



DATE: NOVEMBER 9, 2016

FROM: ENVIRONMENTAL MANAGEMENT

**SUBJECT: RESOLUTION NO. _____ - SECOND AMENDMENT TO
MEMORANDUM OF AGREEMENT NO. 10-2900A WITH THE UNITED
STATES ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

SUMMARY:

Staff requests approval of the Second Amendment to Memorandum of Agreement No. 10-2900A (Agreement) with the United States Army Corps of Engineers (Corps) to expedite the Corps independent evaluation of the City of Los Angeles Harbor Department's (Harbor Department) priority permit applications and environmental assessments required by the National Environmental Policy Act (NEPA). The Second Amendment would extend the term of the Agreement by an additional three years and would increase the contract amount by an additional \$100,000. The Harbor Department is financially responsible for payment of the proposed Amendment.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2(f) of the Los Angeles City CEQA Guidelines as determined by the Director of Environmental Management;
2. Approve the Second Amendment to Memorandum of Agreement No. 10-2900A with the United States Army Corps of Engineers, Los Angeles District extending the term by three years to December 31, 2019 and increasing the contract amount by \$100,000 for a total not-to-exceed contract amount of \$900,000;
3. Authorize the Executive Director to execute and the Board Secretary to attest to said Amendment for and on behalf of the Board; and
4. Adopt Resolution No. _____.

DATE: NOVEMBER 9, 2016

PAGE 2 OF 4

SUBJECT: SECOND AMENDMENT TO MEMORANDUM OF AGREEMENT WITH THE ARMY CORPS

DISCUSSION:

Background and Context – The Corps is responsible for the protection and preservation of the waters of the United States, including wetlands, under Section 10 of the River and Harbor Act (RHA), Section 404 of the Clean Water Act (CWA), and Section 103 of the Marine Protection Resources & Sanctuaries Act (MPRSA). Many port development projects will include work, such as wharf upgrades and dredging in waters of the United States, which require the Corps oversight, environmental assessment, and permitting in accordance with NEPA. A list of current and anticipated Harbor Department projects requiring Corps involvement can be found in Appendix A of the Agreement. For large projects, the Harbor Department and the Corps often prepare joint environmental documents to support the necessary federal permits. As part of this joint effort, the Corps assigns a project manager to provide regulatory NEPA oversight. The Corps project manager attends all meetings, reviews and comments on administrative draft documents, participates in conference calls, and provides NEPA-related guidance and direction.

Regulatory Authority – Due to federal budget constraints, project managers at the Corps often are required to oversee a large number of environmental assessment projects at any given time. As a result of this situation, Congress authorized the Water Resources Development Act of 2000 (WRDA) which, through Section 214, allows the Secretary of the Army to accept and expend funds contributed by non-federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army.

Services Provided – This Agreement provides funding for partial allocation of a Corps project manager to assist with the Harbor Department's California Environmental Quality Act (CEQA)/NEPA projects. The Corps has assigned Theresa Stevens as the project manager overseeing Harbor Department projects. This arrangement has greatly improved both the quality of work and the working relationship between the two agencies by allowing timely and comprehensive feedback on activities such as, but not limited to, application review, jurisdictional determinations, preparation of public notices and correspondence, NEPA document review, permit decision documents, participation in public meetings and meetings with Harbor Department staff, and other permit evaluation-related responsibilities.

In the absence of an amended Agreement, the Harbor Department would be subject to the standard Corps regulatory review process along with all other agencies and entities requiring a permit within the Los Angeles District, which encompasses the Southern California region.

Agreement No. 10-2900 was approved by the Board on September 27, 2010, for a three-year term and an advance payment structure not-to-exceed \$480,000. The First

DATE: NOVEMBER 9, 2016

PAGE 3 OF 4

SUBJECT: SECOND AMENDMENT TO MEMORANDUM OF AGREEMENT WITH THE ARMY CORPS

Amendment was approved on October 3, 2013, to extend the Agreement by an additional three years with an advance payment structure not-to-exceed \$320,000. Staff recommends amending the Agreement for an additional three years but limiting the advance payment to \$100,000 that will only apply if the existing advance payment balance falls under \$100,000 and there is more than one year left on the term on the Agreement (Transmittal 1).

The Agreement is not intended as the exclusive means of obtaining Corps review of Harbor Department projects. Rather, the Agreement is a vehicle for obtaining expedited Corps review of projects designated by the Harbor Department as priorities, outside of the ordinary Corps review process. It is understood and acknowledged that the Corps' review of permit applications for Harbor Department-designated priority projects will be completely impartial and in accordance with all applicable federal laws and regulations.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a Second Amendment to Memorandum of Agreement No. 10-2900A to provide federal oversight of the Harbor Department's priority permit applications and environmental assessments required by NEPA. As such, the Director of Environmental Management has determined that the proposed action is an administrative action and is exempt from the requirements of the CEQA in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Under Memorandum of Agreement No. 10-2900 and First Amendment, an annual advance payment of \$160,000 was made to the Corps for a total payment of \$800,000. As of June 2016, the Corps has spent \$469,000 of the advance payment towards the Harbor Department's priority projects. If the Second Amendment is approved, the balance of \$331,000 will remain with the Corps and will be applied towards expedited review of Harbor Department Projects through December 31, 2019. The Harbor Department agrees to advance an additional \$100,000 to the Corps only if the existing advance payment falls below \$100,000 and there is more than one year left in the agreement. At the end of the Agreement term, any unspent funds will be returned to the Harbor Department.

Based on historical spending, it is not expected that the additional funds will be needed, but if necessary, would not be capitalized until Fiscal Year 18/19 out of the Harbor Department's Capital Account 54260, Center 1000, Program 000.

Funds for future fiscal years will be requested to be budgeted as part of the annual budget adoption process, upon Board approval.

DATE: NOVEMBER 9, 2016

PAGE 4 OF 4

SUBJECT: SECOND AMENDMENT TO MEMORANDUM OF AGREEMENT WITH
THE ARMY CORPS

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the Second Amendment to Memorandum of Agreement No. 10-2900A with the United States Army Corps of Engineers as to form and legality.

TRANSMITTALS:

1. Second Amendment to Memorandum of Agreement No. 10-2900A with the United States Army Corps of Engineers, Los Angeles District



CHRISTOPHER CANNON
Director of Environmental Management

FIS Approval: MB (initials)
CA Approval: MB (initials)



MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:



FOR
EUGENE D. SEROKA
Executive Director

CC:LO:yo
AUTHOR: L. OCHSNER

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