AMENDMENT TO

MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF LATHROP
AND THE UNITED STATES ARMY CORPS OF ENGINEERS
SACRAMENTO DISTRICT

The Memorandum of Agreement (MOA) dated November 16, 2004 between the City of Lathrop and the United States Army Corps of Engineers, Sacramento District, is modified as follows:

Article X. - MISCELLANEOUS

B. Survival

Under the provisions of Section 214 of Public Law 106-541 as extended by Section 114 of Public Law 108-137, no funds may be expended pursuant to this MOA after September 30, 2005. However, if this statutory authority is extended, then provisions of this MOA shall remain in force consistent with the provisions of the statutory extension until the expiration date as provided in this MOA.

All other provisions of the MOA remain in full force and effect.

For the City of Lathrop:

Pam Carder

Pam Carder
City Manager
Date: 11/16/05

For the U.S. Army Corps of Engineers:

Ronald N. Light

Ronald N. Light
Colonel, Corps of Engineers
District Engineer
Date: 11/4/05

MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF LATHROP
AND THE UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

THIS AGREEMENT is entered into as of this 16th day of November, 2004 between the City of Lathrop (hereinafter the "City") and the Department of the Army, represented by the United States Army Corps of Engineers, Sacramento District (hereinafter the "Sacramento District") collectively referred to as "the Parties."

WITNESSETH THAT:

WHEREAS, Section 214 of the federal Water Resources Development Act of 2000 ("WRDA 2000") provides as follows:

> (a) IN GENERAL. - In Fiscal Years 2001 through 2003, the Secretary (of the Army), after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army.
>
> (b) EFFECT ON PERMITTING. - In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision-making with respect to permits, either substantively or procedurally.

WHEREAS, Public Law 108-137, was signed into law on December 1, 2003, extending the sunset clause for Section 214 of the WRDA 2000 to September 30, 2005; and

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

WHEREAS, the Chief of Engineers by memorandum dated July 17, 2001, has authorized the Sacramento District and Division Engineers to accept and expend funds contributed by non-federal entities subject to certain limitations including the publishing of public notices; and

WHEREAS, the City requires expedited and priority review of certain projects in the City boundaries by the Sacramento District; and

WHEREAS, the Sacramento District issued an initial Public Notice dated August 6, 2004, regarding its intent to accept and expend funds contributed by non-Federal public entities for such purposes; and

WHEREAS, the Sacramento District has determined that expenditure of funds received from the City will be in compliance with Section 214 of WRDA 2000, and a public notice dated October 1, 2004, regarding the District Engineers' decision has been issued; and

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

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

NOW, THEREFORE, the City and the Sacramento District agree as follows:

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

Pursuant to Section 214 of WRDA (Pub.L 106-541) and Section 114 of the Energy and Water Appropriations bill, H 2754 (Pub.L 108-137), this Memorandum of Agreement ("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 City to expedite the evaluation of permits under the jurisdiction of the Army. This MOA is not intended as the exclusive means of obtaining Sacramento District review of City projects. This MOA is a vehicle by which the City may obtain expedited review of City projects designated as a priority, outside of the ordinary Sacramento District review process.

Article II. - SCOPE

A. The City will provide additional funds to the Sacramento District to expedite the evaluation City priority projects under the jurisdiction of the Sacramento District for one year. The City may elect to extend the funding beyond one year, subject to written amendment to this MOA. The Sacramento District's regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from the City will be used to augment the Sacramento District regulatory budget in accordance with the provisions of WRDA.

B. The Sacramento District will establish a separate account to track receipt and expenditure of the funds associated with its review of City permit applications. Sacramento District employees will charge their time against the account when they do work to expedite resolution of City permit requests designated by the City as a priority. Employees will not charge the account for work performed on projects not designated as a priority by the City.

C. Funds contributed by the City hereunder will mainly be expended to defray the costs of additional Sacramento District regulatory staff (including salary, associated benefits, overhead, and travel expenses) and other costs in order to expedite the evaluation of permit applications submitted by the City or others conducting work in the City boundaries. Such activities will include, but not be limited to, the following: application intake 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 City, other agencies and applicants, 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 Sacramento District in the decision-making chain of command nor for any review conducted by the Division or Headquarters. Enforcement or compliance activities will not be paid for from the funds contributed by the City, nor will such funds be used for paying the costs of public hearings and distribution of public notices.

D. Funds may be expended to hire contractors to perform select duties, such as site visits, technical writing, copying, reviewing technical materials, including materials related to flood control proposals, cultural resources assessments, and biological assessments, essential fish habitat assessments, and other technical documents, including draft environmental documents for the purpose of augmenting the resources available to the Sacramento District for expediting priority permit applications submitted by the City. 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 City and memorialized by written amendment to this MOA.

