



County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

November 15, 2011

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

25 November 15, 2011

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Board of Supervisors
GLORIA MOLINA
First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

DEPARTMENT OF BEACHES AND HARBORS: MARINA DEL REY MAINTENANCE DREDGING AND REDONDO BEACH SAND RENOURISHMENT PROJECTS (FOURTH DISTRICT) (3 VOTES)

SUBJECT

Approval of the recommended actions will allow the County of Los Angeles to execute a Memorandum of Agreement with the U.S. Army Corps of Engineers to dredge the Marina del Rey Harbor and transport clean sand to Redondo Beach Sand Renourishment Project and transport contaminated sediment to the City of Long Beach Middle Harbor Redevelopment Project fill site.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the recommended action is categorically exempt from the provisions of the California Environmental Quality Act pursuant to Class 4(l) of the County's Environmental Document Reporting Procedures and Guidelines as this is a regular maintenance dredging project where the removed sediment is deposited in an area authorized by all applicable regulatory agencies.
2. Approve and authorize the Mayor to execute a Memorandum of Agreement with the U.S. Army Corp of Engineers in substantially similar form, upon approval as to form by County Counsel and presentation by the Department of Beaches and Harbors, to implement the Marina del Rey Maintenance Dredging and Redondo Beach Sand Renourishment Projects, including a \$5,300,000 contribution funded by the Vehicle License Fee GAP Loan funds.

"To Enrich Lives Through Effective And Caring Service"

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3. Approve and authorize the Mayor to sign the Memorandum of Agreement with the City of Long Beach securing capacity for disposal of contaminated sediment dredged from the Marina del Rey Harbor at the City of Long Beach Middle Harbor Redevelopment Project fill site.
4. Authorize and delegate authority to the Director of Beaches and Harbors to negotiate and execute an agreement with the City of Long Beach to provide funding for additional Marina del Rey Harbor dredging and transportation of contaminated sediment to be implemented by the U.S. Army Corp of Engineers, approved as to form by County Counsel.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS

Approval of the recommended actions will allow County of Los Angeles (County) to dredge the Marina del Rey (Marina) Harbor; renourish Redondo Beach beach area; secure capacity at the Port of Long Beach Middle Harbor Redevelopment Project fill site to accept contaminated sediments from the Marina; and contribute County funds toward the U.S. Army Corp of Engineers' (Corps) Marina Maintenance Dredging Project to increase the volume of sediment to be moved from the Marina.

The Marina is home to more than 4,700 pleasure boats, and to first responders such as the U.S. Coast Guard, County Sheriff, and Lifeguard Baywatch who perform their homeland security duties and provide search and rescue services. Presently, both of the Marina's entrance and exit channels suffer from severe shoaling. This has already impacted the Coast Guard who currently utilizes only the south-channel entrance for the dual purpose of entry and exit to avoid accidental grounding at the north entrance.

The Corps is responsible for maintaining the navigability of the Marina's entry, exit, and main channels. Subsequent to the last full dredging project in 1999, approximately 1,095,600 cubic yards (CY) of sediment from the adjacent Ballona Creek and neighboring beaches has caused severe shoaling at the entrance and exit channels, as well as a portion of the main channel nearest to the breakwater.

There are three components to the Marina del Rey Maintenance Dredging Project: a Memorandum of Agreement (MOA) between the County and the Corps for the dredging and transportation of Marina sediment to Redondo Beach and to the Port of Long Beach Middle Harbor Redevelopment Project fill site; a MOA between the County and the City of Long Beach (City) identifying an approved site to accept the contaminated sediment; and a future MOA between the County and the City to fund and accept additional contaminated sediment at the City's approved site.

Memorandum of Agreement between the County and the Corps

The MOA (Attachment A) will allow the Corps to implement the Marina del Rey Maintenance Dredging Project and provide for the removal and transport of both the clean and contaminated sediment to two different sites. The total shoaling sediment is 1,095,600 CY, including approximately 332,600 CY of clean sand and 763,000 CY of contaminated sediment with toxic chemicals, insecticides, chlordane, and heavy metals such as arsenic, lead, mercury, nickel, cadmium, copper, and zinc.

In 2005, your Board approved the Redondo Beach Sand Renourishment Project in response to the unusually heavy storms of 2005. The Redondo Beach Sand Renourishment Project has not been able to proceed due to the lack of available beach quality sand in sufficient quantities. The Corps has determined, through a Sampling and Analysis Plan released in June 2010, that a portion of the Marina shoaling sediment is clean material suitable for beach sand renourishment.

Due to budgetary constraints, the Corps can remove a portion of the contaminated sediment with the Marina Maintenance Dredging Project, but not transport any clean sediment to any beach. By entering into the MOA, the County agrees to provide funding to the Corps in exchange for it to carry out the Redondo Beach Sand Renourishment Project, in accordance with the plans to be prepared by the County's harbor engineer. The combined projects will save time, eliminate duplication of the substantial set up cost, and offers the best option to maintain the integrity of the beach. The Corps has agreed to extend permits for dredging and transporting contaminated Marina sediment to cover the dredging and transporting of 160,000 CY of a total 332,600 CY of clean sediment to Redondo Beach for the sand renourishment project.

The proposed MOA includes a County contribution from the Redondo Beach Sand Renourishment Project to the Corps to fund the dredging and removal of the clean sediment, plus removal and transport of additional contaminated material from the Marina to the City's Middle Harbor Redevelopment Project.

Memorandum of Agreement between the County and the City of Long Beach

The second component allows the City to accept the contaminated Marina sediment. Although the Corps is responsible for dredging the Marina, Federal regulations require that the local jurisdiction, the County, provide a disposal site for contaminated sediment. The contaminated material cannot be deposited on a beach, or in the open sea, and must be deposited at an approved offshore or inland facility. The City's Middle Harbor Redevelopment Project located at the Port of Long Beach has made available a fill site for contaminated sediment. The MOA with the City (Attachment B) provides for the Corps to deposit up to approximately 400,000 CY of contaminated material at the Middle Harbor Redevelopment Project fill site. Upon the City's approval, an additional

360,000 CY of contaminated material for an aggregate total of 760,000 CY can be deposited at the fill site. The opportunity to utilize the City's fill site will potentially save the Marina Maintenance Dredging Project tens of millions of dollars in contaminated material disposal expenses and avoid the tens of thousands of truck trips to inland disposal sites.

The Corps has presently identified funding to remove only approximately 218,500 CY of the 763,000 CY of contaminated material, after accounting for the very substantial mobilization and demobilization costs. The combination of the Marina Maintenance Dredging and the Redondo Beach Sand Renourishment Projects is expected to result in substantial time and cost savings to County. These cost savings can be diverted to dredge additional contaminated sediment from the Marina of 184,500 CY for an aggregate removal of 403,000 CY of contaminated sediment.

Future Memorandum of Agreement between the County and the City

The final component provides for your Board to authorize the Director of Beaches and Harbors to negotiate and enter into a MOA with the City for funding to dredge and transport an additional 100,000 CY of contaminated Marina sediment to the City's Middle Harbor Redevelopment Project fill site. If implemented, the MOA will direct all funds received by the County from the City to the Corps for removal of additional contaminated material from the Marina and the MOA will be approved as to form by County Counsel.

It is anticipated that the Marina Maintenance Dredging Project will begin January 2012 and be completed September 2012. It is projected that the Corps' funding combined with the County's contribution can remove a total of approximately 160,000 CY of clean and 403,000 CY of contaminated sediments. Once approved, the funding from the City of Long Beach will allow for dredging of an additional 100,000 CY of contaminated sediment, for a grand total of 503,000 CY of contaminated sediment. The County will continue to work with the Corps to identify other opportunities to remove additional clean and/or contaminated sediments from Marina. If no current additional opportunities are identified, the remaining sediment balances will be dredged as part of future Marina dredging projects.

Implementation of Strategic Plan Goals

Approval of the recommended actions is consistent with the County's Strategic Plan Goal of Operational Effectiveness (Goal 1); Children, Family, and Adult Well-Being (Goal 2); and Community and Municipal Services (Goal 3), by investing in public infrastructure that will provide enhanced recreational activities to County residents.

FISCAL IMPACT/ FINANCING

The total combined estimated cost for Marina Maintenance Dredging and Redondo Beach Sand Renourishment Projects totals \$10.7 million. The proposed Project will be funded by \$5.4 million from the Corps and \$5.3 million from the Redondo Beach Sand Renourishment Project (C.P. 86845) funded by Vehicle License Fee GAP Loan Funds.

The MOA with the Corps includes the transfer of \$5.3 million from the Redondo Beach Sand Renourishment Project (C.P. 86845), to the Corps for sand renourishment of the Redondo Beach, and dredging and transportation of additional contaminated shoaling material from the Marina to the City's Middle Harbor Redevelopment Project fill site.

The remaining balance of \$121,000 in Redondo Beach Sand Renourishment Project will be used to retain a harbor engineer to prepare the Redondo Beach sand renourishment implementation plan.

Operating Budget Impact

The recommended actions will have no impact on the Department of Beaches and Harbors operating budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Although the responsibility to dredge and maintain the Marina's main entrances belongs to the Corps, the local jurisdiction is responsible for providing the appropriate contaminated sediment placement site. Therefore, the responsibility to contract and secure a fill site with the City for placement capacity rests with the County. The MOA with the City has been reviewed and approved as to form by County Counsel. The MOA provides for fill capacity of up to approximately 400,000 CY of material, with the option to deposit an additional 360,000 CY upon City approval, during the period November 2011 through August 2012.

Disposal of the contaminated sediment at the City's Middle Harbor Redevelopment Project fill site has received enthusiastic support amongst regulatory agencies such as the Environmental Protection Agency, Regional Water Quality Control Board, California Coastal Commission, and State Fish and Game, as well as environmental groups such as Heal the Bay. The concerns about the least tern nesting season, the grunion spawning season, and the brown pelican habitat have all been satisfactorily addressed by the City's project plan.

The Corps has secured all regulatory permits required for the Marina Maintenance Dredging Project. The MOA includes the following covenants: the County shall transfer \$5,300,000 to the Corps; the funds shall be used first to dredge and transport the clean

sediment and implement the Redondo Beach Sand Renourishment Project; all remaining funds shall be used to dredge and transport additional contaminated material to the City's Middle Harbor Redevelopment Project fill site; and any unspent County contribution funds shall be returned to the County.

The MOA with the Corps to implement the Marina Maintenance Dredging and the Redondo Beach Sand Renourishment Projects has been reviewed and approved as to form by County Counsel. In addition, the MOA with the City to accept the contaminated sediment has been reviewed and approved as to form by County Counsel.

CONTRACTING PROCESS

The County will enter into an agreement with the City to secure capacity for the contaminated sediment at its Middle Harbor Redevelopment Project fill site.

The Corps will follow Federal regulations in issuing a Request for Proposals to secure a qualified contractor to conduct its Marina Maintenance Dredging Project. The contractor will be subject to requirements of the Federal government and not State law and County ordinance, as this is a Federal project.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Dredging of the Marina's entrance and exit channels will improve public safety and remove contaminated shoaling sediment from the Santa Monica Bay proper. The Project will reduce potential costs of emergency response for the Lifeguards, Coast Guard, and Harbor Patrol. It will also reduce the threat of personal injuries and property damage as an important navigational impediment has been remediated.

There are no anticipated negative impacts from this Marina Maintenance Dredging Project except for the minor inconveniences to the boaters and residents during dredging activities.

ENVIRONMENTAL DOCUMENTATION

As the lead agency for the proposed dredging operations, the Corps has prepared the necessary Environmental Assessment document covering the entire Marina Maintenance Dredging Project, which has been approved by the Environmental Protection Agency, California Coastal Commission, Regional Water Quality Control Board, and other regulatory agencies. The dredging contractor will be required to obtain all necessary permits and meet all air quality, water quality, and noise standards.

The Honorable Board of Supervisors
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From the County's perspective, the recommended action is categorically exempt from the provisions of the California Environmental Quality Act pursuant to Class 4(l) of the County's Environmental Document Reporting Procedures and Guidelines, as this is a maintenance dredging project where the spoil is deposited in a spoil area authorized by all applicable regulatory agencies.

CONCLUSION

Please return one adopted copy of this Board letter to the Chief Executive Office, Capital Project Division; and to the Department of Beaches and Harbors; and return four executed originals of the MOA with the City of Long Beach to the Department of Beaches and Harbors for delivery to the City for execution.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer

WTF:RLR:DJT
DKM:AC:mc

Attachments

c: Executive Office, Board of Supervisors
County Counsel
Beaches and Harbors

**DEPARTMENT OF BEACHES AND HARBORS:
MARINA DEL REY MAINTENANCE DREDGING AND
REDONDO BEACH SAND RENOURISHMENT PROJECTS**

ATTACHMENT A

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND THE
COUNTY OF LOS ANGELES, CALIFORNIA
FOR ACCEPTANCE AND RETURN OF CONTRIBUTED FUNDS
FOR THE
MAINTENANCE DREDGING OF MARINA DEL REY HARBOR, CALIFORNIA

This MEMORANDUM OF AGREEMENT (hereinafter referred to as the "MOA"), entered into this _____ day of _____, 2011, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), represented by the U.S. Army Engineer for the Los Angeles District (herein the "District Engineer"), and the County of Los Angeles (hereinafter the "Contributor"), represented by the Mayor, County of Los Angeles.

WITNESSETH THAT:

WHEREAS, Marina del Rey Harbor (hereinafter referred to as the "Project") was authorized by the River and Harbor Act of 1954(Public Law 83-780); and

WHEREAS, the Water Resources Development Act of 1986 (Public Law 99-662) specifies the cost-sharing requirements applicable to the Project; and

WHEREAS, the Contributor considers it to be in its own interest to expedite the maintenance dredging of the Project by voluntary contributing funds (hereinafter referred to as Contributed funds) to be used by the Government for that purpose; and

WHEREAS, the Government is authorized pursuant to 33 U.S.C. 560, to accept Contributed funds, to be expended in connection with Federally appropriated funds, for any authorized work of public improvement of rivers and harbors whenever such work and expenditure may be considered by the Chief of Engineers to be advantageous to the interest of navigation;

NOW, THEREFORE, the Government and Contributor agree as follows:

1. Subject to any necessary appropriation, the Contributor shall contribute to the Government the following sums, in cash: \$5,300,000.00.

The Contributor shall deliver the required funds no later than November 22, 2011. This contribution shall be used first to renourish the Redondo Beach from Area 6. The excess fund shall be used to remove and transport shoaling material dredged from Areas 4 and 5 and Areas 7 through 9 of the Project, in that order; with the understanding that the Government has adequate funding to remove and transport contaminated material from Areas 1 through 3 of the Project.

2. The contributions specified in paragraph 1 above shall be made as follows: provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Los Angeles District" to the District Engineer.

