STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (Rev 06/03)

AGREEMENT NUMBER
4600009722
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME
Department of Water Resources

CONTRACTOR'S NAME
United States Army Corps of Engineers

2. The term of this Agreement is: June 1, 2012 through May 31, 2013
This agreement shall not become effective until approved by Department of the Army Corps of Engineers.

3. The maximum amount of this Agreement is: $ 100,000.00
One Hundred Thousand Dollars and No Cents

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

See attached Memorandum of Agreement Between the State of California Department of Water Resources and the U.S. Department of the Army Corps of Engineers for the Bay Delta Conservation Plan (BDCP) to expedite the evaluations of the permits under the jurisdiction of the Army's initial projects in the Sacramento – San Joaquin Delta and surrounding areas, including the Yolo Bypass.

Signatures appear on page 7 of 7 of the Memorandum of Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME *(if other than an individual, state whether a corporation, partnership, etc.)*

BY *(Authorized Signature)* | DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

BY *(Authorized Signature)* | DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

Approved as to legal form and sufficiency:
For Asst. Chief Counsel, DWR

California Department of General Services Use Only

APPROVED
JUN 4 2012
GENERAL SERVICES

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 July 2012, between the California Department of Water Resources, (hereinafter the "Department") 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 Department requires expedited and priority review by the District of certain Bay Delta Conservation Plan (BDCP) initial projects in the Sacramento-San Joaquin Delta and surrounding areas, including the Yolo Bypass; and

WHEREAS, the District issued an initial Public Notice dated March 27, 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 Department 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 Department projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

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

NOW, THEREFORE, the Department 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 Department to expedite the evaluation of permits under the jurisdiction of the Army under Section 404 of the Clean Water Act (CWA) and Sections 10 and 14 of the Rivers and Harbors Act of 1899 (RHA). This MOA is not intended as the exclusive means of obtaining District review of Department projects. This MOA is a vehicle by which the Department may obtain expedited review of Department projects designated as a priority, outside of the ordinary District review process.

Article II. - SCOPE

A. The Department will provide funds to the District for federal fiscal year (FY) 12 to expedite the evaluation of Department projects under the jurisdiction of the District. The Department may elect to extend the funding beyond FY 12, 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's regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from the Department will be used to augment the District regulatory budget in accordance with the provisions of WRDA 2000, as amended.

B. The District's Regulatory Division evaluates permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The District's Construction-Operations Division evaluates permits under Section 14 of the Rivers and Harbors Act of 1899. Regulatory Division staff will serve as the District's point of contact for this MOA.

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

D. Funds contributed by the Department 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 Department for the BDCP projects. 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 Department, agencies and applicants, permit compliance, mitigation monitoring, preparation of reports/audits of funds expended to the Department, 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 Department, nor will such funds be used to pay for the costs of public hearings and distribution of public notices.

E. 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 Department for the BDCP projects. If such expenditures, when combined with the costs of the regulatory staff, require funding in excess of the amount specified in this, then said contractors shall not be hired until and unless additional funds are approved by the Department and memorialized by written amendment to this MOA..

F. If the Department's funds are expended and are not renewed, the Parties will terminate this MOA in accordance with Article X.A and any remaining Department priority permit applications or requests for permission under Section 14 of the RHA will be processed pursuant to the standard review procedures under the CWA and/or RHA, in a manner decided by the assigned Regulatory or Construction-Operations Project Manager and his or her supervisor.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the District and the Department, 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. 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 Department shall:

1. Provide adequate information regarding priority projects and other specific activities to initiate evaluation of the project. Upon request, the Department 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 Department involvement that may affect the District's workload and staff availability (e.g.,

schedules for projects with individual permits or requests to modify federal projects under RHA section 14, other than minor, low impact modifications).

3. In consultation with the District, schedule District involvement in the priority projects identified by the Department.

4. To the best of its ability, ensure the participation of all essential personnel, water contractors, and decision makers during the District's 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.

6. Develop in cooperation with the District, a schedule for the evaluation of permits under the jurisdiction of the Army required for the BDCP.

7. Provide office space and support for one person from the District to be co-located with key Department staff. The purpose of this embedment staff is to facilitate review and processing of pertinent Department of Army permits necessary for the implementation of BDCP.

B. The District shall:

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

2. Develop in collaboration with the Department a schedule for the evaluation of permits under the jurisdiction of the Army required for the BDCP.

3. Consult with the Department 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.

4. Provide the Department a quarterly summary report of progress made under this MOA. This report will describe achievements, including any improvements the District 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.

5. Designate Regulatory and Construction-Operations Project Managers who will make his or her best efforts to attend periodic meetings with the Department.

6. Co-locate with Department staff one District staff to work with the Department to facilitate review and processing of pertinent Department of Army permits necessary for the implementation of BDCP. District staff will co-locate on a part-time basis dependent on support needs.

Article V. FUNDING

A. The Department will pay the District an amount not to exceed $100,000 for purposes of funding project managers, including overhead and associated support personnel for the term of this MOA.

B. The Department may elect to extend the services under this MOA and fund the costs of the project managers during federal fiscal years subsequent to FY 12 for as long as this MOA remains in effect. In the event the Department elects to continue services under this MOA beyond FY 12, no later than June 30, 2012 and annually thereafter, the Department shall provide written notice of this decision to the District's Principle Representative. The Department and the District will agree on the amount of funding required for succeeding federal fiscal years, including any proposed changes in the level of staffing, at least thirty (30) days prior to the end of each federal fiscal year. Upon agreement on the amount of funding, and in advance of the District incurring any costs for the next federal fiscal year, the Department will make a lump sum payment to the District totaling one-half of the agreed upon funding amount. A second lump sum payment will be made six (6) months from the date of agreement.

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 Department of the additional amount necessary to continue services under this MOA. Upon receipt of such notice, the Department shall either make a lump sum payment for the additional amount or agree to a reduced level of service.

D. Funds will be payable in two lump sum payments, the first payment of which will be made in advance of the District incurring any financial obligations under this MOA and no later than ninety (90) days after the effective date of this MOA as defined in Article XI. The second lump-sum payment will be made no later than six (6) months after the effective date of this MOA. Payment will be made by check or electronic funds transfer to the Finance and Accounting Officer, U.S. Army Corps of Engineers, Sacrament District.

E. As required by OMB Circular A-97, DWR certifies that the services being requested pursuant to this agreement cannot be procured reasonably and expeditiously through ordinary business channels.

F. 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.

G. The Department will provide office space and necessary office support for one District personnel per the terms of Article IV.

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 expedited actions 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 Department 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 Department programs or projects before other agencies, departments and offices. The District may provide, upon request from the Department, 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 or activities under RHA Section 14. The Department 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 Department 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 Department 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 Department 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 Department any funds advanced in excess of the actual costs. Funds may be provided to the Department either by check or by electronic funds transfer.

Article XI. - EFFECTIVE DATE AND DURATION

This MOA will become effective when signed by both the Department and the District. This MOA shall remain in force until the earlier of the following events: (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 California Department of Water Resources acting by and through its Director, or his designee, and by the U.S. Army Corps of Engineers, through its authorized officer.

For the California Department of Water Resources:

Dean L. Messer

Dean Messer, Chief, Division of Environmental Services

Date: 5/17/12

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

William J. Leady

Colonel, US Army
District Engineer

Date: 6 JULY 2012