

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

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into as of this day of \_\_\_\_\_, 2017, between the California Department of Water Resources, Division of Flood Management, (hereinafter "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 regulatory jurisdiction over certain activities occurring in waters of the United States, including wetlands, pursuant to Section 404 of the Clean Water Act ("CWA") of 1972, as amended (hereinafter, "Section 404"), and navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act ("RHA") of 1899, as amended (hereinafter, "Section 10"), and has jurisdiction, pursuant to Section 14 of the RHA (33 U.S.C. § 408) (hereinafter "Section 408"), over all temporary or permanent alterations, occupations or use of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the Corps; and

WHEREAS, Section 214 of the Federal Water Resources Development Act ("WRDA") of 2000, Public Law 106-541 ("WRDA 2000"), as amended, codified at 33 U.S.C. § 2352, 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, to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated September 2, 2015 and in Engineer Circular (EC) 1165-2-216 dated June 21, 2016, has authorized the District and Division Engineers of the Corps to accept and expend funds contributed by non-Federal public entities subject to certain limitations; and

WHEREAS, the District has indicated it is not able, without additional resources, to expedite the evaluation of Section 404 and Section 10 permit applications and/or requests for permission under Section 408 for DWR-designated priority projects ; and

WHEREAS, DWR is a non-Federal public entity of the State of California and believes it is in the best interests of the taxpayers of the State of California to provide funds to the District pursuant to this MOA to expedite the review and evaluation of Section 404 and Section 10 permit applications and/or requests for permission under Section 408 for DWR-designated priority projects as more fully described in Article II of this MOA; and

WHEREAS, the Sacramento District has issued an initial Public Notice regarding its intent to accept and expend funds contributed by DWR; and

WHEREAS, the District has determined that expenditure of its funds received from DWR is appropriate, and will issue an informational public notice regarding its decision; and

WHEREAS, it is understood and acknowledged by all Parties that the District review of Section 404 and Section 10 permit applications and/or requests for permission under Section 408 for DWR-designated priority projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address, and protect environmental resources early in the development of proposed actions; (2) avoid conflicts late in project development through close coordination during early planning and development stages; (3) provide sufficient information to the District for timely analysis of project effects and to assist DWR in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps personnel resources by focusing attention on projects that would most affect aquatic resources; (5) provide a mechanism for expediting project coordination when necessary; and (6) provide procedures for resolving disputes in this resource partnering effort.

NOW, THEREFORE, the Parties agree as follows:

#### AGREEMENT

##### Article I. - PURPOSE AND AUTHORITIES

A. 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 DWR to facilitate interagency coordination and to expedite the evaluation of Section 404 and Section 10 permit applications and/or Section 408 requests for DWR-designated priority projects. The DWR-designated priority projects may include, but are not limited to, projects related to system improvements; operations and maintenance and repair, rehabilitation or replacement (O&M, RRR) of features of the State Plan of Flood Control (SPFC), projects to assist in the implementation of the Central Valley Flood Protection Plan and integration of its Conservation Strategy, activities conducted pursuant to the System Wide Improvement Framework, and improvements or O&M, RRR of non-SPFC facilities, where Section 404 or Section 10 permits or Section 408 permissions are required. This MOA is not intended as the exclusive means of obtaining District review of DWR projects. This MOA is a vehicle by which DWR may obtain expedited review of DWR projects designated as a priority, outside of the District's standard review process.

B. The District enters into this MOA pursuant to their authority under 33 U.S.C. § 2352.

C. DWR enters into the MOA pursuant to authority granted of the laws of the State of California.

##### Article II. - SCOPE

A. DWR will provide funds to the District pursuant to Article V of this MOA to expedite the evaluation of Section 404 and Section 10 permit applications, and/or requests for permission under Section 408 for DWR-designated priority projects under the jurisdiction of the District. The District's operations and

maintenance expenses and expenses for its Regulatory Program are funded as congressionally appropriated line items in the annual Federal budget.

