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

THIS AGREEMENT is entered into as of this 29 day of November, 2012 between the Port of Stockton, (hereinafter the "Port") 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 Port requires expedited and priority review of certain projects in the Port's boundaries by the District; and

WHEREAS, the District issued an initial Public Notice dated 2 October 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 Port 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 Port projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

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

NOW, THEREFORE, the Port 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 Port to expedite the evaluation of permits under the jurisdiction of the Army. This MOA is not intended as the exclusive means of obtaining District review of Port projects. This MOA is a vehicle by which the Port may obtain expedited review of Port projects designated as a priority, outside of the ordinary District review process.

Article II. - SCOPE

A. The Port will provide funds to the District to expedite the evaluation of Port projects under the jurisdiction of the District. The District' regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from the Port 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 Port priority projects. District employees will charge their time against the account when they do work to expedite resolution of Port permit requests.

C. Funds contributed by the Port 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 Port. Such activities will include, but not be limited to, the following: preparation of an Environmental Impact Statement, 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 Port, agencies and applicants, permit compliance, mitigation monitoring, preparation of reports/audits of funds expended to the Port, 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 Port, 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 Port. 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 Port and memorialized by written amendment to this MOA.

E. If the Port's funds are expended and are not renewed, the Parties will terminate this MOA in accordance with Article X.A and any remaining Port 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 Port, 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 Port shall:

1. Provide adequate information regarding priority projects and other specific activities to initiate permit evaluation. Upon request, the Port 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 Port involvement that may affect the District' workload and staff availability (e.g., schedules for projects with individual permits).

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

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 Port projects submitted through the standard District review process.

2. Consult with the Port 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 Port an annual 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.

4. Participate in quarterly status meetings with the Port 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 Port.

Article V. FUNDING

A. The Port will pay the Sacramento District an amount not to exceed $100,000 for purposes of funding project manager(s) half-time for one year, beginning on the effective date of this agreement, including overhead and associated support personnel. Support personnel may include archaeological, legal, and engineering services, as well as clerical services. Funding required under this MOA may be increased by the Sacramento District to account for salary increases and locality adjustments.

B. The Port may elect to extend the services under this MOA and fund the costs of the project manager beyond federal FY 2013 and subsequent federal fiscal years for as long as this MOA remains in effect. In the event the Port elects to continue services under this MOA beyond FY 2013, no later than July 1, 2013 and annually thereafter, the Port shall provide written notice of this decision to the District's Principle Representative. After receipt of the Port's notice and no later than August 1, 2013 and annually thereafter, the District will provide the Port 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 Port 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 Port of the additional amount necessary to continue services under this MOA. Upon receipt of such notice, the Port 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 one lump sum 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. 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 Port 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 Port programs or projects before other agencies, departments and offices. The District may provide, upon request from the Port, 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 Port 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 Port 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 Port 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 ongoing Port 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 Port any funds advanced in excess of the actual costs. Funds may be provided to the Port either by check or by electronic funds transfer.

Article XI. - EFFECTIVE DATE AND DURATION

This MOA will become effective when signed by both the Port 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, this Agreement is executed by the Port of Stockton, acting by and through its Port Manager or his designee and by the U.S. Army Sacramento District of Engineers, through its authorized officer.

For the Port of Stockton:

Port ~~Manager~~ Director
Date: November 21, 2012

APPROVED AS TO FORM:

Port Attorney
Date: Nov. 20, 2012

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

William J. Leady, P.E.
Colonel, US Army
District Engineer
Date: 28 NOV. 2012