CH
09-05-2013
Item No.21.

AN ORDINANCE 2013-09-05-0603

AUTHORIZING THE NEGOTIATION AND EXECUTION OF A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND THE UNITED STATES ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT, IN AN AMOUNT NOT TO EXCEED $500,000.00, FOR A PERIOD OF FIVE YEARS OR AS LONG AS THE CORPS HAS AUTHORITY TO ACCEPT SUCH FUNDS UNDER SECTION 214 OF THE WATER RESOURCES DEVELOPMENT ACT OF 2000, FOR THE EXPEDITED REVIEW OF CLEAN WATER ACT SECTION 404 PERMIT APPLICATIONS UNDER THE JURISDICTION OF THE DEPARTMENT OF THE ARMY, FOR DESIGNATED CITY IMPROVEMENT AND TRANSPORTATION PRIORITY PROJECTS LOCATED CITY-WIDE.

* * * * *

WHEREAS, the United States Army Corps of Engineers (USACE) Chief of Engineers authorized the USACE District and Division Engineers to accept and expend funds contributed by non-federal entities, subject to certain limitations, for the expedited review of Clean Water Act Section 404 permit applications; and

WHEREAS, expedited USACE permit reviews will reduce and, in many cases, eliminate project design and construction delays associated with what can be a lengthy permitting process; and

WHEREAS, USACE review of permit applications for the City of San Antonio designated priority projects will be completely impartial and in accordance with all applicable Federal laws and regulations, while utilizing the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities that are not carried out using funds authorized under the Memorandum of Agreement; and

WHEREAS, this ordinance authorizes the negotiation and execution of a Memorandum of Agreement between the City of San Antonio and the United States Army Corps of Engineers (USACE), Fort Worth District, in the amount not to exceed $500,000.00, for a period of five (5) years or as long as the Corps has authority to accept such funds under Section 214 of the Water Resources Development Act of 2000 (WRDA), for the expedited review of Clean Water Act Section 404 permit applications under the jurisdiction of the Department of the Army, for designated City improvement and transportation priority projects located City-wide; **NOW THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee, or the Director, Capital Improvements Management Services (CIMS), or his designee, is hereby authorized to negotiate and execute a Memorandum of Agreement (MOA) with the United States Army Corps of Engineers (USACE), for the purpose of funding expedited review of certain permits for COSA-designated priority projects, at a cost not to exceed $500,000.00, for a term of five years and to take all actions necessary to effectuate the purpose of this Ordinance. A copy of the MOA, in substantially final form, is attached and incorporated herein for all purposes as **Attachment A**. The execution authority granted by this ordinance expires 120 days from the effective date.

SECTION 2. Funding for this ordinance will be identified when work orders are issued from potential capital projects. All expenditures will comply with Capital Budgets for current and future fiscal years.

SECTION 3. Payment not to exceed the limitations of the budgeted amount is authorized and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

PASSED and APPROVED this **5th** day of **September**, **2013**.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Michael D. Bernard, City Attorney

Request for COUNCIL ACTION

City of San Antonio

Agenda Voting Results - 21

Name:	5A, 5B, 8, 9, 10, 11, 12, 13, 14A, 14B, 14C, 15A, 15B, 15C, 15D, 15E, 15F, 15G, 16, 17, 18, 19, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K, 21, 22, 23, 24, 25, 26A, 26B, 27A, 27B, 28A, 28B, 28C
Date:	09/05/2013
Time:	04:12:36 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the negotiation and execution of a Memorandum of Agreement between the City of San Antonio and United States Army Corp of Engineers, Fort Worth District, in the amount not to exceed $500,000.00 for a period of five years for the expedited review of Section 404 permits for City priority projects under the Clean Water Act, for designated City improvement and transportation projects located City-wide. [Peter Zanoni, Deputy City Manager; Mike Frisbie, Director, Capital Improvements Management Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				x
Ron Nirenberg	District 8		x				
Elisa Chan	District 9	x					
Carlton Soules	District 10		x				

MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO
AND THE UNITED STATES ARMY CORPS OF ENGINEERS,
FORT WORTH DISTRICT

THIS AGREEMENT is entered into as of this _____ day of _____, 2013 by and between the City of San Antonio (hereinafter referred to as "COSA") and the Department of the Army, represented by the United States Army Corps of Engineers, Fort Worth District (hereinafter referred to as "the Corps"). Hereinafter, COSA and the Corps collectively are referred to as the "Parties."

