FIRST AMENDMENT
TO
MEMORANDUM OF AGREEMENT
BETWEEN
THE SAN DIEGO UNIFIED PORT DISTRICT
AND
THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

This First Amendment to the Memorandum of Agreement ("FIRST AMENDMENT") is entered into by the San Diego Unified Port District (hereinafter the "Port") and the Los Angeles District of the United States Army Corps of Engineers (hereinafter the "Corps"), collectively referred to as the "Parties."

RECITALS

WHEREAS, the Corps has jurisdiction over certain activities occurring in waters of the United States, including wetlands, pursuant to section 404 of the Clean Water Act of 1972, as amended, and navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act of 1899, as amended; and

WHEREAS, the Parties entered into a Memorandum of Agreement ("MOA"), effective March 30, 2012, for expedited and priority review of Port-designated priority projects by the Corps; and

WHEREAS, section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541, as amended and codified at 33 U.S.C. § 2352, 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 Department of the Army; and

WHEREAS, the Chief of Engineers, by memorandum dated September 2, 2015, has authorized the District and Division Engineers of the Corps to accept and expend funds contributed by non-Federal public entities subject to certain limitations; and

WHEREAS, the MOA is set to expire December 31, 2016; and

WHEREAS, the Parties desire to extend the duration of the MOA to December 31, 2021.

NOW, THEREFORE, the Parties agree as follows:

FIRST AMENDMENT

1. Article X. - MISCELLANEOUS. Article X.B is deleted in its entirety.

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

"Article XI - EFFECTIVE DATE AND DURATION

This MOA and any amendments will become effective on the date of signature by the last Party. Unless amended or modified pursuant to Article IX.A., this MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2021; or 2) the MOA is terminated pursuant to Article IX.B."

Integration. Except as amended herein all terms and conditions of the MOA remain in full force and effect. The MOA is on file in the Port's Office of the District Clerk as Document No. 58897, dated April 24, 2012.

IN WITNESS WHEREOF, this FIRST AMENDMENT to the MOA is executed as of the dates indicated below by the Port, acting by and through its authorized officer, and by the Corps, through its authorized officer.

SAN DIEGO UNIFIED PORT DISTRICT

Dated: 9.12.16

By _____
T. SCOTT EDWARDS
Vice President, Chief Operations Officer

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

Dated: 10/22/16

By _____
Kirk E. Gibbs
Colonel, US Army
Commander and District Engineer

APPROVED AS TO FORM AND LEGALITY:
Port District General Counsel

_____
By: ~~Assistant/~~Deputy

Appendix A: Port Priority Projects

June 2016

This list of priority projects under this MOA includes the following:

B Street Pier

Broadway Pier

Chula Vista Bayfront Master Plan

Mitigation Bank Prospectus for multiple sites

National City Wharf Extension, Phase II

Overwater Structure Credits Coordination

Regional General Permit #72

Sand Replenishment Projects

Shelter Island Boat Launch Ramp

Appendix B: Corps' Budget Estimate/Second Invoice

June 2016

TASK	TIME	HOURLY RATE	COST
Pre-application meetings	100	$122	$12,200
Project Review & Analysis	750	$122	$91,500
Administrative	125	$77	$9,625
Monitoring	95	$122	$11,590
Subtotal Personnel Costs			
Direct Costs:			
Supplies			$85
Subtotal Direct Costs:			**$85**
Total			**$125,000**

San Diego Unified Port District
Document No. 58897
Filed APR 24 2012
Office of the District Clerk

MEMORANDUM OF AGREEMENT
BETWEEN
THE SAN DIEGO UNIFIED PORT DISTRICT
AND
THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

THIS MEMORANDUM OF AGREEMENT (MOA) is entered into by the San Diego Unified Port District (hereinafter the "Port") and the Los Angeles District of the United States Army Corps of Engineers (hereinafter the "Corps"), collectively referred to as "the Parties."

