



**MEMORANDUM OF AGREEMENT
BETWEEN
THE PORT OF STOCKTON
AND
THE U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT**

SUBJECT: Water Resources Development Act of 2000, Public Law 106-541 (WRDA 2000) Agreement for Port of Stockton

THIS AGREEMENT is entered into as of this 18 day of August, 2020 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 regulatory jurisdiction over certain activities occurring in the 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 of 2000, Public Law 106-541 ("WRDA 2000"), as amended and 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 April 18, 2018, 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 unable, without additional resources, to expedite the evaluation of Section 404 and Section 10 permit applications and/or requests for permission under Section 408 for Port designated priority projects; and

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

SUBJECT: Water Resources Development Act of 2000, Public Law 106-541 (WRDA 2000) Agreement for Port of Stockton

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

WHEREAS, the District issued an initial Public Notice, regarding its intent to accept and expend funds contributed by the Port for evaluation of permit applications under Section 404, Section 10, and/or Section 408 requests for permission; and

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

WHEREAS, it is understood and acknowledged by all Parties that District' review of Section 404 and Section 10 permit applications and/or Section 408 requests for permission for Port 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 and codified at 33 U.S.C. § 2352, 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 Section 404 and Section 10 permit applications and/or Section 408 requests for Port designated priority projects, as identified pursuant to Article II(H). This MOA is not intended as the exclusive means of obtaining District review of the Port projects. This MOA is a vehicle by which the Port may obtain expedited review of Port designated priority projects, outside of the District's standard review process.

Article II. - SCOPE

A. The Port will provide funds to the District, in accordance with Article V, to expedite the evaluation of Section 404 and Section 10 permit applications, and/or requests for permission under Section 408 for Port designated priority projects under the jurisdiction of the District.

B. The District will provide staffing resources dedicated to expediting the evaluation of Port 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 Port 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

SUBJECT: Water Resources Development Act of 2000, Public Law 106-541 (WRDA 2000) Agreement for Port of Stockton

Section 404 and Section 10 permit applications and/or Section 408 requests for Port designated priority project.

D. Funds contributed by the Port hereunder shall 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 expediting review of Port designated priority projects under Section 404, Section 10, and Section 408. 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 and/or Section 408 request 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 and/or statement of findings, meetings with the Port, stakeholders 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 application and/or Section 408 request 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's staff for the activities described in Article II (D) with the Port'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 Port and memorialized by written amendment to this MOA.

F. The District will not expend funds provided by the Port 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 Port 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 January 19, 2018, as amended on April 15, 2019, funds may not be used to continue activities for the Port, should a lapse of federal appropriations result in shutdown or furlough for the District.

G. If the Port's funds are expended and are not renewed, the Parties may elect to terminate this MOA in accordance with Article X. In the event of termination, any remaining permit applications and/or Section 408 requests for Port designated priority

SUBJECT: Water Resources Development Act of 2000, Public Law 106-541 (WRDA 2000) Agreement for Port of Stockton

projects will be processed pursuant to the standard review procedures, in a manner decided by the District.

H. The Port 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 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 Section 404 or Section 10 permit applications and/or Section 408 requests. Each party will issue a letter to the other identifying 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 Port shall:

1. Provide information regarding Port designated priority projects, scheduling requirements and other specific activities to initiate evaluation of Section 404 and Section 10 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. Basic information required for a complete Section 408 request is found in EC 1165-2-220. 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's workload and staff availability (e.g., schedules for projects with individual permits or requests to modify federal projects).

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

SUBJECT: Water Resources Development Act of 2000, Public Law 106-541 (WRDA 2000) Agreement for Port of Stockton

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

6. Participate in quarterly status meetings with the District to discuss Port designated priority projects, schedules, workloads, proposed budgets, any upcoming priorities, and other related matters. To keep expectations accurate and current, the Port will provide the District with updated information about Port designated priority projects at the quarterly coordination meetings.

B. The District shall:

1. Expedite review of Section 404 and Section 10 permit applications and/or Section 408 requests for permission in accordance with the 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 or covered by a separate MOA under Section 214 of the WRDA 2000.

2. Consult with the Port regarding an adjustment of priorities or establishment of relative priorities if the current and/or projected workload of Port designated 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 Port designated priority projects, schedules, workloads, proposed budgets, any upcoming priorities, and other related matters.

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

SUBJECT: Water Resources Development Act of 2000, Public Law 106-541 (WRDA 2000) Agreement for Port of Stockton

Article V. FUNDING

A. No later than 90 days after the effective date of this MOA, the Port shall make a payment to the District totaling \$100,000, the anticipated costs expected to be incurred by the District under this MOA through the end of federal fiscal year 2021. 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 2020 is from October 1, 2019 through September 30, 2020.

B. In the event the Port elects to continue services under this MOA beyond federal fiscal year 2021, no later than August 1, 2021, 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 September 1, 2021 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 in writing of the additional amount necessary to continue services under this MOA. Upon receipt of such notice, the Port may either make a lump sum payment for the additional amount within sixty (60) calendar days after receipt of the notice, continue the same level of service until funds are expended, or agree to a reduced level of service.

D. The funds specified in subparagraph A above will be payable in a lump sum payment 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. If the Port elects to continue services under this MOA in accordance with Paragraph V.B., the District will, credit any funds remaining at the end of the fiscal year to the following federal fiscal year’s payment. If the Port chooses not to continue services under this MOA or this MOA is terminated for any other reason or expires, the District will return any remaining funds, in accordance with Article X.

F. If, during any federal fiscal year, the District determines 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 Port’s Principal Representative in writing of the additional amount(s) needed to continue to provide expedited reviews

SUBJECT: Water Resources Development Act of 2000, Public Law 106-541 (WRDA 2000) Agreement for Port of Stockton

through the end of the federal fiscal year. The Port will have the option of (i) making additional payment(s) to the District, within sixty (60) calendar days after receipt of the notice, 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 Port 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 permit applications and/or requests for permission under Section 408 associated with Port designated priority projects, 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 will proceed in accordance with Federal law.

Article VIII. - PUBLIC INFORMATION

The District will not be responsible for justifying or explaining the Port's 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 the District's regulatory and operations and maintenance 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. This MOA will not affect any pre-existing or independent relationships or obligations between the Port 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's participation in this MOA does not imply endorsement of the Port's projects nor does it diminish, modify, or otherwise affect the District's statutory or regulatory authorities.

SUBJECT: Water Resources Development Act of 2000, Public Law 106-541 (WRDA 2000) Agreement for Port of Stockton

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. 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 on-going Port designated priority projects.

C. In the event either party terminates the MOA, the District will close out or transfer any ongoing Port designated priority projects and upon the effective date of termination, any outstanding Port designated priority permit applications will be processed pursuant to the standard review procedures, in a manner to be decided by the District.

D. 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, subject to compliance with the Anti-Deficiency Act (31 U.S.C. 1341 et seq.). 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 until the MOA expires or 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.

SUBJECT: Water Resources Development Act of 2000, Public Law 106-541 (WRDA 2000) Agreement for Port of Stockton

IN WITNESS WHEREOF, the Agreement is executed by the Port, 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 Port and the District.

THE PORT OF STOCKTON:



Richard Aschieris
Port Director

August 18, 2020

(Date)

APPROVED AS TO FORM:



Steve Herum
Port Counsel

August 17, 2020

(Date)

FOR THE U. S. ARMY SACRAMENTO DISTRICT OF ENGINEERS:



James J. Handura
Colonel, U.S. Army
Commander and District Engineer

7/23/2020

(Date)