WHEREAS, Section 214 of the 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 for that entity under the jurisdiction of the Department of the Army, as long as the acceptance and use of funds will not substantively or procedurally impact impartial decision making with respect to permits;

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out section 214 of WRDA 2000, as amended by Public Law 111-315, to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Corps' Chief of Engineers, by memorandum dated March 29, 2004, as modified October 1, 2008, has authorized the Corps' District and Division Engineers to accept and expend funds contributed by non-federal entities subject to certain limitations i; and

WHEREAS, COSA desires to provide funds for the expedited review of Section 404 permit applications;

WHEREAS, the Corps issued an initial Public Notice dated _____, regarding its intent to accept and expend funds contributed by COSA for such purposes; and

WHEREAS, the Corps' Fort Worth District Engineer has determined that the acceptance and expenditure of funds received from COSA shall be in compliance with section 214 of WRDA 2000, as amended by Public Law 111-135, and a public notice dated _____, regarding the District Engineers' decision has been issued; and

WHEREAS, it is understood and acknowledged by the Parties that the Corps' review of permit applications for COSA-designated priority projects shall be completely impartial and in accordance with all applicable Federal laws and regulations, while utilizing the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section; and

Attachment A

WHEREAS, all final permit decisions carried out using funds authorized under this section shall be made available to the public, including on the Internet; and

WHEREAS, COSA is a non-Federal public entity; and

WHEREAS, on _____, 2013, the San Antonio City Council approved this Memorandum of Agreement (hereinafter referred to as "MOA"), through Ordinance No. _____ for the purpose of funding expedited review of certain permits for COSA-designated priority projects as more fully described in this MOA; and

NOW, THEREFORE, COSA and the Corps agree as follows:

Article I. - PURPOSE AND AUTHORITIES

Pursuant to Section 214 of WRDA 2000 (Public Law 106-541), as amended by Public Law 111-135, 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 COSA to expedite the evaluation of permits under the jurisdiction of the Department of the Army. This MOA is not intended as the exclusive means of obtaining Corps review of COSA projects. This MOA is a vehicle by which COSA may obtain expedited review of COSA projects designated as priorities, outside of the ordinary Corps review process.

Article II. - SCOPE

A. On a project-by-project basis, COSA shall request the Corps to expedite review of designated permit applications. Upon receipt of said request from COSA, the Corps shall estimate the cost necessary to expedite the permit review and notify COSA of that estimate.

B. Upon COSA's determination that expedition is desired and in its best interest, COSA shall provide notification and funds in the amount of the estimate to the Corps to expedite the evaluation of the designated permit application.

C. Prior to commencing the expedited review, the Corps shall invoice COSA for the cost of expediting the evaluation of a permit. The invoice shall occur on a monthly basis through COSA's PRIME*link* System. Upon receipt of the Corps' invoice, COSA shall provide funds to the Corps through its electronic payment system.

D. The District will establish a separate account to track receipt and expenditure of the funds associated with its review of COSA priority projects. District employees will charge their time against the account when they do work to expedite resolution of City permit requests.

E. The projects designated as a priority by COSA, along with estimates for expedited evaluation of various permits, are listed in **Attachment A** to this MOA. If the cost of expediting a permit exceeds the stated estimate, the Corps shall notify COSA and provide an additional estimate. COSA may determine to continue expediting the review or notify the Corps the permit is no longer a priority. If COSA elects to continue expediting the evaluation, funds will be provided as stated in Paragraph D. If the permit is no longer consider a priority or if no additional funds are provided to continue expedition, the Corps will handle remaining review activities in the regular course of business in a manner decided by the assigned Corps employee and his or her supervisor.

F. Funds provided for expedited evaluation of a permit shall be used for activities not limited to the following: application review, permit database entry, drawing correction, jurisdictional determinations, site visits, National Historic Preservation Act Section 106 review, public notice preparation, preparation of correspondence, NEPA document review, public interest review, preparation of draft permit decision documents, meetings with COSA and other agencies, compliance activities including monitoring of mitigation sites, creation of general permits to expedite projects in **Attachment A**, and any other permit evaluation-related responsibilities that may be mutually agreed upon.

G. Any overage of permit fees paid by COSA to the Corps shall be reconciled by COSA and the Corps at the permitting stage of the process.

H. The Corps' regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received from COSA shall be used to augment the Corps regulatory budget in accordance with the provisions of WRDA 2000. It is understood that the use of funds accepted hereunder shall not impact impartial decision making with respect to permits, either substantively or procedurally.

Article III. - INTERAGENCY COMMUNICATIONS / COORDINATION

A. To provide for consistent and effective communication between the Corps and COSA, each party shall 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.

B. The Parties, including assigned Regulatory Project Managers (RPMs), shall hold periodic meetings to establish priorities and evaluate work performed under the agreement. During these meetings, the Corps shall provide a permit status report detailing important milestones associated with each permit. The format of the report shall be mutually acceptable to all parties. These meetings can be less frequent if all parties agree.

