

# LAST MINUTE AGENDA INFORMATION

## 09/01/10 Regular Meeting

*(Agenda Related Writings/Documents provided to a majority of the City Council after distribution of the Agenda Packet for the September 1, 2010 Regular meeting.)*

**ITEM NO.      DESCRIPTION**

<b>3.1</b>	<p><b>ORDINANCE NO. 2010-1110 – ADDING PROVISIONS TO THE CITY OF IMPERIAL BEACH MUNICIPAL CODE, ADDING CHAPTER 9.80 OF THE IMPERIAL BEACH MUNICIPAL CODE, PERTAINING TO ADULT ENTERTAINMENT ESTABLISHMENTS.</b></p> <p>a. Memorandum from Community Development Director Wade and Code Compliance Officer Garcias regarding change to staff report and ordinance.</p>
<b>6.4</b>	<p><b>ARMY CORPS OF ENGINEERS SAN DIEGO HARBOR MAINTENANCE DREDGING PROJECT AND ADOPTION OF RESOLUTION NO. 2010-6931 – AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE ARMY CORPS OF ENGINEERS AND THE CITY OF IMPERIAL BEACH.</b></p> <p>a. Memorandum of Agreement.</p>

## CITY OF IMPERIAL BEACH

# Memo

**To:** Honorable Mayor & City Council

**From:** Community Development Department  
Greg Wade, Community Development Department Director  
David Garcias, Code Compliance Officer

**CC:** Gary Brown – City Manager  
Jennifer Lyon – City Attorney

**Date:** August 31, 2010

**Re:** Change to Staff Report and Ordinance regarding item 3.1, Ordinance 2010-1110  
Adult Entertainment Establishments, Adding Chapter 9.80 to the Imperial Beach  
Municipal Code

RECEIVED  
2010 AUG 31 P 1:22  
CITY MANAGER/PERSONNEL  
CITY CLERK OFFICES

Changes / Additions:

1. Staff Report: Page one, first paragraph, first bullet point  
The business ~~was operating~~ advertised "Open 24-hours" 24 hours a day, 7 days a week.
2. Staff Report: Page two, second paragraph, last bullet point  
The walls and doors of the viewing booths which are bordering the adjacent aisle corridor shall ~~would be constructed to~~ be elevated 18 inches above the floor to allow for inspection by law enforcement personnel (see Diagram A).
3. Ordinance 2010-1110, Page nine, section 9.80.070. Minimum Doorways, first paragraph  
A. It is unlawful for any person to own, operate, manage, or be the employee of an adult entertainment establishment which is or contains an adult arcade unless there are at least two doorways that are each a minimum of 80 inches tall and 36 inches wide in each room where a viewing room booth is located. The doorway shall provide ingress or egress from any room unless the Building Official and Fire Marshall Fire Chief determine that one doorway is sufficient. Every owner, operator, manager, and employee shall ensure that doorways are unlocked during business hours.

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Item No. 3.1  
Last Minute Agenda

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND THE  
**THE CITY OF IMPERIAL BEACH**  
FOR ACCEPTANCE AND RETURN OF **CONTRIBUTED FUNDS**  
FOR THE **MAINTENANCE OF THE APPROACH CHANNEL**  
OF THE **SAN DIEGO HARBOR FEDERAL NAVIGATION CHANNEL**

CITY MANAGER/PERSONNEL  
CITY CLERK OFFICES

2010 AUG 31 P 5:28

RECEIVED

This MEMORANDUM OF AGREEMENT (hereinafter referred to as "MOA"), entered into this day of **September 2<sup>nd</sup>, 2010**, 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** (hereinafter the "District Engineer"), and the **City of Imperial Beach** (hereinafter the "Contributor"), represented by the Mayor.

WITNESSETH THAT:

WHEREAS, the construction of **San Diego Harbor including its Federal Navigation Channel** (hereinafter referred to as the "Project") was authorized by the **Rivers and Harbors Act of 1852**; and

WHEREAS, the construction of improvements to the authorized Federal Navigation Channel were authorized by the Rivers and Harbors Act of 1968; and

WHEREAS, the 33 U.S.C. § 2211(b) (1), which codifies Section 101 of the Water Resources Development Act of 1986 (Public Law 99-662), specifies the cost-sharing requirements applicable to the Project; and

WHEREAS, the Government is responsible for maintaining authorized navigation depths in San Diego Harbor and its Federal Navigation Channel; and

