

Memorandum of Agreement
Between
Harris County Flood Control District
And

The U.S. Army Corps of Engineers, Galveston District

THIS AGREEMENT is entered into this 8 day of January, 2009, by and between the Department of the Army, represented by the U.S. Army Corps of Engineers, Galveston District (hereinafter "Galveston District"), and the Harris County Flood Control District (hereinafter "HCFCD"), represented by the Harris County Commissioners Court acting by and through the Harris County Judge, collectively referred to as "the parties."

WITNESSETH, THAT:

WHEREAS, Section 214 of the Federal Water Resources Development Act of 2000 ("WRDA 2000"), as amended, provides as follows:

- (a) IN GENERAL. - The Secretary (of the Army), after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army.
- (b) EFFECT ON PERMITTING. - In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision making with respect to permits, either substantively or procedurally; and

WHEREAS, Public Law 110-114 was passed into law on November 8, 2007, extending the sunset clause for Section 214 of WRDA 2000 to December 31, 2009; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214 of WRDA 2000 to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers has authorized the Corps District and Division Engineers to accept and expend funds contributed by non-Federal entities to expedite the evaluation of permits subject to certain limitations, including the publishing of public notices; and

WHEREAS the HCFCD proposed, by letter dated April 11, 2008, to transfer funds for a designated full-time position to expedite wetland verifications, jurisdictional determinations, and permitting requests submitted by HCFCD; and

WHEREAS, the Galveston District issued an initial Public Notice dated June 11, 2008, regarding its intent to accept and expend funds contributed by non-Federal public entities for such purposes; and

WHEREAS, the Galveston District Engineer has determined that expenditure of funds received from HCFCD will be in compliance with Section 214 of WRDA 2000, and a public notice dated December 5, 2008, regarding the District Engineer's decision has been issued; and

WHEREAS, it is understood and acknowledged by the parties that Galveston District's review of HCFCD projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, HCFCD is a non-Federal public entity;

NOW, THEREFORE, HCFCD and the Galveston District agree as follows:

ARTICLE I - PURPOSE AND AUTHORITY

Pursuant to Section 214 of WRDA 2000 (Public Law 106-541), as amended, this Agreement is entered into by and between the Galveston District and HCFCD for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the acceptance and expenditure of funds contributed by HCFCD to expedite the evaluation of permits under the jurisdiction of the Army.

ARTICLE II - SCOPE

A. The HCFCD may provide funds to Galveston District during Galveston District's fiscal years 2008 and 2009, in an amount or amounts agreed upon by Galveston District and the HCFCD, and may provide additional funds in future fiscal years if authorized by Federal law and as may be agreed upon by the parties hereto. It is understood that the use of funds accepted hereunder will not impact impartial decision making with respect to any permit, either substantively or procedurally. The Army Corps of Engineers' regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from HCFCD will be used to augment the Galveston District regulatory budget in accordance with the provisions of WRDA 2000, as amended. HCFCD will provide funds in advance of the Galveston District incurring any financial obligation under this Agreement. HCFCD contributions under this Agreement will be made to the Finance and Accounting Officer, U.S. Army Corps of Engineers, Galveston District.

B. It is expressly understood and agreed by the parties, such understanding and agreement being of the essence to this Agreement, that HCFCD has not appropriated funds hereunder to fulfill any obligation created by the terms of this Agreement; and that HCFCD may, but shall not be obligated to, from time to time budget and appropriate funds to fulfill any obligation created hereunder. In the event that HCFCD shall fail or refuse to appropriate or expend funds necessary to fund any obligation under the terms of this Agreement, the sole remedy of the Galveston District for such failure or

refusal shall be to terminate this Agreement; provided further, however, that before terminating this Agreement for such failure or refusal, the District shall first notify HCFCD in writing of its intent to terminate and give HCFCD not less than thirty (30) days to remedy such deficiency, and thereafter only terminate this Agreement in the event that HCFCD fails or refuses to remedy the deficiency.

C. The Galveston District will establish a separate account to track receipt and expenditure of the funds associated with its review of HCFCD permits. Galveston District employees will charge their time against the account when they do work to expedite resolution of any HCFCD permit requests.

D. Funds contributed by HCFCD hereunder will be expended primarily for permit evaluation by Senior Corps Regulatory Project Managers performing expedited processing activities for HCFCD. However, this Agreement does not preclude funding necessary to provide for the time, travel and lodging costs of Corps staff and other expertise necessary to address project-related issues that may arise, such as cultural resources issues. Such activities will include, but not be limited to, the following: application review meetings, jurisdictional determinations, jurisdictional delineation verifications, Environmental Impact Statement (EIS) consultant meetings, agency meetings, public scoping meetings, and meetings with HCFCD. Funds will not be expended for review of Project Managers' work by supervisors or by other persons or elements of the Galveston District in the decision making chain of command. Enforcement or compliance activities will not be paid for from the funds contributed by HCFCD hereunder, nor will such funds be used for paying the costs of public hearings and distribution of public notices.

