

**AGREEMENT BETWEEN THE CITY OF LONG BEACH  
AND THE CITY OF LOS ANGELES**

**ESTABLISHING COSTS TO BE SHARED UNDER  
THE 2013 BIOLOGICAL SURVEY OF  
LONG BEACH AND LOS ANGELES HARBORS**

THIS COST SHARE AGREEMENT is made and entered into by and between the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners, at its meeting of \_\_\_\_\_, 2013, and the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners, at its meeting of \_\_\_\_\_, 2013.

WHEREAS, the cities of Long Beach and Los Angeles, acting by their respective Board of Harbor Commissioners (“Ports”) have entered into Long Beach Agreement No. \_\_\_\_/Los Angeles Agreement No. \_\_\_\_ (“Cost Sharing Agreement”) expressing their desire to share the costs of a certain contract related to the 2013 Biological Survey of Long Beach and Los Angeles Harbors; and

WHEREAS, the Ports have collectively solicited proposals to conduct the 2013 Biological Survey of Long Beach and Los Angeles Harbors and the staffs of the respective Ports have determined that MBC Applied Environmental Sciences (“MBC”) submitted the highest ranking proposal; and

WHEREAS, the City of Long Beach has or intends to enter into an agreement with MBC to conduct a comprehensive biological survey of Long Beach and Los Angeles Harbors (the “Project”); and

WHEREAS, the Ports are interested in sharing the cost of the agreement with MBC in accordance with the terms of this Cost Share Agreement; and

WHEREAS, because the Los Angeles Harbor requires additional sampling and surveys for habitat that is not present in the Long Beach Harbor (i.e. sampling of beaches for fish and eelgrass surveys), the City of Los Angeles agrees to pay fifty-two percent (52%) of the total cost of the City of Long Beach agreement with MBC, in a not-to-exceed amount as set forth herein;

**NOW, THEREFORE, THE PORTS AGREE AS FOLLOWS:**

1. The City of Long Beach has entered into or intends to enter into an agreement with MBC for the Project.
2. The term of the agreement between the City of Long Beach and MBC shall commence upon execution and, subject to the City of Long Beach’s right to terminate early, shall terminate on December 31, 2016.
3. The total cost of the project is estimated at \$1,016,500 with the Port of Long Beach paying 48% and the Port of Los Angeles paying 52%. Therefore, the maximum payable by the City of Los Angeles to the City of Long Beach pursuant to this

Cost Share Agreement shall be Five Hundred Twenty Eight Thousand Five Hundred and Eighty Dollars (\$528,580).

4. The terms of this Cost Share Agreement shall be amended only in writing and signed by both parties.

### Section 1. Scope of Joint Effort

A. A survey of the biological characteristics of San Pedro Bay is a necessary tool in establishing a baseline for the health of the harbor environment.

B. The survey will include the following sampling tasks: physical characteristics, benthos, riprap biota, kelp and macroalgae, fish, ichthyoplankton, birds, marine mammals, habitat comparison, eelgrass, non-native species, and beach seines.

C. The resulting survey report may be used in the preparation of environmental documents (e.g., Environmental Impact Reports and Negative Declarations) for analyzing impacts associated with projects.

D. The resulting survey report may be used by resource and regulatory agencies when determining the value of the harbor environment in terms of mitigation credits.

E. Other work that may be performed by MBC pursuant to its agreement with the Port of Long Beach, which is beneficial to both Ports and requires cost sharing, may be added to this Cost Share Agreement by written amendment and appropriate approval by the Ports.

### Section 2. Term

This Cost Share Agreement shall commence on the date this Cost Share Agreement is signed by the latter of either the Executive Director of the Port of Los Angeles or the Executive Director of the Port of Long Beach. It shall terminate upon completion of the Project or upon termination by either party as provided in this Cost Share Agreement.

### Section 3. Preparation of Scope of Work and Award of Contract

A. The Ports agree to establish a "Project Coordinating Committee" (Committee) consisting of two representatives from each Port for the purpose of establishing a mutually satisfactory scope of work with MBC for each separate element of work to be undertaken. The scope of work established by the Committee will specify all work tasks and the terms of compensation associated with each task.

B. The agreement with MBC shall be prepared in the format of the Port of Long Beach's city charter requirements. The City of Los Angeles shall not be obligated to commit to share any costs under this Cost Share Agreement unless it is satisfied with the scope of work and the selection of MBC for the study and has so indicated in writing.

#### Section 4. Responsibility for Administration of the Contract

A. Contract administration with MBC shall be the responsibility of the Port of Long Beach. However, the Ports agree in good faith through the Committee to resolve any disputes which may arise as to the quality or quantity of the work or questions regarding other contract terms.

B. If members of the Committee cannot resolve a given dispute, then the dispute shall be resolved by the Executive Directors of the two Ports. If the Executive Directors cannot reach agreement, then either Port may terminate this Cost Share Agreement and shall be liable only for the percent of work completed, up to the effective date of termination of this Cost Share Agreement.

