

AMENDMENT NO.1
TO
AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF LONG BEACH
FOR THE
EAST SAN PEDRO BAY ECOSYSTEM RESTORATION, CA STUDY
34155

THIS AMENDMENT NO.1 is entered into this 20th day of Jan, 2016, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Los Angeles District (hereinafter the "District Engineer"), and the City of Long Beach (hereinafter the "Non-Federal Sponsor"), represented by the City Manager.

WITNESSETH, THAT:

WHEREAS, the Government and the Non-Federal Sponsor entered into an agreement on November 10, 2010 (hereinafter the "Agreement"), to conduct a feasibility study of ecosystem restoration and recreation improvements for East San Pedro Bay at Long Beach, California (hereinafter the "*Study*");

WHEREAS, the Non-Federal Sponsor considers it to be in its own interest for the Government to accelerate use of a portion or all of the Non-Federal Sponsor's required contribution of funds for the *Study*;

WHEREAS, the Non-Federal Sponsor understands that the Government's accelerated use of the funds provided by the Non-Federal Sponsor shall not constitute or imply any commitment by the Government to budget or appropriate funds for the *Study* in the future or to match the amount the Non-Federal Sponsor elects to designate for accelerated use; that such funds accelerated will be credited toward the Non-Federal Sponsor's required cost share only to the extent additional Federal funds are appropriated for the *Study*; and that the Non-Federal Sponsor is not entitled to any repayment of the funds accelerated even if the *Study* is not completed;

WHEREAS, in addition to providing the required non-Federal cost share, the Non-Federal Sponsor considers it to be in its own interest to contribute funds voluntarily to be used by the Government for the *Study*, as authorized pursuant to 33 U.S.C. 701h;

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to amend the Agreement as follows:

1. The following Whereas Clauses are inserted after the 8th Whereas clause:

“WHEREAS, the Non-Federal Sponsor considers it to be in its own interest for the Government to accelerate use of a portion or all of the Non-Federal Sponsor’s required contribution of funds for the *Study*;

WHEREAS, the Non-Federal Sponsor understands that the Government’s accelerated use of the funds provided by the Non-Federal Sponsor shall not constitute or imply any commitment by the Government to budget or appropriate funds for the *Study* in the future or to match the amount the Non-Federal Sponsor elects to designate for accelerated use; that such funds accelerated will be credited toward the Non-Federal Sponsor’s required cost share only to the extent additional Federal funds are appropriated for the *Study*; and that the Non-Federal Sponsor is not entitled to any repayment of the funds accelerated even if the *Study* is not completed;

WHEREAS, in addition to providing the required non-Federal cost share, the Non-Federal Sponsor considers it to be in its own interest to contribute funds voluntarily (hereinafter the “*Contributed Funds*,” as defined in Article I.L. of this Agreement) to be used by the Government for the *Study*, as authorized pursuant to 33 U.S.C. 701h;”

2. ARTICLE I – DEFINITIONS is amended by adding new paragraph L. as follows:

“L. The term “*Contributed Funds*” shall mean those funds above any statutorily required non-Federal cost share that are provided voluntarily by the Non-Federal Sponsor, with no credit or repayment authorized for such funds.”

3. ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR is amended as follows:

a. Article II.E.4. is amended by striking the current paragraph and replacing it with the following:

“4. The Government shall not include in *total study costs* any costs for *non-Federal in-kind contributions* paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Study*.”

b. Article II.I. is amended by striking the current paragraph and replacing it with the following:

“I. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Study* unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Study*.”

c. Article II is further amended by adding new paragraphs K-O as follows:

“K. The Non-Federal Sponsor desires that the Government accelerate use of a portion or all of the Non-Federal Sponsor’s contribution of funds required during the *period of study* by paragraph C. of this Article. The amount of funds accelerated shall not exceed the current estimate of the Non-Federal Sponsor’s contribution of funds required by paragraph C.1.b. of this Article, as determined by the Government in coordination with the Non-Federal Sponsor, less any funds previously contributed by the Non-Federal Sponsor and obligated by the Government.

L. As Federal appropriations are made available to pay the Federal share of *total study costs*, the Government shall afford credit toward the Non-Federal Sponsor’s contribution of funds required by paragraph C.1.b. of this Article for the funds accelerated in accordance with paragraph K. of this Article.

M. Neither execution of Amendment No. 1 to this Agreement nor the Government’s accelerated use of funds provided by the Non-Federal Sponsor constitutes or implies any commitment by the Government to budget or appropriate funds for this *Study* in the future or to match the amount the Non-Federal Sponsor provides for accelerated use. Credit toward the Non-Federal Sponsor’s contribution of funds required by paragraph C.1.b. of this Article for the funds accelerated shall be provided only to the extent that additional Federal funds are appropriated for this *Study*. No repayment of the funds accelerated and obligated will be provided even if the *Study* is not completed.

N. In addition to its contribution of funds required under paragraph C.1.b. of this Article, the Non-Federal Sponsor will provide *Contributed Funds*, currently estimated at \$750,000, for the *Study*. The Non-Federal Sponsor will provide the *Contributed Funds* in accordance with Article IV.D. of this Agreement. No credit or repayment will be provided for any *Contributed Funds* that are obligated by the Government. In addition, the Government’s use of *Contributed Funds* shall not constitute or imply any commitment to budget or appropriate funds for the *Study* in the future.

