



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT CORPS OF ENGINEERS
P. O. BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

**FIRST AMENDMENT
TO
MEMORANDUM OF AGREEMENT
BETWEEN
CITY OF LOS ANGELES
AND
U.S. ARMY CORPS OF ENGINEERS' LOS ANGELES DISTRICT**

SUBJECT: First Amendment to Memorandum of Agreement between the City of Los Angeles and the U.S. Army Corps of Engineers' Los Angeles District

This First Amendment to Memorandum of Agreement ("**FIRST AMENDMENT**") is entered into by the City of Los Angeles, a municipal corporation, acting by and through the Board of Harbor Commissioners (hereinafter "**Port**") and United States Army Corps of Engineers' Los Angeles District (hereinafter "**Corps**"), collectively referred to as the "Parties."

RECITALS

WHEREAS, the Corps has jurisdiction over certain activities occurring in jurisdictional waters; and

WHEREAS, the Parties entered into a Memorandum of Agreement ("**MOA**"), effective October 29, 2010, for expedited and priority review of Authority-designated priority projects by the Corps; 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 Corps; and

WHEREAS, under the provisions of section 214 of the WRDA 2000 as extended, no funds may be accepted or expended by the Corps after December 31, 2016. However, this date may be extended by Federal law; and

WHEREAS, the MOA is set to expire October 28, 2013; and

WHEREAS, the Parties desire to modify the MOA to increase funding and extend the duration of the MOA.

NOW, THEREFORE, the Parties agree as follows:

SUBJECT: First Amendment to Memorandum of Agreement between the City of Los Angeles and the U.S. Army Corps of Engineers' Los Angeles District

FIRST AMENDMENT

1. ARTICLE III – INTERAGENCY COMMUNICATIONS

For the Corps:

Theresa Stevens, Ph.D.

Sr. Project Manager, North Coast Branch

2151 Alessandro Drive, Suite 110

Ventura, CA 93001

(805) 585-2146

(805) 585-2154 (fax)

theresa.stevens@usace.army.mil

2. ARTICLE IV – RESPONSIBILITIES OF THE PARTIES. Article IV.A. opening paragraph and subparagraph 1 are modified in their entirety to read:

“A. Port will provide adequate resources to fund Corps regulatory personnel for the purpose of timely review of designated priority projects and other identified activities. To facilitate the Corps’ reviews and activities, Port will:

1. Provide adequate information regarding Port-designated priority projects, Port-designated priority project designs, scheduling requirements, 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 as published in the Federal Register (77 Fed. Reg. 10184, dated February 21, 2012). Upon request, Port 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, Port shall provide such additional information so as to ensure the Corps can effectively accomplish the required review.”

3. ARTICLE V – FUNDING. This Article is modified in its entirety to read:

“A. The total compensation paid to the Corps under this MOA shall not exceed Eight Hundred Thousand Dollars (\$800,000).

B. The total compensation paid to the Corps under this FIRST AMENDMENT shall not exceed Three Hundred Twenty Thousand Dollars (\$320,000) paid as follows:

1. \$160,000 twelve months from the effective date of the FIRST AMENDMENT.
2. \$160,000 twenty-four months from the effective date of the FIRST AMENDMENT.

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

SUBJECT: First Amendment to Memorandum of Agreement between the City of Los Angeles and the U.S. Army Corps of Engineers' Los Angeles District

C. 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 in accordance with Article X. C of this MOA.

D. Expediting of permit actions by the Corps will be provided under this MOA only after funds have been received by the Corps.

E. Funds will be payable to the Corps upon submittal of an invoice and a summary of expenditures. Payments by the Port are to be made by electronic or wire transfer of funds or made payable to Finance and Accounting Officer and mailed to:

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Division
P.O. Box 532711
Los Angeles, CA 90053-2325
Attn: Sandra Chavez, Budget Analyst

F. If the Corps' actual costs for providing the agreed upon level of service will at any time during the term of this MOA exceed the amount of funds available, the Corps will notify the Port at least ninety (90) days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. Port will either initiate an amendment to this MOA to increase the funding amount, or agree to a reduced level of service.

