



RESTATED AND AMENDED

**MEMORANDUM OF AGREEMENT
BETWEEN
THE SAN FRANCISCO BAY RESTORATION AUTHORITY,
FUNDING ENTITY/ENTITIES,
AND
THE UNITED STATES ARMY CORPS OF ENGINEERS,
SAN FRANCISCO DISTRICT**

This Memorandum of Agreement (“MOA”) is entered into between the San Francisco Bay Restoration Authority (hereinafter “Authority”), Funding Entity/Entities, and the United States Army Corps of Engineers, San Francisco District (hereinafter “Corps”), collectively referred to as the “Parties.”

RECITALS

WHEREAS, the United States Army Corps of Engineers has regulatory jurisdiction over certain activities occurring in waters of the United States, including wetlands, pursuant to section 404 of the Clean Water Act of 1972 (“CWA”), as amended, and navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act of 1899 (“RHA”), as amended; and

WHEREAS, section 214 of the Federal Water Resources Development Act (“WRDA”) of 2000, 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 application 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, SUBJECT: Redelegation of Authority to Accept and Expend Funds Contributed by Non-Federal Public Entities, Public-Utility Companies, Natural Gas Companies, or Railroad Carriers to Expedite the Evaluation of Department of the Army Permit Applications, has authorized the U.S. Army Corps of Engineers to accept and expend funds contributed by non-Federal public entities subject to certain limitations; and

WHEREAS, California Government Code Sections 66700-66706 establishes the Authority as a non-Federal public entity with authority to grant funds for all phases of eligible projects, which are those projects that restore, protect or enhance tidal wetlands, managed ponds, or natural habitats on the shoreline of San Francisco Bay, which projects may include features that provide public access or flood management; and

- A. Pursuant to Section 214 of WRDA 2000, as amended, 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 Corps' acceptance and expenditure of funds contributed by the Authority on behalf of Funding Entities to provide expedited and coordinated permit application evaluation-related services for the Authority's list of Priority Projects requiring Corps' approval pursuant to section 404 of the CWA and section 10 of the RHA. This MOA is not intended as the exclusive means of obtaining review of Priority Projects, it is a vehicle by which Priority Projects will obtain expedited and coordinated permit evaluation related services outside of the ordinary Corps standard review process. Priority Projects are defined as the list of projects identified in accordance with Article IV.A.1.
- B. The Authority enters into this MOA pursuant to its authority to grant funds for all phases of projects that restore, protect or enhance tidal wetlands and other wildlife habitat in and surrounding the San Francisco Bay as set forth in Government Code Sections 66700-66706 and pursuant to the June 1, 2018 authorization to disburse funds to the Corps for Priority Projects.
- C. The Funding Entities enter into this MOA pursuant to their authority to undertake Priority Projects and to accept grant funds from public entities. The Funding Entities desire for the Authority to enter into this MOA and disburse funds directly to the Corps in lieu of granting funds to the Funding Entities for subsequent disbursement to the Corp pursuant to multiple, separate agreements.

Article II - SCOPE OF WORK

- A. The Authority will provide funds to the Corps on behalf of Funding Entities (hereinafter "Authority funds") to provide permit application evaluation-related services as more particularly described in Appendix A. The Corps' regulatory program is funded as a congressionally appropriated line item in the annual Federal Budget. Authority funds will be added to the Corps' regulatory budget in accordance with the provisions of section 214 of WRDA 2000, as amended.
- B. The Funding Entity associated with each project will be the applicant and permittee for the project.
- C. The Corps will provide staffing resources dedicated to the permit evaluation-related services as described in Article II.C below.
- D. The Corps will establish a separate internal financial account to track receipt and expenditure of the funds associated with permit evaluation-related services and review of permit applications for Priority Projects. The Corps will assign one member of regulatory personnel ("Project Manager" or other Authority-funded staff) to work full-time on applications for Priority Projects, and additional Corps personnel to work part-time on the coordination described in this agreement. The Corps assigned staff members will charge time and expenses against the account

Priority Projects and other identified activities as set forth in the Scope of Work (Appendix A).

