



Executive Director's  
Report to the  
Board of Harbor Commissioners

**DATE: SEPTEMBER 24, 2013**

**FROM: ENVIRONMENTAL MANAGEMENT**

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

**SUMMARY:**

The United States Army Corps of Engineers (Corps) has federal regulatory authority over certain port construction, dredging, and filling activities. One primary example of such regulatory authority is under the National Environmental Policy Act (NEPA) which requires the Corps to conduct environmental assessments for many port development projects. The Water Resources Development Act of 2000 (WRDA) allows non-federal public entities such as the City of Los Angeles Harbor Department (Harbor Department) to augment the Corps' regulatory budget as a means of facilitating the environmental review process. In October 2010, the Harbor Department entered into a three-year Memorandum of Agreement (Agreement) for \$480,000 with the Corps to expedite the Corps' independent evaluation of the Harbor Department's priority permit applications and environmental assessments. The Agreement is due to expire on October 28, 2013, so staff recommends approval of an Amendment to Agreement No. 10-2900 to extend the term by an additional thirty-eight months and to increase the contract amount by \$320,000 for a not-to-exceed total contract amount of \$800,000.

**RECOMMENDATION:**

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

1. Approve the First Amendment to Agreement No. 10-2900 with the United States Army Corps of Engineers, Los Angeles District extending the term by thirty-eight months to December 31, 2016 increasing the contract amount by \$320,000 for a total not-to-exceed contract amount of \$800,000;
2. Authorize the Executive Director to execute and the Board Secretary to attest to said Amendment for and on behalf of the Board; and
3. Adopt Resolution No. \_\_\_\_\_.

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**DISCUSSION:**

Background and Context – The United States Army Corps of Engineers (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 the National Environmental Policy Act (NEPA). A list of current and anticipated Harbor Department projects requiring Corps involvement can be found in Transmittal 2. 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. As amended, WRDA authority was recently extended until December 31, 2016. It is expected that this statutory authority will be extended again prior to this current sunset date. A cancellation clause is included in the Agreement in the event that a statutory authorization extension is not granted.

Services Provided – In October 2010, the Harbor Department entered into a three-year WRDA Agreement with the Corps for \$480,000 that is due to expire on October 28, 2013. This amount was agreed to based on anticipated costs over the three-year period for the Corps. Approximately half (\$240,000) of the Agreement's total not-to-exceed funds will have been spent by October 2013. Discussion with the Corps and an anticipated increased workload of Harbor Department projects indicate that the remaining amount will be required for the remainder of Fiscal Year 13/14. As a result, staff proposes that the remaining \$240,000 with the Corps be carried forward in Fiscal Year 13/14 as part of the proposed Amendment (Transmittal 1) and that the Harbor Department add an additional \$320,000, based on Corps estimated expenditures, for Fiscal Year 14/15 and 15/16 making the total not-to-exceed amount value of the contract \$800,000. Staff recommends amending the existing Agreement by thirty-eight months to continue receiving expedited permit review by the Corps, and to align the Agreement with WRDA's recent extension.

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This Agreement has: (1) facilitated and expedited the approval of five major NEPA assessments and priority permit applications under the jurisdiction of the Corps, including the Berth 302-306 (APL) Container Terminal Project, the Al Larson Boatshop Improvement Project, the U.S.S. Iowa, a Regional General Permit for routine wharf maintenance and maintenance dredging at various locations, and the Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) upgrades at Shell Marine; and (2) allowed the Harbor Department to promptly move forward on a number of other development and regulatory projects, including the City Dock No. 1 Marine Research Center Project, the Berth 212-224 (YTI) Container Terminal Improvements Project currently under review, and potential Environmental Impact Statements for Yang Ming and Evergreen. The 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. Currently, our expedited NEPA review process for a major joint Environmental Impact Statement/Environmental Impact Report is 18 months from the issuance of a Notice of Preparation/Notice of Intent with permitting occurring shortly after a Record of Decision is issued by the Corps. Under the standard Corps regulatory process, Harbor Department projects would not be given priority or expedited reviews and would be handled in the order received. Given federal budget constraints and the lack of a designated Corps project manager, the timeline for delivery of capital improvements and other development projects requiring a Corps permit could be extended by at least an additional six months or more.

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.

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**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of a First Amendment to Agreement No. 10-2900 to provide administrative oversight on existing Harbor Department environmental documents. As such, the Director of Environmental Management has determined that the Agreement is exempt from the requirements of the CEQA in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

**ECONOMIC BENEFITS:**

Approval of the proposed Amendment will support three direct one-year equivalent jobs for the five-county region.

**FINANCIAL IMPACT:**

The Water Resources Development Act of 2000 (WRDA) allows non-federal public entities, such as the Harbor Department, to augment the Corps' regulatory budget as a means of facilitating the environmental review process. The WRDA authority was recently extended to December 31, 2016. Under Agreement No. 10-2900, an advance payment was made annually to the Corps for a total payment of \$480,000. It is anticipated that by the end of the Agreement term, \$240,000 (50%) of these funds will have been spent towards the Harbor Department's priority projects, and the unspent funds would be returned to the Harbor Department. However, staff recommends amending the existing Agreement by thirty-eight months to continue receiving expedited permit review by the Corps, and to align the Agreement with WRDA's recent extension. If approved, the unspent funds will remain with the Corps and applied towards their review of Harbor Department-designated priority projects in FY 13/14.

The additional \$320,000 requested in the First Amendment will be paid to the Corps out of the Harbor Department's Capital Account 54260, Center 1000, Program 000 as follows:

FY 14/15	\$160,000
FY 15/16	<u>\$160,000</u>
<b>TOTAL</b>	<b>\$320,000</b>

At the end of the Agreement, any unspent funds will be returned to the Harbor Department. Funds for future fiscal years will be requested to be budgeted as part of the annual budget adoption process, upon Board approval. A funding out clause is included in the Agreement.

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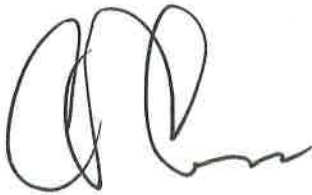
**CITY ATTORNEY:**

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

**TRANSMITTALS:**

1. First Amendment to Memorandum of Agreement with the United States Army Corps of Engineers, Los Angeles District
2. Port Designated Priority Projects

**FIS Approval:**  (initials)  
**CA Approval:**  (initials)



**CHRISTOPHER CANNON**  
Director of Environmental Management



**MICHAEL R. CHRISTENSEN**  
Deputy Executive Director

**APPROVED:**



**GERALDINE KNATZ, Ph.D.**  
Executive Director

AUTHOR: LISA OCHSNER  
BOARD MEETING: 10/3/2013

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