3. In the event that the Contributor contributes more or less than the amount listed in paragraph 1 above, or make its contributions earlier or later than the dates listed in paragraph 1 above, the MOA shall apply to whatever funds are contributed by the Contributor to the Government pursuant to this MOA; however, the Government shall not obligate any Contributed funds before they are received and available.

4. The Government shall use all Contributed funds for maintenance dredging of the Project, except with regard to excess Contributed funds, which are addressed in paragraph 8 of this MOA. The Contributor shall bear all additional costs of the work for which funds are accepted including any additional environmental compliance costs.

5. The Government shall provide the Contributor with quarterly accountings of its expenditures of Contributed funds for maintenance dredging. The first such accounting shall be provided within 30 days after the final day of the first complete Government fiscal year quarter following receipt of the Contributed funds, and subsequent accountings shall be provided within 30 days after the final day of each succeeding quarter until the Contributed funds are completely expended or the Government concludes maintenance dredging on the Project.

6. Unless directed in law, the Government shall not reimburse the Contributor for Contributed funds expended by the Government.

7. The Government shall not credit the Contributor of the Contributed funds so as to reduce the cash contribution that otherwise would be required of the Contributor pursuant to any Project Cooperation Agreement entered into by the Government and Contributor (or a legal entity empowered to act on behalf of the Contributor) governing the construction of all or part of the Project.

8. The Government, subject to the availability of funds and subject to the approval by the Secretary of the Army, shall return to the Contributor Contributed funds not expended by the Government.

9. Nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the United States.

10. Nothing herein shall constitute, or be deemed to constitute, an assurance or promise of the Government to take any action whatsoever with respect to the Project, including but not limited to the following actions: entering into a Project Cooperation Agreement with the Contributor; construction of the Project; including the Project in the Government's budget; or completing the maintenance dredging of the Project.

11. Before any party to this MOA may bring suit in any court concerning an issue relating to this MOA, such party must first seek in good faith to resolve the issue through

negotiations or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

12. The Contributor shall hold and save the Government free from all damages arising from the design, construction, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project-related betterment, except for damages due to the fault or negligence of the Government or its contractors.

13. Federal and State Laws. In the exercise of their respective rights and obligations under this MOA, the Contributor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Sections 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.00 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

14. Relationship of Parties. In the exercise of their respective rights and obligations under this MOA, the Government and the Contributor each act in an independent capacity, and neither is to be considered the office, agent, or employee of the other.

15. Officials Not to Benefit. No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this MOA, or to any benefit that may arise there from.

16. Notices.

a. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Contributor: Mr. Santos H. Kreimann, Director
LA County Department of Beaches & Harbors
13837 Fiji Way
Marina del Rey, CA 90292

If to the Government: District Commander
U.S. Army Corps of Engineers
PO Box 532711
Los Angeles, CA 90053-2325

b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

c. Any notice, request, demand, or other communications made pursuant to this paragraph shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven days after it is mailed.

17. Confidentiality. To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

IN WITNESS WHEREOF, the parties have executed this MOA as of the day, month, and year first above written.

THE DEPARTMENT OF THE ARMY

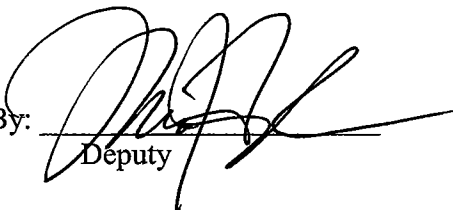
THE COUNTY OF LOS ANGELES

By: _____
MARK TOY
Colonel, US Army
District Engineer

By: _____
MICHAEL D. ANTONOVICH
Mayor, County of Los Angeles

APPROVED AS TO FORM:
ANDREA SHERIDAN ORDIN
County Counsel

ATTEST:
SACHI A. HAMAI
Executive Officer-Clerk of
The Board of Supervisors

By:  _____
Deputy

By: _____
Deputy

CERTIFICATE OF AUTHORITY

I, Andrea Sheridan Ordin, County Counsel, by Thomas J. Faughnan, Principal Deputy County Counsel, do hereby certify that I am the principal legal officer of the County of Los Angeles, that the County of Los Angeles is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the County of Los Angeles in connection with Marina Del Rey Harbor, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the County of Los Angeles have acted with their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this ____ day of _____ 20____.

ANDREA SHERIDAN ORDIN
County Counsel

By: _____
Deputy

CERTIFICATION REGARDING LOBBYING

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

(1) No Federal appropriate 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 subwards 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 Section 1352, Title 31, U.S. Code. 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.

MICHAEL D. ANTONOVICH
Mayor, County of Los Angeles

Date: _____

APPROVED AS TO FORM:
ANDREA SHERIDAN ORDIN
County Counsel

ATTEST:
SACHI A. HAMAI
Executive Officer-Clerk of
The Board of Supervisors

By: _____

Deputy

By: _____

Deputy

**DEPARTMENT OF BEACHES AND HARBORS:
MARINA DEL REY MAINTENANCE DREDGING AND
REDONDO BEACH SAND RENOURISHMENT PROJECTS**

ATTACHMENT B

MEMORANDUM OF AGREEMENT
BY AND BETWEEN
THE COUNTY OF LOS ANGELES
AND
THE CITY OF LONG BEACH,
ACTING BY AND THROUGH ITS BOARD OF
HARBOR COMMISSIONERS

THIS MEMORANDUM OF AGREEMENT ("MOA") is made and entered into, in duplicate, as of the date executed by the Executive Director of the Long Beach Harbor Department ("Executive Director"), by and between the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City") pursuant to authority granted by said Board at its meeting of _____, 2011; and THE COUNTY OF LOS ANGELES ("Third Party").

1. Recitals. This MOA is made with reference to the following facts and objectives:

1.1 City's Middle Harbor Redevelopment Project ("Middle Harbor Project") is a complex, multi-phase, time-sensitive project that is expected to be constructed while container terminals remain in operation.

1.2 One of the early, essential components of the Middle Harbor Project is the placement of fill in the areas known as the Slip 1 fill area and the East Basin fill area following the construction of two containment dikes, as further described herein and in City's Middle Harbor Redevelopment Sediment Management Plan ("Middle Harbor SMP").

1.3 Unlike a typical dredge disposal location, the Middle Harbor fill site is an early, key component of a much larger, time-critical redevelopment project. The timing of the placement of fill is critical to subsequent terminal construction activities, but is also dependent on the timing of preceding construction activities. As a result, the temporal window for acceptance and placement of fill is both narrow and subject to change as the Middle Harbor Project advances.

1.4 City anticipates satisfying some of its fill material needs from material generated by the Middle Harbor Project and other Port of Long Beach ("Port") projects; however, in the interest of benefitting the Middle Harbor Project and the region, and furthering the Los Angeles Regional Contaminated Sediment Task Force's ("CSTF") policy of encouraging beneficial reuse of contaminated sediments, City is endeavoring to accommodate as much dredge material from third-party (i.e., non-Port) projects as is reasonable given City's fill material criteria, the logistical,

technical and environmental requirements of the Middle Harbor Project and the requirements of Applicable Laws (as defined in paragraph 2 below).

1.5 To facilitate identification of suitable third-party fill material, City has distributed Applications (as defined in paragraph 2 below) to potentially interested parties, including Third Party.

1.6 Third Party has submitted an Application to City because it has or expects to have, within the required timeframe, dredge material that it wishes to dispose of and that it believes meets City's criteria and the Middle Harbor Project requirements.

1.7 City, with input from the CSTF, has evaluated the Applications and has selected Third Party as one of the potential sources of third-party fill material.

1.8 Third Party is willing and able to meet City's fill criteria and the Middle Harbor Project requirements, and City is interested in accommodating as much of Third Party's dredge material as is reasonable within the constraints of the Middle Harbor Project, such project's objectives and as is consistent with Applicable Laws, including without limitation the USACE Permit and WDRs issued to City (each as defined in paragraph 2 below).

1.9 The parties now wish by this MOA to set forth all of their understandings regarding the dredge material, and the terms and conditions under which such material may be placed in the Fill Site (as defined in paragraph 2 below).

2. Definitions. In addition to the definitions set forth elsewhere in this MOA, the following capitalized terms and phrases shall have the following meanings for purposes of this MOA:

2.1 "Applicable Laws" is the collective reference to all applicable laws, rules, regulations, requirements, licenses, permits and orders, as may be amended from time to time.

2.2 "Application" is the Port of Long Beach Middle Harbor Fill Site Application for Placement of Dredge Material, as may be amended from time to time in City's sole discretion. The Application submitted by Third Party is referred to herein as "Third Party's Application."

2.3 "Dredge Material" is Third Party's dredge material or any of it as identified and described in the Third Party Fill Plan Memo as being allowed to be placed in the Fill Site.

2.4 "Effective Date" is the latest date on which City and Third Party execute this MOA, as set forth on the signature page(s) of this MOA.

2.5 "Engineer" is the Chief Harbor Engineer of the Harbor Department of the City of Long Beach, California, who may be represented on the work by such assistants as may be necessary. Engineer's designated construction site manager shall be an authorized representative of Engineer for purposes of this MOA.

2.6 "Fill Schedule" is the overall schedule established by City for Fill Site construction, dredge material delivery to the Fill Site and dredge material placement/location within the Fill Site, as may be modified from time to time in City's sole discretion as described in paragraph 5.

2.7 "Fill Site" is the confined disposal site into which dredged material is to be placed and contained for disposal within the Slip 1 fill area and the East Basin fill area. The portion of the Fill Site into which Third Party shall place its fill material is set forth in the Third Party Fill Plan Memo (as defined in subparagraph 2.10 below).

2.8 "Governmental Authority" is any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

2.9 "Third Party Delivery Period" is the timeframe within the Fill Schedule during which Third Party shall deliver and place the Dredge Material in the Fill Site, as specified in the Third Party Fill Plan Memo.

2.10 "Third Party Fill Plan Memo" is the document developed by Engineer in consultation with Third Party, detailing the Third Party Delivery Period, the volume, the specifics of the material (chemical and geotechnical) and the placement methods, as such Third Party Fill Plan Memo may be modified from time to time in City's sole discretion as described in paragraph 5. The Third Party Fill Plan Memo as of the date hereof is attached hereto as Exhibit A and incorporated by this reference.

2.11 "Third Party Project" is the dredging origination project-related activities accomplished or to be accomplished by Third Party that involve the testing, permitting, dredging and transportation of material from the origination location for placement in the Fill Site.

2.12 "Third Party's Application" is defined in subparagraph 2.2 above.

2.13 "USACE Permit" is the United States Army Corps of Engineers permit number SPL-2004-01053-AOA issued for the Port of Long Beach Middle Harbor Redevelopment Project, as may be amended from time to time.

2.14 "WDRs" are the Waste Discharge Requirements (including Order No. R4-2010-0020) issued by the California Regional Water Quality Control Board, Los Angeles Region, for the Port of Long Beach Middle Harbor Redevelopment Project (File No. 09-204), as may be amended from time to time.

3. Placement of Dredge Material. Subject to the terms and conditions in this MOA:

3.1 City agrees to allow Third Party to place the Dredge Material in the Fill Site as set forth in the Third Party Fill Plan Memo.

3.2 Third Party agrees to place or cause to be placed the Dredge Material in the Fill Site as set forth in the Third Party Fill Plan Memo and to comply or cause compliance with the other provisions of the Third Party Fill Plan Memo. Third Party understands and acknowledges that it may be necessary for the Engineer to supplement the Third Party Fill Plan Memo with additional directions as conditions develop in the field, including without limitation directives concerning the movement of Third Party's vessels and equipment within the boundaries of the fill project. Third Party agrees to comply or cause compliance with any such directions.

3.3 Third Party understands and acknowledges that all matters contemplated by this MOA, including without limitation the volume of Dredge Material which may be placed and the deadline by which it must be placed are subject in all respects to the terms and conditions of the USACE Permit, the WDRs and all other Applicable Laws.

4. Limited Delegation of Authority to Engineer. Without in any manner limiting City's discretion to modify the Third Party Fill Plan Memo or any other provisions of this MOA, the Board of Harbor Commissioners hereby grants authority to the Engineer to make changes to the Third Party Fill Plan Memo made necessary by geotechnical engineering requirements, logistical requirements and/or to comply with Applicable Laws. Any replacement versions of the Third Party Fill Plan Memo shall be automatically substituted as Exhibit A of this MOA.

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5. Fill Schedule, Etc.

5.1 City reserves all rights and discretion with respect to the Middle Harbor Project, subject to Applicable Laws. As such, City reserves the right to develop, establish and implement among other things, the Fill Schedule and the Third Party Fill Plan Memo and the right to establish the Third Party Delivery Period. City agrees to consult with Third Party in developing the Third Party Fill Plan Memo and establishing the Third Party Delivery Period, but it is understood and agreed by both parties hereto that any final decisions shall be reserved to City.

5.2 City reserves the right to modify, in its sole discretion, the Fill Schedule, Third Party Fill Plan Memo and Third Party Delivery Date from time to time as field conditions and the requirements of the Middle Harbor Project warrant and to comply with Applicable Laws. Where possible, City will consult with Third Party in making modifications to the Third Party Fill Plan Memo and Third Party Delivery Period. City also agrees to keep Third Party reasonably apprised of any substantive changes to the Fill Schedule, Third Party Fill Plan Memo and Third Party Delivery Period (including by providing replacement versions of the Third Party Fill Plan Memo as described in paragraph 4 above), however, notwithstanding anything in this subparagraph or the MOA, any final decisions concerning the Fill Schedule, Third Party Fill Plan Memo and Third Party Delivery Date and any changes thereto shall be reserved to City and it shall be Third Party's responsibility to communicate regularly with City to keep itself informed of any such changes and to comply or cause compliance with any such changes.

5.3 Third Party's sole and exclusive recourse by reason of any disagreement with City that is not able to be resolved regarding the Fill Schedule, Third Party Fill Plan Memo, Third Party Delivery Period or any modifications thereto, shall be the termination of this MOA in accordance with paragraph 13.

6. Conditions Precedent. As a condition precedent to City's agreement to allow Third Party to place the Dredge Material in the Fill Site as described in paragraph 3, Third Party shall do or cause to be done, at the earliest time possible and in any event prior to any placement of the Dredge Material, the following:

6.1 Obtain and provide City with copies of all regulatory permits, licenses and approvals for the placement of the Dredge Material in the Fill Site. Said permits, licenses and approvals shall name the Middle Harbor Project Fill Site as an acceptable disposal site.

6.2 Demonstrate to City's satisfaction, including without limitation by providing copies of any documentation requested by City, that the Third Party Project has secured adequate funding and that Third Party has approved a dredging contract.

Third Party understands and acknowledges that satisfaction of all conditions precedent is in no way a guarantee that Third Party will be able to place the Dredge Material in the Fill Site or of the quantity of Dredge Material that may be placed.