RECITALS

WHEREAS, the Corps has regulatory jurisdiction over certain activities occurring in waters of the United States, including wetlands pursuant to section 404 of the Clean Water Act (CWA) of 1972 and section 10 of the Rivers and Harbors Act (RHA), as amended; 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 Department of the Army; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out section 214 of the 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 permits of the Port related to projects for a public purpose; and

WHEREAS, the Port believes it is in the best interests of the taxpayers to provide funds to the Corps pursuant to this MOA to expedite Corps environmental review under section 404 of the CWA for Port-designated priority projects as more fully described in this MOA; and

WHEREAS, the Corps issued an initial Public Notice dated, January 15, 2008, regarding its intent to accept and expend funds contributed by the Port; and

WHEREAS, in a memorandum dated March 29, 2012 the Corps determined that expenditure of funds received from the Port is appropriate, and an informational public notice dated March 29, 2012, regarding the decision has been issued; and

WHEREAS, it is understood and acknowledged by all Parties that the Corps' review of the Port 's permit applications for Port-designated priority projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

DUPLICATE ORIGINAL

WHEREAS, this MOA establishes the responsibilities and operating procedures of the Parties with respect to priority reviews; 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 Port in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps Regulatory Division personnel 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 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 Corps enters into this MOA pursuant to its authority under section 214 of the WRDA 2000, as amended.

C. The Port enters into this MOA pursuant to its authority under the San Diego Unified Port District Act which establishes the Port as the trustee of the tidelands surrounding San Diego Bay.

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. The Corps' Regulatory Program is funded as a congressionally appropriated line item in the annual Federal budget. The Port will provide the Corps with funds in accordance with the provisions of section 214 of WRDA 2000, as amended.

B. The Corps will provide staffing resources exclusively dedicated to expediting permit evaluation-related services, as described below, for Port-designated priority projects and/or other programmatic efforts to support efficient decision-making related to the Port CWA section 404 and section 10 of the RHA permitting needs.

C. The Corps will establish a separate internal financial 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 the projects designated by the Port as priorities are insufficient to keep Corps personnel busy, Corps personnel will then work on other programmatic efforts for the Port.

D. Funds contributed by the Port hereunder will be expended by the Corps to defray the costs of Regulatory Division personnel (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. Such activities will include, but not be limited to, the following: jurisdictional determinations; site visits; travel; federal register and public notice preparation; preparation of correspondence; public interest review; preparation and review of environmental documentation; undertaking consultations pursuant to section 106 of the National Historic Preservation Act and section 7 of the Endangered Species Act; and meetings with the Port and resource agencies.

E. 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 Division personnel specified in Article II.D, require funding in excess of the amount available under this MOA, then said contractors shall not be hired by the Corps until and unless additional funds are provided by the Port , and the Parties execute a written amendment to this MOA.

F. The Corps will *not* expend Port funds for costs associated with the review of Regulatory Project Managers' work by supervisors or other persons or elements of the Corps in the decision-making chain of command. However, if a supervisor is performing staff work and not supervisory, decision-making oversight, funds may be used. The Corps will *not* expend funds contributed by Port to defray the costs of activities related to the Corps' enforcement functions, but *may* use Port funds to defray costs of activities related to compliance functions.

G. 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.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Parties, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on specific actions or issues. For the purposes of this MOA the Port's Principal Representative will be Eileen Maher, Assistant Director, Environmental and Land Use Management and the Corps' Principal Representative will be Robert Smith, Senior Project Manager, South Coast Branch,

Carlsbad Field Office. The Principal Representative for each party may be changed upon written notification to the other parties.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. The Port will provide adequate resources to fund additional Corps Regulatory personnel for the purpose of timely review of designated priority projects and other identified activities. To facilitate the Corps' review and activities, the Port will:

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 31 of the Nationwide Permit Program. 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 in a timely manner 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 project is shown on **Appendix A**. The list may be changed by mutual agreement of the Principal Representatives of each party without requiring an amendment to this MOA. Such changes shall be submitted to the Corps' Principal Representative in writing, including email, and will be effective upon receipt thereof.

4. To the best of their ability, ensure the participation of all essential personnel during the permit evaluation process.

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

6. Provide funding pursuant to the terms of this MOA.

B. The Corps shall supplement or reassign its existing Regulatory Division 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:

1. Expedite review of the Port priority projects 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 projects submitted by the Port through the standard Corps review process.

2. Upon submittal of new permit applications and following any meetings and discussions to clarify the scope of anticipated permit application review processes, Corps staff will 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 priorities per Appendix A, or provide additional resources per Article V.E.

3. 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.

4. Provide the Port a brief quarterly summary report of progress made under 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 to this MOA and will provide an estimate of costs expected for the ensuing quarter. The report shall not be in excess of five (5) pages.

