MEMORANDUM OF AGREEMENT BETWEEN THE COUNTY OF SACRAMENTO AND THE US ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

THIS AGREEMENT is entered into as of this 5th day of May, 2007 between the Freeport Regional Water Authority, the County of Sacramento, the Sacramento County Water Agency, the Sacramento Regional County Sanitation District, County Sanitation District No. 1, and the Sacramento Area Flood Control Agency, (hereinafter collectively "Sacramento Agencies") 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:

WHEREAS, Section 214 of the federal Water Resources Development Act of 2000 ("WRDA") 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; and

WHEREAS, Public Law 109-434, was signed into law on December 20, 2006, extending the sunset clause for Section 214 of the WRDA 2000 to December 31, 2008; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214 of the Water Resources Development Act of 2000 (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 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 Sacramento Agencies require expedited and priority review of infrastructure-related projects and other priority projects in Sacramento County by the Sacramento District; and

WHEREAS, the Sacramento District issued an initial Public Notice dated October 1, 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 Sacramento Agencies 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 Sacramento District's review of Sacramento Agencies' designated priority projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, the Sacramento Agencies are all non-Federal public entities.

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

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

Pursuant to Section 214 of WRDA (Pub.L 106-541) and Public Law 109-434 (HR 6316), 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 Sacramento Agencies to expedite the evaluation of permits under the jurisdiction of the Army. This MOA is intended to supplement, and not replace typical project review services of the Sacramento District provided for Sacramento Agencies' projects. This MOA is a vehicle by which the Sacramento Agencies may obtain expedited review of projects designated as a priority, outside of the ordinary Sacramento District review process.

Article II. – MANAGEMENT AND FUNDING

A. The Sacramento District's regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from the Sacramento Agencies will be used to augment the Sacramento District regulatory budget in accordance with the provisions of WRDA 2000, as amended. The Sacramento Agencies will provide funds to the Sacramento District to expedite the evaluation of Sacramento Agencies' priority projects under the jurisdiction of the Sacramento District in accordance with subparagraphs B. and C. below during the term of this MOA. Any funds remaining from a previous year will be credited to the following year's payment, or refunded if this MOA is terminated or expires.

B. The Sacramento Agencies will pay the Sacramento District an amount necessary to fund a project manager(s) for one year, beginning on the effective date of this MOA,

including overhead and associated support personnel. Support personnel may include archaeological, legal, and engineering services, as well as clerical services. The initial funding required under this MOA shall be $200,000 for the first year of this MOA but may be increased by the Sacramento District to account for salary increases and locality adjustments. The amount to be funded in subsequent years of this MOA shall be established by the Sacramento District in an amount necessary to fund the project manager as set forth above.

C. Funds will be payable in one lump sum, semi-annually, or quarterly no later than ninety (90) days in advance of the Sacramento District incurring any financial obligations under this MOA. Payment will be made to the Finance and Accounting Officer, U.S. Army Corps of Engineers, Sacramento District. Prior to transferring the funds, the Sacramento Agencies shall coordinate payment efforts with the budget analyst assigned to the Regulatory Branch as identified by the District.

D. The Sacramento District will establish a separate account to track receipt and expenditure of the funds associated with its review of Sacramento Agencies' priority projects. Sacramento District employees will charge their time against the account when performing work pursuant to this MOA. District Employees will not charge the account for work performed on projects not designated as a priority by the Sacramento Agencies under the terms of this MOA.

E. Funds contributed by the Sacramento Agencies hereunder will mainly be expended to defray the costs of additional regulatory staff (including salary, associated benefits, overhead, and travel expenses) and other costs in order to expedite the evaluation of projects within the Corps' jurisdiction so long as the Sacramento Agencies have designated the project as a priority project. Activities associated with evaluating projects 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, public interest review, preparation of permit decision documents, meetings with the Sacramento Agencies and other agencies, 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, South Pacific Division, or Headquarters in the decision-making chain of command. Enforcement or compliance activities will not be paid for from the funds contributed by the Sacramento Agencies, unless such enforcement and/or compliance have been designated as priority projects. Funds will not be used for paying the costs of public hearings and distribution of public notices.

