

**MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF LOS ANGELES
AND THE UNITED STATES ARMY CORPS OF ENGINEERS,
LOS ANGELES DISTRICT**

THIS AGREEMENT is entered into as of this 29 day of OCT, 2010 by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Harbor Commissioners, (hereinafter the "**Port**") and the Department of the Army, represented by the United States Army Corps of Engineers, Los Angeles District (hereinafter the "**Corps**"), collectively referred to as the "**Parties**."

RECITALS

WHEREAS, the Corps has jurisdiction over certain activities occurring in waters/navigable waters of the United States; and

WHEREAS, section 214 of the federal Water Resources Development Act of 2000, Public Law 106-541 ("**WRDA 2000**") provides as follows:

(a) IN GENERAL. - In Fiscal Years 2001 through 2003, the Secretary (of the Army), after public notice, may 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.

(b) EFFECT ON PERMITTING. - In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision-making with respect to permits, either substantively or procedurally.

WHEREAS, the authority provided under section 214 of the WRDA 2000 is presently in effect until December 31, 2010; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out section 214 of WRDA 2000 to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated March 29, 2004, as modified October 1, 2008, has authorized the District and Division Engineers of the Corps to accept and expend funds contributed by non-federal entities subject to certain limitations; and

WHEREAS, the Corps has indicated it is not able, without additional resources, to expedite the evaluation of Port projects; and

WHEREAS, the Port believes it is in its best interest to provide funds to the Corps pursuant to this Memorandum of Agreement (“**MOA**”) to streamline and expedite Corps environmental review under section 404 of the Clean Water Act (“**CWA**”) and/or section 10 of the Rivers and Harbors Act (“**RHA**”) and/or section 103 of the Marine, Protection, Research and Sanctuaries Act (“**MPRSA**”) for Port-designated priority projects as more fully described in this MOA; and

WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address, and protect environmental resources early in the development of proposed actions; (2) avoid conflicts late in project development through close coordination during early planning and development stages; (3) provide sufficient information to the Corps for timely analysis of project effects and to assist the Port in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps personnel resources by focusing attention on projects that would most affect aquatic resources; (5) provide a mechanism for expediting project coordination when necessary; and (6) provide procedures for resolving disputes in this resource partnering effort.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

A. This MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by the Port to provide expedited permit evaluation-related services for Port-designated priority projects under the jurisdiction of the Corps. This MOA is not intended as the exclusive means of obtaining review of projects proposed by the Port. This MOA is a vehicle by which the Port will obtain expedited permit evaluation-related services, outside of the ordinary Corps review process.

B. The Port enters into this MOA pursuant to its authority by the Board of Harbor Commissioners. The Corps enters into this MOA pursuant to its authority under section 214 of the WRDA 2000, as amended.

Article II. – SCOPE OF WORK

A. The Port will provide funds to the Corps to expedite permit evaluation-related services for Port-designated priority projects under the jurisdiction of the Corps.

B. The Corps’ Regulatory Program is funded as a Congressionally appropriated line item in the annual Federal budget. Funds received from the Port will be added to the Corps’ regulatory budget in accordance with the provisions of section 214 of WRDA 2000. The Corps will provide staffing resources exclusively dedicated to expediting

permit evaluation related services, as described in Article II.D., below, for Port-designated priority projects and/or other programmatic efforts to support efficient decision-making related to the Port's CWA section 404 and/or RHA section 10 and/or MPRSA section 103 permitting needs.

C. Specific services to be provided pursuant to this MOA include, but are not necessarily limited to: (1) participation in Port project development activities, including planning, scoping, Project Development Team ("PDT") meetings, and field reviews; (2) review of Port proposed projects; (3) processing permit applications; and (4) review of environmental documents and technical studies.

D. Funds contributed by the Port hereunder will be expended by the Corps to defray the costs of regulatory staff (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the evaluation of priority permit applications designated by the Port. The Corps may expend Port funds to hire contractors to perform select duties, including but not limited to site visits; preparing and providing technical materials, including environmental documentation; GIS-related services; and meeting coordination for the purpose of augmenting the resources available to the Corps for expediting priority projects and activities designated by the Port. If such expenditures when combined with the costs of the regulatory staff require funding in excess of the amount available under this MOA, then the Corps shall not hire said contractors until and unless additional funds are provided by the Port and the Parties execute a written amendment to this MOA. No contractors will be hired unless the Port has had the opportunity to comment on the selection.