7. Third Party Affirmative Covenants. Third Party hereby agrees that it shall and shall cause its employees, contractors and agents to:

7.1 Maintain all regulatory permits, licenses and approvals for the placement of the Dredge Material in the Fill Site.

7.2 Comply with all Applicable Laws in the handling and placement of the Dredge Material (including without limitation the extraction, transportation and placement of the Dredge Material), and where applicable assist and facilitate City's compliance with its permits and other Applicable Laws.

7.3 In recognition of the critical importance to the Middle Harbor Project of the timely placement of the Dredge Material, promptly coordinate and cooperate, and regularly communicate with, the Engineer and City's contractors in all matters relating to the placement of the Dredge Material such that the Middle Harbor Project schedule is not delayed or otherwise impacted. Such coordination, cooperation and communication shall include, at minimum, attendance by Third Party's contractors at the Middle Harbor Project's weekly construction meetings relating to dredging and fill activities, starting four weeks prior to anticipated material placement and through the entire material placement process or as otherwise notified to Third Party by City.

7.4 Comply with all Engineer directives, including but not limited to directions to interrupt, delay, stop or modify the delivery of the Dredge Material to and placement in the Fill Site due to water quality issues, safety issues, impacts to City operations, permit compliance, dredge material placement sequencing, and/or other issues pertinent to the Middle Harbor SMP. In any event Third Party shall bear its own standby and delay costs.

7.5 Employ best management practices in the handling and placement of the Dredge Material (including without limitation with regard to the extraction, transportation and placement of the Dredge Material).

7.6 Upon request by City, provide access to Third Party's records relating to or concerning the handling and placement of the Dredge Material.

7.7 Upon request by City, provide access to Third Party's contractors' construction operations records such as barge and disposal logs related to the Fill Site placement activities to ensure coordination with other construction activities.

7.8 Be responsible for rehandling, relocating and/or retrieving any material which may be misplaced or lost during transportation or placement activities, as may be directed by the Engineer or Governmental Authorities, as the case may be.

7.9 Promptly give notice to City of:

- (A) the commencement of dredging activities for the Third Party Project;
- (B) the completion of dredging activities for the Third Party Project (at the same time notification is provided to the regulatory agencies);
- (C) any change in anticipated scheduling of the Third Party Project or Third Party's ability to comply with any provisions of this MOA, including without limitation the Third Party Delivery Period or Third Party Fill Plan Memo;
- (D) any changes to the information provided to City relating to or concerning the Dredge Material, including without limitation the volume or chemical or geotechnical profile;
- (E) any litigation, investigation, proceeding or order involving or affecting Third Party or the Dredge Material; and
- (F) any other matter or information involving or affecting the Dredge Material which heretofore has not been notified to City in writing.

7.10 Furnish to City:

- (A) as soon as available, but no later than concurrently with Third Party's execution of this MOA, copies of all bathymetric surveys and dredge designs;
- (B) as soon as available but no later than concurrently with Third Party's execution of this MOA, copies of all sampling, analytical and technical data and reports relevant to assessment of the suitability of Third Party Project material for placement and disposal in the Fill Site;
- (C) as soon as available but no later than concurrently with Third Party's execution of this MOA, any other test results, reports or data relating to or concerning the Dredge Material;
- (D) prior to the placement of any Dredge Material in the Fill Site, copies of the permits, licenses and approvals referred to in subparagraph 6.1, together with any regulatory correspondence;
- (E) any information generated by or caused to be generated by Third Party for regulators concerning the Dredge Material or Third Party Project;
- (F) any information which may reasonably be expected to need to be incorporated into City's Middle Harbor Project documentation or documentation to comply with City's permits. In the event of any doubt, Third Party shall promptly consult with City.
- (G) within thirty (30) days after Third Party's notification to the regulatory agencies of completion of the pertinent dredging activities, copies of Third Party's calculation of the total in-situ dredged material volume, and all information relevant to such calculation, including without limitation all bathymetry surveys and other information; and
- (H) any other information reasonably requested by City, including without limitation barge information and transportation logs.

7.11 Work in good faith with City to eliminate or minimize standby and delay costs which may be incurred to accomplish the placement of the Dredge Material in accordance with the Fill Schedule.

7.12 Cooperate with any post-placement bathymetric surveys or sampling which may be conducted by City to ensure that placement of the Dredge Material was conducted as agreed upon in the Third Party Fill Plan Memo.

8. Third Party Negative Covenants. Third Party shall not, and shall not permit any of its employees, contractors or agents to:

8.1 Place any Dredge Material in the Fill Site prior to the satisfaction of all conditions precedent pursuant to paragraph 6.

8.2 Place anything other than the Dredge Material (such as construction debris) in the Fill Site, or otherwise violate the terms of the USACE Permit, the WDRs or any other Applicable Laws.

8.3 Impact, delay, interrupt or hinder the Fill Schedule, Middle Harbor Project schedule, successful construction of the Middle Harbor Project or the ongoing activities of City or the Port, including without limitation any marine terminal operations.

8.4 Engage in any landside activities.

8.5 Engage in any activities inconsistent with the Environmental Impact Report for the Middle Harbor Project ("Middle Harbor EIR").

8.6 Engage in any activities that would cause City to violate any Applicable Laws, including without limitation, the USACE Permit and WDRs.

9. No Payment of Monies. Third Party understands that City will pay no monetary consideration for the Dredge Material, but that the benefit to Third Party is City's willingness to accommodate as much Dredge Material as is reasonable in the context of the Middle Harbor Project, subject to the terms and conditions of this MOA.

10. No Liability of City; Assumption of the Risk by Third Party.

10.1 Although City is undertaking in this MOA to accommodate as much of the Dredge Material as is reasonable in the context of the Middle Harbor Project, Third Party acknowledges and understands that the Middle Harbor Project's requirements and schedules are subject to change and/or delay as field conditions develop and as fill from other third

parties is placed in the Fill Site. For example, the fill that is placed prior to or concurrently with Third Party's Dredge Material may affect the timing, volume and chemical and structural characteristics of the fill that follows, including without limitation eliminating the need for any additional fill. Third Party understands that it is its responsibility to make, at its cost and expense, such contingency and other plans as it sees fit, including securing an alternate disposal site and negotiating flexibility into its contracts and permits, to be prepared in the event that City's fill material needs and/or scheduling changes. Third Party understands and acknowledges that if it fails to make such contingency and other plans it does so at its own risk.

10.2 Third Party assumes all risks and responsibilities associated with the extraction, transportation and placement of the Dredge Material, including without limitation compliance with all Applicable Laws and rehandling of Dredge Material, injury to crew or contractors and misplaced or lost fill material.

10.3 Third Party understands and acknowledges that if it chooses to avail itself of any equipment which may be provided by City, Third Party does so at its own risk, and City makes no representations or warranties thereby, including without limitation as to the availability, fitness or operation of any such equipment.

10.4 Third Party understands and acknowledges that City retains all rights and discretion with respect to the Middle Harbor Project. City makes no representations or warranties with respect to the placement of the Dredge Material in the Fill Site, either by virtue of this MOA, any permits, licenses or approvals obtained by either of the parties hereto, or otherwise.

10.5 Third Party understands and acknowledges that nothing in this MOA shall constitute or confer or be implied to constitute or confer a grant of any property right, privilege, permit, license or other entitlement to Third Party or anyone else.

10.6 Notwithstanding anything in this MOA, Third Party understands and acknowledges that all matters contemplated by this MOA are subject to the terms and conditions of City's permits and all other Applicable Laws, as described in subparagraph 3.3 above.

10.7 Neither Third Party nor any other persons shall be entitled to any monies or damages (including without limitation, consequential damages) from City as a result of any matters relating to or arising from this MOA, including without limitation any changes in City's fill material needs or scheduling, such as City's accommodation of less Dredge

Material than is contemplated in this MOA or no Dredge Material. Third Party's sole and exclusive recourse by reason of any matter concerning this MOA shall be the termination of this MOA pursuant to paragraph 13.

MOA: 11. Costs and Expenses. Without limiting any other provision of this

11.1 Third Party agrees that it shall be responsible for all costs, expenses and/or losses associated with the placement of the Dredge Material, including without limitation the extraction and transportation of the Dredge Material to the Fill Site, compliance with all Applicable Laws, any contingency plans, any delays in scheduling or any other circumstances, conditions or changes, whether anticipated or not.

11.2 Third Party further agrees that it shall be responsible, and reimburse City for, all costs, expenses and/or losses incurred by City associated with the placement of the Dredge Material, including without limitation for any delays to the Fill Schedule. Costs, expenses and/or losses incurred by City include, without limitation, out-of-pocket expenses, in-house staff costs, reduced rent, and/or reimbursements.

11.3 Third Party agrees that it shall be responsible, and reimburse City for, for all costs and/or losses incurred by City in connection with surveys, inspections, monitoring and review related to or arising out of the Dredge Material.

11.4 Third Party understands and acknowledges that if all the Third Party Project material is not placed before the end of the Third Party Delivery Period, the Fill Site may, at City's sole discretion, no longer accept the Third Party Project material or acceptance of material may require additional logistical procedures and associated costs in order to receive Third Party's Project material, all of which additional logistical procedures, costs and expenses shall be Third Party's responsibility.

11.5 Third Party understands and acknowledges that once the Fill Site reaches the elevation at which bottom dumping is no longer feasible, rehandling of the Dredge Material including without limitation hydraulic placement (and additional costs and expenses) will be necessary, as further described in the Third Party Fill Plan Memo. Third Party shall be responsible for any equipment, planning, costs and expenses associated with such rehandling. No provision by City, if any, of any equipment with regard to the Dredge Material shall diminish or modify Third Party's responsibilities under this subparagraph or as stated elsewhere in this MOA.

12. Representations and Warranties. To induce City to enter into this MOA and allow Third Party to place the Dredge Material as provided in this MOA, Third Party hereby represents and warrants to City that:

12.1 Except as otherwise notified to City in writing and acknowledged by City prior to the Effective Date of this MOA, all information and materials provided by Third Party to City relating to or concerning the Dredge Material, including without limitation the information set forth in Third Party's Application, is true, complete and accurate.

12.2 Third Party has disclosed to City all material facts concerning the Third Party Project and Dredge Material and not failed to disclose any material fact that would cause any representation to be materially misleading.

12.3 The Dredge Material has been designated by all applicable regulators as suitable for placement in a confined disposal facility.

12.4 The Dredge Material does not constitute "hazardous waste" as defined by the United States Environmental Protection Agency or the California Department of Toxic Substances Control.

12.5 The Dredge Material is not encumbered by restrictions, covenants or any other requirements imposed by the State of California or any other Governmental Authority, including without limitation any restrictions, covenants or other requirements having the effect of establishing long-term liability, monitoring and/or maintenance obligations.

12.6 No litigation, investigation, proceeding or order of or before any Governmental Authority is pending or, to the knowledge of Third Party, threatened by or against Third Party or anyone else with respect to the Third Party Project or Dredge Material.

12.7 No claim or litigation of or by any person or non-governmental entity or organization is pending or, to the knowledge of Third Party, threatened by or against Third Party or anyone else with respect to the Third Party Project or the Dredge Material.

12.8 Third Party has obtained and is familiar with the contents of the Middle Harbor EIR, the current version of the Middle Harbor SMP, the USACE Permit and the WDRs, copies of which are on file with City's Director of Environmental Planning.

12.9 Third Party has the power and authority, and the legal right, to make, deliver and perform this MOA.

12.10 This MOA has been duly authorized, executed and delivered on behalf of Third Party.

13. Termination. If not earlier expired, this MOA may be terminated at any time as follows:

13.1 Upon the mutual agreement of City and Third Party.

13.2 By either party, by giving fourteen (14) days' notice to the other party in the event that the parties are unable to resolve a dispute pursuant to paragraph 23.

13.3 City may terminate this MOA by giving Third Party two (2) days' notice upon the breach or default by Third Party (either directly or through a contractor, subcontractor or agent of Third Party) of any covenant, duty, obligation, representation or warranty of Third Party under this MOA and/or any exhibit hereto. Notwithstanding the foregoing, City may terminate this MOA immediately and without any notice to Third Party in the event of a breach or default that City believes in its sole discretion is an imminent threat to the timely, safe or successful completion of the Middle Harbor Project. Additionally, City may terminate this MOA immediately and without any notice to Third Party in the event that City believes in its sole discretion that a violation of an Applicable Law is imminent or reasonably likely to occur.

13.4 Upon any termination (or expiration) of this MOA, Third Party shall immediately cease and cause its employees, contractors and agents to cease all activities, and shall at Third Party's cost, promptly and with all due care, remove and demobilize all equipment, debris and personnel from the Middle Harbor Project site. Third Party shall, at its cost, repair any damage caused by such removal or demobilization and reimburse City for any delay costs attributable to such removal or demobilization.

13.5 Notwithstanding anything contained in the foregoing or elsewhere in this MOA, the obligations and indemnities of Third Party pursuant to paragraphs 10, 11, 13.4 and 15 shall survive any termination of this MOA.

14. MOA Expiration Date. Notwithstanding anything contained in this MOA or any exhibits hereto, including without limitation the Third Party Fill Plan Memo, if this MOA has not earlier been terminated pursuant to paragraph 13, this MOA shall expire on the earliest of the following dates (such date, the "Expiration Date"):

14.1 Five years from the Effective Date;

14.2 February 3, 2015, or other date specified in the WDRs;

14.3 February 28, 2020, or other date specified in the USACE Permit; or

14.4 Upon reaching the applicable volume limits set forth in the USACE Permit,

unless and until City in its sole and absolute discretion elects to and approves the extension of the Expiration Date (and, in the case of any applicable regulatory requirements, obtains the necessary approvals or waivers from the relevant Governmental Authority to modify such requirement). Notwithstanding anything contained in the foregoing or elsewhere in this MOA, the obligations and indemnities of Third Party pursuant to paragraphs 10, 11, 13.4 and 15 shall survive any expiration of this MOA. Nothing in this paragraph 14 creates a duty or obligation on the part of City to seek any approvals, waivers, time extensions or otherwise from any Governmental Authorities.

15. Indemnity. Third Party shall indemnify, hold, protect and save harmless the City of Long Beach, the Board of Harbor Commissioners and their officials, commissioners, employees, consultants, advisors and agents ("Indemnified Parties") from and against any and all actions, suits, proceedings, claims, demands, damages, losses, liens, costs, expenses or liabilities, of any kind or nature whatsoever ("Claims") which may be brought, made, filed against, imposed upon or sustained by the Indemnified Parties, or any of them, alleging any connection with this MOA or activities described or related to activities described in this MOA, including without limitation any activities of or for the benefit of Third Party, its employees, contractors, subcontractors or agents. City shall notify Third Party of any such Claim, shall tender its defense to Third Party, and assist Third Party, as may be reasonably requested, in such defense. Upon such notification and tender, Third Party shall have independent duties to defend such Claim, and to indemnify the Indemnified Parties except to the extent that injury, death or property damage is determined by a court of competent jurisdiction to have been caused by the negligence or willful misconduct of the Indemnified Parties or any of them. Payment of a Claim shall not be a condition precedent to an Indemnified Party's right to defense and indemnity.

