - PUBLIC INFORMATION

The District will not be responsible for justifying or explaining DWR programs or projects before other agencies, departments and offices. The District may provide, upon request from the DWR, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the District is responsible only for public information regarding District regulatory activities. The DWR will give the District advance notice before making formal, official statements regarding District activities funded under this MOA.

Article IX. - MISCELLANEOUS

A. Other Relationships or Obligations

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

B. 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 X. - AMENDMENT, MODIFICATION AND TERMINATION

A. This Agreement may be modified or amended only by written, mutual agreement of the Parties. Either party may terminate this MOA prior to its expiration date 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 DWR shall continue to be responsible for all costs incurred by the District under this MOA prior to the effective date of such termination and for the costs of closing out or transferring any on-going DWR priority projects.

B. Within ninety days (90) days of termination, or expiration of the MOA, the District shall conduct an accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, the District shall return to the DWR any funds advanced in excess of the actual costs. Funds may be provided to the DWR either by check or by electronic funds transfer.

Article XI. - EFFECTIVE DATE AND DURATION

This MOA will become effective when signed by both the DWR and the District. This MOA shall remain in force as follows: (1) December 31, 2016, unless the sunset clause in Section 214 of WRDA 2000, as amended by Public Law 111-315, is extended prior to that date, in which case the MOA will remain in effect for the duration of the statutory extension; or (2) the MOA is terminated pursuant to Article X.

Article XII. – 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 Agreement is executed by the DWR, acting by and through its Director or his designee, authorizing such execution, and by the U.S. Army Corps of Engineers, through its authorized officer. By affixing their signatures below, each signatory certifies and affirms that s/he has the authority to enter into this MOA on behalf of his/her organization and to bind that organization to the terms of this MOA.

For the DWR:

Keith Swanson
Chief, Division of Flood Management
Date: 5/25/12

For the U. S. Army Sacramento District of Engineers:

William J. Leady
Colonel, US Army
District Engineer
Date: 6 AUG 2012

COST SHEET
Attachment 1

U.S. Army Corps of Engineers
WRDA Position

FY 2012 Biologist Day Rates for Reimbursable Agreements

Base Biologist Day Rate	$ 722.48 *
Regional Overhead @ 41%	$ 296.21
Total Biologist Day Rate	$ 1,018.69
Total Biologist Hourly Rate	$ 127.34

Projected Cost for Year 2012 • .216 FTE (39.26612 Biologist Days x $1,018.69)	$40,000

*Includes administrative support + 10% Other support

FY 2013 (2012 + estimated 3% increase) Biologist Day Rates for Reimbursable Agreements

Base Biologist Day Rate	$ 744.15 *
Regional Overhead @ 41%	$ 305.10
Total Biologist Day Rate	$ 1,049.25
Total Biologist Hourly Rate	$ 131.16

Projected Cost for Year 2013 • .314 FTE (57.1837 Biologist Days x $1,049.25)	$60,000

*Includes administrative support + 10% Other support