SECOND AMENDMENT
TO
MEMORANDUM OF AGREEMENT
BETWEEN
CITY OF LONG BEACH
AND
THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

This Second Amendment to Memorandum of Agreement ("SECOND AMENDMENT"), made the 6th day of September, 2016, is entered into by and between the City of Long Beach, a municipal corporation (hereinafter the "City"), and the United States Army Corps of Engineers, Los Angeles District (hereinafter the "Corps"), collectively referred to as the "Parties."

RECITALS

WHEREAS, the Parties entered into a Memorandum of Agreement ("MOA"), effective December 20, 2012, for expedited and priority review of City-designated priority projects by the Corps; and

WHEREAS, the Parties entered into a First Amendment to the MOA ("FIRST AMENDMENT"), effective November 19, 2014, increasing funding and extending the duration of the MOA until December 31, 2016; and

WHEREAS, the MOA is set to expire December 31, 2016; 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 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 public entities subject to certain limitations; and

WHEREAS, the Parties desire to extend the duration of the MOA an additional three years and to further revise the terms and conditions of the MOA; and

WHEREAS, the City has deposited $290,000 with the Corps pursuant to the MOA as a result of the Corps crediting carry-over of unobligated funds from payments due under the MOA up to January 20, 2016; and

WHEREAS, the Corps has determined additional funding from the City is necessary to continue to fund permit evaluation-related activities through December 31, 2019; and

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NOW, THEREFORE, the Parties agree as follows:

SECOND AMENDMENT

1. Article V. – FUNDING. Paragraphs A and B of this Article are modified to read:

"A. The total compensation paid to the Corps under the MOA, as modified by the FIRST AMENDMENT and this SECOND AMENDMENT shall not exceed Nine Hundred Twenty Thousand Dollars ($920,000) paid as follows:

1. $290,000 was paid to the Corps between execution of the MOA and January 20, 2016.
2. $210,000 on or before January 20, 2017.
3. $210,000 on or before January 20, 2018.
4. $210,000 on or before January 20, 2019.

This payment schedule can be changed by mutual agreement of the parties but may not exceed the total compensation unless approved through an amendment.

B. The Corps will carry-over any unobligated funds from year to year, or will refund such unobligated funds if this MOA is terminated or expires. If unobligated funds are carried-over, the City will be notified of the estimated carry-over amount at least 4 weeks prior to the deadline for the next annual payment and the actual carry-over amount will be credited toward the next payment due under Paragraph A."

2. Article X- EFFECTIVE DATE AND DURATION. This Article is modified in its entirety to read:

"Article X - EFFECTIVE DATE AND DURATION

This MOA as amended will become effective on the date of signature by the last Party. Unless amended or modified pursuant to Article VIII.A., this amended MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2019; or 2) the MOA is terminated pursuant to Article VIII.B."

3. Integration. This SECOND AMENDMENT represents the entire understanding of the Parties regarding changes to the MOA and FIRST AMENDMENT. All other terms and conditions of the MOA remain in full force and effect.

[REMAINDER LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the SECOND AMENDMENT is executed by the City of Long Beach, acting by and through its authorized Board of Harbor Commissioners, and by the Los Angeles District U.S. Army Corps of Engineers, through its authorized officer.

THE CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

11/22, 2016

By: _____

For

Jon W. Slangerup

Chief Executive

Long Beach Harbor

U.S. ARMY CORPS OF ENGINEERS

LOS ANGELES DISTRICT

September 6, 2016

By: _____

Kirk E. Gibbs

Colonel, U.S. Army

Commander and District Engineer

The foregoing document is hereby approved as to form.

CHARLES PARKIN, City Attorney

November 17, 2016

By: _____

~~Charles M. Gale~~, ~~Principal~~ Deputy

Dawn A. McIntosh

FIRST AMENDMENT
TO
MEMORANDUM OF AGREEMENT
BETWEEN
CITY OF LONG BEACH
AND
THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

This First Amendment to Memorandum of Agreement ("FIRST AMENDMENT"), made the 19 day of November, 2014, is entered into by and among the City of Long Beach, a municipal corporation (hereinafter the "City"), and the United States Army Corps of Engineers, Los Angeles District (hereinafter the "Corps"), collectively referred to as the "Parties."

RECITALS

WHEREAS, the Parties entered into a Memorandum of Agreement ("MOA"), effective December 20, 2012, for expedited and priority review of City-designated priority projects by the Corps; and

WHEREAS, the MOA is set to expire December 20, 2014; and

WHEREAS, section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000") as amended by Public Law 113-121, 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, Public Law 113-121, signed into law on June 10, 2014, made the authority permanent; and

WHEREAS, the Parties desire to amend the MOA to increase the not to exceed total compensation paid to the Corps by an additional $420,000.00 and extend the duration of the MOA to December 31, 2016.