F. Funds may be expended by the Sacramento District to hire contractors to perform select duties, including but not limited to, site visits, technical writing, copying, reviewing technical materials, cultural resources assessments, biological assessments, essential fish habitat assessments, programmatic permits for use by the Sacramento Agencies and others, and other technical documents, including draft environmental documents for the purpose of augmenting the resources available to the Sacramento District regulatory staff for expediting priority permit applications submitted by the

Sacramento Agencies. 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 Sacramento Agencies and memorialized by written amendment to this MOA.

G. If the Sacramento Agencies' funds are expended and are not renewed, any remaining priority projects 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 Sacramento Agencies, 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 send a letter to each other party designating the Principal Representative for each agency.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. The Sacramento Agencies shall:

1. Provide adequate information regarding priority projects and other specific activities to initiate permit evaluation. Upon request, the Sacramento Agencies shall provide supplemental information necessary to assure 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 Sacramento Agencies' involvement that may affect the Sacramento District' 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 Sacramento Agencies.

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 Sacramento Agencies' projects submitted through the standard Sacramento District review process.

2. Consult with the Sacramento Agencies in the development of schedules for permit processing.

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

4. Provide the Sacramento Agencies 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.

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

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 Sacramento Agencies' permit applications, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, will apply to all cases using funds provided by the Sacramento Agencies 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 is 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 Sacramento 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 Sacramento 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 review of decisions by supervisors or other persons or elements of the Sacramento District in the decision-making chain of command. If contractors 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. - 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 Sacramento District will be governed by Sacramento District regulations, policies and procedures.

Article VII. - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute between the Parties, the Sacramento Agencies 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 VIII. - PUBLIC INFORMATION

Justification and explanation of Sacramento Agencies' 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 Sacramento Agencies, 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 Sacramento Agencies will give the Sacramento District advance notice before making formal, official statements regarding Sacramento 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 Sacramento Agencies and the Sacramento District.

B. Survival

Under the provisions of Section 214 of Public Law 106-541 as extended by Public Law 109-434, no funds may be expended pursuant to this MOA after December 31, 2008. However, if prior to the lapse of current statutory authority, such authority is extended, then provisions of this MOA shall remain in force consistent with the provisions of the statutory extension unless the MOA is terminated or funds have been expended and not replenished in accordance with Article X.

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 X. - AMENDMENT, MODIFICATION AND TERMINATION

A. This Agreement may be modified or amended only by written, mutual agreement of the Parties. The Sacramento District may terminate this MOA prior to its expiration date by providing written notice to the Sacramento Agencies. 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 Sacramento Agencies 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 Sacramento Agencies' priority projects. Any of the individual Sacramento Agencies may terminate their status as a party to this MOA by providing written notice to the other parties. Such termination shall be effective upon the sixtieth (60th) calendar day following notice, unless a later date is set forth. In the event of such termination, the terminating party shall continue to be responsible for all costs incurred by the Sacramento District under this MOA on behalf of the terminating agency prior to the effective date of such termination and for the costs of closing out or transferring any of the terminating agency's priority projects.

B. This MOA shall remain in force until either December 31, 2008, unless the sunset clause is eliminated in which case it shall remain in effect consistent with the provisions of Article IX.B. hereof, the MOA is terminated pursuant to this Article, or until the funds have been expended and not replenished following notice to the Sacramento Agencies, whichever occurs first.

C. Within ninety days (90) days of termination, or expiration of the MOA, 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 Sacramento Agencies any funds advanced in excess of the actual costs. Funds may be provided to the Sacramento Agencies either by check or by electronic funds transfer.

Article XI. - EFFECTIVE DATE

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

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, this MOA is executed by the parties through their respective authorized officer.

Don Nottoli
Chair, Board of Supervisors

Date: April 4, 2007

Don Nottoli
Chair, Sacramento County Water Agency

Date: April 4, 2007

Jimmie R Yee
Vice Chair, Sacramento Regional County Sanitation District

Date: MAR 2 8 2007

Jimmie R Yee
Vice Chair, County Sanitation District No. 1

Date: MAR 2 8 2007

Date: April 6, 2007

Eric Mische
General Manager, Freeport Regional
Water Authority

Date: 4/10/07

Stein Buer
Executive Director, Sacramento Area Flood
Control Agency

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

Date: 5-25-07

for Ronald N Light
Colonel, US Army
District Engineer

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