C. Before initiation of this MOA, the parties shall agree on the scope of projects to be covered by the MOA. Projects that fall within this scope shall be listed in **Attachment A**. At the periodic meetings established above, COSA shall submit to the Corps a listing

of projects. If these projects fall within the scope of work, and all parties agree, then **Attachment A** shall be modified. If the projects are outside of the scope, and all parties agree, the RPMs shall be reassigned to include the new scope of work. Adjustments of the scope of work and **Attachment A** can be modified at anytime the parties agree to the change.

D. Both COSA and the Corps agree that ready and reasonable access shall be provided to working level staff of the other agency in an effort to minimize the need for formal meetings. Both agencies are committed to frequent and productive interaction and the establishment of working-level interpersonal relationships, which shall allow for expedient scheduling of field visits, meetings, and all manner of open communications in a sustained effort to achieve the stated goals of this agreement.

E. COSA and the Corps agree to conduct early and frequent coordination on issues such as, but not limited to, comments on project alternatives; mitigation plans; review of and comments on Biological Assessments; implementation of the permit streamlining processes; NHPA Section 106 issues; and interagency COSA/Corps training.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. COSA shall:

1. Provide adequate information regarding projects and other specific activities to initiate permit evaluations. 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 and in General Condition 27 of the Nationwide Permit Program, as published in the Federal Register (77 FR 10184, dated February 21, 2012). Upon request, COSA shall provide supplemental information necessary to complete the permit application. Additional information required to complete the permit evaluation process may exceed what is needed to initiate the process. On a case-by-case basis, if requested by the Corps, COSA shall provide such additional information so as to ensure the Corps can effectively accomplish the required review.

2. Make a reasonable effort to provide the Corps with information on other projects with COSA involvement to enable the Corps to most efficiently apply available staff resources and plan for workload cycles.

3. In consultation with the Corps, schedule Corps involvement in the projects identified by COSA. The list of initial priority projects is shown on **Attachment A**. COSA periodically shall identify additional projects as necessary (See Article III D. herein). If COSA fails to identify specific priority projects, the Corps shall establish its own priorities in accordance with the objectives of this MOA.

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 Corps to adjust priorities and schedules in order to make optimal use of available staff resources. While COSA shall make every effort to not overlap project schedules, occasional overlaps may occur and COSA shall work with the Corps to prioritize such overlaps.

6. Provide funds pursuant to the terms of this MOA.

7. Within 5 days of the conclusion of the fiscal year, provide a letter to the Corps' Principal Representative detailing the level of satisfaction with the District's performance under the MOA.

B. The Corps shall:

1. Expedite review of COSA permit requests in accordance with the purpose, terms, and conditions of this MOA. The Corps shall not redirect resources from, or otherwise postpone, other COSA projects submitted through the standard Corps review process.

2. Upon submittal of a new request to expedite a permit evaluation and payment by COSA, and following any meetings and discussions to clarify the scope of the anticipated permit application review processes, Corps staff shall provide COSA with an estimated schedule to complete the permit evaluation process for each expedited application submitted. COSA shall be able to comment on these schedules and adjust priorities if workloads allow for such changes.

3. Consult with COSA regarding an adjustment of priorities or establishment of relative priorities if the current and/or projected workload of projects and activities exceeds the Corps' ability to provide the services specified in this MOA.

4. During the periodic meetings described in Article III.B the Corps shall provide COSA a summary report of progress made under this MOA. Progress shall be itemized for each permit application review and for each permit application pending on **Attachment A**. This report shall describe achievements, including any improvements the Corps has documented in coordinating and improving the efficiency of environmental reviews, and shall summarize expenditures to date. The report may also identify any recommendations for improving consultation and coordination among the Parties to this MOA and shall provide an estimate of costs expected for the ensuing quarter.

5. Designate a RPM who shall attend periodic meetings with COSA.

6. Withdraw funds from the account described in Article II.E pursuant to the terms of this MOA.

Article V. - IMPARTIAL DECISIONMAKING

It is understood and acknowledged by the Parties that the Corps' review of COSA-designated priority projects shall be conducted in a completely impartial manner and in accordance with all applicable Federal laws and regulations. It is further understood and agreed that the funds shall not impact impartial decision-making with respect to COSA permit applications. The following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, shall apply to all cases using additional funds provided by COSA as a participating non-Federal public entity:

1. All final permit decisions for cases where these funds are used must be reviewed by at least one level above the normal decision-maker, unless the decision-maker is the District Engineer. For example, if the decision-maker would be the Chief, Regulatory Division, then the reviewer would be the District Engineer. In addition, all jurisdictional determinations made on projects where funds are used must have documentation that a non-funded Regulator reviewed and agreed with the determination (i.e. peer review).