NOW, THEREFORE, the Parties agree as follows:

FIRST AMENDMENT

1. Article V. – FUNDING. Paragraph A of this Article is modified to read:

"A. The total lump sum payment authorized under this MOA shall not exceed Eight Hundred Forty Thousand dollars ($840,000.00) for the duration of the MOA, and shall be paid as follows:

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1. $210,000 upon execution of the MOA;
2. $210,000 twelve months from the effective date of the MOA.
3. $210,000 on or before January 20, 2015.
4. $210,000 on or before January 20, 2016.

This payment schedule can be changed by mutual agreement of the parties but may not exceed the total compensation unless approved through an amendment."

2. Article X- EFFECTIVE DATE AND DURATION. This Article is modified in its entirety to read:

"Article X - EFFECTIVE DATE AND DURATION

This MOA and any amendments will become effective on the date of signature by the last Party. Unless amended or modified pursuant to Article VIII.A., this MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2016; or 2) the MOA is terminated pursuant to Article VIII.B."

3. Integration. This FIRST AMENDMENT represents the entire understanding of the Parties regarding the MOA and changes to the MOA. All other terms and conditions of the MOA remain in full force and effect.

[REMAINDER LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the FIRST AMENDMENT is executed by the City of Long Beach, acting by and through its authorized Board of Harbor Commissioners, and by the Los Angeles District U.S. Army Corps of Engineers, through its authorized officer.

THE CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

12/10, 2014

By: _____

Jon W. Slangerup

Chief Executive

Long Beach Harbor Department

U.S. ARMY CORPS OF ENGINEERS

LOS ANGELES DISTRICT

Dec. 17, 2014

By: _____

David J. Castanon

Chief, Regulatory Division

The foregoing document is hereby approved as to form.

CHARLES PARKIN, City Attorney

12/1, 2014

By: _____

Dominic T. Holzhaus, Principal Deputy

MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF LONG BEACH AND
THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into as of this 20 day of December, 2012 by and between the United States Army Corps of Engineers, Los Angeles District (hereinafter the "Corps") and the City of Long Beach, a municipal corporation, acting by and through its Board of Harbor Commissioners (hereinafter the "City"), which has authorized the Executive Director to execute this MOA. The Corps and the City are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the 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, in navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act ("RHA"), as amended; and in ocean waters pursuant to section 103 of the Marine Protection, Research, and Sanctuaries Act ("MPRSA"); and

WHEREAS, section 214 of the Federal 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 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 authority provided under section 214 of the WRDA 2000 is presently in effect until December 31, 2016; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214 of the WRDA 2000 to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated October 1, 2008, 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 Corps has indicated it is not able, without additional resources, to expedite the evaluation of permits of the City related to projects for a public purpose; and

WHEREAS, the City is a non-Federal entity and believes it is in its best interest to provide funds to the Corps pursuant to this MOA to streamline and expedite Corps environmental review under section 404 of the CWA and/or section 10 of the RHA and/or section 103 of the MPRSA for City-designated priority projects, as more fully described in this MOA; and

WHEREAS, the Corps issued an initial Public Notice dated August 3, 2012, regarding its intent to accept and expend funds contributed by the City; and

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WHEREAS, in a memorandum dated October 17, 2012 the Corps determined that expenditure of funds received from the City is appropriate, and an informational public notice dated October 26, 2012, regarding the decision has been issued; and

WHEREAS, it is understood and acknowledged by all Parties that the Corps' review of the City's permit applications for City-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 Corps for timely analysis of project effects and to assist the City 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 the City to provide expedited permit evaluation-related services for City-designated priority projects under the jurisdiction of the Corps. This MOA is not intended as the exclusive means of obtaining review of projects proposed by the City. This MOA is a vehicle by which the City will obtain expedited permit evaluation-related services, outside of the ordinary Corps review process.

B. The City enters into this MOA pursuant to its authority by the Board of Harbor Commissioners.

C. The Corps enters into this MOA pursuant to its authority under section 214 of the WRDA 2000, as amended.

Article II. – SCOPE OF WORK

A. The City will provide funds to the Corps to expedite permit evaluation-related services for City-designated priority projects under the jurisdiction of the Corps for two years. The City may elect to extend the funding beyond two years, subject to written amendment to this MOA. The Corps' Regulatory Program is funded as a congressionally appropriated line item in the annual Federal budget. The City will provide the Corps with funds in accordance with the provisions of section 214 of WRDA 2000, as amended.