B. The District will allocate funds internally in order to expedite Section 404 and Section 10 permit application and/or Section 408 request evaluation and related services for DWR-designated priority projects. Funds received from DWR will be added to the District's operations and maintenance budget and/or the Regulatory Program budget in accordance with 33 U.S.C. § 2352.

C. The District will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of DWR-designated priority projects. The District's employees will charge their time against the account when they do work to expedite review and evaluation of DWR Section 404 or Section 10 permit applications and/or requests for permission under Section 408 for DWR-designated priority projects.

D. Funds contributed by 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, operations staff, support/clerical staff, and staff of other functional areas of the District) and other costs necessary to expedite the evaluation of DWR-designated priority projects under Section 404, Section 10, and Section 408. The USACE shall provide staffing resources to facilitate interagency coordination and to expedite evaluation related services for permit applications and/or requests for permission as described below for DWR designated priority projects and/or other programmatic efforts to support efficient decision-making related to DWR's Section 404, Section 10 and/or Section 408 permitting needs. Such activities will include, but are not limited to, the following: application review including all necessary engineering documentation, permit database entry, drawing correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, conduct of the public interest review, review of Habitat Conservation Plans (HCPs) and/or Natural Communities Conservation Plans (NCCPs), preparation and/or review of NEPA and/or CEQA/NEPA documents, review of mitigation banking documents, preparation of draft permit decision documents, meetings with DWR (including but not limited to the Interagency Coordination Committee [IAC] and its subcommittees), meetings with stakeholders and applicants, permit compliance, mitigation monitoring, preparation of reports/audits of funds expended for 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 and/or permission evaluation-related responsibilities that may be mutually agreed upon. USACE will provide an interagency and stakeholder forum and materials to describe USACE permit authorities and issues if needed.

E. Funds may also be expended to hire contract staff for the purpose of augmenting the resources available to the District's staff for expediting review and evaluation of Section 404 and Section 10 permit applications and/or requests for permission under Section 408, for DWR-designated priority projects. If such expenditures, when combined with the costs of the District's 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 DWR and memorialized by written amendment to this MOA.

F. The District will not expend funds provided by DWR for costs associated with the review of District work undertaken by supervisors or other persons or elements of the District in the decision-making chain of command; however, if a supervisor is performing staff work and not supervisory oversight, funds may be used. The District will not expend funds provided by DWR to defray the costs of activities

related to the District enforcement functions, but may use funds provided by DWR to defray costs of activities related to permit compliance functions. "Enforcement functions" are defined as those activities related to investigating work not authorized by the District but which required District authorization. "Permit compliance functions" are defined as District oversight of authorized activities. In accordance with the Chief of Engineers' memorandum dated September 2, 2015, funds may not be used to continue activities for DWR, should a lapse of federal appropriations result in shutdown or furlough for the District.

G. If the DWR's funds are expended and are not replenished, the Parties will terminate this MOA in accordance with Article X and any remaining Section 404 or Section 10 permit applications and/or requests for permission under Section 408 for DWR-designated priority projects will be processed pursuant to the standard review procedures, in a manner decided by the District.

H. Because multiple projects will be ongoing simultaneously, DWR will identify priorities and expectations for each DWR-designated priority project. DWR will provide the District with information about project workload and priorities on a quarterly basis.

### Article III. - INTERAGENCY COMMUNICATIONS

A. To provide for consistent and effective communication between the District and DWR, each party has appointed a Principal Representative as identified in Article IV.C. below, 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 applications and/or requests for permission under Section 408, for DWR-designated priority projects

B. The Principal Representative for each party may be changed upon advance written notice to the other party without the need to execute an amendment to this MOA.

C. Any notices, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and delivered personally, or sent by email, or mailed by first-class, registered, or certified mail to the applicable Principal Representative. Any notice, request, demand or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven (7) business days after it is mailed.