G. 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 Port. Corps regulatory personnel will charge their time and expenses against the account when they perform work to either expedite resolution of permit requests designated by the Port as a priority or undertake other programmatic efforts to support efficient decision-making related to the Port's permitting needs. Corps regulatory personnel will focus on the work as prioritized by the Port, and if no or few projects are designated by the Port as a priority, Corps personnel will then work on other programmatic efforts.”

4. ARTICLE IX – MISCELLANEOUS. Article IX.B is deleted in its entirety.

5. ARTICLE IX – MISCELLANEOUS. Article IX.D is added to read:

“D. Liabilities

The Parties agree that with regard to any liability which may arise from this MOA, that each party shall be solely and exclusively liable for the negligence of its own agents, servants, and/or employees, in accordance with applicable law, and that neither party looks to the other to save or hold it harmless for the consequences of any negligence on the part of one of its own agents, servants and/or employees.”

6. ARTICLE XI- EFFECTIVE DATE AND DURATION. This Article is modified in its entirety to read:

SUBJECT: First Amendment to Memorandum of Agreement between the City of Los Angeles and the U.S. Army Corps of Engineers' Los Angeles District

“ARTICLE XI - EFFECTIVE DATE AND DURATION

This FIRST AMENDMENT will become effective on the date of signature by the last Party. Unless amended or modified pursuant to Article X.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 X.B.”

7. APPENDIX A. This Appendix is replaced in its entirety with an updated Appendix A attached hereto.

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

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

SUBJECT: First Amendment to Memorandum of Agreement between the City of Los Angeles and the U.S. Army Corps of Engineers' Los Angeles District

FOR THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

By: _____

Geraldine Knatz, Ph.D.
Executive Director

Date: _____

Attest: _____

Secretary

APPROVED AS TO FORM:
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By:  _____

Deputy City Attorney

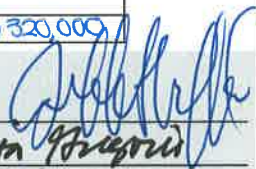
Date: 9/18/13

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

By: _____

Kimberly M. Colloton, PMP
Colonel, U.S. Army
Commander and District Engineer

Date: _____

Account#	<u>54260</u>	W.O. #	<u> </u>
Ctr/Div#	<u>1000</u>	Job Fac.#	<u> </u>
Proj/Prog#	<u>000</u>		
Budget FY:		Amount:	
	<u>FY 14/15</u>		<u>\$160,000</u>
	<u>FY 15/16</u>		<u>\$160,000</u>
	<u>TOTAL</u>		<u>\$320,000</u>
For Acct/Budget Div. Use Only			
Verified by:			
Verified Funds Available:	<u>Arum Rodriguez</u>		
Date Approved:	<u>9/17/13</u>		

SUBJECT: First Amendment to Memorandum of Agreement between the City of Los Angeles and the U.S. Army Corps of Engineers' Los Angeles District

Appendix A: Port-designated priority projects

(Dated: August 2013)

The list of Port Priority Projects under this MOA includes the following proposed projects:

1. Berth 212-224 Yusen Terminals Inc. (YTI) Container Terminal Improvements Project, EIS/EIR
2. Berths 302-306 (APL) Container Terminal Expansion Project, Supplemental EIS/EIR
3. City Dock No. 1 Marine Research Center Project, Supplemental EIS/EIR and Corps Permitting Process
4. San Pedro Waterfront Project (Ports O' Call Redevelopment), Addendum/Supplemental EIS/EIR and Corps Permitting Process
5. Wilmington Waterfront Project, Corps Permitting Process
6. Port of Los Angeles Maintenance Dredging Program, Corps Permitting Process
7. Berths 121-131 (Yang Ming) Container Terminal Improvements Project, EIS/EIR
8. Berth 238 Exxon Mobile Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) EIS/EIR and Permitting Process
9. Berths 148-149 Phillips 66 Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) EIS/EIR and Permitting Process
10. Berths 167-169 Shell Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) Permitting Process
11. Berth 163 Nustar Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) Permitting Process
12. Berth 164 Valero Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) Permitting Process
13. Berths 226-236 Evergreen Container Terminal Improvements Project, EIS/EIR and Permitting Process
14. Berths 206-209 Container Terminal Improvements Project, EIS/EIR and Permitting Process
15. Berths 187-191 Vopak Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) EIS/EIR and Permitting Process