



**THE PORT
OF LOS ANGELES**
Executive Director's
Report to the
Board of Harbor Commissioners

DATE: AUGUST 14, 2019

FROM: ENVIRONMENTAL MANAGEMENT

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

SUMMARY:

Staff recommends approval of a Third Amendment to Memorandum of Agreement No. 10-2900 (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 Corps acts as the NEPA lead agency for the issuance of federal permits related to waters of the United States. The Third Amendment would extend the term of the Agreement by an additional five years and would increase the contract amount by an additional \$400,000 for a total not-to-exceed amount of \$1,300,000. The Harbor Department is financially responsible for payment of the proposed Third Amendment.

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 Third Amendment to Agreement No. 10-2900 with the United States Army Corps of Engineers, Los Angeles District extending the term by five years to December 31, 2024, and increasing the contract amount by \$400,000 for a total not-to-exceed contract amount of \$1,300,000;
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. _____.

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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 the Corps oversight, environmental assessment, and function as NEPA lead agency in its issuance of such federal permits. A list of current and anticipated Harbor Department projects requiring Corps involvement can be found in Transmittal 1. 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 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 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.

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The Agreement was approved by the Board on September 27, 2010, for a three-year term in the amount of \$480,000. This amount was paid to the Corps upon execution of the Agreement. A First Amendment to the Agreement was approved on October 3, 2013, to extend the Agreement by an additional three years and in the amount of \$320,000. This amount was also paid to the Corps upon execution of the First Amendment. At that time, advance payments authorized for payment to the Corps under the Agreement and First Amendment totaled \$800,000.

Use of Corps staff time by the Harbor Department began to slow by the end of the term of the First Amendment, which meant that money was left over from the initial authorized \$800,000 in advances. As a result, when the time came for negotiation of a Second Amendment to the Agreement, the advance payment procedures were modified. Starting with the Second Amendment, the left over initial advances were still allowed to roll over to apply to the new extension, but the Harbor Department would only make another advance payment if the balance in the Corps account for the Agreement ever dropped below \$100,000.

Accordingly, on November 17, 2016, the Board approved a Second Amendment to extend the term of the Agreement for an additional three years. Due to an anticipated reduced work load, and the presence of left over advances from the First Amendment term, the Harbor Department only authorized an additional \$100,000 for the three-year term of the Second Amendment, to be paid only if the balance in the Corps account for the Agreement ever dropped below \$100,000. This brought the total amount authorized to be paid to the Corps under the Agreement, and First and Second Amendments to \$900,000. The anticipated reduced workload during the term of Second Amendment proved to be accurate, and the \$100,000 authorized to be advanced was not needed. At present, past Corps expenditures total approximately \$664,398 for evaluation and/or permitting of over 60 projects under the Agreement and the First and Second Amendments.

Staff now recommends a Third Amendment, extending the term of the Agreement for an additional five years. This time, an increased work load is anticipated (see Transmittal 1), so staff requests adding authorization of up to \$400,000, for a total amount authorized to be paid to the Corps under the Agreement, and First, Second and Third Amendments of \$1,300,000, using the same advance payment procedure. 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 (Transmittal 2).

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

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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 Third 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 Class 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Under Agreement No. 10-2900 and the First Amendment, annual advance payments totaling \$800,000 were made to the Corps. The additional \$100,000 authorized in the Second Amendment has not been needed to date. As of June 2019, the Corps has spent \$664,398 of the advance payments towards over 60 of the Harbor Department's priority projects since 2010. If the Third Amendment is approved, the balance of \$635,602 will be applied towards expedited review of Harbor Department projects through December 31, 2024. 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, Center 1000, Program 000.

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

CITY ATTORNEY:

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

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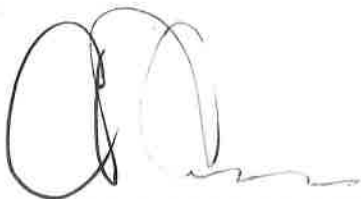
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TRANSMITTALS:

1. List of Priority Projects
2. Third Amendment to Memorandum of Agreement No. 10-2900 with the United States Army Corps of Engineers, Los Angeles District

FIS Approval: MB
CA Approval: JML



CHRISTOPHER CANNON
Director of Environmental Management



MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:



FOR

EUGENE D. SEROKA
Executive Director

CC:yo
AUTHOR: L. WUNDER

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