16. Insurance. As a condition precedent to the effectiveness of this MOA, Third Party shall (or shall cause its contractor to) procure and maintain in full force and effect during the term of the MOA, Watercraft Liability Insurance including Protection and Indemnity with minimum limits of \$10,000,000 per occurrence, Jones Act for employees performing services under said Act, and Water Pollution Liability. Water Pollution Liability shall include coverage for bodily injury (including death and mental anguish), property damage, defense costs and cleanup costs with minimum limits of \$10,000,000 per loss and \$10,000,000 total all losses.

Insurance policies will not be in compliance with the MOA if they include any limiting endorsement that has not been approved in writing by City.

The policy or policies of insurance for Watercraft Liability shall contain the following provisions or be endorsed to provide the following:

(1) The Indemnified Parties shall be additional insureds with regard to liability and defense of suits or claims arising out of the MOA.

Additional Insured Endorsements shall not:

- i. Be limited to ongoing operations.
- ii. Exclude contractual liability.
- iii. Restrict coverage to the sole liability of Third Party (or Third Party's contractor, if insurance under this paragraph 16 is being procured and maintained by Third Party's contractor).
- iv. Contain any other exclusion contrary to the MOA.

(2) This insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the Indemnified Parties shall not contribute with this primary insurance.

(3) The policy shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor Department except notice of ten (10) days shall be allowed for non-payment of premium.

Any deductible or self-insured retention must be approved in writing by the Executive Director and shall protect the Indemnified Parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

Third Party shall (or shall cause its contractor to) deliver either certified copies of the required policies or endorsements on forms approved by the City ("evidence of insurance") to the Executive Director for approval as to sufficiency and as to form. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the Executive Director. If such coverage is canceled or reduced, Third Party shall (or shall cause its contractor to), within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Executive Director evidence of insurance showing that the

required insurance has been reinstated or has been provided through another insurance company or companies.

The coverage provided shall apply to the obligations assumed by the Third Party under the indemnity provisions of this MOA but this insurance provision in no way limits the indemnity provisions and the indemnity provisions in no way limit this insurance provision.

Third Party agrees to suspend and cease, and cause the suspension and cessation of, all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been approved by the City.

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide with or precede the effective date of the MOA and continuous coverage shall be maintained or Third Party shall (or shall cause its contractor to) obtain and submit to City an extended reporting period endorsement of at least three (3) years from termination or expiration of this MOA.

Upon expiration or termination of coverage of required insurance, Third Party shall (or shall cause its contractor to) procure and submit to City evidence of "tail" coverage or an extended reporting coverage period endorsement for the period of at least three (3) years from termination or expiration of the MOA.

Notwithstanding the foregoing, at its discretion, and subject to the provisions of this paragraph 16, Third Party may self-insure the watercraft liability, Jones Act and water pollution insurance requirements of this MOA. If Third Party decides to so self-insure, the Third Party shall assume the risk of loss for each such exposure, as applicable including those exposures for which Third Party may be contractually liable relating to or arising out of this MOA. The scope of coverage provided by this self-insured program shall be equal to any insurance coverage which may be required by this MOA. Notwithstanding any provisions of this paragraph, City shall have the right in its sole and absolute discretion to terminate the Third Party's ability to self-insure any or all of the insurance requirements without liability or cost to City for such termination upon thirty (30) days written notice to Third Party. Third Party represents to City that Third Party is authorized to self-insure for its liability in accordance with California Government Code Section 989-991.2, County Code Chapter 5.32, and Articles 1 and 2 of the Los Angeles County Charter.

17. Notices. Any notices to be given under this MOA, including without limitation the notices described in subparagraph 7.9, shall be given in writing. Such notices may be served by personal delivery, facsimile transmission or by first class regular mail, postage prepaid. Any such notice, when served by mail, shall be effective two (2) calendar days after the date of mailing of the same, and when served by facsimile transmission or personal delivery shall be effective upon receipt. For the purposes hereof, the address of City, and the proper person to receive any such notices on its behalf, is: Executive Director, Long Beach Harbor Department, P.O. Box 570, Long Beach, California 90801, FAX number (562) 901-1733 with a copy to: Thomas Baldwin, Long Beach Harbor Department, P.O. Box 570, Long Beach, California 90801, FAX number (562) 901-1763; and the address and FAX number of Third Party set forth on Exhibit B attached hereto.

18. Governing Law. This MOA shall be deemed made in the State of California and shall be governed by the laws of said State (except those provisions of California law dealing with conflicts of law), both as to interpretation and performance.

19. Amendments, Waivers and Extensions. Except as expressly provided in this MOA, no modification, amendment or extension, in whole or in part, of this MOA shall be effective unless made in writing by both parties hereto. No waiver shall be effective unless made in a writing by a duly authorized officer or representative of the party whose rights are thereby waived. No waivers shall be implied.

20. Merger; Integration. This MOA, including all exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.

21. Relationship of the Parties. Each party hereto represents that it has sought and obtained any appropriate legal advice it deems necessary prior to entering into this MOA. No party shall act or be deemed to act as legal counsel or representative of the other party, unless expressly retained by such party for such purpose, and, except for such express retention, no attorney/client relationship is intended to be created between the parties. Nothing herein shall be deemed to create a partnership or joint venture and/or principal and agent relationship between the parties hereto. Each party represents that the parties hereto have participated jointly in the negotiation and drafting of this MOA. In the event any ambiguity or question of intent or interpretation arises, this MOA shall be construed as if drafted jointly by both parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this MOA.

22. Assignment; Binding Effect. Third Party shall not assign or transfer this MOA without the prior written approval of City. Such approval may be

granted or denied in the absolute discretion of City. This MOA shall extend to, be binding upon, and inure to the benefit of the parties hereto and their respective successor, heirs and permitted assigns.

23. Dispute Resolution. In the event of a dispute between the parties hereto, the parties shall make good faith efforts to resolve the dispute through negotiation. If the parties are unable to resolve the dispute, one or both parties may terminate this MOA in accordance with paragraph 13.

24. Order of Precedence. In the event of any conflict or ambiguity between this written agreement and any exhibit hereto, the provisions of this agreement shall govern.

25. Counterparts; Headings. This MOA may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. The headings and sub-headings contained in this MOA are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

[Signature Pages Follow]

SACHI A. HAMAI
Executive Officer – Clerk of the
Board of Supervisors

COUNTY OF LOS ANGELES

By: _____
Deputy

By: _____
Mayor, County of Los Angeles

THIRD PARTY

APPROVED AS TO FORM

ANDREA SHERIDAN ORDIN
County Counsel

By: 
Deputy

CITY OF LONG BEACH, a municipal
corporation, acting by and through its
Board of Harbor Commissioners

_____, 2011

By: _____

Richard D. Steinke
Executive Director
Long Beach Harbor Department

CITY

[Signature Page to Third Party Dredge Material MOA with LA County]

[Continues on Next Page]

The foregoing document is hereby approved as to form.

ROBERT E. SHANNON, City Attorney

_____, 2011

By: _____

Tiffani L. Shin, Deputy

[Signature Page to Third Party Dredge Material MOA with LA County]

[Continued from Previous Page]

EXHIBIT A
THIRD PARTY FILL PLAN MEMO
[Attached.]

THIRD PARTY FILL PLAN MEMO

Version 4.0 October 26, 2011

This memorandum sets forth specific details associated with the materials to be delivered by the County of Los Angeles to the City of Long Beach.

DELIVERY PERIOD

The delivery period for the third party material shall be as stated below. Any changes to the delivery period will be according to the provisions of the MOA. The delivery cannot commence until the City constructs the retention dike and the site is made available. It is understood, the City has entered into a Contract with Manson/Connelly JV to construct the retention dike for the Slip 1 fill location and coordinate the deposit of Third Party materials. The retention dike is anticipated to be in place and the fill site available by August 2011.

Initial Delivery Period is January 2012 through June 2012 and; may, at the sole discretion of City, be extended through August 2012 for additional material to be delivered.

VOLUME OF MATERIAL

The volume of material the Third Party anticipates delivering to the City during the initial delivery period is up to approximately 400,000 cubic yards. If City consents to an extended delivery period as described above, a total maximum amount of 760,000 CY (inclusive of the amount delivered during the initial delivery period) may be delivered during the extended delivery period, if any. This total quantity is approximate and may vary by 10% without this memorandum needing to be revised. It is agreed the maximum amount of sediments budget permitting will be dredged from areas 1 through 3 and delivered to the Port prior to dredging and delivering sediments from areas 7 through 9.

MATERIAL CHARACTERISTICS

The materials to be delivered are generally characterized as sand and silty-sand materials dredged from the Ballona Creek/Marina Del Rey Channel areas 1 through 9. Sediments from areas 1-6 are considered good quality and 7 through 9 poor quality. Sediments from these areas must be placed in the specific locations as stated below (see attached plan of dredging area).

The geotechnical characteristics of the proposed dredge material shall be consistent with the geotechnical data that was provided to the port of Long Beach in your application dated June 30, 2010 and any supplemental data that was subsequently provided to the Port.

Material that is not consistent with the general characteristics represented by the testing performed will not be permitted to be placed in the fill.

LOCATION AND PLACEMENT METHODS

The location of sediments from Marina Del Rey areas 1 through 3 will be placed in Slip 1 in layers 2 and 3 as shown in the attached fill plan. Sediments from areas 7 through 9 will be placed in layer 1 of the slip fill.

The Third party shall place the dredge material in Slip 1 in the sequence and locations as provided by the City. The deposited materials shall be placed in a manner as to create a relatively consistent elevation, with undulations not to exceed 4 feet vertically from the surrounding area. The material shall be placed in a pattern of barge placement that does not continuously overlap previous placement.

The Third Party shall provide the City with a pre deposit survey seven calendar days prior to scheduled delivery and a post deposit survey within fourteen calendar days after depositing the material is completed.

The third party shall provide for the City's review and approval copies of all permits, insurance, indemnity forms fourteen calendar days prior to scheduled delivery in accordance with the MOA.

The third party shall schedule a pre-disposal meeting with the City seven calendar days prior to scheduled delivery.

Any debris from the Third Party material disposal shall be removed by the Third Party and properly disposed of outside the Port of Long Beach.

Attachments:

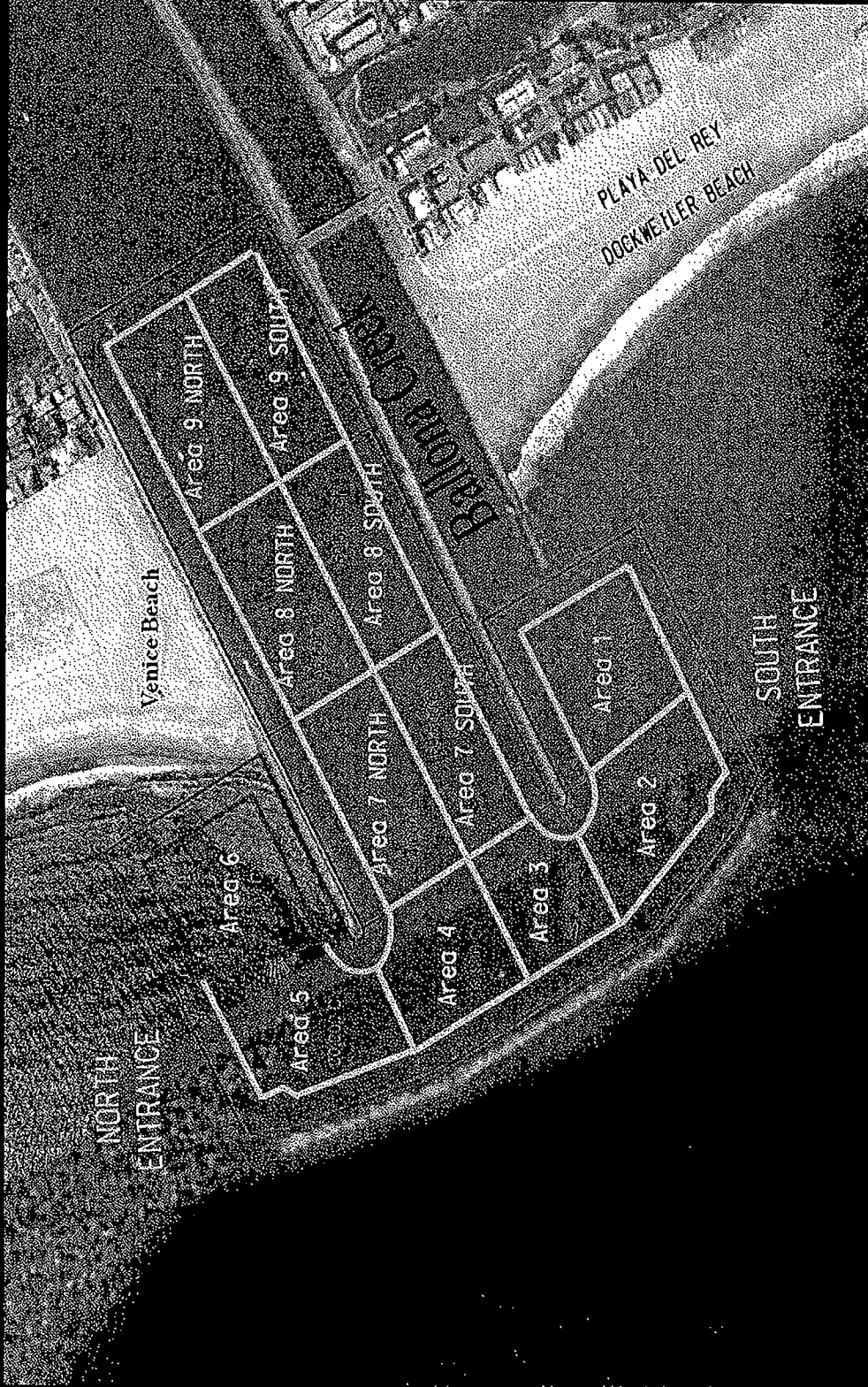
1. Third Party Dredge Site
2. Third Party Deposit Location Plan and Sections

Attachment 1: “Third Party Dredge Site”

to

Third Party Fill Plan Memo

MdR Maintenance Dredging Areas



Sediment Quantity (04/2011)

