

**DATE: JULY 29, 2024**

**FROM: ENVIRONMENTAL MANAGEMENT**

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

**SUMMARY:**

Staff requests approval of a Fourth Amendment to Memorandum of Agreement No. 10-2900 (Agreement) with the United States Army Corps of Engineers (Corps or USACE) 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 Corps acts as the NEPA lead agency for the issuance of federal permits related to waters of the United States.

Approval of the proposed Fourth Amendment would extend the term of the Agreement by an additional five years for a total Agreement term of 19 years with no increase to the previously approved not-to-exceed amount of \$1,300,000. The Harbor Department will continue to be financially responsible for payment of expenses incurred under the Agreement.

**RECOMMENDATION:**

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

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Approve the Fourth Amendment to Memorandum of Agreement No. 10-2900 with the United States Army Corps of Engineers, Los Angeles District extending the term by five years to December 31, 2029;
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. \_\_\_\_\_.

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**SUBJECT: FOURTH 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, and issuance of required federal permits under Section 10 of the River and Harbor Act, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection Resources & Sanctuaries Act. Many port development projects will include work, such as wharf upgrades and dredging in waters of the United States, which require Corps oversight, environmental assessment, and function as NEPA lead agency in its issuance of such federal permits. 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 lead agency oversight. The Corps project manager attends 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 priority allocation of a Corps project manager, as needed, to assist with the NEPA element of the Harbor Department's joint CEQA/NEPA projects. The Corps has assigned Theresa Stevens as the NEPA 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, 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 federal permit evaluation-related responsibilities.

Under the terms of this Agreement, payments are made to the Corps in advance, and the Corps draws down on the funds to pay for the agreed upon services. Any leftover funds in the possession of the Corps at the end of the Agreement are either allowed to roll over, if an extension is agreed upon, or must be paid back to the Harbor Department in the event the Agreement is terminated.

The Agreement was approved by the Board on September 27, 2010, for a three-year term in the amount of \$480,000. A First Amendment to the Agreement was approved

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on October 3, 2013 which extended the Agreement by an additional three years and added an additional \$320,000 to the not-to-exceed authorization amount.

On November 17, 2016, the Board approved a Second Amendment to extend the term of the Agreement for an additional three years and authorized an additional \$100,000 for the additional three-year term. On August 14, 2019, the Board approved a Third Amendment to extend the term of the Agreement for an additional five years, with an additional authorization of up to \$400,000, for a total not-to-exceed authorization of \$1,300,000.

Staff now recommends a Fourth Amendment (Transmittal 1), extending the term of the Agreement for an additional five years for a total Agreement term of 19 years. At present, the Corps has received \$1,000,000 in payments leaving a balance of \$300,000 for the remaining term. The existing authorization is sufficient to cover USACE expenses through 2029. Advance payments of \$100,000 would only be made if the balance in the Corps account for the Agreement ever drops below \$100,000 and there is more than one year left on the term on the Agreement.

The Agreement is not the exclusive means of obtaining Corps NEPA review of Harbor Department projects. Rather, the Agreement funds resources for Corps staff to provide expedited 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 the approval of a proposed Fourth Amendment to Agreement No. 10-2900 to provide federal oversight of the Harbor Department's priority permit applications and environmental assessments required by NEPA, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

#### **FINANCIAL IMPACT:**

Approval of the proposed amendment will extend Agreement No. 10-2900 with the Corps for five years to December 31, 2029. There is no additional funding requested in this amendment. As of May 2024, the Corps has received \$1,000,000 in advance payments towards permitting and review of over 60 of the Harbor Department's priority

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projects. The Harbor Department agrees to advance additional funds, in the amount of \$100,000 at a time, 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.

Additional funds, if needed, would be capitalized out of the Harbor Department's Capital Account 54260 (Environment Assessment Services), Center 1000, Program 000. At the time of the advance request, the Harbor Department will identify the projects from which to charge the expense.

**CITY ATTORNEY:**

The Office of the City Attorney has reviewed and approved the Fourth Amendment as to form and legality.

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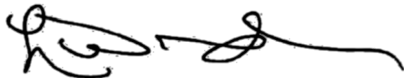
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THE ARMY CORPS

**TRANSMITTALS:**

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

FIS Approval: JS

CA Approval: \_\_\_\_\_



LISA WUNDER  
Acting Director of Environmental Management

*Michael DiBernardo*

MICHAEL DiBERNARDO  
Deputy Executive Director

APPROVED:

*Erica M. Calhoun* for

EUGENE D. SEROKA  
Executive Director

LW:mvr  
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