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

WHEREAS, the Maintenance of the Project will, for the purposes of this MOA, consist of the dredging of the entrance and approach channel to the San Diego Harbor and transporting dredged materials to offshore Imperial Beach for deposition in conformance with: (1) the debris management plan, (2) the Final Environmental Assessment for the San Diego Harbor Maintenance Dredging Project (March 2009), and (3) the Final Supplemental Environmental Assessment for the San Diego Harbor Maintenance Dredging Project (June 2010) as specified in Construction Solicitation and Specifications (August 2010), IFB No. W912PL-10-B-0018, Section 01 57 20, Environmental Protection; and

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Item No. 6.4

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 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; and

WHEREAS, the Contributor considers it to be in its own interest to have materials dredged from San Diego Harbor and its entrance channel disposed of in a beneficial manner offshore at Imperial Beach; and

WHEREAS, the Government has prepared documentation pursuant to the National Environmental Policy Act which recommends disposal of the dredged material offshore at Imperial Beach; and

WHEREAS, the Contributed funds shall be provided for the incremental costs of the Government **transporting the materials from Coronado Beach to Imperial Beach**; and

WHEREAS, the District Engineer, **Los Angeles District**, is authorized under authority delegated by the Secretary of the Army/Assistant Secretary of the Army for Civil Works to accept **Contributed funds** in the amount of \$2,000,000 or less for work dealing with non-Federal requests for dredging non-Federal berthing areas and channels/slips or to dispose of dredged material in a beneficial manner (i.e., non-Federal beach nourishment and wetland development), where Federal funds have been appropriated for Federal project work to which the proposed non-Federal work relates, under the following conditions: (1) the Contributed funds are not to be used to implement or maintain any portion of a Federal project for which a Federal contribution is authorized; and (2) the proposed non-Federal work will be accomplished as part of the maintenance dredging of the Federal navigation project associated with the proposed non-Federal work; and to execute MOAs associated therewith;

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

1. Subject to any necessary appropriation, the Contributor shall contribute to the Government the following sum, in cash: \$150,000.00 A for the incremental cost of the Government transporting the dredged material from Coronado Beach to Imperial Beach.

2. The Contributed funds specified in paragraph 1 above shall be made as follows: provide the Government electronic funds transfer directed to the USACE Finance Center, 5722 Integrity Drive, Millington, TN 38054, no later than September 3rd, 2010.

3. In the event that the Contributor contributes more or less than the amount listed in paragraph 1 above, or makes its

contributions earlier or later than the dates listed in paragraph 1 above, this 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** of the Project only as specified in paragraph 1 above.

5. The Government shall provide the Contributor with quarterly accountings of its expenditures of **Contributed** funds for **Maintenance**. 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** 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, subject to the availability of funds, shall return to the Contributor **Contributed** funds not expended by the Government. If the Government transports no materials to the nearshore off the coast of Imperial Beach, then it shall return all Contributed funds to the Contributor.

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

9. 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 Partnership Agreement with the Contributor; constructing the Project; including the Project in the Government's budget; or completing the **Maintenance** of the Project.

10. 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 negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

11. The Contributor shall hold and save the Government free from all damages arising from the **Maintenance** as defined in this MOA, except for damages due to the fault or negligence of the Government or its contractors.

12. 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, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. § 2000d), and Department of Defense Directive 5500.11 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".

13. 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 officer, agent, or employee of the other.

14. 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 therefrom.

15. Notices.

a. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been 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:           **825 Imperial Beach Blvd.  
Imperial Beach, CA 91932**

If to the Government:           **915 Wilshire Blvd.  
Los Angeles, CA 90017**

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 communication 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 CITY OF IMPERIAL BEACH**

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Item No. 6.4

BY: \_\_\_\_\_  
**R. Mark Toy, P.E.**  
**Colonel, US Army**  
**Commander and District Engineer**

BY: \_\_\_\_\_  
**Mayor Jim Janney**  
**City of Imperial Beach**

DRAFT

CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer of the City of Imperial Beach, that the City of Imperial Beach 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 City of Imperial Beach in connection with the maintenance of the **San Diego Harbor Federal Navigation Channel**, 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. § 1962d-5b), and that the persons who have executed this Agreement on behalf of the **City of Imperial Beach** have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**[SIGNATURE]**  
**Jim Janney**  
**Mayor, City of Imperial Beach**

DRAFT

CERTIFICATION REGARDING LOBBYING

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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.

**[SIGNATURE OF MOA SIGNATORY]**  
**Jim Janney]**  
**Mayor, City of Imperial Beach**

DATE: \_\_\_\_\_