

**MEMORANDUM OF AGREEMENT
BETWEEN THE SACRAMENTO AREA FLOOD CONTROL AGENCY
AND THE U.S. ARMY CORPS OF ENGINEERS,
SACRAMENTO DISTRICT**

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into as of this 27th day of March, 2018, between the Sacramento Area Flood Control Agency, (hereinafter the "SAFCA") 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 United States, including wetlands, pursuant to Section 404 of the Clean Water Act ("CWA") of 1972, as amended, and navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act ("RHA") of 1899, as amended, 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 a water resources development project constructed 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, 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 District has indicated it is not able, without additional resources, to expedite the evaluation of permit applications under Section 404 of the CWA or Section 10 of the RHA, or Section 408 requests for SAFCA designated priority projects; and

WHEREAS, the SAFCA is a non-Federal public entity and requires expedited and priority review of certain projects under requires expedited and priority review of certain projects under Section 404 of the CWA or Section 10 of the RHA, or Section 408 as more fully described in this MOA; and

WHEREAS, the District has determined that expenditure of funds received from the SAFCA is appropriate; and

WHEREAS, the District issued an initial Public Notice dated October 23, 2017, regarding its intent to accept and expend funds contributed by the SAFCA for evaluation of permit applications under Section 404 of the CWA or Section 10 of the RHA, and/or Section 408 requests; and

WHEREAS, it is understood and acknowledged by all Parties that District' review of permit applications and Section 408 requests for SAFCA designated priority projects will be completely impartial and in accordance with all applicable Federal laws and regulations.

NOW, THEREFORE, the Parties 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 SAFCA to expedite the evaluation of permit applications and Section 408 requests for the SAFCA designated priority projects, as identified by SAFCA pursuant to Article II(H), requiring approval by the District pursuant to Section 404 of the CWA, Section 10 of the RHA, and/or Section 408. This MOA is not intended as the exclusive means of obtaining District review of the SAFCA projects. This MOA is a vehicle by which the SAFCA may obtain expedited review of the SAFCA designated priority projects, outside of the District's standard review process.

Article II. - SCOPE

A. The SAFCA will provide funds to the District, in accordance with Article V, to expedite the evaluation of permit applications and Section 408 requests for SAFCA designated priority projects under the jurisdiction of the District. The District will allocate funds internally. Funds received from the SAFCA will be used to augment the District's budget in accordance with Section 214 of the WRDA 2000, as amended.

B. The District will provide staffing resources dedicated to expediting the evaluation of SAFCA-designated priority projects, as described more fully below.

C. The District will establish separate internal financial accounts to track receipt and expenditure of the funds associated with its review of SAFCA designated priority projects. The District's employees will charge their time and related expenses against the appropriate account(s) when they perform work to expedite review and evaluation of SAFCA permit applications and/or Section 408 requests.

D. Funds contributed by the SAFCA hereunder will mainly be expended to defray the costs of salary, associated benefits, overhead, and travel expenses for existing or additional personnel (including regulatory and operations staff, support/clerical staff, and staff of other functional areas of the District) associated with SAFCA designated priority projects. The Districts shall provide staffing resources to expedite permit application and related services as described below to support efficient decision-making related to the SAFCA's Section 404 of the CWA, Section 10 of the RHA permitting needs, and/or evaluation of Section 408 requests for SAFCA designated priority projects. Such activities will include, but are not limited to, the following: early input and coordination on topics including engineering, environmental, regulatory, permit processing and permitting issues; 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 and development of environmental compliance documents, preparation of draft permit decision documents, meetings with the SAFCA, stakeholders and applicants, permit compliance, mitigation monitoring, preparation of reports/audits of funds expended to the SAFCA, 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. The District will also provide an interagency and stakeholder forum and materials to describe Corps permit authorities and issues, if appropriate.

E. Funds may also be expended to hire contract staff for the purpose of augmenting the resources available to the District staff for the activities described in Article II (D) with SAFCA's prior approval. 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 SAFCA and memorialized by written amendment to this MOA.

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

G. If the SAFCA's funds are expended and are not renewed, the Parties may elect to terminate this MOA in accordance with Article X(B). In the event of termination, any remaining SAFCA designated priority permit applications and/or Section 408 requests will be processed pursuant to the standard review procedures, in a manner decided by the District.

H. The SAFCA will provide written notification to the District identifying which projects constitute priority projects for the purpose of this MOA.

Article III. - INTERAGENCY COMMUNICATIONS

A. To provide for consistent and effective communication between the District and the SAFCA, 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 and/or Section 408 requests. Each party will issue a delegation letter to the other designating the Principal Representative for each agency.

B. Any notice, 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 SAFCA shall:

1. Provide information regarding SAFCA designated priority projects, scheduling requirements and other specific activities to initiate evaluation of permit applications and/or Section 408 requests. Information required for the District to deem a permit application complete thereby allowing initiation of the permit application review process can be found at 33 C.F.R. 325.1(d), 325.3(a), and in General Condition 31 of the Nationwide Permit Program. Information necessary to begin the review and evaluation of Section 408 requests is found in EC 1165-2-216. Upon request, the SAFCA shall provide supplemental information if it is reasonably 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 SAFCA involvement that may affect the District workload and staff availability (e.g., schedules for projects with individual permits).

3. In consultation with the District, as appropriate, schedule District involvement in the SAFCA designated priority projects.