### Article IV. - RESPONSIBILITIES OF THE PARTIES

A. The DWR shall:

1. Provide information regarding priority projects, scheduling requirements and other specific activities to initiate evaluation of permit applications and/or requests for permission under Section 408, for DWR-designated priority projects. Upon request, 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's workload and staff availability (e.g., schedules for projects with individual permits).

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

4. To the best of its ability, ensure the participation of all essential personnel, customers and decision makers during the permit application and/or request for permission 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, to include providing the District with information about project workload and priorities on a quarterly basis.

B. Sacramento District shall:

1. Expedite review of permit applications and/or requests for permission under Section 404 and Section 10 permit applications and/or requests for permission under Section 408, for DWR-designated priority projects, 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 DWR regarding an adjustment of priorities or establishment of relative priorities if the current and/or projected workload of DWR-designated priority projects and activities exceeds the District's ability to provide the services specified in this MOA.

3. Provide DWR monthly tracking reports by staff hours and by project in a spreadsheet to be provided by DWR.

4. Provide DWR a quarterly report of progress made under this MOA that documents and summarizes the District's activities completed and funds expended during the quarter preceding the report, as well as the work and funds projected for the next quarter in a brief, bulleted report submitted to DWR Principal Representative. The quarterly progress report will also describe achievements, including any improvements the District has documented in coordinating and enhancing the efficiency of reviews of DWR-designated priority projects. The quarterly progress report also will identify any recommendations for improving consultation and coordination among the Parties to this MOA.

5. Participate in quarterly status meetings with DWR, as requested, to discuss progress on DWR-designated priority projects and upcoming priorities.

6. Designate a Project Manager(s) who will make his or her best efforts to attend periodic meetings with DWR.

C. The Parties have identified the following Principal Representatives for this MOA and all inquiries, notices, request, demand, or other communication during the term of the MOA will be directed to:

Principal Representative: Erin Brehmer Department of Water Resources Division of Flood Management 3310 El Camino Avenue Sacramento, CA PO Box 219000 Sacramento California 95821-9000 Phone: (916) 574-2313 Fax: (916) 574-1478 <a href="mailto:Erin.Brehmer@water.ca.gov">Erin.Brehmer@water.ca.gov</a>	Principal Representative: Michael G. Nepstad Deputy Chief, Regulatory Division United States Army Corps of Engineers Sacramento District 1325 J Street, Room 1350 Sacramento, California 95814-2922 Phone: (916) 557-7262 Fax: (916) 557-7803 <a href="mailto:michael.g.nepstad@usace.army.mil">michael.g.nepstad@usace.army.mil</a>
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#### Article V. FUNDING

A. DWR will pay the District an amount not to exceed \$1,140,000 for purposes of funding the District's costs, as specified in Article II, for the term of this MOA.

B. DWR may elect to request an amendment pursuant to Article X to extend the term of this MOA and fund the costs of expediting the District's review and evaluation of permit applications and requests for permission under Section 408 beyond September 30, 2027, for as long as this MOA remains in effect. In the event DWR elects to continue services under this MOA beyond September 30, 2027, no later than June 30, 2027, and annually thereafter, DWR shall provide written notice of this decision to the District's Principle Representative. After receipt of DWR's written notice of intent to extend the term of this MOA and no later than 30 calendar days after such written notice, the District will provide 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, DWR will make a lump sum payment in advance to the District in the total amount specified in the District's cost estimate. 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. For example, FY 2017 is from October 1, 2016 through September 30, 2017.

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 DWR, in writing, of the additional amount necessary to continue services under this MOA. Upon receipt of the District's written notice, and no later than 60 calendar days after receipt of such notice, DWR shall either make a lump sum payment for the additional amount or agree to a modified level of service until DWR's funds are exhausted.

D. If the District's actual costs for providing the agreed upon level of service will at any time during the term of this MOA, exceed the amount of funds available, the Corps will notify DWR in writing, at least 90 calendar days prior to the anticipated exhaustion of funds, of the additional amount necessary to fund services under this MOA. Upon receipt of the District's written notice, and no later than 60 calendar days after receipt of such notice, DWR shall make a lump sum payment for the additional amount.