4. ARTICLE IV – METHOD OF PAYMENT is amended as follows:

a. Article IV.A.1. is deleted in its entirety and replaced with the following:

“1. As of the effective date of Amendment No. 1 to this Agreement, *total study costs* are projected to be \$3,114,000; the value of the Non-Federal Sponsor’s contributions under Article III and Article VI is projected to be \$18,000; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement is projected to be \$1,539,000; the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement are projected to be \$16,000; the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement is projected to be \$16,000; the Non-Federal Sponsor’s contribution of funds required by Article II.C.1.b. of this Agreement is projected to be \$1,523,000; and the *non-Federal proportionate share* is projected to be

49.7 percent. In addition, the Non-Federal Sponsor will provide *Contributed Funds*, currently estimated at \$750,000, for the *Study*. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and Non-Federal Sponsor.

b. Article IV.A.2. is amended by inserting “the credit afforded pursuant to Article II.L. of this Agreement; the *Contributed Funds* to be provided pursuant to Article II.N. of this Agreement;” after “the total contribution of funds required from the Non-Federal Sponsor for the upcoming contract and the upcoming *fiscal year*;” and before “and the *non-Federal proportionate share*.”

c. The first sentence of Article IV.B.2.a. is amended by inserting the phrase “, after consideration of credit afforded pursuant to Article II.L. of this Agreement,” after “to be required from the Non-Federal Sponsor” and before “to meet”.

d. The first sentence of Article IV.B.2.b. is amended by inserting the phrase “, after consideration of credit afforded pursuant to Article II.L. of this Agreement,” after “to be required from the Non-Federal Sponsor” and before “to meet”.

e. The first sentence of Article IV.B.3. is amended by:

(i) deleting “and” before “(b)”; and

(ii) inserting the following at the end of the sentence:

“; and (c) to the extent funds are accelerated in accordance with Article II.K. of this Agreement, any other contractual and in-house fiscal obligations attributable to the *Study* in excess of the *non-Federal proportionate share* as they are incurred”.

f. The second sentence of Article IV.B.3. is amended by inserting the phrase: “after consideration of credit afforded pursuant to Article II.L. of this Agreement” after “the Government determines” and before “that additional funds will be needed from the Non-Federal Sponsor”.

g. The fourth sentence of Article IV.C. is amended by inserting the phrase “*Contributed Funds* provided by the Non-Federal Sponsor,” after “*study costs to be shared during the period of study*” and before “and *excess study costs*”.

h. The first sentence of Article IV.C.2. is deleted in its entirety and replaced with the following: “Should the final accounting show that the contributions provided by the Non-Federal Sponsor for *study costs to be shared during the period of study* exceed the Non-Federal Sponsor’s total required 50 percent share thereof, the Government, subject to the availability of funds and as limited by Article II.G. of this Agreement, shall refund or reimburse the excess amount to the Non-Federal Sponsor within ninety (90) calendar days of the date of completion of such final accounting.”

i. Article IV.C.2. is further amended by adding at the end thereof: "However, if the final accounting results from termination pursuant to Article IX of this Agreement, and funds were accelerated in accordance with Article II.K. of this Agreement, the Government shall refund to the Non-Federal Sponsor only that portion of accelerated funds that were not obligated by the Government for work on the *Study*, subject to the availability of funds. Further, if the final accounting shows there are any remaining *Contributed Funds* provided pursuant to Article II.N. of this Agreement that were not obligated by the Government for work on the *Study*, the Government shall refund to the Non-Federal Sponsor such *Contributed Funds* that were not obligated by the Government for work on the *Study*, subject to the availability of funds.

j. Article IV is further amended by adding new paragraph D. as follows:


"D. Within 30 calendar days of execution of Amendment No. 1 to this Agreement, the Non-Federal Sponsor will provide *Contributed Funds* to the Government in the amount of \$750,000. Furthermore, the Non-Federal Sponsor may provide *Contributed Funds* above this amount upon written notification by the Government of the need for additional *Contributed Funds*. The Non-Federal Sponsor shall provide the *Contributed Funds* by delivering a check payable to "FAO, USAED, Los Angeles District" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government."


5. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

CITY OF LONG BEACH

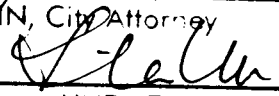
BY: 
Kirk E. Gibbs
Colonel, U.S. Army
District Engineer
Los Angeles District

BY: 
Patrick H. West
City Manager Assistant City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

DATE: 1/20/16

DATE: 1/15/16

APPROVED AS TO FORM
1/15, 20 16
CHARLES PARKIN, City Attorney
By 
LINDA T. VU
DEPUTY CITY ATTORNEY

CERTIFICATION REGARDING LOBBYING

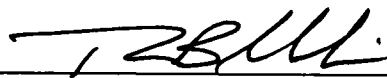
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

 Assistant City Manager

Patrick H. West
City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

DATE: 1/15/16

APPROVED AS TO FORM

1/15, 2016
CHARLES PARKIN, City Attorney

By 
LINDA T. VU
DEPUTY CITY ATTORNEY

CERTIFICATE OF AUTHORITY

I, Charles Parkin, do hereby certify that I am the principal legal officer of the **City of Long Beach**, that the **City of Long Beach** is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement, as amended, between the Department of the Army and the **City of Long Beach** in connection with the **EAST SAN PEDRO BAY ECOSYSTEM RESTORATION, CA STUDY**, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the **City of Long Beach** have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
15th day of January 2016.



Charles Parkin
City Attorney