

SECOND AMENDMENT TO COOPERATIVE AGREEMENT NO. 34249

34249

THIS SECOND AMENDMENT TO COOPERATIVE AGREEMENT NO. 34249 is made and entered, in duplicate, as of October 23, 2018 pursuant to a minute order of the City Council of the City of Long beach at its meeting held October 23, 2018, by and between the CITY OF LONG BEACH, a municipal corporation ("CLB") and the CITY OF SIGNAL HILL, a municipal corporation ("CSH") (collectively, the "Parties").

WHEREAS, on June 29, 2015, the California Department of Transportation ("Caltrans") entered into a cooperate implementation agreement with CSH (the "Caltrans Agreement"), attached hereto as Exhibit A, to reimburse CSH an amount not to exceed eleven million dollars (\$11,000,000) for costs associated with the planning, design and construction of a stormwater capture facility within Caltrans' regional jurisdiction in order to satisfy NPDES permit requirements and further the goals of their permits ("Project"); and

WHEREAS, CLB also desires to participate in the Project by providing a site for the Project, as well as technical support, in order to satisfy NPDES permit requirements and further the goals of its permit; and

WHEREAS, the Parties entered into Cooperative Agreement No. 32429 ("Agreement No. 34249"), attached hereto as Exhibit B for the purpose of setting forth their respective roles in and responsibilities for the Project; and

WHEREAS, on February 5, 2018 the Parties executed a First Amendment to Cooperative Agreement No. 34249, attached hereto as Exhibit C, which

2018 NOV 23 10:00:10

increased the amount of project costs for which City of Long Beach could seek reimbursement from \$50,000 to \$350,000; and

WHEREAS, on May 22, 2018 Caltrans and the City of Signal Hill entered into a second Cooperative Implementation Agreement (CIA No. D43CIASH0002), attached hereto as Exhibit D ("**Second Caltrans Agreement**"), in which Caltrans agreed to contribute an additional four million two hundred fifty thousand dollars (\$4,250,000) to the Project, to expand the stormwater capture capacity of the Project by approximately seven acre feet (7AF); and

WHEREAS, on June 19, 2018, the Los Angeles County Flood Control District ("**LACFCD**") approved a Memorandum of Understanding, attached hereto as Exhibit E ("**LACFCD MOU**"), in which LACFCD agreed to contribute an additional seven million five hundred thousand dollars (\$7,500,000) to the Project, to expand the stormwater capture capacity of the Project by approximately ten additional acre feet (10AF); and

WHEREAS, on August 9, 2016, CSH contracted with Mike Bubalo Construction Co. Inc. ("**Bubalo**") to design and construct the Project ("**Bubalo Contract**"), and whereas the Bubalo Contract has been amended to increase the scope of work to account for the expansion of the Project brought about by the Second Caltrans Agreement and the LACFCD MOU; and

WHEREAS, Bubalo has entered into an Access License Agreement, attached hereto as Exhibit F, with Long Beach Airport Hangar Owner LLC to access the Project site; and

WHEREAS, the Parties desire to amend Agreement No. 34249 to reflect the additional scope of work and the additional \$11,750,000 of available Project funding resulting from the Second Caltrans Agreement and LACFCD MOU;

NOW THEREFORE, in consideration of the mutual terms and conditions herein contained the Parties agree as follows:

1. Section 1 of Agreement No. 34249 is hereby amended to read as follows:

"1. Scope of Work. The Project consists of the Scope of Work attached to the Second Amendment To Cooperative Agreement No. 34249 as Exhibit "G"."

2. Section 2 of Agreement No. 34249 is hereby amended to read as follows:

"2. Project Budget. The budget for the Project shall not exceed twenty-two million seven hundred fifty thousand dollars (\$22,750,000) ("Project Budget"), as described in Exhibit G to the Second Amendment To Cooperative Agreement No. 34249."

3. Section 3.A of Agreement No. 34249 is hereby amended to read as follows:

"A. Act as the lead agency for the Project, including obtaining all necessary environmental clearance and required permits, authorizations, and approvals necessary to construct the Project, conducting all necessary inspections, and managing the construction schedule of performance."

4. Section 3.E of Agreement No. 34249 is hereby amended to read as follows:

"E. Act as the point of contact with Caltrans and the Los Angeles County Flood Control District."

5. Section 3.F of Agreement No. 34249 is hereby amended to read as follows:

"F. Submit requests for reimbursement for Project costs to Caltrans or Los Angeles County Flood Control District within ten (10) business days of receipt of complete invoices from CLB."

6. Section 3.I of Agreement No. 34249 is hereby amended to read as follows:

"Upon completion of the Project, the Project site will be restored to its pre-project grade and the project area will be compacted to 90% relative compaction to accommodate a Boeing 737 aircraft or similar load."

7. Section 5.A of Agreement No. 3429 is hereby amended to read as follows:

"A. CLB and CSH agree to share the costs of ongoing maintenance of the Project as follows: CLB shall be responsible for two-thirds (2/3) of the maintenance costs and CSH shall be responsible for one-third (1/3) of the maintenance costs, based on proportional share of stormwater flow into the Los Cerritos Channel."

8. Section 12.B. of Agreement No. 3429 is hereby amended to read

as follows:

"B. CLB may submit invoices to CSH for Project costs authorized for reimbursement by the Caltrans Agreement, the Second Caltrans Agreement, or the LACFCD MOU, as defined in the Second Amendment to Cooperative Agreement No. 34249, within sixty (60) days after the effective date of the termination of this Agreement. The total Project costs invoiced by CLB shall not exceed Five Hundred and Sixty-five Thousand Dollars (\$565,000). Notwithstanding any other provision of this Agreement, CLB shall only be entitled to reimbursement for Project costs, if at all, to the extent that such costs are included in the Project Budget, and provided that funding remains available after all contractor costs, all consultant costs, and CSH administrative costs up to One Hundred and Twenty-Five Thousand Dollars (\$125,000) have been paid and reimbursed. Under no circumstances will CLB look to CSH for reimbursement of Project costs, and CSH shall have no obligation to pay any invoice submitted by CLB; rather CSH's only obligation will be to submit CLB's requests for reimbursement to Caltrans or Los Angeles County Flood Control District pursuant to Section 3.F of this Agreement."

9. Except as expressly modified herein, all the terms and conditions contained in Cooperative Agreement No. 34249 are ratified and confirmed and shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

Oct 26, 2018
CITY OF LONG BEACH, a Municipal Corporation
By [Signature]
City Manager

This Second Amendment to Cooperative Agreement No. 34249 is approved as to form on 10-22, 2018.

Tom Modica
Assistant City Manager
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

CHARLES PARKIN, City Attorney
By [Signature]
Deputy

ATTEST:
By _____
City Clerk

_____, 2018
CITY OF SIGNAL HILL, a Municipal Corporation
By [Signature]
City Manager

This Second Amendment to Cooperative Agreement No. 34249 is approved as to form on _____, 2018.

Approved as to form:
By [Signature]
City Attorney

ATTEST:
By _____
City Clerk

THE CITY CHARTER
TO SECTION 301 OF
EXECUTED PURSUANT
Assisnt City Manager
Tom Moberg

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]