4. To the best of its ability, ensure the participation of all essential personnel 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.

6. Because multiple projects may be ongoing simultaneously, the SAFCA will identify priorities and expectations for each project, and the SAFCA and the District will discuss

anticipated project workloads, proposed budgets, and other related matters every three years during the term of the MOA. To keep expectations accurate and current, the SAFCA will provide the District with information about project updates at the quarterly coordination meetings.

B. The District shall:

1. Expedite review of permit applications and/or Section 408 requests in accordance with the purpose, scope, and other terms and conditions of this MOA. The District shall not redirect resources from, or otherwise postpone, other SAFCA projects submitted through the standard District review process or covered by a separate MOA under Section 214 of the WRDA 2000.

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

3. Provide the SAFCA 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 SAFCA to discuss SAFCA designated priority projects and upcoming priorities.

5. Designate a Regulatory Project Manager and a Section 408 Project Manager who will make his or her best efforts to attend periodic meetings with the SAFCA.

Article V. FUNDING

A. No later than 90 days after the effective date of this MOA, the SAFCA shall make two separate payments to the District totaling \$150,000, the anticipated costs expected to be incurred by the District under this MOA through the end of federal fiscal year 2018. One payment shall be in the amount of \$70,000 (Regulatory) and the second payment shall be in the amount of \$80,000 (Section 408). 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, federal fiscal year 2018 is from October 1, 2017 through September 30, 2018.

B. In the event the SAFCA elects to continue services under this MOA beyond federal fiscal year 2018, no later than August 1, 2018, and annually thereafter, the SAFCA shall provide written notice of this decision to the District's Principle Representative. After receipt of the SAFCA's notice and no later than September 1, 2018 and annually thereafter, the District will provide the SAFCA 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 SAFCA will make two lump sum payments 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 SAFCA of the additional amount necessary to continue services under this MOA. Upon receipt of such notice, the SAFCA shall either make a lump sum payment(s) for the additional amount or agree to a reduced level of service.

D. The funds specified in subparagraph A above will be payable in two lump sum payments in advance of the District incurring any financial obligations or performing work 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 federal fiscal year's payment, or refunded in accordance with Article X if this MOA is terminated.

F. If, during any federal fiscal year, the District determines that its actual costs for providing expedited reviews under this MOA through the end of the federal fiscal year will exceed the amount of funds available, at least ninety (90) days prior to the date the District expects funds to be exhausted, the District will notify the SAFCA's Principal Representative in writing of the additional amount(s) needed to continue to provide expedited reviews through the end of the federal fiscal year. The SAFCA will have the option of (i) making additional payment(s) to the District for continued services under the MOA through the end of the federal fiscal year, (ii) agreeing to continue to receive services under the MOA until funds are exhausted, at which time any remaining SAFCA designated priority projects will be processed pursuant to the standard review procedures, in a manner decided by the District, or (iii) agreeing to a reduced level of service under the MOA.

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 and Section 408 requests 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 SAFCA 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 SAFCA programs or projects before other agencies, departments and offices. The District may provide, upon request from the SAFCA, 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 and operations and maintenance activities. SAFCA will give the District advance notice before making formal, official statements regarding District activities funded under this MOA.

Article IX. - MISCELLANEOUS

A. This MOA will not affect any pre-existing or independent relationships or obligations between the SAFCA 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 SAFCA 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 subparagraph A above, 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.

Article X. - AMENDMENT, MODIFICATION AND TERMINATION

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

B. The SAFCA may terminate this MOA by providing written notice to the District. 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 SAFCA 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 SAFCA designated priority projects.

C. The District may terminate this MOA by providing written notice to the SAFCA. Such termination shall be effective upon the sixtieth (60th) calendar day following notice, unless a later date is set forth.

D. In the event either party terminates the MOA, the District will close out or transfer any ongoing SAFCA-designated priority projects and upon the effective date of termination, any

outstanding SAFCA-designated priority permit applications and/or Section 408 requests will be processed pursuant to the standard review procedures, in a manner to be decided by the District.

E. 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 SAFCA 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 the SAFCA either by check or by electronic funds transfer.

Article XI. - EFFECTIVE DATE AND DURATION

This MOA will become effective when signed by both the SAFCA and the District. This MOA shall remain in force until the MOA is terminated pursuant to Article X.

Article XII. – INTEGRATION

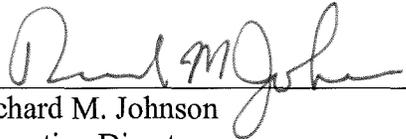
This MOA, including any documents incorporated by reference or attachments thereto, constitute the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

IN WITNESS WHEREOF, the Agreement is executed by the SAFCA, acting by and through its Executive Director or his designee, pursuant to Resolution No. 2017-063 authorizing such execution, 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 SAFCA and the District.

For the Sacramento Area Flood Control Agency:

By (Authorized Signature)

Date Signed

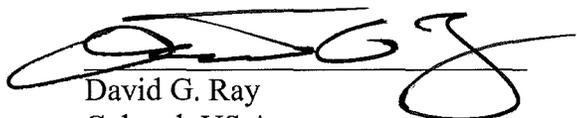

Richard M. Johnson
Executive Director

1 MARCH 2018

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

By (Authorized Signature)

Date Signed


David G. Ray
Colonel, US Army
District Commander

26 MARCH 2018