B. The Corps will provide staffing resources exclusively dedicated to expediting permit evaluation-related services, as described below, for designated priority projects and/or other programmatic efforts to support efficient decision-making related to the City's permitting needs.

C. The Corps will establish a separate internal account to track receipt and expenditure of the funds associated with its review of permit applications submitted by the City. Corps Regulatory Division personnel will charge their time and expenses against the account when they perform work to either expedite resolution of permit requests designated by the City as a priority or undertake other programmatic efforts to support efficient decision-making related to the City's permitting needs. Corps Regulatory Division personnel will not charge the account for work performed on project(s) not designated as a priority by the City. Corps Regulatory Division personnel will focus on the work as prioritized by the City, and if no or few projects are designated by the City as a priority, Corps personnel will then work on other programmatic efforts.

D. Funds contributed by the City hereunder will be expended by the Corps to defray the costs of Regulatory Division personnel (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the evaluation of priority permit applications designated by the City. Such activities will include, but not be limited to, the following: jurisdictional determinations; site visits; travel; federal register and public notice preparation; preparation of correspondence; public interest review; preparation and review of environmental documentation; undertaking consultations pursuant to section 106 of the National Historic Preservation Act and section 7 of the Endangered Species Act; and meetings with the City and resource agencies.

E. The Corps may expend funds provided by the City to hire contractors to perform select duties, including but not limited to site visits; preparing and providing technical materials, including environmental documentation; GIS-related services; and meeting coordination for the purpose of augmenting the resources available to the Corps for expediting priority projects and activities designated by the City. If such expenditures, when combined with the costs of the Regulatory Division personnel specified in Article II.D., require funding in excess of the amount available under this MOA, then said contractors shall not be hired by the Corps until and unless additional funds are provided by the City, and the Parties execute a written amendment to this MOA.

F. The Corps will not expend funds provided by the City for costs associated with the review of Regulatory Project Managers' work by supervisors or other persons or elements of the Corps in the decision-making chain of command. However, if a supervisor is performing staff work and not supervisory, decision-making oversight, funds may be used. The Corps will not expend funds provided by the City to defray the costs of activities related to the Corps' enforcement functions, but may use City funds to defray costs of activities related to compliance functions.

G. If the funds provided by the City are expended and not replenished, any remaining priority permit applications will be handled like those of any permit applicant.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Parties, 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 actions or issues. For the purposes of this MOA, the City's Principal Representative will be Richard D. Cameron, Director of Environmental Planning and the Corps' Principal Representative will be Dr. Aaron O. Allen, Chief, North Coast Branch, Regulatory Division. The Principal Representative for each party may be changed upon written notification to the other party.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. The City will provide adequate resources to fund additional Corps Regulatory personnel for the purpose of timely review of designated priority projects and other identified activities. To facilitate the Corps' review and activities, the City will:

1. Provide adequate information regarding projects and other specific activities to initiate permit 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), and in General Condition 31 of the Nationwide Permit Program. Upon request, the City shall provide supplemental information necessary to complete the permit application. Additional information [33 CFR Part 325.1(e)] 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, the City shall provide such additional information in a timely manner 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 City 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 priority projects identified by the City. The list of initial priority projects is shown in Appendix A; the list may be changed by the City's Principal Representative without requiring an amendment to this MOA. Such changes shall be submitted to the Corps in writing and will be effective upon receipt thereof.

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 City priorities and schedules in order to make optimal use of available Regulatory Division staff resources. While the City will make every effort not to overlap project schedules, occasional overlaps may occur and the City's Principal Representative will work with the Corps to prioritize such overlaps.

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

B. The Corps shall supplement or reassign its existing Regulatory Division personnel, which currently reviews City projects on a routine basis, with qualified personnel within projected funding levels provided by the City. The Corps shall use the funds provided to defray the costs of salaries and associated benefits and to reimburse travel expenses in order to:

1. Expedite review of City priority projects in accordance with the purpose, terms, and conditions of this MOA or any amendments thereto. The Corps shall not redirect resources from, or otherwise postpone, other projects submitted by the City through the standard Corps review process.

2. Following any pre-application meetings and/or discussions to clarify the scope of anticipated permit application review processes, provide the City with an estimated schedule to complete the permit evaluation process for each application submitted. The City shall be able to comment on these schedules and adjust their priorities per Appendix A, or provide additional resources per Article V.D.