B. To facilitate the Corps' reviews and activities, the Authority will:

1. Provide the Corps with the Priority Projects list. The Priority Projects list will be provided at an initial meeting between the Corps and the Authority. The Authority and the Corps will review the list and revise it on an as-needed basis. Changes to the list will be submitted by the Authority to the Corps in writing and will be effective upon receipt thereof.
2. Provide the Corps with the list of other resource and regulatory agencies that are participating in the coordinated review of Priority Projects, which agencies are referred to as the Bay Restoration Regulatory Integration Team ("BRRIT").
3. Encourage Funding Entity applicants to actively engage Corps personnel in early coordination, consultation, scoping, planning, and development of Priority Projects through various means including, but not limited to, meetings, field visits, conference calls, video teleconferencing, and electronic correspondence.
4. Encourage Funding Entity applicants to provide adequate information regarding projects and other specific activities to initiate permit application evaluation. Information required for the Corps to deem a permit application complete thereby allowing initiation of the permit review process can be found in Corps regulations at 33 C.F.R. §§ 325.1 (d), § 325.3(a), General Condition 31 of the Nationwide Permit Program as published in the Federal Register (82 Fed. Reg. 1,860, dated January 6, 2017), and the Corps' Final Nationwide Permit Regional Conditions for Sacramento, San Francisco, and Los Angeles Districts (effective March 18, 2017). Upon request, Authority shall encourage Funding Entity applicants to provide additional information necessary to complete the application and/or pre-construction notification. If additional information, pursuant to 33 C.F.R. § 325.1(e) is requested by the Corps, Authority shall encourage Funding Entity applicants to provide such additional information necessary to ensure the Corps can effectively accomplish the required review.
5. In consultation with the Corps, establish realistic schedules for the Corps' involvement in Priority Projects. Work closely with the Corps to resolve workload conflicts and adjust priorities and schedules in order to make optimal use of available Regulatory Program staff resources. If overlaps or conflicts occur in the schedules for Priority Projects, the Authority will work with the Corps to resolve such overlaps or schedule conflicts.
6. Request meetings in writing to the Corps by mail or email. Meeting requests must provide sufficient lead-time for scheduling. Such requests must include

- A. This MOA became effective on March 5, 2019, when it was signed by both the Authority and the Corps. The amendments to the MOA will become effective when this amended and restated MOA is signed by both the Authority and the Corps. The Corps shall not receive payment for work performed prior to the effective date of the MOA and before the start date identified in the Authority's notice to proceed. Work performed pursuant to this MOA shall terminate on March 31, 2022; and this MOA shall expire on June 30, 2022. The Parties may amend this MOA or terminate the MOA prior to the expiration date pursuant to Article XII.
- B. The Authority shall send a notice to proceed to the Corps, which notice shall include a start date for the Corps obligations under this MOA and will include the Priority Projects list for the first six-month funding period.
- C. This MOA will become effective as to each Funding Entity upon signing by the Funding Entity. Signing by a Funding Entity will not affect the rights and obligations of any other Party under the MOA.

Article VI – FUNDING

Within thirty (30) days of receipt of an invoice from the Corps, the Authority shall pay the anticipated FY costs expected to be incurred each year following MOA execution date in one lump sum each year, at the level specified in the Corps' budget estimate, which is included as Appendix C to this MOA and incorporated herein by reference. The total not to exceed budget for three years of work is one million, six thousand one hundred and two dollars (\$1,006,102.00). If the term of this agreement is extended, the total not to exceed budget for five years of work is one million, seven hundred fifty thousand, five hundred sixty-one dollars (\$1,750,561.00). Work is expected to be performed from approximately, March 31, 2019 through March 31, 2022; or if this agreement is extended, work will be performed through March 31, 2024.

- A. The Corps shall submit an invoice for full advance payment of the total annual amount. The invoice shall be provided on Corps letterhead, and include (1) the Corps' name and address, (2) Corps' remittance address, if different, (or electronic transfer information) and (3) total amount.

Invoices shall be submitted by the Corps to:

San Francisco Bay Restoration Authority
1515 Clay Street, Suite 1000
Oakland, California 94612-1401
Attention: Amy Hutzel

- B. Revisions agreed to by the Corps and Authority will be incorporated into a revised budget estimate to reflect costs for subsequent years that this MOA remains in effect without necessitating a formal revision or amendment to the MOA. The Corps will carry-over any unobligated funds from year to year, which will be

Except as required under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 as amended by Pub. Law No. 104-231:

- A. Should the Corps receive a FOIA request regarding information designated as confidential by the Authority, the Corps shall notify the Authority's Principal Representative of such request and forward a copy of the request to the Authority's Principal Representative.

Article XI – MISCELLANEOUS

A. Other Relationships or Obligations

1. This MOA will not affect any pre-existing or independent relationships or obligations between the Parties.
2. The Corps' participation in this MOA does not imply endorsement of the Priority Projects, nor does it diminish, modify, or otherwise affect Corps statutory or regulatory authorities.
3. 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 A1 above, constitutes 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.

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.

C. Advance Payment for Federal Agreements

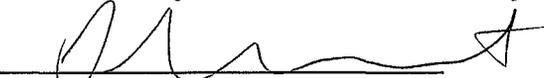
As required by OMB Circular A-97, Authority certifies that the services being requested pursuant to this agreement cannot be procured reasonably and expeditiously through ordinary business channels.