E. If HCFCD's funds are expended and are not renewed, any remaining HCFCD permit applications will be handled like those of any other non-participant, in a manner decided by the assigned regulatory Project Manager and his or her supervisor.

F. The Galveston District will provide HCFCD with quarterly reports that show expenditures by permit/project, including all travel receipts and travel purpose summaries. Reports are due fifteen (15) working days following the end of each calendar quarter.

G. Any funds required beyond Fiscal Year 2009 will be subject to approval by Harris County Commissioners Court on behalf of HCFCD.

ARTICLE III - IMPARTIAL DECISION MAKING

It is understood and agreed that in order to ensure that the funds will not impact impartial decision making with respect to HCFCD permit applications, the following procedures mandated from Headquarters, U. S. Army Corps of Engineers, will apply to all cases using additional funds provided by HCFCD as a participating non-Federal public entity:

1. All final permit decisions for cases where these funds are used must be reviewed at least by one level above the decision maker, unless the decision maker is the Chief, Regulatory Branch, then the reviewer would be the Chief, Planning, Environmental and Regulatory Division.
2. All final permit decisions for cases where these funds are used will be made available on the Galveston District Regulatory web page.
3. The Galveston District will not eliminate any procedures or decisions that would otherwise be required for that type of project and permit application under consideration.
4. The Galveston District must comply with all applicable laws and regulations.
5. Funds will only be expended to expedite the final decision on the permit application. Funds will not be expended for the review of the decision maker's decision. If contracts are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by Corps regulatory program employees before the decision is made.

ARTICLE IV - COMMUNICATIONS

To provide for consistent and effective communications between the Galveston District and HCFCD, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this Agreement.

ARTICLE V - PUBLIC INFORMATION

Justification and explanation of HCFCD programs or projects before other agencies, departments, offices, or the general public will not be the responsibility of the Galveston District. The Galveston District is responsible for public information regarding Galveston District regulatory activities. HCFCD will coordinate with the Galveston District before making formal, official statements regarding Galveston District regulatory activities funded under this Agreement.

ARTICLE VI - APPLICABLE LAWS

This Agreement and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, policies and procedures of the United States.

ARTICLE VII - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties regarding implementation of this Agreement (excluding any specific permit application/decision), HCFCD and the Galveston District shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

ARTICLE VIII - AMENDMENT, MODIFICATION AND TERMINATION

A. This Agreement may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this Agreement by providing written notice to the other party. Such termination shall be effective upon the sixtieth (60th) calendar day following notice, unless a later date is set forth. In the event of termination, HCFCD shall continue to be responsible for all costs incurred by the Galveston District under this Agreement prior to the effective date of such termination and for the costs of closing out or transferring any on going contracts.

B. This Agreement shall remain in force until: 1) December 31, 2009, unless Federal law authorizes the Corps of Engineers to accept funds for the purposes described in this Agreement beyond that date, in which case this Agreement shall terminate at such time as applicable Federal law no longer authorizes acceptance of such funds; or 2) the Agreement is terminated pursuant to this article; or 3) the funds described herein have been expended and not replenished following appropriate notice between the parties, whichever occurs first.

C. Within ninety (90) days of termination, or the expiration of this Agreement, the Galveston District shall conduct an accounting to determine the actual costs of work conducted under this Agreement. Within thirty (30) days of completion of this accounting, the Galveston District shall return to HCFCD any funds advanced in excess of the actual costs. Funds may be provided to HCFCD either by check or by electronic funds transfer.

ARTICLE IX - MISCELLANEOUS

A. Other Relationships or Obligations

This Agreement does not affect any pre-existing or independent relationships or obligations between HCFCD and the Galveston District.

B. Severability

If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE X - EFFECTIVE DATE

This Agreement shall become effective when signed by both the HCFCF and the Galveston District.

APPROVED AS TO FORM:

HARRIS COUNTY FLOOD CONTROL DISTRICT

MIKE STAFFORD
County Attorney

By Ed Emmett
ED EMMETT
County Judge

By [Signature]
PAUL TAPARAUSKAS
Senior Assistant County Attorney

DATE: DEC 23 2008

DATE: 12/10/08

U.S. ARMY CORPS OF ENGINEERS
Galveston District

[Signature]
DAVID C. WESTON
Colonel, Corps of Engineers
District Engineer

DATE: 18 JANUARY 2009