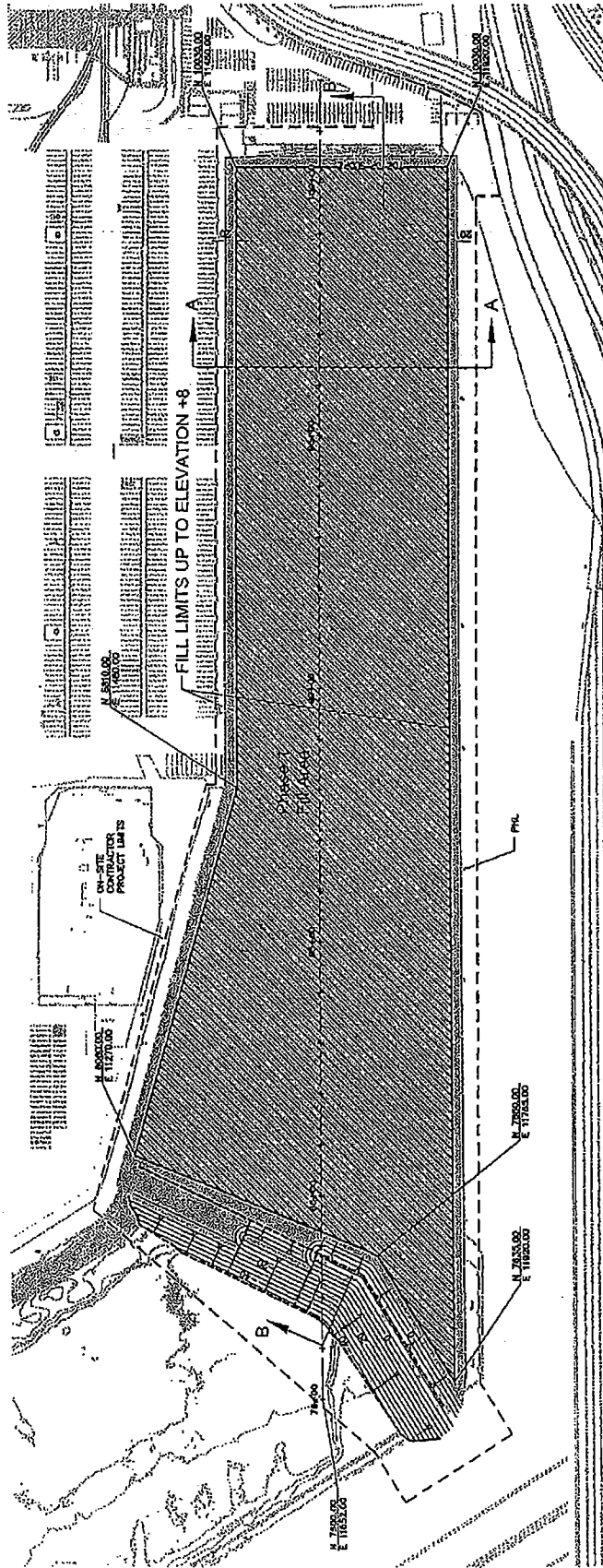
763,000 CY contaminated; 352,000 CY clean; 1,095,000 CY total.

Source: U.S. Army Corps of Engineers

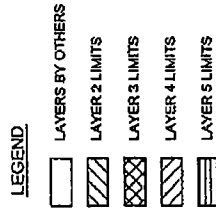
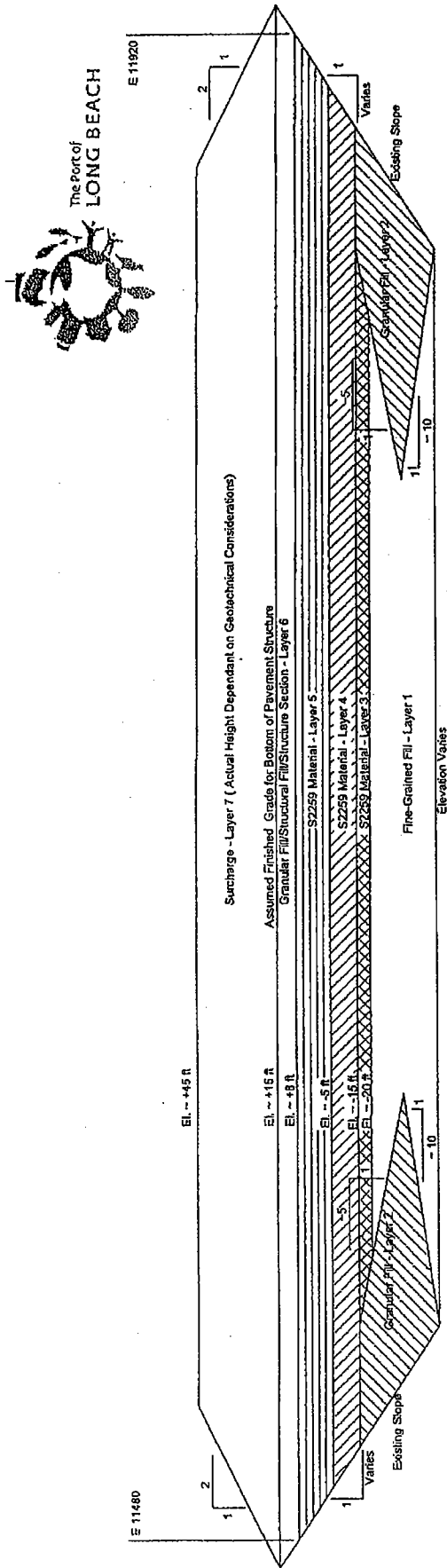
Attachment 2: "Third Party Deposit Location Plan and Sections"

to

Third Party Fill Plan Memo

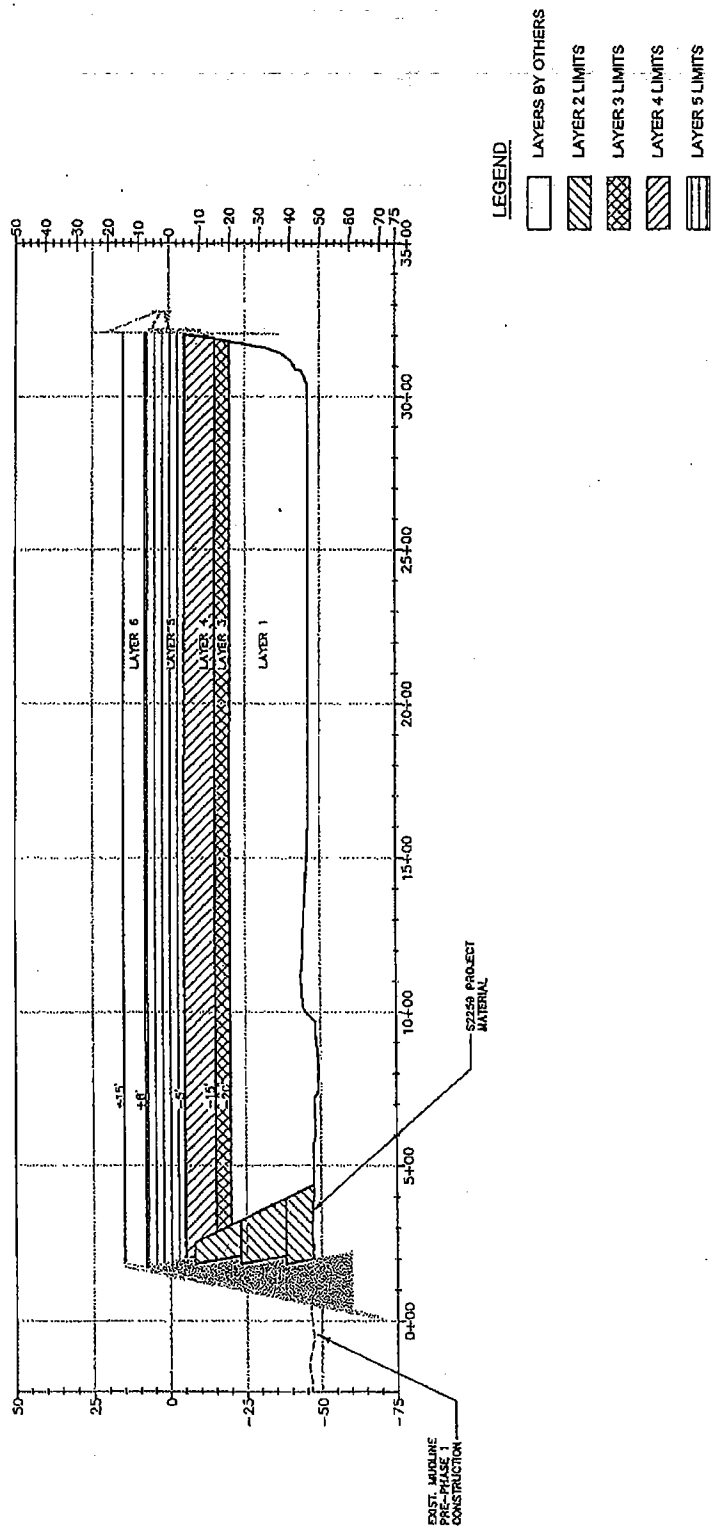


MARINA DEL REY
DREDGE MATERIAL DEPOSIT LOCATION
PLAN



NOTE
DRAWING INDICATES LAYER 2 MUST BE PLACED PRIOR TO
COMPLETION OF LAYER 1 AND LAYER 3 AND HIGHER.

MARINA DEL REY SLIP NO. 1 MATERIAL LAYERS SECTION A-A



MARINA DEL REY

SLIP NO. 1 MATERIAL LAYERS

SECTION B-B

EXHIBIT B

THIRD PARTY'S ADDRESS AND FAX NUMBER

Paul Wong
Planning Division
County of Los Angeles
Department of Beaches and Harbors
13483 Fiji Way Tr. #3
Marina del Rey, CA 90292
Tel. No.: (310) 305-9533
FAX No.: (310) 821-7076

MEMORANDUM OF AGREEMENT
BY AND BETWEEN
THE COUNTY OF LOS ANGELES
AND
THE CITY OF LONG BEACH,
ACTING BY AND THROUGH ITS BOARD OF
HARBOR COMMISSIONERS

THIS MEMORANDUM OF AGREEMENT ("MOA") is made and entered into, in duplicate, as of the date executed by the Executive Director of the Long Beach Harbor Department ("Executive Director"), by and between the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City") pursuant to authority granted by said Board at its meeting of _____, 2011; and THE COUNTY OF LOS ANGELES ("Third Party").

1. Recitals. This MOA is made with reference to the following facts and objectives:

1.1 City's Middle Harbor Redevelopment Project ("Middle Harbor Project") is a complex, multi-phase, time-sensitive project that is expected to be constructed while container terminals remain in operation.

1.2 One of the early, essential components of the Middle Harbor Project is the placement of fill in the areas known as the Slip 1 fill area and the East Basin fill area following the construction of two containment dikes, as further described herein and in City's Middle Harbor Redevelopment Sediment Management Plan ("Middle Harbor SMP").

1.3 Unlike a typical dredge disposal location, the Middle Harbor fill site is an early, key component of a much larger, time-critical redevelopment project. The timing of the placement of fill is critical to subsequent terminal construction activities, but is also dependent on the timing of preceding construction activities. As a result, the temporal window for acceptance and placement of fill is both narrow and subject to change as the Middle Harbor Project advances.

1.4 City anticipates satisfying some of its fill material needs from material generated by the Middle Harbor Project and other Port of Long Beach ("Port") projects; however, in the interest of benefitting the Middle Harbor Project and the region, and furthering the Los Angeles Regional Contaminated Sediment Task Force's ("CSTF") policy of encouraging beneficial reuse of contaminated sediments, City is endeavoring to accommodate as much dredge material from third-party (i.e., non-Port) projects as is reasonable given City's fill material criteria, the logistical,

technical and environmental requirements of the Middle Harbor Project and the requirements of Applicable Laws (as defined in paragraph 2 below).

1.5 To facilitate identification of suitable third-party fill material, City has distributed Applications (as defined in paragraph 2 below) to potentially interested parties, including Third Party.

1.6 Third Party has submitted an Application to City because it has or expects to have, within the required timeframe, dredge material that it wishes to dispose of and that it believes meets City's criteria and the Middle Harbor Project requirements.

1.7 City, with input from the CSTF, has evaluated the Applications and has selected Third Party as one of the potential sources of third-party fill material.

1.8 Third Party is willing and able to meet City's fill criteria and the Middle Harbor Project requirements, and City is interested in accommodating as much of Third Party's dredge material as is reasonable within the constraints of the Middle Harbor Project, such project's objectives and as is consistent with Applicable Laws, including without limitation the USACE Permit and WDRs issued to City (each as defined in paragraph 2 below).

1.9 The parties now wish by this MOA to set forth all of their understandings regarding the dredge material, and the terms and conditions under which such material may be placed in the Fill Site (as defined in paragraph 2 below).

2. Definitions. In addition to the definitions set forth elsewhere in this MOA, the following capitalized terms and phrases shall have the following meanings for purposes of this MOA:

2.1 "Applicable Laws" is the collective reference to all applicable laws, rules, regulations, requirements, licenses, permits and orders, as may be amended from time to time.

2.2 "Application" is the Port of Long Beach Middle Harbor Fill Site Application for Placement of Dredge Material, as may be amended from time to time in City's sole discretion. The Application submitted by Third Party is referred to herein as "Third Party's Application."

2.3 "Dredge Material" is Third Party's dredge material or any of it as identified and described in the Third Party Fill Plan Memo as being allowed to be placed in the Fill Site.

2.4 "Effective Date" is the latest date on which City and Third Party execute this MOA, as set forth on the signature page(s) of this MOA.

2.5 "Engineer" is the Chief Harbor Engineer of the Harbor Department of the City of Long Beach, California, who may be represented on the work by such assistants as may be necessary. Engineer's designated construction site manager shall be an authorized representative of Engineer for purposes of this MOA.

2.6 "Fill Schedule" is the overall schedule established by City for Fill Site construction, dredge material delivery to the Fill Site and dredge material placement/location within the Fill Site, as may be modified from time to time in City's sole discretion as described in paragraph 5.

2.7 "Fill Site" is the confined disposal site into which dredged material is to be placed and contained for disposal within the Slip 1 fill area and the East Basin fill area. The portion of the Fill Site into which Third Party shall place its fill material is set forth in the Third Party Fill Plan Memo (as defined in subparagraph 2.10 below).

2.8 "Governmental Authority" is any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

2.9 "Third Party Delivery Period" is the timeframe within the Fill Schedule during which Third Party shall deliver and place the Dredge Material in the Fill Site, as specified in the Third Party Fill Plan Memo.

