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**MEMORANDUM OF UNDERSTANDING**  
**BY AND BETWEEN**  
**THE PARKS, RECREATION AND MARINE DEPARTMENT AND**  
**THE HARBOR DEPARTMENT**  
**34377**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made by and between the City of Long Beach Parks, Recreation and Marine Department ("Parks") and the City of Long Beach Harbor Department acting by and through its Board of Harbor Commissioners ("Harbor") (collectively "Departments") with regard to participation in the Colorado Lagoon Open Channel Restoration Phase 2A Project ("Project").

**1. Recitals.**

This MOU is made with reference to the following facts and objectives:

1.1 WHEREAS, the Harbor and City Manager's Office have agreed to expand upon the previous MOU's developed between the Departments with respect to the Colorado Lagoon Restoration Project.

1.2 WHEREAS, Harbor is empowered by the State Tidelands Grant to foster the orderly and necessary development of the Port's navigation, commerce, recreation, and fisheries, including the development of new land in the Long Beach Harbor District by landfill, and these developments contribute significantly to the local, regional and national economies by accommodating maritime commerce; and

1.3 WHEREAS, Harbor development landfills and coastal wetland restoration are subject to state and federal environmental evaluation pursuant to, among others, the California Environmental Quality Act ("CEQA"), National Environmental Policy Act ("NEPA"), and Coastal Zone Management Act and are subject to state regulation pursuant to the California Coastal Act, to federal regulation pursuant to the Clean Water Act and the Rivers and Harbors Act, and to

HD-8651

1 State and federal regulation pursuant to the state and federal Endangered Species  
2 Acts (collectively "ESA"); and

3 1.4 WHEREAS, the Fish and Wildlife Service, United States  
4 Department of Interior, the National Marine Fisheries Services, National Oceanic  
5 and Atmospheric Administration, United States Department of Commerce, and the  
6 California Department of Fish and Wildlife (collectively, "Federal and State  
7 Resource Agencies") have a primary mandate to conserve, protect, and enhance  
8 fish and migratory birds and their habitats, and overall marine fisheries including  
9 the planning and biological loss avoidance, minimization, and compensation; and

10 1.5 WHEREAS, Harbor anticipates the need for the construction  
11 of new landfills that will permanently impact marine fish and wildlife habitat and  
12 other aquatic functions that the respective State and Federal Resource Agencies  
13 recommend be compensated by creation or restoration of equivalent aquatic  
14 functions and habitat values that would be maintained on a permanent basis; and

15 1.6 WHEREAS, Harbor has participated in previous development  
16 projects where advanced planning of appropriate compensatory mitigation and an  
17 existing Mitigation Banking Agreement currently exists between Harbor and the  
18 respective State and Federal Resources Agencies; and

19 1.7 WHEREAS, City Manager's Office has identified a need to  
20 reconnect the Colorado Lagoon Wetlands ("Lagoon") located in the eastern part of  
21 the City of Long Beach, California to Alamitos Bay and the Pacific Ocean to  
22 improve the aquatic resources and habitat functions at the Lagoon. The Lagoon  
23 was historically connected to Alamitos Bay and the Pacific Ocean prior to the  
24 development of Marine Stadium and the surrounding land area. The Lagoon  
25 currently serves three main functions: it hosts estuarine habitat, provides public  
26 recreation, and retains and conveys storm water; and

27 1.8 WHEREAS, the Colorado Lagoon Restoration Plan  
28 (Feasibility Study) identified a series of multi-phased efforts to restore habitat and

1 improve water quality at the Lagoon, including the reconnection of the Lagoon to  
2 Alamitos Bay. Phase 1 Restoration Activities have been completed which included  
3 the installation of a low flow diversion system, trash separation devices,  
4 underground culvert cleaning, and removal of 72,000 cubic yards of contaminated  
5 sediment, resulting in improved water quality scores at the Lagoon; and

6 1.9 WHEREAS, Phase 2A Restoration, or the Project, consists of  
7 constructing an open, earthen hydraulic water channel to reconnect the Lagoon to  
8 Marine Stadium. The Phase 2A site is generally bounded by Colorado Street to  
9 the north, Eliot Street to the west, Marine Stadium to the south, and open park  
10 space to the east.