5. Designate a Regulatory Project Manager who will make his or her best efforts to attend periodic meetings with the Port.

Article V. - FUNDING

A. Within 30 days of execution of this MOA, the Port shall pay the anticipated costs expected to be incurred through September 30, 2012, at the level specified in the Corps' budget estimate, which is included as **Appendix B** to this MOA and incorporated herein by reference.

B. No later than July 1 of each year that this MOA remains in effect, the Corps will provide the Port with an anticipated cost invoice ("Invoice") that provides an updated budget estimate of costs for the next Federal fiscal year, including any proposed changes in the level of staffing. Revisions agreed to by the Parties will be incorporated into a revised budget estimate. Invoices shall be submitted by the Corps to:

Eileen Maher

Assistant Director, Environmental Services

Environmental and Land Use Management Department

San Diego Unified Port District

P.O. Box 120488

San Diego, CA 92112-0488

C. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, the Port will make an annual lump sum payment to the Corps. Upon receipt of the Corps' Invoice(s) and in accordance with normal Port payment procedures, the Port will each make an annual lump sum payment, in advance, of the total amount specified in the Invoice(s).

D. Expediting of permit evaluation related activities as specified in this MOA will be undertaken by the Corps only after funds have been transferred to the Corps. Payments by the Port are to be made to:

U.S. Army Corps of Engineers, Los Angeles District
Finance and Accounting Officer
P.O. Box 532711
Los Angeles, CA 90053-2325
Attn: Carlos M. Tabares

E. If the Corps' actual costs for providing the agreed upon level of service will exceed the amount of funds available, the Corps will promptly notify the Port's Principal Representative of the incremental amount of funds needed to defray the costs. The Port will either increase the funding amount or agree to a reduced level of service.

F. 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.

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

In the event of a dispute, the Parties agree to 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 proceed in accordance with applicable 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.

Article IX. - AMENDMENT, MODIFICATION, AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties. The list of initial priority projects is shown on **Appendix A**. The list may be changed by mutual agreement of the Principal Representatives of each party without requiring an amendment to this MOA. Such changes shall be submitted to the Corps' Principal Representative in writing, including email, and will be effective upon receipt thereof.

B. Any party reserves the right to terminate its participation in this MOA without cause upon thirty (30) days' written notice to the other parties. In the event of termination, the 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. If the Port wants to terminate this agreement and the other entity wishes to continue, this agreement may be modified or amended to reflect that change.

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, subject to compliance with the Anti-Deficiency Act (31 U.S.C. 1341 et. seq.), shall directly remit to the Port the unexpended balance of the advance payments, if any. Funds may be provided to the Port either by check or electronic funds transfer.

Article X. - MISCELLANEOUS

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

B. Under the provisions of section 214 of the WRDA 2000 as extended, no funds may be accepted or expended by the Corps pursuant to this MOA after December 31, 2016. However, if prior to this date, this statutory authority is extended, then provisions of this MOA shall remain in force until the earlier of the sun setting of section 214 of WRDA 2000, as further extended, or until the expiration date as provided in this MOA.

C. 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.

D. The Corps' participation in this MOA does not imply endorsement of Port projects nor does it diminish, modify, or otherwise affect Corps statutory or regulatory authorities.

E. 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.

Article XI. - EFFECTIVE DATE AND DURATION

This MOA will become effective on the date of signature by the last Party. 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 IX.B.

IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by the Port, acting by and through its authorized officer, and by the Corps, through its authorized officer.

RECOMMENDED FOR APPROVAL:

SAN DIEGO UNIFIED PORT DISTRICT

Dated: APR 24 2012

By _____
RANDA CONIGLIO
Executive Vice President, Operations

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

Dated: 30 March 2012

By _____
R. MARK TOY, P.E.
Colonel,Commander and District Engineer

APPROVED AS TO FORM:
Celia Brewer, Interim Port Attorney

By: _____
William McMinn, Deputy Port Attorney

DEPUTY PORT ATTORNEY

Appendix A: Port Priority Projects

March 9, 2012

The list of priority projects under this MOA includes the following:

Broadway Pier

B Street Pier

Regional General Permit 72

Chula Vista Bayfront Master Plan

5 year permit for rock revetment

Mitigation Bank Prospectus and associated documents

Shelter Island Boat launch ramp

National City Wharf Extension, Phase II