E. If the funds provided by the Port are expended and not replenished, any remaining priority permit applications will be handled like those of any permit applicant, in a manner decided by the assigned Regulatory Project Manager and his or her supervisor.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Corps and the Port, each party appoints the following Principal Representative to serve as its central point of contact on matters relating to this MOA:

For the Port:
Lisa Ochsner
CEQA Supervisor
425 S. Palos Verdes Street
San Pedro, CA 90808
(310) 732-3412
(310) 547-4692 Fax
lochsner@portla.org

For the Corps:
Dr. Spencer MacNeil
Sr. Project Manager, North Coast Branch
2151 Alessandro Drive, Suite 110
Ventura, CA 93001
(805) 585-2152
(805) 585-2154 Fax
spencer.d.macneil@usace.army.mil

Additional representatives may also be appointed to serve as points of contact on specific permit actions. The Principal Representative for each party may be changed upon written notification to the other party.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. The Port shall:

1. Provide adequate information regarding projects 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 27 of the Nationwide Permit Program as published in the Federal Register (72, Fed. Reg. 11194, dated March 12, 2007). Upon request, the 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, the Port shall provide such additional information so as to ensure the Corps can effectively accomplish the required review.

2. Make a reasonable effort to provide the Corps with information on other projects with Port involvement to enable the Corps to most efficiently apply available staff resources and plan for workload cycles.

3. In consultation with the Corps, schedule Corps involvement in the priority projects identified by the Port. The list of initial priority projects is shown in **Appendix A**; the list may be changed by the Port's Principal Representative without requiring an amendment to this MOA. Such changes shall be submitted to the Corps in writing and will be effective upon receipt thereof. If the Port fails to identify its priority projects, the Corps will establish its own priorities in accordance with objectives of this MOA.

4. To the best of its ability, ensure the participation of all essential personnel, customers, and decision makers during the permit evaluation process.

5. Work closely with the Corps to adjust priorities and schedules in order to make optimal use of available staff resources. While the Port will make every effort to not overlap Project schedules, occasional overlaps may occur and the Port will work with the Corps to prioritize such overlaps.

B. The Corps shall:

1. Supplement or reassign its existing Regulatory Program personnel, which currently reviews Port projects on a routine basis, with qualified personnel within projected funding levels provided by the Port. The Corps shall use the funds provided to defray the costs of salaries and associated benefits and to reimburse travel expenses in order to:

2. Expedite review of Port permit requests in accordance with the purpose, terms, and conditions of this MOA or any amendments thereto. The Corps shall not redirect resources from, or otherwise postpone, other Port projects submitted through the standard Corps review process.

3. Following any pre-application meetings and/or discussions to clarify the scope of anticipated permit application review processes, provide the Port with an estimated schedule to complete the permit evaluation process for each application submitted. The Port shall be able to comment on these schedules and adjust their priorities per Appendix A, or provide additional resources per Article V. D, below.

4. Consult with the Port regarding an adjustment of priorities or establishment of relative priorities if the current and/or projected workload of priority projects and activities exceeds Corps' ability to provide the services specified in this MOA.

5. Provide the Port with a brief Quarterly Summary Report of progress made under this MOA, or in accordance with an alternative schedule as agreed to by the Parties to this MOA. Progress will be itemized for each permit application review completed during the quarter and for each permit application pending at the end of the quarter. This report will describe achievements, including any improvements the Corps has documented in coordinating and improving the efficiency of environmental reviews, and will summarize expenditures to date. The report also will identify any recommendations for improving consultation and coordination among the Parties and will identify anticipated activities for the next quarter. The fourth quarter report shall include a summary of the annual progress made under this MOA. The report shall not be in excess of five (5) pages.

6. Designate and identify to the Port a Regulatory Project Manager for each priority project.

7. Meet with Port as needed to discuss progress under this MOA.

8. Prior to expiration of the MOA, hold a final meeting with the Port to review a summary of permit streamlining and other activities under this MOA, as well as provide recommendations for future coordination between the Parties.

Article V. – FUNDING

A. The total compensation paid to the Corps under this MOA shall not exceed Four Hundred Eighty Thousand Dollars (\$480,000) paid as follows:

1. \$160,000 upon execution of the MOA
2. \$160,000 twelve months from the effective date of the MOA
3. \$160,000 twenty-four months from the effective date of the MOA

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

B. Any unexpended funds will be returned to the Port in accordance to Article X.C.

C. Expediting of permit actions by the Corps will be provided under this MOA only after funds have been transferred to the Corps.

D. 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 to:

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

E. If the Corps' actual costs for providing the agreed upon level of service will exceed the amount of funds available as a result of the Federal Government's General Schedule increases and locality adjustments provided for in paragraph A of this Article then the Corps will promptly notify the Port of the incremental amount of funds needed to defray the costs. The Port will either initiate an amendment to this MOA to increase the funding amount, or agree to a reduced level of service.