E. If the City's funds are expended and are not renewed, any remaining City permit applications will be handled like those of any other non-participant, 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 Sacramento District and the City, 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 City shall:

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

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

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

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

B. The Sacramento District shall:

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

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

3. Provide the City an annual summary report of progress made under this MOA. This report will describe achievements, including any improvements the Sacramento 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.

4. Designate a Regulatory Project Manager who will make his or her best efforts to attend periodic meetings with the City and the permit applicants.

Article V. - IMPARTIAL DECISIONMAKING

It is understood and agreed that in order to ensure that the funds will not impact impartial decision-making with respect to City permit applications, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, will apply to all cases using additional funds provided by the City as a participating non-Federal public entity:

1. All final permit decisions for cases where these funds are used must be reviewed at least by one level above the decision-maker, unless the decision-maker is the District Engineer. For example, if the decision-maker would be the Chief, Regulatory Branch, then the reviewer would be the Chief, Construction-Operations Division.

2. All final permit decisions for cases where these funds are used will be made available on the Sacramento District Regulatory web page.

3. The District will not eliminate any procedures or decision criteria that would otherwise be required for that type of project and permit application under consideration.

4. The District must comply with all applicable laws and regulations.

5. Funds will only be expended to expedite the final decision on the permit application according to the terms and conditions of this MOA. Funds will not be expended for the review of the decision-maker's decision. If contracts are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Sacramento District regulatory program employees before the final permit decision is made.

Article VI. – FUNDING

A. The City will pay the Sacramento District an amount not to exceed $178,000 for purposes of funding one additional project manager for one year, including overhead, and associated support personnel for the term of this MOA. Support personnel may include archaeological, legal, and engineering services, as well as clerical services. The City may elect to extend the services of the project manager beyond one year. Funding required under this Agreement MOA may be increased by the Sacramento District to account for the Federal Government's General Schedule increases and locality adjustments. Any carry-over funds from year to year would be credited to the following fiscal year's payment, or refunded if this Agreement MOA is terminated or expires.

B. Funds will be payable in one lump sum in advance of the Sacramento District incurring any financial obligations under this MOA Agreement. Payment will be made to the Finance and Accounting Officer, U.S. Army Corps of Engineers, Sacramento District.

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

Article VIII. - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute between the Parties, the City and the Sacramento 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 IX. - PUBLIC INFORMATION

Justification and explanation of City programs or projects before other agencies, departments and offices will not be the responsibility of the Sacramento District. The Sacramento District may provide, upon request from the City, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the Sacramento District is responsible only for public information regarding Sacramento District regulatory activities. The

City will give the Sacramento District advance notice before making formal, official statements regarding Sacramento District activities funded under this MOA.

Article X. - MISCELLANEOUS

A. Other Relationships or Obligations

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

B. Survival

Under the provisions of Section 214 of Public Law 106-541 as extended by Section 114 of Public Law 108-137, no funds may be expended pursuant to this MOA after September 30, 2005. However, if prior to the expiration of fiscal year 2005 this statutory authority is extended, then provisions of this MOA shall remain in force consistent with the provisions of the statutory extension until the expiration date as provided in this MOA.

C. 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 XI. - 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 City shall continue to be responsible for all costs incurred by the Sacramento District under this MOA prior to the effective date of such termination and for the costs of closing out or transferring any on-going priority projects.

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

C. This MOA shall expire one year after the date the Regulatory Project Manager is assigned to work on expedited projects, unless extended by written amendment to this MOA, but in no event shall this MOA be extended beyond September 30, 2005, unless federal law extends the Sacramento District's authority beyond that date. The Sacramento District shall notify the City in writing of the date the Regulatory Project Manager is assigned to work on City expedited projects within thirty (30) days of said date, thereby fixing the expiration date of this

Article XII. - EFFECTIVE DATE

This MOA will become effective when signed by both the City and the District.

Article XIII. - 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.

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IN WITNESS WHEREOF, the Agreement is executed by the City of Lathrop, acting by and through its City Manager or his designee, pursuant to Resolution No. 04-1712 authorizing such execution, and by the Sacramento District, through its authorized officer.

For the City of Lathrop:

Pam Carder

PAM CARDER
City Manager

Date: 11/5/04

For the U.S. Army Corps of Engineers:

Ronald N. Light

RONALD N. LIGHT
Colonel, Corps of Engineers
District Engineer

Date: 11/16/04