2.10 "Third Party Fill Plan Memo" is the document developed by Engineer in consultation with Third Party, detailing the Third Party Delivery Period, the volume, the specifics of the material (chemical and geotechnical) and the placement methods, as such Third Party Fill Plan Memo may be modified from time to time in City's sole discretion as described in paragraph 5. The Third Party Fill Plan Memo as of the date hereof is attached hereto as Exhibit A and incorporated by this reference.

2.11 "Third Party Project" is the dredging origination project-related activities accomplished or to be accomplished by Third Party that involve the testing, permitting, dredging and transportation of material from the origination location for placement in the Fill Site.

2.12 "Third Party's Application" is defined in subparagraph 2.2 above.

2.13 "USACE Permit" is the United States Army Corps of Engineers permit number SPL-2004-01053-AOA issued for the Port of Long Beach Middle Harbor Redevelopment Project, as may be amended from time to time.

2.14 "WDRs" are the Waste Discharge Requirements (including Order No. R4-2010-0020) issued by the California Regional Water Quality Control Board, Los Angeles Region, for the Port of Long Beach Middle Harbor Redevelopment Project (File No. 09-204), as may be amended from time to time.

3. Placement of Dredge Material. Subject to the terms and conditions in this MOA:

3.1 City agrees to allow Third Party to place the Dredge Material in the Fill Site as set forth in the Third Party Fill Plan Memo.

3.2 Third Party agrees to place or cause to be placed the Dredge Material in the Fill Site as set forth in the Third Party Fill Plan Memo and to comply or cause compliance with the other provisions of the Third Party Fill Plan Memo. Third Party understands and acknowledges that it may be necessary for the Engineer to supplement the Third Party Fill Plan Memo with additional directions as conditions develop in the field, including without limitation directives concerning the movement of Third Party's vessels and equipment within the boundaries of the fill project. Third Party agrees to comply or cause compliance with any such directions.

3.3 Third Party understands and acknowledges that all matters contemplated by this MOA, including without limitation the volume of Dredge Material which may be placed and the deadline by which it must be placed are subject in all respects to the terms and conditions of the USACE Permit, the WDRs and all other Applicable Laws.

4. Limited Delegation of Authority to Engineer. Without in any manner limiting City's discretion to modify the Third Party Fill Plan Memo or any other provisions of this MOA, the Board of Harbor Commissioners hereby grants authority to the Engineer to make changes to the Third Party Fill Plan Memo made necessary by geotechnical engineering requirements, logistical requirements and/or to comply with Applicable Laws. Any replacement versions of the Third Party Fill Plan Memo shall be automatically substituted as Exhibit A of this MOA.

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5. Fill Schedule, Etc.

5.1 City reserves all rights and discretion with respect to the Middle Harbor Project, subject to Applicable Laws. As such, City reserves the right to develop, establish and implement among other things, the Fill Schedule and the Third Party Fill Plan Memo and the right to establish the Third Party Delivery Period. City agrees to consult with Third Party in developing the Third Party Fill Plan Memo and establishing the Third Party Delivery Period, but it is understood and agreed by both parties hereto that any final decisions shall be reserved to City.

5.2 City reserves the right to modify, in its sole discretion, the Fill Schedule, Third Party Fill Plan Memo and Third Party Delivery Date from time to time as field conditions and the requirements of the Middle Harbor Project warrant and to comply with Applicable Laws. Where possible, City will consult with Third Party in making modifications to the Third Party Fill Plan Memo and Third Party Delivery Period. City also agrees to keep Third Party reasonably apprised of any substantive changes to the Fill Schedule, Third Party Fill Plan Memo and Third Party Delivery Period (including by providing replacement versions of the Third Party Fill Plan Memo as described in paragraph 4 above), however, notwithstanding anything in this subparagraph or the MOA, any final decisions concerning the Fill Schedule, Third Party Fill Plan Memo and Third Party Delivery Date and any changes thereto shall be reserved to City and it shall be Third Party's responsibility to communicate regularly with City to keep itself informed of any such changes and to comply or cause compliance with any such changes.

5.3 Third Party's sole and exclusive recourse by reason of any disagreement with City that is not able to be resolved regarding the Fill Schedule, Third Party Fill Plan Memo, Third Party Delivery Period or any modifications thereto, shall be the termination of this MOA in accordance with paragraph 13.

6. Conditions Precedent. As a condition precedent to City's agreement to allow Third Party to place the Dredge Material in the Fill Site as described in paragraph 3, Third Party shall do or cause to be done, at the earliest time possible and in any event prior to any placement of the Dredge Material, the following:

6.1 Obtain and provide City with copies of all regulatory permits, licenses and approvals for the placement of the Dredge Material in the Fill Site. Said permits, licenses and approvals shall name the Middle Harbor Project Fill Site as an acceptable disposal site.

6.2 Demonstrate to City's satisfaction, including without limitation by providing copies of any documentation requested by City, that the Third Party Project has secured adequate funding and that Third Party has approved a dredging contract.

Third Party understands and acknowledges that satisfaction of all conditions precedent is in no way a guarantee that Third Party will be able to place the Dredge Material in the Fill Site or of the quantity of Dredge Material that may be placed.

7. Third Party Affirmative Covenants. Third Party hereby agrees that it shall and shall cause its employees, contractors and agents to:

7.1 Maintain all regulatory permits, licenses and approvals for the placement of the Dredge Material in the Fill Site.

7.2 Comply with all Applicable Laws in the handling and placement of the Dredge Material (including without limitation the extraction, transportation and placement of the Dredge Material), and where applicable assist and facilitate City's compliance with its permits and other Applicable Laws.

7.3 In recognition of the critical importance to the Middle Harbor Project of the timely placement of the Dredge Material, promptly coordinate and cooperate, and regularly communicate with, the Engineer and City's contractors in all matters relating to the placement of the Dredge Material such that the Middle Harbor Project schedule is not delayed or otherwise impacted. Such coordination, cooperation and communication shall include, at minimum, attendance by Third Party's contractors at the Middle Harbor Project's weekly construction meetings relating to dredging and fill activities, starting four weeks prior to anticipated material placement and through the entire material placement process or as otherwise notified to Third Party by City.

7.4 Comply with all Engineer directives, including but not limited to directions to interrupt, delay, stop or modify the delivery of the Dredge Material to and placement in the Fill Site due to water quality issues, safety issues, impacts to City operations, permit compliance, dredge material placement sequencing, and/or other issues pertinent to the Middle Harbor SMP. In any event Third Party shall bear its own standby and delay costs.

7.5 Employ best management practices in the handling and placement of the Dredge Material (including without limitation with regard to the extraction, transportation and placement of the Dredge Material).

7.6 Upon request by City, provide access to Third Party's records relating to or concerning the handling and placement of the Dredge Material.

7.7 Upon request by City, provide access to Third Party's contractors' construction operations records such as barge and disposal logs related to the Fill Site placement activities to ensure coordination with other construction activities.

7.8 Be responsible for rehandling, relocating and/or retrieving any material which may be misplaced or lost during transportation or placement activities, as may be directed by the Engineer or Governmental Authorities, as the case may be.

7.9 Promptly give notice to City of:

- (A) the commencement of dredging activities for the Third Party Project;
- (B) the completion of dredging activities for the Third Party Project (at the same time notification is provided to the regulatory agencies);
- (C) any change in anticipated scheduling of the Third Party Project or Third Party's ability to comply with any provisions of this MOA, including without limitation the Third Party Delivery Period or Third Party Fill Plan Memo;
- (D) any changes to the information provided to City relating to or concerning the Dredge Material, including without limitation the volume or chemical or geotechnical profile;
- (E) any litigation, investigation, proceeding or order involving or affecting Third Party or the Dredge Material; and
- (F) any other matter or information involving or affecting the Dredge Material which heretofore has not been notified to City in writing.

7.10 Furnish to City:

- (A) as soon as available, but no later than concurrently with Third Party's execution of this MOA, copies of all bathymetric surveys and dredge designs;
- (B) as soon as available but no later than concurrently with Third Party's execution of this MOA, copies of all sampling, analytical and technical data and reports relevant to assessment of the suitability of Third Party Project material for placement and disposal in the Fill Site;
- (C) as soon as available but no later than concurrently with Third Party's execution of this MOA, any other test results, reports or data relating to or concerning the Dredge Material;
- (D) prior to the placement of any Dredge Material in the Fill Site, copies of the permits, licenses and approvals referred to in subparagraph 6.1, together with any regulatory correspondence;
- (E) any information generated by or caused to be generated by Third Party for regulators concerning the Dredge Material or Third Party Project;
- (F) any information which may reasonably be expected to need to be incorporated into City's Middle Harbor Project documentation or documentation to comply with City's permits. In the event of any doubt, Third Party shall promptly consult with City.
- (G) within thirty (30) days after Third Party's notification to the regulatory agencies of completion of the pertinent dredging activities, copies of Third Party's calculation of the total in-situ dredged material volume, and all information relevant to such calculation, including without limitation all bathymetry surveys and other information; and
- (H) any other information reasonably requested by City, including without limitation barge information and transportation logs.

7.11 Work in good faith with City to eliminate or minimize standby and delay costs which may be incurred to accomplish the placement of the Dredge Material in accordance with the Fill Schedule.

7.12 Cooperate with any post-placement bathymetric surveys or sampling which may be conducted by City to ensure that placement of the Dredge Material was conducted as agreed upon in the Third Party Fill Plan Memo.

8. Third Party Negative Covenants. Third Party shall not, and shall not permit any of its employees, contractors or agents to:

8.1 Place any Dredge Material in the Fill Site prior to the satisfaction of all conditions precedent pursuant to paragraph 6.

8.2 Place anything other than the Dredge Material (such as construction debris) in the Fill Site, or otherwise violate the terms of the USACE Permit, the WDRs or any other Applicable Laws.

8.3 Impact, delay, interrupt or hinder the Fill Schedule, Middle Harbor Project schedule, successful construction of the Middle Harbor Project or the ongoing activities of City or the Port, including without limitation any marine terminal operations.

8.4 Engage in any landside activities.

8.5 Engage in any activities inconsistent with the Environmental Impact Report for the Middle Harbor Project ("Middle Harbor EIR").

8.6 Engage in any activities that would cause City to violate any Applicable Laws, including without limitation, the USACE Permit and WDRs.

9. No Payment of Monies. Third Party understands that City will pay no monetary consideration for the Dredge Material, but that the benefit to Third Party is City's willingness to accommodate as much Dredge Material as is reasonable in the context of the Middle Harbor Project, subject to the terms and conditions of this MOA.

10. No Liability of City; Assumption of the Risk by Third Party.

10.1 Although City is undertaking in this MOA to accommodate as much of the Dredge Material as is reasonable in the context of the Middle Harbor Project, Third Party acknowledges and understands that the Middle Harbor Project's requirements and schedules are subject to change and/or delay as field conditions develop and as fill from other third

parties is placed in the Fill Site. For example, the fill that is placed prior to or concurrently with Third Party's Dredge Material may affect the timing, volume and chemical and structural characteristics of the fill that follows, including without limitation eliminating the need for any additional fill. Third Party understands that it is its responsibility to make, at its cost and expense, such contingency and other plans as it sees fit, including securing an alternate disposal site and negotiating flexibility into its contracts and permits, to be prepared in the event that City's fill material needs and/or scheduling changes. Third Party understands and acknowledges that if it fails to make such contingency and other plans it does so at its own risk.

10.2 Third Party assumes all risks and responsibilities associated with the extraction, transportation and placement of the Dredge Material, including without limitation compliance with all Applicable Laws and rehandling of Dredge Material, injury to crew or contractors and misplaced or lost fill material.

10.3 Third Party understands and acknowledges that if it chooses to avail itself of any equipment which may be provided by City, Third Party does so at its own risk, and City makes no representations or warranties thereby, including without limitation as to the availability, fitness or operation of any such equipment.

10.4 Third Party understands and acknowledges that City retains all rights and discretion with respect to the Middle Harbor Project. City makes no representations or warranties with respect to the placement of the Dredge Material in the Fill Site, either by virtue of this MOA, any permits, licenses or approvals obtained by either of the parties hereto, or otherwise.

10.5 Third Party understands and acknowledges that nothing in this MOA shall constitute or confer or be implied to constitute or confer a grant of any property right, privilege, permit, license or other entitlement to Third Party or anyone else.

10.6 Notwithstanding anything in this MOA, Third Party understands and acknowledges that all matters contemplated by this MOA are subject to the terms and conditions of City's permits and all other Applicable Laws, as described in subparagraph 3.3 above.

10.7 Neither Third Party nor any other persons shall be entitled to any monies or damages (including without limitation, consequential damages) from City as a result of any matters relating to or arising from this MOA, including without limitation any changes in City's fill material needs or scheduling, such as City's accommodation of less Dredge

Material than is contemplated in this MOA or no Dredge Material. Third Party's sole and exclusive recourse by reason of any matter concerning this MOA shall be the termination of this MOA pursuant to paragraph 13.

MOA: 11. Costs and Expenses. Without limiting any other provision of this

11.1 Third Party agrees that it shall be responsible for all costs, expenses and/or losses associated with the placement of the Dredge Material, including without limitation the extraction and transportation of the Dredge Material to the Fill Site, compliance with all Applicable Laws, any contingency plans, any delays in scheduling or any other circumstances, conditions or changes, whether anticipated or not.

11.2 Third Party further agrees that it shall be responsible, and reimburse City for, all costs, expenses and/or losses incurred by City associated with the placement of the Dredge Material, including without limitation for any delays to the Fill Schedule. Costs, expenses and/or losses incurred by City include, without limitation, out-of-pocket expenses, in-house staff costs, reduced rent, and/or reimbursements.

11.3 Third Party agrees that it shall be responsible, and reimburse City for, for all costs and/or losses incurred by City in connection with surveys, inspections, monitoring and review related to or arising out of the Dredge Material.

11.4 Third Party understands and acknowledges that if all the Third Party Project material is not placed before the end of the Third Party Delivery Period, the Fill Site may, at City's sole discretion, no longer accept the Third Party Project material or acceptance of material may require additional logistical procedures and associated costs in order to receive Third Party's Project material, all of which additional logistical procedures, costs and expenses shall be Third Party's responsibility.

11.5 Third Party understands and acknowledges that once the Fill Site reaches the elevation at which bottom dumping is no longer feasible, rehandling of the Dredge Material including without limitation hydraulic placement (and additional costs and expenses) will be necessary, as further described in the Third Party Fill Plan Memo. Third Party shall be responsible for any equipment, planning, costs and expenses associated with such rehandling. No provision by City, if any, of any equipment with regard to the Dredge Material shall diminish or modify Third Party's responsibilities under this subparagraph or as stated elsewhere in this MOA.

12. Representations and Warranties. To induce City to enter into this MOA and allow Third Party to place the Dredge Material as provided in this MOA, Third Party hereby represents and warrants to City that:

12.1 Except as otherwise notified to City in writing and acknowledged by City prior to the Effective Date of this MOA, all information and materials provided by Third Party to City relating to or concerning the Dredge Material, including without limitation the information set forth in Third Party's Application, is true, complete and accurate.