E. Within 90 days of execution of this MOA, DWR shall pay the anticipated costs expected to be incurred

through September 30, 2018, at the level specified in the Corps' budget estimate which is included as Exhibit A to this MOA and incorporated herein by reference. Payment will be made by check or electronic funds transfer to the Finance and Accounting Officer, U.S. Army Corps of Engineers, Sacramento District.

F. Within 30 days of the effective date of this MOA, and annually thereafter for each year that this MOA remains in effect, the District will provide DWR with an anticipated budget estimate of costs for the next Federal fiscal year, including any proposed changes in the level of staffing. Revisions agreed to by the Parties will be incorporated into a revised budget estimate. The District shall submit budget estimates to DWR's designated Principle Representative.

G. The Corps' budget estimate, included as Exhibit A to this MOA, will be revised to reflect costs for subsequent years that this MOA remains in effect by mutual agreement of the Parties without necessitating a formal revision or amendment to this MOA, provided the revised budget estimate does not result in an increase in the total funding amount specified in paragraph A of this Article.

H. Prior to the Corps incurring any expenditure for services pursuant to this MOA and following the initial lump sum payment under Article V.E., DWR will make a lump sum payment to the District by September 15<sup>th</sup> of each year that this MOA remains in effect. Upon receipt of the District's budget estimate, and in accordance with normal DWR payment procedures, DWR will make an annual lump sum payment, in advance, of the total amount specified in the District's budget estimate.

I. 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 permit applications and/or requests for permission under Section 408 associated with DWR-designated priority projects, undertaken by the District, will be governed by Corps regulations, policies and procedures.

#### Article VII. - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute between the Parties, 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, the Parties shall proceed in accordance with applicable 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 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 the District's regulatory activities. DWR will give the District advance notice before making formal, official statements on its website, in the media,

and/or in other public venues including, but not limited to, public hearings and professional conferences regarding the District's activities funded under this MOA.

Article IX. - MISCELLANEOUS

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

B. 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.

C. The District participation in this MOA does not imply endorsement of DWR projects nor does it diminish, modify, or otherwise affect the District's statutory or regulatory authorities.

D. This MOA, including any documents incorporated by reference or attachments thereto, but excluding the pre-existing relationships or obligations between the Parties referenced in paragraph A above, constitute the entire agreement between the Parties.

Article X. - AMENDMENT, MODIFICATION AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties.

B. 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, DWR shall continue to be responsible for all costs incurred by the District under this MOA up to the effective date of such termination.

C. 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 sixty (60) days of completion of this accounting, the District shall directly return to DWR any funds advanced in excess of the actual costs, subject to compliance with the Anti-Deficiency Act (31 U.S.C. § 1341 et seq.). Funds may be provided to DWR either by check or by electronic funds transfer.

Article XI. - EFFECTIVE DATE AND DURATION

This MOA, and any amendments, will become effective when signed by both DWR and the District. This MOA shall remain in force until September 30, 2027, unless amended or terminated prior to that date in accordance with Article X. In the event the MOA is amended prior to September 30, 2027, this MOA will remain in effect for the duration specified in such amendment or any subsequent amendments. DWR may elect to extend the expiration date of this MOA beyond September 30, 2027, subject to the terms of this MOA.

Article XII. - ADVANCE PAYMENT FOR FEDERAL AGREEMENTS

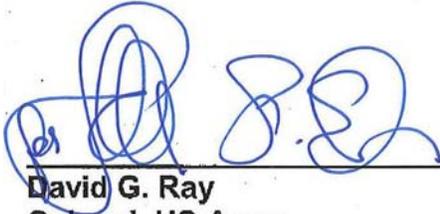
As required by OMB Circular A-97, DWR certifies that the services being requested pursuant to this agreement cannot be procured reasonably and expeditiously through ordinary business channels.