C. The agreement with MBC shall contain a provision which allows for deletion of work from the contract as well as termination upon ten days written notice and for payment for work performed before termination of the Cost Share Agreement by either of the Ports. The agreement with MBC shall require that MBC deliver to the Port of Long Beach all data gathered and all reports prepared prior to termination of the Cost Share Agreement. All such data shall be shared with the Port of Los Angeles through the Committee.

D. All correspondence from MBC to the Port of Long Beach shall also be copied to the Port of Los Angeles. Any instructions from the Port of Long Beach to MBC shall also be copied to the Port of Los Angeles.

E. The Port of Long Beach agreement with MBC shall contain insurance and indemnification sections which include the City of Los Angeles, its Boards, Officers, Agents, Employees, Assigns and Successors in Interest to the same standards and coverage as the City of Long Beach.

#### Section 5. Reimbursement of Monies Between Ports

It shall be the responsibility of the Port of Long Beach to pay all monies due to MBC under the terms of their contract. Subject to the provisions of Section 6 below, the Port of Los Angeles agrees to use its best efforts to reimburse the Port of Long Beach its share of the contracting costs actually paid to MBC within 45 days of the receipt of a billing statement or invoice from the Port of Long Beach.

#### Section 6. Limitations on Reimbursement

A. It shall be the responsibility of the Port of Long Beach to pay all monies due to MBC under the terms of its agreement with MBC. The Port of Long Beach shall not be entitled to reimbursement for the cost of any extra work requested by MBC unless the Port of Los Angeles has authorized such extra work in writing. If the consultant requests any extra work or extra monies, both Ports agree that this request shall be directed by the Port of Long Beach to the Committee, which shall recommend to both Ports whether payment for such extra work is appropriate.

B. If a dispute arises between the two Ports, the Port of Los Angeles shall have the right to veto any proposed payment to the consultant or contractor for extra work conducted on behalf of the Port of Los Angeles, provided that the Port of Los Angeles agrees to defend, indemnify and hold harmless the Port of Long Beach, from any claims of the consultant or contractor arising from a veto by the Port of Los Angeles. If the Port of Los Angeles refuses to provide such written indemnity assurances, the Port of Long Beach may pay the cost of such extra work and will be entitled to reimbursement from the Port of Los Angeles.

C. The Port of Los Angeles shall not be responsible for any extra costs resulting from the negligence of the Port of Long Beach in the administration of the MBC agreement.

#### Section 7. Rights and Obligations

A. Ownership of Data and Records. Both Ports agree that all records, exhibits, work product and all related data collected or reproduced by MBC (“data and records”), for which the costs are shared pursuant to this Cost Share Agreement, are to be the joint property of both Ports.

B. Notices. Any notices to be given under or pursuant to this Cost Share Agreement shall be served by mail or by personal delivery. When so given, such notice shall be effective two calendar days after the date of mailing or upon personal delivery, if not mailed. For the purpose hereof, unless otherwise provided in writing by the parties hereto, the address of the Port of Long Beach and the proper person to receive any such notice on its behalf is the Executive Director, Port of Long Beach, P.O. Box 570, Long Beach, California 90802. For the Port of Los Angeles, the proper person to receive notices on its behalf is the Executive Director, Port of Los Angeles, P.O. Box 151, San Pedro, California 90733.

C. Termination. Either Port shall have the right to terminate this Cost Share Agreement upon ten calendar days written notice to the other Port provided, however, such termination shall not affect the respective obligations of the Ports’ reimbursement due for work provided by MBC and owed by either Port pursuant to this Cost Share Agreement up to the effective date of the termination. If such termination occurs, the Port of Long Beach agrees to notify MBC of such termination as well as any change in the scope of work or specific tasks, which may result from such termination.

D. Cooperation and Port Staff Costs. Both Ports pledge to fully cooperate with each other and MBC. Both Ports agree that each will absorb its respective staff costs to implement and meet the obligations of this Cost Share Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date to the left of their signatures.

THE CITY OF LOS ANGELES HARBOR DEPARTMENT, a municipal corporation, acting by and through its Executive Director of the Harbor Department

Date: \_\_\_\_\_, 2013

By: \_\_\_\_\_

Geraldine Knatz, PhD  
Executive Director

APPROVED AS TO FORM:  
CARMEN A. TRUTANICH, City Attorney

By: \_\_\_\_\_

Heather M. McCloskey,  
Deputy City Attorney

Date: \_\_\_\_\_, 2013

THE CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

Date: \_\_\_\_\_, 2013

By: \_\_\_\_\_

J. Christopher Lytle  
Executive Director

APPROVED AS TO FORM:  
ROBERT E. SHANNON, City Attorney

By: \_\_\_\_\_

Dominic T. Holzhaus  
Principal Deputy

Date: \_\_\_\_\_, 2013

Account#	W.O.#
Ctr/Div#	Job Fac.#
Proj/Prog#	
Budget FY:	Amount:
TOTAL	

For Acct/Budget Div. Use Only

Verified by: \_\_\_\_\_

Verified Funds Available: \_\_\_\_\_

Date Approved: \_\_\_\_\_