12.2 Third Party has disclosed to City all material facts concerning the Third Party Project and Dredge Material and not failed to disclose any material fact that would cause any representation to be materially misleading.

12.3 The Dredge Material has been designated by all applicable regulators as suitable for placement in a confined disposal facility.

12.4 The Dredge Material does not constitute "hazardous waste" as defined by the United States Environmental Protection Agency or the California Department of Toxic Substances Control.

12.5 The Dredge Material is not encumbered by restrictions, covenants or any other requirements imposed by the State of California or any other Governmental Authority, including without limitation any restrictions, covenants or other requirements having the effect of establishing long-term liability, monitoring and/or maintenance obligations.

12.6 No litigation, investigation, proceeding or order of or before any Governmental Authority is pending or, to the knowledge of Third Party, threatened by or against Third Party or anyone else with respect to the Third Party Project or Dredge Material.

12.7 No claim or litigation of or by any person or non-governmental entity or organization is pending or, to the knowledge of Third Party, threatened by or against Third Party or anyone else with respect to the Third Party Project or the Dredge Material.

12.8 Third Party has obtained and is familiar with the contents of the Middle Harbor EIR, the current version of the Middle Harbor SMP, the USACE Permit and the WDRs, copies of which are on file with City's Director of Environmental Planning.

12.9 Third Party has the power and authority, and the legal right, to make, deliver and perform this MOA.

12.10 This MOA has been duly authorized, executed and delivered on behalf of Third Party.

13. Termination. If not earlier expired, this MOA may be terminated at any time as follows:

13.1 Upon the mutual agreement of City and Third Party.

13.2 By either party, by giving fourteen (14) days' notice to the other party in the event that the parties are unable to resolve a dispute pursuant to paragraph 23.

13.3 City may terminate this MOA by giving Third Party two (2) days' notice upon the breach or default by Third Party (either directly or through a contractor, subcontractor or agent of Third Party) of any covenant, duty, obligation, representation or warranty of Third Party under this MOA and/or any exhibit hereto. Notwithstanding the foregoing, City may terminate this MOA immediately and without any notice to Third Party in the event of a breach or default that City believes in its sole discretion is an imminent threat to the timely, safe or successful completion of the Middle Harbor Project. Additionally, City may terminate this MOA immediately and without any notice to Third Party in the event that City believes in its sole discretion that a violation of an Applicable Law is imminent or reasonably likely to occur.

13.4 Upon any termination (or expiration) of this MOA, Third Party shall immediately cease and cause its employees, contractors and agents to cease all activities, and shall at Third Party's cost, promptly and with all due care, remove and demobilize all equipment, debris and personnel from the Middle Harbor Project site. Third Party shall, at its cost, repair any damage caused by such removal or demobilization and reimburse City for any delay costs attributable to such removal or demobilization.

13.5 Notwithstanding anything contained in the foregoing or elsewhere in this MOA, the obligations and indemnities of Third Party pursuant to paragraphs 10, 11, 13.4 and 15 shall survive any termination of this MOA.

14. MOA Expiration Date. Notwithstanding anything contained in this MOA or any exhibits hereto, including without limitation the Third Party Fill Plan Memo, if this MOA has not earlier been terminated pursuant to paragraph 13, this MOA shall expire on the earliest of the following dates (such date, the "Expiration Date"):

14.1 Five years from the Effective Date;

14.2 February 3, 2015, or other date specified in the WDRs;

14.3 February 28, 2020, or other date specified in the USACE Permit; or

14.4 Upon reaching the applicable volume limits set forth in the USACE Permit,

unless and until City in its sole and absolute discretion elects to and approves the extension of the Expiration Date (and, in the case of any applicable regulatory requirements, obtains the necessary approvals or waivers from the relevant Governmental Authority to modify such requirement). Notwithstanding anything contained in the foregoing or elsewhere in this MOA, the obligations and indemnities of Third Party pursuant to paragraphs 10, 11, 13.4 and 15 shall survive any expiration of this MOA. Nothing in this paragraph 14 creates a duty or obligation on the part of City to seek any approvals, waivers, time extensions or otherwise from any Governmental Authorities.

15. Indemnity. Third Party shall indemnify, hold, protect and save harmless the City of Long Beach, the Board of Harbor Commissioners and their officials, commissioners, employees, consultants, advisors and agents ("Indemnified Parties") from and against any and all actions, suits, proceedings, claims, demands, damages, losses, liens, costs, expenses or liabilities, of any kind or nature whatsoever ("Claims") which may be brought, made, filed against, imposed upon or sustained by the Indemnified Parties, or any of them, alleging any connection with this MOA or activities described or related to activities described in this MOA, including without limitation any activities of or for the benefit of Third Party, its employees, contractors, subcontractors or agents. City shall notify Third Party of any such Claim, shall tender its defense to Third Party, and assist Third Party, as may be reasonably requested, in such defense. Upon such notification and tender, Third Party shall have independent duties to defend such Claim, and to indemnify the Indemnified Parties except to the extent that injury, death or property damage is determined by a court of competent jurisdiction to have been caused by the negligence or willful misconduct of the Indemnified Parties or any of them. Payment of a Claim shall not be a condition precedent to an Indemnified Party's right to defense and indemnity.

16. Insurance. As a condition precedent to the effectiveness of this MOA, Third Party shall (or shall cause its contractor to) procure and maintain in full force and effect during the term of the MOA, Watercraft Liability Insurance including Protection and Indemnity with minimum limits of \$10,000,000 per occurrence, Jones Act for employees performing services under said Act, and Water Pollution Liability. Water Pollution Liability shall include coverage for bodily injury (including death and mental anguish), property damage, defense costs and cleanup costs with minimum limits of \$10,000,000 per loss and \$10,000,000 total all losses.

Insurance policies will not be in compliance with the MOA if they include any limiting endorsement that has not been approved in writing by City.

The policy or policies of insurance for Watercraft Liability shall contain the following provisions or be endorsed to provide the following:

(1) The Indemnified Parties shall be additional insureds with regard to liability and defense of suits or claims arising out of the MOA.

Additional Insured Endorsements shall not:

- i. Be limited to ongoing operations.
- ii. Exclude contractual liability.
- iii. Restrict coverage to the sole liability of Third Party (or Third Party's contractor, if insurance under this paragraph 16 is being procured and maintained by Third Party's contractor).
- iv. Contain any other exclusion contrary to the MOA.

(2) This insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the Indemnified Parties shall not contribute with this primary insurance.

(3) The policy shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor Department except notice of ten (10) days shall be allowed for non-payment of premium.

Any deductible or self-insured retention must be approved in writing by the Executive Director and shall protect the Indemnified Parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

Third Party shall (or shall cause its contractor to) deliver either certified copies of the required policies or endorsements on forms approved by the City ("evidence of insurance") to the Executive Director for approval as to sufficiency and as to form. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the Executive Director. If such coverage is canceled or reduced, Third Party shall (or shall cause its contractor to), within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Executive Director evidence of insurance showing that the

required insurance has been reinstated or has been provided through another insurance company or companies.

The coverage provided shall apply to the obligations assumed by the Third Party under the indemnity provisions of this MOA but this insurance provision in no way limits the indemnity provisions and the indemnity provisions in no way limit this insurance provision.

Third Party agrees to suspend and cease, and cause the suspension and cessation of, all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been approved by the City.

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide with or precede the effective date of the MOA and continuous coverage shall be maintained or Third Party shall (or shall cause its contractor to) obtain and submit to City an extended reporting period endorsement of at least three (3) years from termination or expiration of this MOA.

Upon expiration or termination of coverage of required insurance, Third Party shall (or shall cause its contractor to) procure and submit to City evidence of "tail" coverage or an extended reporting coverage period endorsement for the period of at least three (3) years from termination or expiration of the MOA.

Notwithstanding the foregoing, at its discretion, and subject to the provisions of this paragraph 16, Third Party may self-insure the watercraft liability, Jones Act and water pollution insurance requirements of this MOA. If Third Party decides to so self-insure, the Third Party shall assume the risk of loss for each such exposure, as applicable including those exposures for which Third Party may be contractually liable relating to or arising out of this MOA. The scope of coverage provided by this self-insured program shall be equal to any insurance coverage which may be required by this MOA. Notwithstanding any provisions of this paragraph, City shall have the right in its sole and absolute discretion to terminate the Third Party's ability to self-insure any or all of the insurance requirements without liability or cost to City for such termination upon thirty (30) days written notice to Third Party. Third Party represents to City that Third Party is authorized to self-insure for its liability in accordance with California Government Code Section 989-991.2, County Code Chapter 5.32, and Articles 1 and 2 of the Los Angeles County Charter.

17. Notices. Any notices to be given under this MOA, including without limitation the notices described in subparagraph 7.9, shall be given in writing. Such notices may be served by personal delivery, facsimile transmission or by first class regular mail, postage prepaid. Any such notice, when served by mail, shall be effective two (2) calendar days after the date of mailing of the same, and when served by facsimile transmission or personal delivery shall be effective upon receipt. For the purposes hereof, the address of City, and the proper person to receive any such notices on its behalf, is: Executive Director, Long Beach Harbor Department, P.O. Box 570, Long Beach, California 90801, FAX number (562) 901-1733 with a copy to: Thomas Baldwin, Long Beach Harbor Department, P.O. Box 570, Long Beach, California 90801, FAX number (562) 901-1763; and the address and FAX number of Third Party set forth on Exhibit B attached hereto.

18. Governing Law. This MOA shall be deemed made in the State of California and shall be governed by the laws of said State (except those provisions of California law dealing with conflicts of law), both as to interpretation and performance.

19. Amendments, Waivers and Extensions. Except as expressly provided in this MOA, no modification, amendment or extension, in whole or in part, of this MOA shall be effective unless made in writing by both parties hereto. No waiver shall be effective unless made in a writing by a duly authorized officer or representative of the party whose rights are thereby waived. No waivers shall be implied.

20. Merger; Integration. This MOA, including all exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.

21. Relationship of the Parties. Each party hereto represents that it has sought and obtained any appropriate legal advice it deems necessary prior to entering into this MOA. No party shall act or be deemed to act as legal counsel or representative of the other party, unless expressly retained by such party for such purpose, and, except for such express retention, no attorney/client relationship is intended to be created between the parties. Nothing herein shall be deemed to create a partnership or joint venture and/or principal and agent relationship between the parties hereto. Each party represents that the parties hereto have participated jointly in the negotiation and drafting of this MOA. In the event any ambiguity or question of intent or interpretation arises, this MOA shall be construed as if drafted jointly by both parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this MOA.

22. Assignment; Binding Effect. Third Party shall not assign or transfer this MOA without the prior written approval of City. Such approval may be

granted or denied in the absolute discretion of City. This MOA shall extend to, be binding upon, and inure to the benefit of the parties hereto and their respective successor, heirs and permitted assigns.

23. Dispute Resolution. In the event of a dispute between the parties hereto, the parties shall make good faith efforts to resolve the dispute through negotiation. If the parties are unable to resolve the dispute, one or both parties may terminate this MOA in accordance with paragraph 13.

24. Order of Precedence. In the event of any conflict or ambiguity between this written agreement and any exhibit hereto, the provisions of this agreement shall govern.

25. Counterparts; Headings. This MOA may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. The headings and sub-headings contained in this MOA are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

[Signature Pages Follow]

SACHI A. HAMAI
Executive Officer – Clerk of the
Board of Supervisors

COUNTY OF LOS ANGELES

By: _____

Deputy

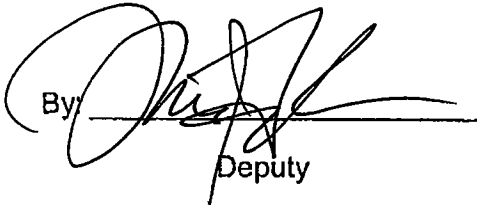
By: _____

Mayor, County of Los Angeles

THIRD PARTY

APPROVED AS TO FORM

ANDREA SHERIDAN ORDIN
County Counsel

By:  _____
Deputy

CITY OF LONG BEACH, a municipal
corporation, acting by and through its
Board of Harbor Commissioners

_____, 2011

By: _____

Richard D. Steinke
Executive Director
Long Beach Harbor Department

CITY

[Signature Page to Third Party Dredge Material MOA with LA County]

[Continues on Next Page]

The foregoing document is hereby approved as to form.

ROBERT E. SHANNON, City Attorney

_____, 2011 By: _____

Tiffani L. Shin, Deputy

[Signature Page to Third Party Dredge Material MOA with LA County]

[Continued from Previous Page]

EXHIBIT A
THIRD PARTY FILL PLAN MEMO
[Attached.]

THIRD PARTY FILL PLAN MEMO

Version 4.0 October 26, 2011

This memorandum sets forth specific details associated with the materials to be delivered by the County of Los Angeles to the City of Long Beach.

DELIVERY PERIOD

The delivery period for the third party material shall be as stated below. Any changes to the delivery period will be according to the provisions of the MOA. The delivery cannot commence until the City constructs the retention dike and the site is made available. It is understood, the City has entered into a Contract with Manson/Connolly JV to construct the retention dike for the Slip 1 fill location and coordinate the deposit of Third Party materials. The retention dike is anticipated to be in place and the fill site available by August 2011.

Initial Delivery Period is January 2012 through June 2012 and; may, at the sole discretion of City, be extended through August 2012 for additional material to be delivered.

VOLUME OF MATERIAL

The volume of material the Third Party anticipates delivering to the City during the initial delivery period is up to approximately 400,000 cubic yards. If City consents to an extended delivery period as described above, a total maximum amount of 760,000 CY (inclusive of the amount delivered during the initial delivery period) may be delivered during the extended delivery period, if any. This total quantity is approximate and may vary by 10% without this memorandum needing to be revised. It is agreed the maximum amount of sediments budget permitting will be dredged from areas 1 through 3 and delivered to the Port prior to dredging and delivering sediments from areas 7 through 9.

MATERIAL CHARACTERISTICS

The materials to be delivered are generally characterized as sand and silty-sand materials dredged from the Ballona Creek/Marina Del Rey Channel areas 1 through 9. Sediments from areas 1-6 are considered good quality and 7 through 9 poor quality. Sediments from these areas must be placed in the specific locations as stated below (see attached plan of dredging area).

The geotechnical characteristics of the proposed dredge material shall be consistent with the geotechnical data that was provided to the port of Long Beach in your application dated June 30, 2010 and any supplemental data that was subsequently provided to the Port.

Material that is not consistent with the general characteristics represented by the testing performed will not be permitted to be placed in the fill.