IN WITNESS WHEREOF, the Agreement is executed by DWR, acting by and through its Director or his designee, and by the U.S. Army Corps of Engineers, through its authorized officer and shall become effective upon the date it is signed by both the Department and the District.

**For the U.S. Army Corps of Engineers  
U.S. Army Engineer District, Sacramento**

**By (Authorized Signature)**

**Date Signed**



\_\_\_\_\_  
**David G. Ray  
Colonel, US Army  
District Commander**

\_\_\_\_\_  
11/27/17

**For the California Department of Water Resources:**

**By (Authorized Signature)**

**Date Signed**



\_\_\_\_\_  
**Eric S. Koch, Chief  
Division of Flood Management**

\_\_\_\_\_  
10/20/17

Projects	Work Category	Description	FPO
<ul style="list-style-type: none"> <li>• Lower Elkhorn Levee Setback (LEBLS) Project</li> <li>• LEBLS Ecosystem Enhancements</li> <li>• Step Levee Modification</li> <li>• Degrade Lower Egbert Tract Levees</li> <li>• In-place Levee Improvements</li> <li>• Prospect Island Improvements</li> <li>• Upper Elkhorn Basin Levee Setback Project</li> <li>• Deep Water Ship Channel Improvements</li> </ul>	Project Management	Scheduling, processing, public outreach	\$50,000
	NEPA	Document Preparation, Cultural, Biological	\$300,000
	Environmental Permitting	106, 404, Section 7 Consultation, SWIF	\$100,000
	Hydrology & Hydraulics	Modeling review	\$75,000
	Geotechnical Engineering	Basis of Design, geotechnical review	\$75,000
	Total		
Projects	Work Category	Description	FMO
<ul style="list-style-type: none"> <li>• Deferred Maintenance Project (DMP)</li> <li>• Small Erosion Repair Program (SERP) USACE RGP</li> <li>• Butte Slough Outfall Gates Rehabilitation Project</li> <li>• Collection Canals Sediment Removal Project</li> <li>• Marcuse Road Bridge Replacement</li> <li>• Elder Creek Channel Rehabilitation Project</li> <li>• Tisdale Wier Rehabilitation Project</li> <li>• System Wide Improvement Framework plans/404/ESA</li> <li>• Post Construction Monitoring Reports (eg Colusa SRA)</li> <li>• Mitigation area/project Development and Review (eg Colusa SRA)</li> <li>• FSRP</li> </ul>	Project Management	Scheduling, processing, public outreach	\$ 30,000
	NEPA	Document Preparation, Cultural, Biological	\$ 40,000
	Environmental Permitting	106, 404, Section 7 Consultation, SWIF	\$ 100,000
	Hydrology & Hydraulics	Modeling review	\$ 10,000
	Geotechnical Engineering	Basis of Design, geotechnical review	\$ 10,000
	Total		
Projects	Work Category	Description	FES
Feather River HCP and associated EIR/EIS Other Feather R regional permits: - Sec 404 - Sec 408 - Regional General Permit/401 WQ cert - Sec 106 Misc. Advance Mitigation Projects	Project Management	Scheduling, processing, public outreach	\$20,000
	NEPA	Document Preparation, Cultural, Biological	\$70,000
	Environmental Permitting	106, 404, Section 7 Consultation, SWIF	\$180,000
	Hydrology & Hydraulics	Modeling review	\$30,000
	Geotechnical Engineering	Basis of Design, geotechnical review	\$0
	Total		
Projects	Work Category	Description	DLO
McCormack-Williamson Tract Grizzly Slough Dutch Slough	Project Management	Scheduling, processing, public outreach	
	NEPA	Document Preparation, Cultural, Biological	
	Environmental Permitting	106, 404, Section 7 Consultation, SWIF, Section 10	\$50,000
	Hydrology & Hydraulics	Modeling review	
	Geotechnical Engineering	Basis of Design, geotechnical review	
Total			\$50,000
Total Contract Amount			\$1,140,000