

FILE NUMBER: 2025-076

DATE: Tuesday, March 11, 2025

SUBJECT: Amendment No. 5 to Army Corps MOA

DESCRIPTION: Resolution Authorizing Amendment No. 5 to the Memorandum of Agreement (MOA) with the U.S. Army Corps of Engineers for Expedited and Priority Review of District Permitting Projects, for an Additional \$125,000 and a New Not to Exceed Total of \$715,000 and Extending the MOA Through December 31, 2028. Funds for FY25 are Budgeted in the Non-Personnel Expenses.

EXECUTIVE SUMMARY:

In April 2012, the San Diego Unified Port District (District) entered into a Memorandum of Agreement (MOA) with the United States Army Corps of Engineers (USACE) to provide expedited permit application review and processing of Port-designated Priority Projects Under the Jurisdiction of USACE (Clerk's Doc No. 58897). The MOA was in the amount of \$125, 000 over a period of five years.

In August 2016, the Board amended the MOA to increase funding by an additional \$125,000 and extend the MOA for an additional five years, through December 31, 2021 (Clerk's Doc No. 65760). A second amendment, which increased funding by an additional \$125,000 was approved by the Board in June of 2019 (Clerk's Doc No. 71115). A third amendment was approved by the Board in May of 2021 to increase funding by an additional \$90,000 (Clerk's Doc No. 72899). Additionally, a fourth amendment, which increased funding by an additional \$125,000 was approved by the Board in December 2022 (Clerk's Doc No. 74765). The MOA is scheduled to expire on December 31, 2025. To maintain an efficient and timely permit review process and to assist with reducing project timelines for District priority projects, staff is requesting Board approval to amend the MOA a fifth time to increase funding by an additional \$125,000 for a new not to exceed total of \$715,000 and extending the MOA for three years, through December 31, 2028 (Attachment A).

RECOMMENDATION:

Adopt a Resolution authorizing Amendment No. 5 to the Memorandum of Agreement with the United States Army Corps of Engineers for expedited and priority review of District projects, for a new not to exceed total of \$715,000 through December 31, 2028.

FISCAL IMPACT:

There is no fiscal impact caused by approval of this action.

Funding for the Fifth Amendment to the MOU is included in Environmental Conservation's FY 2025 non-personnel budget. Funds required for future fiscal years will be budgeted in the appropriate fiscal year, subject to Board approval upon adoption of each fiscal year's budget.

COMPASS STRATEGIC GOALS:

This item is a resolution authorizing a fifth Amendment to the MOA with USACE to expedite permit services for projects under the jurisdiction of USACE that are designated as priority projects by the District. These services are in compliance with the environmental regulations to protect natural resources in and around San Diego Bay. Therefore, this agenda item supports the following Strategic Goal(s).

- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.

DISCUSSION:

Under section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 (WRDA 2000), the USACE is authorized to accept and expend funds contributed by a non-Federal agency for the purpose of expediting permit evaluation services for projects occurring in, on or over waters of the United States. In accordance with the provisions of WRDA 2000, the Port entered into an MOA with USACE to provide funding for the purpose of expediting permit reviews for District-designated priority projects under the jurisdiction of USACE. The MOA, dated April 24, 2012, was originally approved for \$125,000 through December 31, 2016 (Clerk's Doc No. 58897). In August 2016, by Resolution No. 2016-123, the Board amended the MOA to increase funding by an additional \$125,000 and extended the MOA for an additional five years, through December 31, 2021 (Clerk's Doc No. 65760). In June 2019, the Board by Resolution No. 2019-073, approved the second amendment to the MOA to increase funding by \$125,000 (Clerk's Doc No. 71115). In May 2021, by Resolution No. 2021-062, the Board approved the third amendment to the MOA to increase funding by \$90,000 (Clerk's Doc No. 72899) through December 2022. In December 2022, by Resolution No. 2022-145, the Board approved the fourth amendment to the MOA to increase funding by \$125,000 and extending the agreement until December 31, 2025 (Clerk's Doc No. 74765).

Funding under the MOA supports USACE staffing resources dedicated to reviewing and processing District projects in an expedited manner. Under the MOA, USACE's services to expedite the permit processing time include: 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 meeting with the District and resource agencies. USACE personnel focus on specific project tasks as prioritized by the District.

USACE has effectively provided staffing resources dedicated to expediting permit services for District projects and/or other programmatic efforts to support efficient decision-making. Expedited permit review has created cost savings and reduced project timelines for District Other Capital Projects and Major Maintenance Program projects (OCP/MM) Including routine repairs to piers, docks and wharfs.

Examples of OCP/MM projects that have benefited from the MOA include the Tenth Avenue Marine Terminal Yokohama Fender Replacement; National City Marine Terminal Berth 24-10 Structural and Mooring Repair; B Street Pier curtain wall repair; Broadway Pier structural repairs; B Street Pier North Berth Fender System Upgrade; Tuna Harbor Dock and Structural Repairs; FLUPSY Emergency Pile Repair; and the Shelter Island Boat Launch Ramp repairs. Selected current and future OCP/MM projects identified as priority projects to be funded through the stimulus package including the B Street Pier dredging/knockdown; shore power projects; Navy Pier and National City Marine Terminal Structural Repairs; the Chula Vista Bayfront Master Plan, Harbor Park and Sweetwater Park buffer; and Regional General Permit No. 72 for routine maintenance of our piers, docks and wharves.

Conclusion:

Staff recommends the approval of Amendment No. 5 to the MOA with USACE to continue timely processing of priority District projects under USACE jurisdiction for an additional \$125,000 for a new not to exceed total of \$715,000 through December 31, 2028.

General Counsel's Comments:

The Office of the General Counsel reviewed this agenda sheet and approved the proposed agreement as presented to it as to form and legality.

Environmental Review:

The proposed Board action, including without limitation authorizing Amendment No. 5 to the Memorandum of Agreement (MOA) with the U.S. Army Corps of Engineers for expedited and priority review of District permitting projects for an additional \$125,000 and not to exceed \$715,000 and extending the MOA through December 31, 2028, does not constitute a project under the definition in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of the Board action that requires the District or the Board's discretionary approval and would result in a physical change to the environment would be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The exercise of this discretion is in no way limited by this proposed Board action. Therefore, no further CEQA review is required.

The proposed Board action complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operations of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent

with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for development, as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because there will not be, without limitation, a physical change, change in use or increase in intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development would remain subject to its own independent review pursuant to the District's certified CDP Regulations, Port Master Plan (PMP), and the relevant chapter(s) of the Coastal Act. The exercise of the District's discretion under the District's CDP Regulations is in no way limited by the proposed Board action.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI Impact on District workforce or contract reporting at this time.

PREPARED BY:

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Attachment(s):

Attachment A: Draft Amendment No. 5 to Memorandum of Agreement between the San Diego Unified Port District and the U.S. Army Corps of Engineers, Los Angeles District