F. 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.

G. The Corps will neither accept nor expend funds under this MOA after December 31, 2010, unless Federal law extends or makes permanent the Corps' authority under Section 214 of the WRDA 2000 to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

Article VI. - APPLICABLE LAWS

The applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of permit applications undertaken by the Corps will be governed by Corps regulations, policies and procedures.

Article VII. - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute between the Parties, the Port and the Corps shall use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The Parties agree that, in the event such measures fail to resolve the dispute, they shall refer the dispute for resolution to an appropriate forum in accordance with Federal law.

Article VIII. - PUBLIC INFORMATION

Justification and explanation of Port programs or projects before other agencies, departments and offices will not be the responsibility of the Corps. The Corps may provide, upon request from the Port, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the Corps is responsible only for public information regarding Corps regulatory activities. The Port will give the Corps at least three (3) business days advance notice before making formal, official statements regarding activities funded under this MOA.

Article IX. - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA will not affect any pre-existing or independent relationships or obligations between the Parties.

B. Survival

Under the provisions of Section 214 of the WRDA 2000 as extended, no funds may be expended pursuant to this MOA after December 31, 2010. However, if prior to this date, this statutory authority is extended, then provisions of this MOA shall remain in force until the sunseting of section 214 of WRDA 2000, as further extended, or the expiration date as provided in this MOA, whichever is earlier.

C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

Article X. - AMENDMENT, MODIFICATION AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties.

B. Either party reserves the right to terminate this MOA without cause upon thirty (30) days written notice to the other party, or sooner by mutual written agreement, or immediately in the event of a material breach. In the event of termination, Port will continue to be responsible for all costs incurred by the Corps in performing expedited environmental permit review services up to the time of notice and for the costs of closing out or transferring any ongoing contracts in support of the provision of services by the Corps under this MOA.

C. Within ninety (90) calendar days of termination of the MOA, or the expiration of the MOA, the Corps shall provide the Port with a final statement of expenditures. Within sixty (60) calendar days after submittal of the Corps' final statement of expenditures, the Corps, shall directly remit to the Port the unexpended balance of the advance payment, if any. Funds may be provided to the Port either by check or electronic funds transfer.

Article XI. - EFFECTIVE DATE AND DURATION

This MOA will be effective on the date of execution by the last party. This MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2010, unless the sunset clause of section 214 of WRDA 2000 is extended or section 214 is made permanent, in which case the MOA will remain in effect for the duration of the statutory extension or until three years from the effective date, whichever date is earlier; or 2) the MOA is terminated pursuant to Article X.B.

Article XII. - INTEGRATION

This MOA, including any documents incorporated by reference or attachments thereto, constitute the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date next to their signatures.

Dated: 10/13/10

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

By [Signature]
Executive Director

Attest: [Signature]
Secretary

DEPARTMENT OF THE ARMY

Dated: 10/29/01

By [Signature]
Colonel, US Army
District Commander

APPROVED AS TO FORM:
8-3, 2010
CARMEN A. TRUTANICH, City Attorney

By [Signature]
Deputy City Attorney

Account # 54260 W.O. # _____
Ctr/Div # 1000 Job Fac. # _____
Proj/Prog # 000

Budget FY:	Amount:
2010/11	\$160,000
2011/12	\$160,000
2012/13	\$160,000
TOTAL	\$480,000

For Acct Div. Use Only: [Signature]
Verified Funds Available [Signature]
Date Approved: 8/2/10

APPENDIX A

CURRENT AND FUTURE JOINT CEQA/NEQA PROJECTS AT THE PORT OF LOS ANGELES

The following is a list of current and anticipated future CEQA/NEPA Projects requiring Corps assistance:

1. Pier 400 (Pacific Energy) Liquid Bulk Terminal Project: Corps Permitting Process
2. Berths 302-306 (APL) Container Terminal Expansion Project, EIS/EIR and Corps Permitting Process
3. Southern California International Gateway (SCIG) Project EIR: Corps Permitting Process
4. City Dock No. 1 EIR: Corps Permitting Process
5. Al Larson Boat Shop Project EIR: Corps Permitting Process
6. San Pedro Waterfront Project: Corps Permitting Process
7. Wilmington Waterfront Project: Corps Permitting Process
8. Port of Los Angeles Maintenance Dredging Program: Corps Permitting Process
9. Berth 212-224 Yusen Terminals Inc. (YTI) Wharf Improvements Project, EIS/EIR
10. Berth 121-131 Yang Ming Marine Terminal Improvements Project, EIS/EIR
11. Berth 195-199 WWL Auto Terminal Project, EIS/EIR
12. Southern California Ship Services, EIS/EIR
13. Berth 174-181 Pasha Terminal Improvements Project, EIS/EIR