11 1.10 WHEREAS, The City Manager's Office, through Work Order  
12 No. 70 HD-6478, has engaged the United States Army Corps of Engineers for the  
13 establishment of a Compensatory Mitigation Bank Enabling Instrument or  
14 "mitigation bank" pursuant to the Compensatory Mitigation Rule (33 CFR Part  
15 332).

16 1.11 WHEREAS, Harbor provided a portion of the funding for the  
17 Phase 1 Restoration Activities as outlined in the 12/14/2009 Board of Harbor  
18 Commissioners Staff Memorandum, in exchange for the right to purchase  
19 mitigation credits from the mitigation bank resulting from increased habitat value at  
20 the Colorado Lagoon Open Channel (functional lift) and establishment of tidal  
21 habitat at the open channel site; and

22 1.12 WHEREAS, Harbor has demonstrated its continued  
23 commitment to the Colorado Lagoon Restoration Project with contributions for the  
24 Environmental Impact Report (2007), Open Channel Phase 2 Alternatives Analysis  
25 (2009), and Mitigation Bank Prospectus and BEI Development (2013); and

26 1.13 WHEREAS, the City Manager's Office is ready to proceed  
27 with preliminary design phases for the Project pursuant to RFP CM No. 16-028.  
28 The preliminary scope of services include value engineering the project,

1 developing preliminary engineering plans, and securing all necessary permits; and  
2 1.14 WHEREAS, the City Manager's Office recognizes the  
3 importance of the Project and has committed \$200,000 for the preliminary design  
4 phases; and

5 1.15 WHEREAS, Harbor recognizes the value of the Project, and  
6 anticipates the need for mitigation credits in the future.

7 **2. Agreement.**

8 2.1 Harbor hereby agrees to fund the preliminary engineering  
9 efforts for the Project in the amount of \$300,000, and fund the Compensatory  
10 Mitigation Bank Enabling Instrument establishment efforts in the amount of  
11 \$50,000; and

12 2.2 The parties agree that Harbor shall have first rights to any,  
13 and all, mitigation credits that may result from the Project, as determined by the  
14 respective State and Federal Resource Agencies.

15 **3. Term and Termination.**

16 3.1 The term of this MOU shall commence on the date of the  
17 signature of the second party to execute the MOU and shall continue until the  
18 completion of the Project.

19 3.2 This MOU can be terminated by either party upon ten (10)  
20 days written notice to the other party.

21 3.3 Both Harbor and City Manager's Office agree that any  
22 additional cost associated with the development of the Project engineering designs  
23 will be negotiated amongst the respective departments to determine the  
24 appropriate level of cost share for each of the respective departments, as deemed  
25 necessary.

26 3.4 Both Harbor and City Manager's Office agree that any future  
27 participation by the Harbor in the Colorado Lagoon Restoration Project will  
28 necessitate additional negotiations amongst the two respective departments,

1 which may include, but not be limited to, the respective State and Federal  
2 Resource Agencies.

3 **4. Notices.**

4 4.1 Notices. Any notices to be given under this MOU shall be  
5 given in writing. Such notices may be served by personal delivery, facsimile  
6 transmission or by first class regular mail, postage prepaid. Any such notice, when  
7 served by mail, shall be effective two (2) calendar days after the date of mailing of  
8 the same, and when served by facsimile transmission or personal delivery shall be  
9 effective upon receipt. For the purposes hereof, the address of Harbor and the  
10 proper person to receive any such notices on its behalf, is: Managing Director  
11 of Planning, Long Beach Harbor Department, 4801 Airport Plaza Drive, Long  
12 Beach, California 90815. For the purposes hereof, the address of the City  
13 Manager's Office, and the proper person to receive any notices on its behalf, is:  
14 Tidelands Development Officer, City Manager's Office, City of Long Beach, 333  
15 West Ocean Blvd 5th Floor, Long Beach California 90802.

16 4.2 Amendment. The terms and provisions of this MOU may not  
17 be amended, modified or waived, except by an instrument in writing signed by the  
18 parties.

19 4.3 Counterparts. This MOU may be executed in any number of  
20 counterparts, each of which shall be any original but all of which taken together  
21 shall constitute but one and the same instrument, provided, however, that such  
22 counterparts shall have been delivered to both parties to this MOU.

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