Article XII - AMENDMENT, MODIFICATION, AND TERMINATION

- A. This MOA may be modified or amended only by written mutual agreement of the Parties. The Authority and the Corps each has the right to terminate this MOA without cause upon thirty (30) days written notice to the other Parties, or sooner by mutual written agreement, or immediately in the event of a material breach. In the event of termination, the Authority will continue to be responsible for all costs

IN WITNESS WHEREOF, this Agreement is executed by the San Francisco Bay Restoration Authority acting by and through its authorized officers, and by the U.S. Army Corps of Engineers' San Francisco District, through its authorized officers.

San Francisco Bay Restoration Authority

By: 
Mr. Sam Schuchat
Executive Officer

3/6/20
Date

U.S. Army Corps of Engineers, San Francisco District

By: 
John D. Cunningham, Lieutenant Colonel
San Francisco District Commander
U.S. Army Corps of Engineers

1/16/2020
Date

Funding Entity Signatures are on separate pages

City of San Leandro

By: _____
Signature Date

Print Name and Title

California Department of Fish and Wildlife

By: _____
Signature Date

Print Name and Title

Santa Clara Valley Water District

By: _____
Signature Date

Print Name and Title

San Francisquito Creek Joint Powers Authority

By: _____
Signature Date

Print Name and Title

**APPENDIX A
SCOPE OF WORK**

WORK TASK 1: AGENCY PARTICIPATION

Schedule	The Corps will consult with the Authority in order to prepare a schedule for Priority Project deliverables.
Meetings, conference calls, field reviews	The Corps will participate actively in permit evaluation-related services by attending meetings and field reviews, when requested, and identifying critical issues, key decision points, and potential conflicts as early as possible. Participation includes sharing, when appropriate, the most current regulatory and aquatic resources information.
Responses to requests for information	The Corps will provide timely responses to requests from the Priority Project permit applicants and BRRIT members for information either verbally, via email, or by letter as necessary.
Coordination	The Corps will coordinate with BRRIT members and other federal, state, and local agencies to facilitate early coordination of Priority Projects.
Projected Workload	The Corps will consult with the Authority regarding an adjustment of priorities if the current and/or projected workload for Priority Projects exceeds the Corps' ability to provide the services specified herein or negotiate additional funding in accordance with paragraph VI.C. of the MOA.

Post-permit issuance activities	The Corps will reasonably coordinate with the permit applicants regarding permit modifications, including but not limited to: extensions, review of mitigation monitoring reports, and compliance inspection.
Additional necessary permitting tasks	The Corps will reasonably coordinate with the permit applicant regarding any additional tasks associated with the issuance of permits.

<p>Jurisdictional Determinations (JDs), including Approved JDs, will be processed within sixty (60) calendar days of receiving a complete jurisdictional determination request.</p>	<p>The Corps shall meet the stated objective at least 90% of the time.</p>
<p>Endangered Species Act Section 7 consultation initiation request letters and Section 106 consultation initiation request letters will be sent within fifteen (15) days of receiving adequate information from Authority to make a determination of effect and initiate consultation.</p>	<p>The Corps shall meet the stated objective at least 90% of the time.</p>

Year 1

FY19 (1 Oct 2018- 30 Sept 2019)			
Labor Costs	Staff Days	Rate	Cost
GS -12 Regulatory Support	218	\$938.23	\$204,534.05
GS-12 Regulatory – part-time	109	\$938.23	\$102,267
In house Support Service (e.g. legal, engineering)	20	\$938.23	\$ 18764.59
Other Direct Costs			
Travel & per Diem (20 days @ \$125 average)	20	\$125.00	\$ 2,500
TOTAL FY 2019			\$328,065.66

YEAR 2

FY 2020 (1 October 2019 -30 Sept 2020)			
Labor Costs	Staff Days	Rate	Cost
GS -12 Regulatory Support	218	\$969.62	\$211,377.55
GS-12 Regulatory – part-time	109	\$969.62	\$105688.80
In house Support Service (e.g. legal, engineering)	20	\$969.62	\$ 19,392.44
Other Direct Costs			
Travel & per Diem (20 days @ \$125 average)	20	\$125.00	\$ 2,500
TOTAL FY 2020			\$338,958.76

YEAR 3

FY 2021 (1 October 2020 -30 Sept 2021)			
Labor Costs	Staff Days	Rate	Cost
GS -12 Regulatory Support	218	\$ 1000.79	\$ 218,172.86
GS-12 Regulatory – part-time	109	\$ 1000.79	\$ 109,086.40
In house Support Service (e.g., legal engineering)	20	\$ 1000.79	\$ 20,015.86
Other Direct Costs			
Travel & per Diem (20 days @ \$125 average)	20	\$125.00	\$ 2,500
TOTAL 2021			\$349,775.15