LOCATION AND PLACEMENT METHODS

The location of sediments from Marina Del Rey areas 1 through 3 will be placed in Slip 1 in layers 2 and 3 as shown in the attached fill plan. Sediments from areas 7 through 9 will be placed in layer 1 of the slip fill.

The Third party shall place the dredge material in Slip 1 in the sequence and locations as provided by the City. The deposited materials shall be placed in a manner as to create a relatively consistent elevation, with undulations not to exceed 4 feet vertically from the surrounding area. The material shall be placed in a pattern of barge placement that does not continuously overlap previous placement.

The Third Party shall provide the City with a pre deposit survey seven calendar days prior to scheduled delivery and a post deposit survey within fourteen calendar days after depositing the material is completed.

The third party shall provide for the City's review and approval copies of all permits, insurance, indemnity forms fourteen calendar days prior to scheduled delivery in accordance with the MOA.

The third party shall schedule a pre-disposal meeting with the City seven calendar days prior to scheduled delivery.

Any debris from the Third Party material disposal shall be removed by the Third Party and properly disposed of outside the Port of Long Beach.

Attachments:

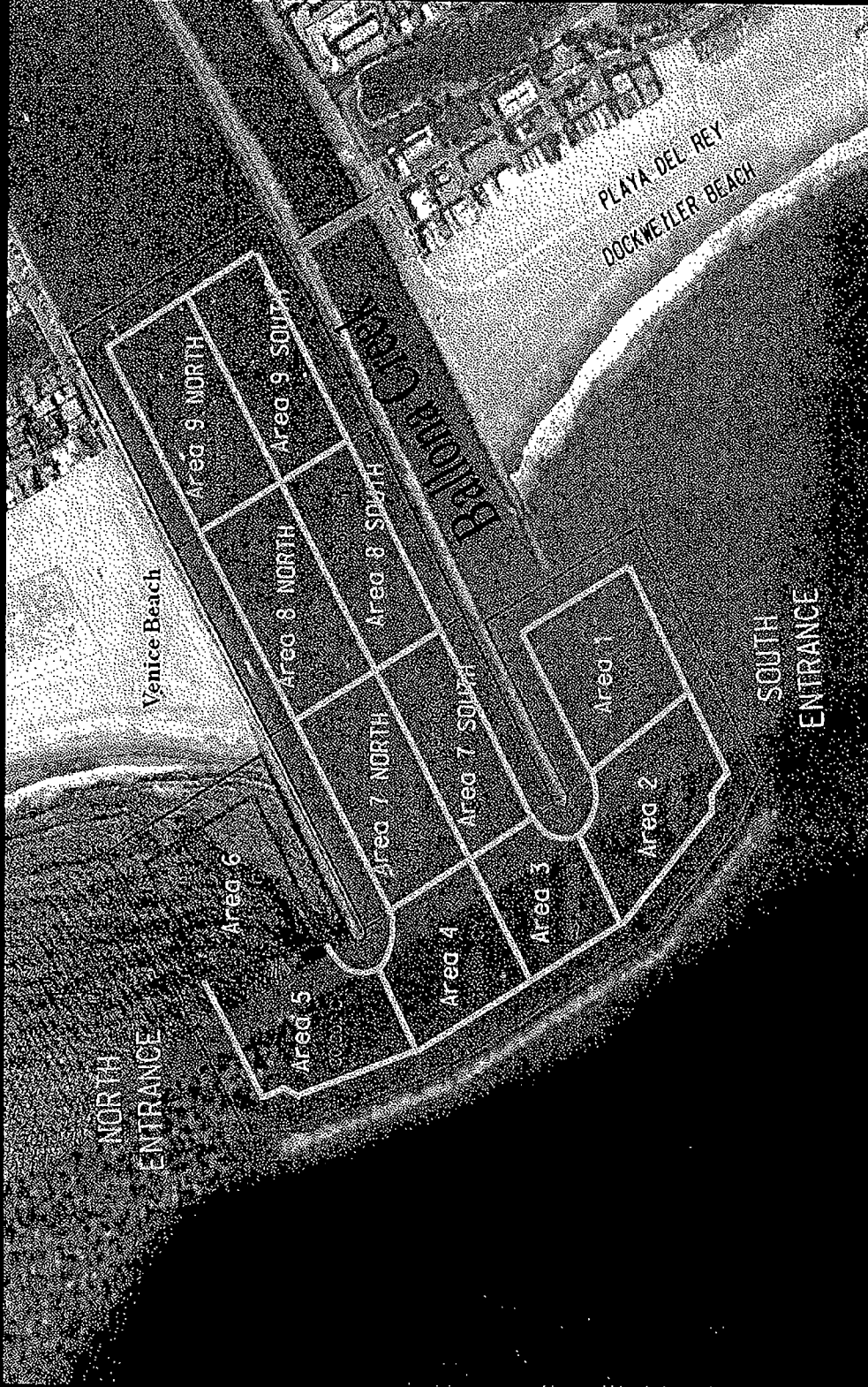
1. Third Party Dredge Site
2. Third Party Deposit Location Plan and Sections

Attachment 1: “Third Party Dredge Site”

to

Third Party Fill Plan Memo

MdR Maintenance Dredging Areas

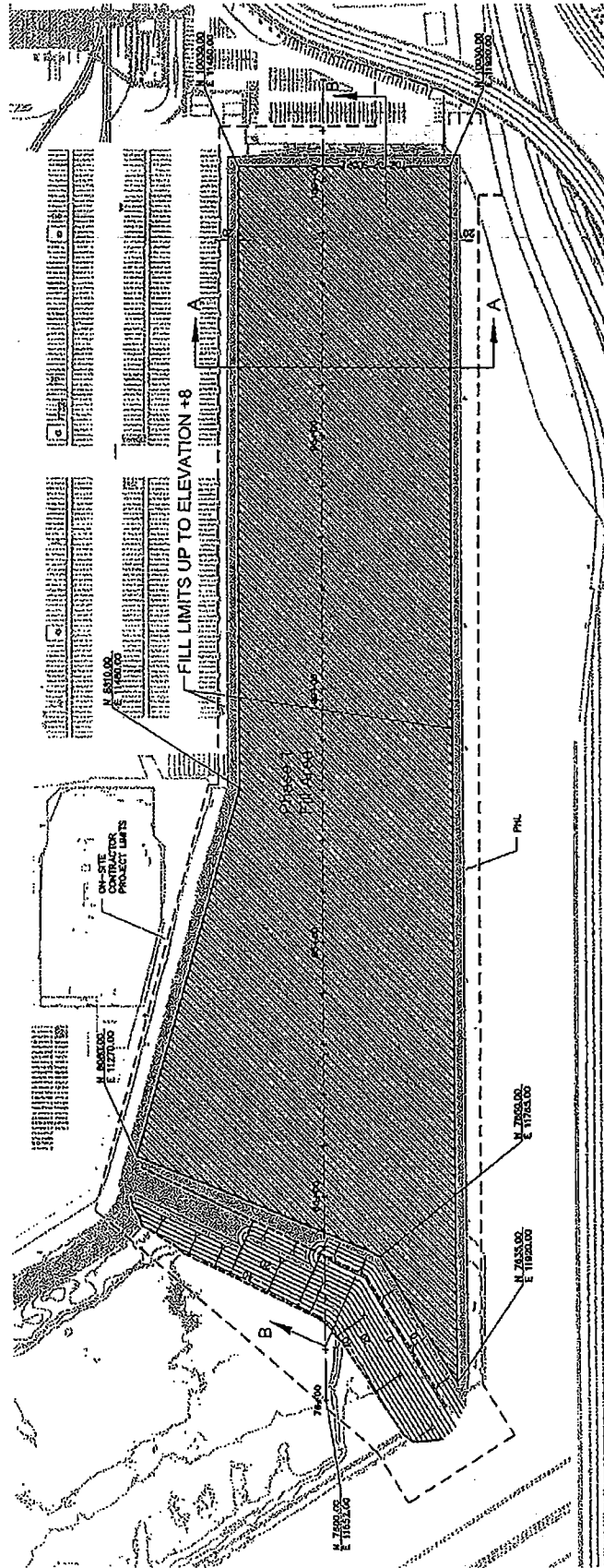


Sediment Quantity (04/2011)

763,000 CY contaminated; 352,000 CY clean; 1,095,000 CY total.

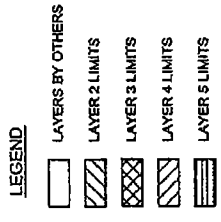
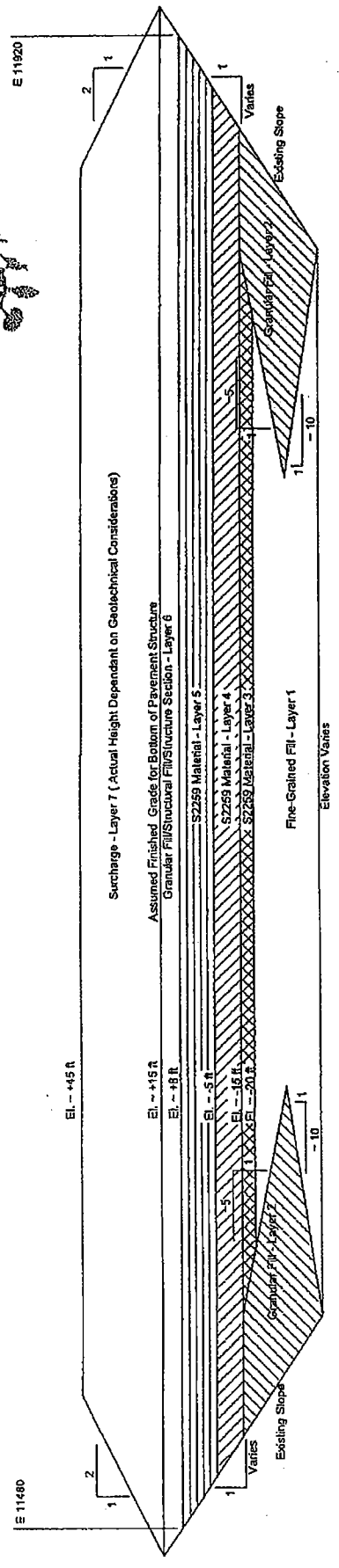
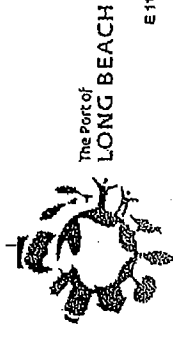
Source: U.S. Army Corps of Engineers

Attachment 2: “Third Party Deposit Location Plan and Sections”
to
Third Party Fill Plan Memo



MARINA DEL REY DREDGE MATERIAL DEPOSIT LOCATION PLAN





NOTE
DRAWING INDICATES LAYER 2 MUST BE PLACED PRIOR TO COMPLETION OF LAYER 1 AND LAYER 3 AND HIGHER.

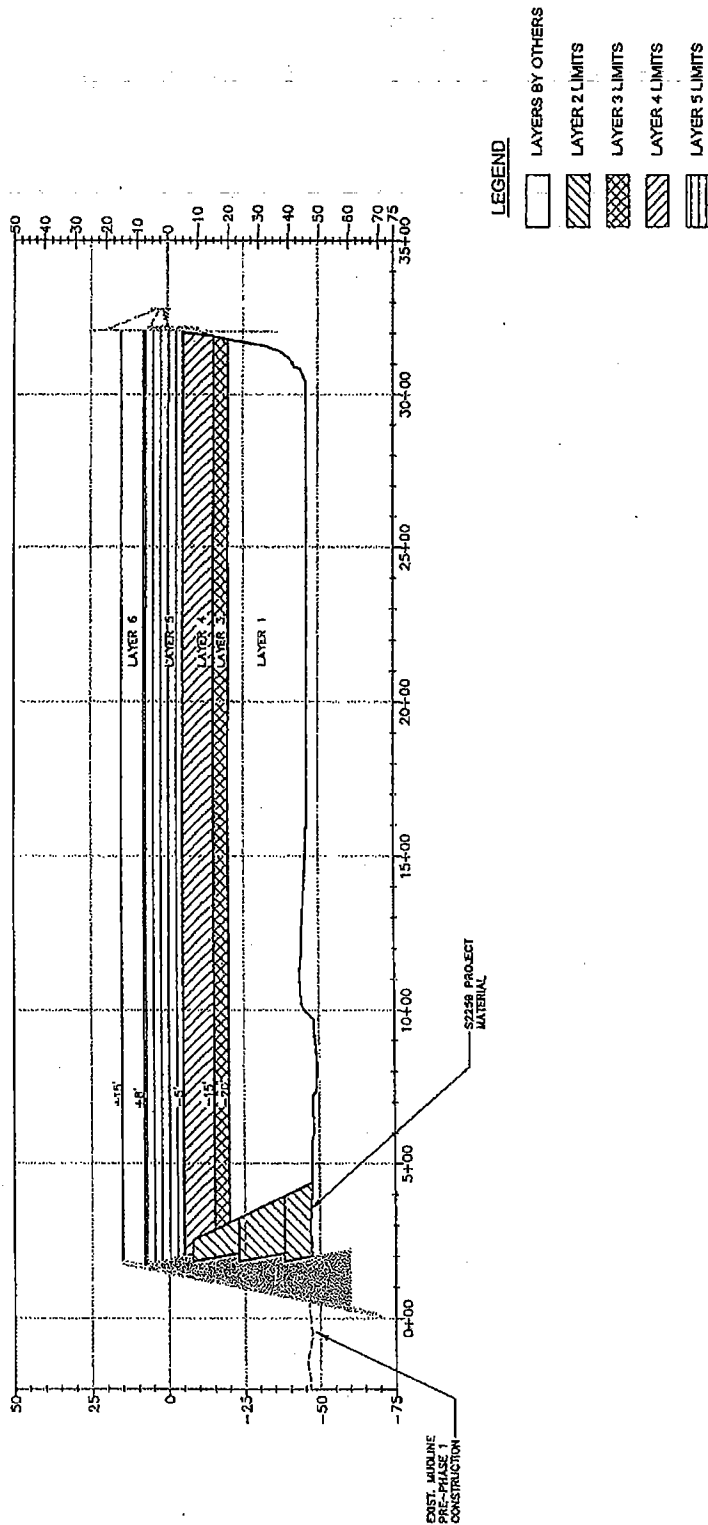
MARINA DEL REY

SLIP NO. 1 MATERIAL LAYERS

SECTION A-A



The Port of
LONG BEACH



MARINA DEL REY

SLIP NO. 1 MATERIAL LAYERS

SECTION B-B

EXHIBIT B

THIRD PARTY'S ADDRESS AND FAX NUMBER

Paul Wong
Planning Division
County of Los Angeles
Department of Beaches and Harbors
13483 Fiji Way Tr. #3
Marina del Rey, CA 90292
Tel. No.: (310) 305-9533
FAX No.: (310) 821-7076