

**DATE: SEPTEMBER 5, 2024**

**FROM: ENGINEERING**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY AND THE CITY OF LOS ANGELES CONCERNING THE PROVISION OF FUNDS PURSUANT TO SECTION 2106 OF THE WATER RESOURCES REFORM AND DEVELOPMENT ACT OF 2014 AS AMENDED**

**SUMMARY:**

Staff requests approval of a Memorandum of Agreement (MOA) between the Department of Army (DOA) represented by the U.S. Army District Commander, Los Angeles District and the City of Los Angeles, Harbor Department (Department) for the transfer of \$60,606,000 for maintenance dredging and related work to non-federal berths which was appropriated in fiscal year 2024 by the DOA.

The funds are to be used for “expanded uses” as defined by Section 2106 of the Water Resources Reform and Development Act of 2014, as amended (33 U.S.C. 2238c) (hereinafter “Section 2106”), and Section 102 of the Water Resources Development Act of 2020; which includes maintenance dredging of non-Federal berths and disposal of legacy contaminated sediment related to dredging berths and Federal navigation channels, repair and seismic retrofit of existing in-water structures, and maintenance of slope stability of existing dikes.

**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;

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2. Approve the proposed Memorandum of Agreement between the City of Los Angeles Harbor Department and the Department of Army;
3. Authorize the Executive Director to execute and the Board Secretary to attest to said Agreement for and on behalf of the Board;
4. Authorize the Executive Director to execute future MOAs with the Department of the Army to receive funds for future years pursuant to Section 2106 of the Water Resources Reform and Development Act of 2014, as amended and Section 102 of the Water Resources Development Act of 2020; and
5. Adopt Resolution No. \_\_\_\_\_ .

**DISCUSSION:**

The United States Army Corps of Engineers (Corps) is responsible for protection and preservation of the waters of the United States. One such responsibility of the Corps is maintaining the federal navigation channels within the Port of Los Angeles. The United States collects a Harbor Maintenance Fee (HMF) from importers that utilize federal navigation channels to import goods into the United States. The Harbor Maintenance Fee was created by the Water Resources Development Act of 1986. The fee is intended to require those who benefit from maintenance of U.S. ports and harbors to share the cost of maintenance.

Section 2106 of the Water Resources Reform and Development Act of 2014, as amended (33 U.S.C. 2238c) and Section 102 of the Water Resources Development Act of 2020; authorizes the Secretary of the Army, subject to the availability of funds, to provide funds to donor ports and energy transfer ports to be used for “expanded uses,” as that term is defined in Section 210(f)(4) of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2238(f)(4)). The Port of Los Angeles, as a donor port, was allocated \$60,606,000 in expanded use funding in 2024 (Transmittal 1). This MOA will transfer these funds from the DOA to the Department for expanded uses at the Port of Los Angeles.

The term “expanded uses” is defined in 33 U.S.C. 2238(f)(4) as the following:

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(A) The maintenance dredging of a berth in a harbor that is accessible to a Federal navigation project and that benefits commercial navigation at the harbor;

(B) The maintenance dredging and disposal of legacy-contaminated sediment, and sediment unsuitable for open water disposal, if (i) such dredging and disposal benefits commercial navigation at the harbor and (ii) such sediment is located in and affects the maintenance of a Federal navigation project or is located in a berth that is accessible to a Federal navigation project;

(C) An in-water improvement, if the improvement (i) is for the seismic reinforcement of a wharf or other berthing structure, or the repair or replacement of a deteriorating wharf or other berthing structure, at a port facility, (ii) benefits commercial navigation at the harbor; and (iii) is located in, or adjacent to, a berth that is accessible to a Federal navigation project; or

(D) An activity to maintain slope stability at a berth in a harbor that is accessible to a Federal navigation project if such activity benefits commercial navigation at the harbor. The Corps will not provide funding for environmental remediation provided in 33 U.S.C. 2238c(c)(3).

This MOA requires that the Department submit a report detailing the use and benefits of the funds by October 30 each year, with a final report submitted no later than 30 days after the completion of all work using the funds.

The Department has tentatively identified the following projects to utilize these funds:

- Berths 238-239 Marine Oil Terminal
- Berths 167-169 Marine Oil Terminal
- Berths 178-182 Marine Improvements
- Berths 167-169 Maintenance Dredging
- Berths 195-199 Maintenance Dredging
- Berths 57-60 Wharf Reconstruction and Preliminary Engineering
- Berths 153-155 Wharf Repair

It is staff's goal to schedule execution of these projects and expenditures of funds under these projects in such a manner that the funds provided by the DOA cover all costs for each project.

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**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of an MOA with the DOA for the transfer of funds for expanded use as defined in Section 2106 of the Water Resources Development Act of 1986, which is an administrative activity. This action is limited to approval of the MOA and does not constitute approval of any specific projects which may be undertaken as a result. Any such project will be assessed separately pursuant to CEQA and the National Environmental Policy Act (NEPA) as required. 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 MOA will facilitate a transfer of \$60,606,000 to the Department for maintenance dredging and related work to non-federal berths. Approval of the proposed action does not authorize expenditure of any funds to any project. Funding for expenditures related to approved uses under the proposed MOA will be requested as part of the annual budgeting process, subject to Board approval.

Funds received under the proposed MOA will be recorded within Account No. 49094 (Harbor Maintenance Tax Receipts).

**CITY ATTORNEY:**

The Office of the City Attorney has reviewed and approved the Memorandum of Agreement between the Department of the Army and the City of Los Angeles concerning the provision of funds pursuant to section 2106 of the Water Resources reform and development act of 2014 as amended as to form and legality.

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**TRANSMITTAL:**

1. Memorandum of Agreement between the Department of the Army and the City of Los Angeles concerning the provision of funds pursuant to section 2106 of the Water Resources reform and development act of 2014 as amended
2. Certificate of Authority Template
3. Certificate Regarding Lobbying Template

FIS Approval: JS  
CA Approval: JC

*Adrienne Newbold*

JAMES C. BROWN, P.E.  
Chief Harbor Engineer

*Dina Aryan-Zahlan*

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APPROVED:

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