2. All final permit decisions for cases where these funds are used shall be made available on the Fort Worth District Regulatory Division's web page. The information shall be posted in a clearly identifiable area that indicates the projects were funded through this authority.

3. The Corps shall not eliminate any procedures or decision criteria that would otherwise be required for that type of project and permit application under consideration.

4. The Corps must comply with all applicable laws and regulations.

5. Funds only shall be expended to expedite the final decision on the permit application according to the terms and conditions of this MOA. Funds shall not be expended for the review of the decision-maker's decision.

6. Funds shall not be used for enforcement activities, but may be used for compliance activities including monitoring of mitigation sites.

Article VI. – FUNDING

A. The amount provided to expedite permit evaluations **SHALL NOT EXCEED FIVE HUNDRED THOUSAND DOLLARS AND NO/100 ($500,000.00) for either a period of five (5) years, beginning at the execution date of this MOA, or as long as the Corps has authority to accept such funds under Section 214 of WRDA 2000, whichever period is shorter**.

B. It is recognized from the outset of this MOA that the Corps shall neither accept nor expend funds under this MOA after December 31, 2016, unless subsequent federal law extends the Corps' authority, under section 214 of WRDA 2000, to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

C. Expediting of permit evaluations by the Corps shall be provided under this MOA only after funds have been paid to the Corps. The estimated amount provided by COSA to expedite permit review shall be identified and defined in **Attachment A** hereto.

Article VII. - APPLICABLE LAWS

The applicable statutes, regulations, policies, directives, and procedures of the United States shall govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of permit applications undertaken by the Corps shall be governed by Corps regulations, policies, and procedures.

Article VIII. - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute between the Parties, COSA and the Corps 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 IX. - PUBLIC INFORMATION

Justification and explanation of COSA programs or projects before other agencies, departments, and offices shall not be the responsibility of the Corps. The Corps may provide, upon request from COSA, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the Corps is responsible only for public information regarding Corps regulatory activities.

Article X. - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between COSA and the Corps.

B. Survival

Under the provisions of section 214 of WRDA 2000, as extended, no funds may be expended pursuant to this MOA after December 31, 2016. However, if prior to this date, this statutory authority is extended, then provisions of this MOA shall remain in force consistent with the provisions of the statutory extension until the expiration date, or as provided in Article XI.B. of this MOA.

C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

Article XI. - AMENDMENT, MODIFICATION AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties. Either party may terminate this MOA by providing written notice to the other party. Such termination shall be effective upon the ninetieth (90th) calendar day following notice, unless a later date is set forth. In the event of termination, COSA shall continue to be responsible for all costs incurred by the Corps in performing expedited environmental permit review services up to the time of notice.

B. This MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2016, unless the sunset clause of WRDA 2000 is extended, in which case the MOA shall remain in effect for the duration of the statutory extension, but not to exceed an amount of time equal to five (5) years from the effective date of this MOA, unless this time is extended by mutual agreement and consent of the Parties, or 2) the MOA is terminated pursuant to this Article.

C. Within ninety (90) days of termination, or the expiration of the MOA, the Corps shall conduct an accounting to determine the actual costs of the work completed by the Corps and to determine the amount of any unused funds. Within thirty (30) days of completion of this accounting, any remaining funds shall be returned to COSA by check or electronic funds transfer.

Article XII. - EFFECTIVE DATE

This MOA shall become effective on the date of execution by the last Party.

Article XIII. – 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 Parties hereto have executed this Agreement on the date next to their signatures.

The City of San Antonio

Dated: _____ By _____

City Manager or Designee

DEPARTMENT OF THE ARMY

Dated: _____ By _____

Richard J. Muraski, Jr.
Colonel, US Army
District Commander

ATTACHMENT A

COSA PROJECT	APPLICATION FEE
Citywide Bridge Program - Helotes Creek at Shaenfield	$2,000.00
Citywide Bridge Program - Salado Creek at Commerce	$1,500.00
Citywide Bridge Program - San Antonio River at Crockett	$1,500.00
Citywide Bridge Program - Apache Creek Tributary at S. Laredo	$1,500.00
Citywide Bridge Program - Draw at Bronco	$2,000.00
Citywide Bridge Program - Salado Creek Tributary at Dreamwood	$2,000.00
Citywide Bridge Program - Six Mile Creek at Ashley	$2,000.00
Espada Rd (Loop 410 to E. Ashley Rd)	$2,000.00
Indian Creek Channel Phase II	$10,000.00
Lorence Creek	$14,000.00
McCullough Avenue Area Drainage	$2,500.00
Menger Creek Drainage	$10,000.00
Mountain View Estates, Ph III Drainage	$2,000.00
Quail Creek Tributary Drainage	$7,500.00
Seeling Channel Phase II Drainage	$12,000.00
Upper Woodlawn Drainage	$8,000.00