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

4. Provide the City a brief quarterly summary report of progress made under this MOA. Progress will be itemized for each permit application review completed during the quarter and for each permit application pending at the end of the quarter. This report will describe achievements, including any improvements the Corps 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 and will provide an estimate of costs expected for the ensuing quarter. The report shall not be in excess of five (5) pages.

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

Article V. – FUNDING

A. The total lump sum payment authorized under this MOA shall not exceed Four Hundred Twenty Thousand dollars ($420,000.00) for the duration of the MOA, and shall be paid as follows:

1. $210,000 upon execution of the MOA;
2. $210,000 twelve months from the effective date of the MOA.

This payment schedule can be changed by mutual agreement of the Parties but may not exceed the total compensation unless approved through an amendment.

B. The Corps will carry-over any unobligated funds from year to year, or will refund such unobligated funds if this MOA is terminated or expires.

C. Expediting of permit actions by the Corps will be provided under this MOA only after funds have been transferred to the Corps. Payment(s) will be made to the Finance and Accounting Officer, U.S. Army Corps of Engineers, Los Angeles District.

D. If the Corps' actual costs for providing the agreed upon level of service will exceed the amount of funds available, the Corps will notify the City at least 90 days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. The City will either increase the funding amount or agree to a reduced level of service.

Article VI. - APPLICABLE LAWS

The 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 undertaken by the Corps will be governed by Corps regulations, policies and procedures.

Article VII. - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute, the City 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 VIII. - AMENDMENT, MODIFICATION, AND TERMINATION

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

B. Any party reserves the right to terminate its participation in this MOA without cause upon thirty (30) days' written notice to the other party. In the event of termination, the City will continue to be responsible for all costs incurred by the Corps in performing expedited environmental permit review services up to the time of notice and for the costs of closing out any ongoing contracts in support of the provision of services by the Corps under this MOA.

C. Within ninety (90) calendar days of termination of the MOA, or the expiration of the MOA, the Corps shall provide the City with a final statement of expenditures. Within sixty (60) calendar days after submittal of the Corps' final statement of expenditures, the Corps, subject to compliance with the Anti-Deficiency Act (31 U.S.C. 1341 et. seq.), shall directly remit to the City the unexpended balance of the advance payments, if any. Funds may be provided to the City either by check or electronic funds transfer.

Article IX. - MISCELLANEOUS

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

B. Under the provisions of section 214 of the WRDA 2000 as extended, no funds may be accepted or expended by the Corps 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 until the earlier of the sun setting of section 214 of WRDA 2000, as further extended, or until the expiration date as provided in this MOA.

C. 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.

D. The Corps' participation in this MOA does not imply endorsement of City projects nor does it diminish, modify, or otherwise affect Corps statutory or regulatory authorities.

E. 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.

Article X. - EFFECTIVE DATE AND DURATION

This MOA and any amendments will become effective on the date of execution by the last Party. Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first: 1) two (2) years from the effective date of this MOA or 2) the MOA is terminated pursuant to Article VIII.B.

[Remainder Left Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this MOA as of the dates indicated below.

THE CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

Dec 7, 2012 By: _____

J. Christopher Lytle
Executive Director
Long Beach Harbor Department

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

20 DEC, 2012 By: _____

R. Mark Toy, P.E.
Colonel, US Army
District Commander

The foregoing document is hereby approved as to form.

ROBERT E. SHANNON, City Attorney

12-15, 2012 By: _____

Charles M. Gale, Deputy

APPENDIX A

Current and Future (Priority) Projects at the Port of Long Beach

The following is a list of current and anticipated future projects requiring Corps assistance:

1) Pier S Terminal Development Project: EIR/EIS and Corps Permitting Process;
2) Middle Harbor Terminal Redevelopment Project: Corps Permitting Process;
3) Port of Long Beach Maintenance Dredging Program (RGP 28): Corps Permitting Process;
4) Eagle Rock Aggregate Terminal Development: EIR/EIS and Corps Permitting Process;
5) Piers T and J Capital Dredging Project: EIR/EIS;
6) Permanent Fireboat Station No. 20 at Berth C55 Project: Corps Permitting Process;
7) NRG Intake Structure Demolition Project: Corps Permitting Process;
8) Pier J Crescent Piers: : Corps Permitting Process;
9) Protective Fireboat Basins Project: : Corps Permitting Process;
10) Pier G Terminal Redevelopment Project: Corps Permitting Process;
11) Terminal Island Rail Project: EIR/EIS;
12) Berth T126 Deep Water Liquid Bulk Terminal: EIR/EIS
13) Port-wide Maintenance Dredging and Beneficial Re-Use (400-500,000 cubic yards): EIR/EIS