

Memorandum of Agreement  
Between  
The Port of Houston Authority  
And  
The U.S. Army Corps of Engineers, Galveston District

THIS AGREEMENT is entered into this 19<sup>th</sup> day of MARCH, 2012, by and between the Department of the Army, represented by the District Engineer for the U.S. Army Corps of Engineers, Galveston District (hereinafter "Galveston District"), and the Port of Houston Authority of Harris County, Texas, a political subdivision of the State of Texas represented by the Executive Director, (hereinafter "Port Authority"), 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 decisionmaking with respect to permits, either substantively or procedurally; and

WHEREAS, Public Law 111-315 amended Section 214 of WRDA 2000 by extending the sunset clause to December 31, 2016; 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 Port Commission, as the governing body of the Port Authority, has determined that a public purpose of the Port Authority would be served by entry into this Memorandum of Agreement providing for the transfer of funds to the Galveston District to provide costs of a designated full-time position to expedite wetland verifications, jurisdictional determinations and permitting requests submitted by the Port Authority (such work being called "PHA Projects"); and

WHEREAS, the Port Commission, as the governing body of the Port Authority, authorized entering into this Memorandum of Agreement by action taken at its meeting of December 13, 2011 and evidenced in Minute Number 2011-1213-41; and

WHEREAS, the Galveston District issued an initial Public Notice dated December 12, 2011, 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 the Port Authority will be in compliance with Section 214 of WRDA 2000, and a public notice dated February 14, 2012, 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 PHA Projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, the Port Authority is a non-Federal public entity;

NOW, THEREFORE, the Port Authority 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 the Port Authority for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the acceptance and expenditure of funds contributed by the Port Authority to expedite the evaluation of PHA Projects under the jurisdiction of the Army.

#### ARTICLE II – SCOPE

A. The Port Authority may provide funds to Galveston District during Galveston District's fiscal year 2012, in an amount or amounts determined by the Port Authority and acceptable to the Galveston District, and the Port Authority may provide additional funds in future fiscal years if authorized by Federal law and acceptable to the Galveston District. 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 the Port Authority will be used to augment the Galveston District Regulatory budget in accordance with the provisions of Section 214 of WRDA 2000, as amended. The Port Authority will provide funds in advance of the Galveston District incurring any financial obligation under this Agreement. The Port

Authority's 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 the Port Authority has not appropriated funds hereunder to fulfill any obligation created by the terms of this agreement; and that the Port Authority 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 the Port Authority shall fail or refuse to appropriate or expend funds for use 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 the Port Authority in writing of its intent to terminate and give the Port Authority not less than thirty (30) days to remedy such deficiency, and thereafter only terminate this agreement in the event that the Port Authority 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 PHA Projects. Galveston District employees will charge their time against the account when they do work to expedite resolution of any issues in regard to PHA Projects.

D. Funds contributed by the Port Authority hereunder will be expended primarily for permit evaluation by Regulatory Project Managers and/or Regulatory Specialists performing expedited processing activities for PHA Projects. However, this Agreement does not preclude use of the funding to provide for necessary time, travel and lodging costs of Corps staff and other expertise necessary to address PHA 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, functional or condition assessment verification, Environmental Impact Statement (EIS) consultant meetings, agency meetings, public scoping meetings, and meetings with the Port Authority in regard to PHA Projects. PHA Projects 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 hereunder, nor will such funds be used for paying the costs of public hearings and distribution of public notices. Funds provided under this Agreement shall not be used for any other purposes than those provided for under this paragraph.

E. If the Port Authority's funds are expended and are not renewed; any remaining PHA Projects 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 the Port Authority with quarterly reports that show expenditures by permit/project, including all travel receipts and travel purpose summaries. Accounting procedures, reports, receipts and documentation of all expenditures made by the Government pursuant to this Memorandum of Agreement shall be documented in accordance with standard Federal agency accounting policies. Records will be maintained in a manner sufficient for internal and external audits of all funds received and expended by the Galveston District pursuant to this agreement. For compliance with OMB Circular 133 (Single Audit Act) independent auditors will be notified by the Port Authority of these expenditures and this agreement. Reports will be provided to the Port Authority by the Galveston District within fifteen (15) working days following the end of each calendar quarter.

### 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 PHA Projects, the following procedures mandated from Headquarters, U. S. Army Corps of Engineers, will apply to all cases using additional funds provided by the Port Authority 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 the Port Authority, 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 the Port Authority 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. The Port Authority 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), the Port Authority 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 (60<sup>th</sup>) calendar day following notice, unless a later date is set forth. In the event of termination, the Port Authority 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, 2016, 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 the Port Authority any funds advanced in excess of the actual costs. Funds may be provided to the Port Authority 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 the Port Authority 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 Port Authority and the Galveston District.

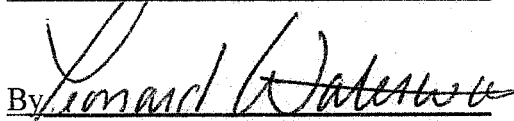
APPROVED AS TO FORM:



Margot Campbell  
Assistant General Counsel  
Port of Houston Authority

DATE: 3/13/12

PORT OF HOUSTON AUTHORITY



Leonard D. Waterworth  
Interim Executive Director

DATE: 3-13-2012

U.S. ARMY CORPS OF ENGINEERS  
GALVESTON DISTRICT



Christopher W. Sallese  
Colonel, Corps of Engineers  
District Engineer

DATE: 3/19/12

Memorandum of Agreement  
Between  
The Port of Houston Authority  
and  
The U.S. Army Corps of Engineers, Galveston District

Agreement entered into the 19<sup>th</sup> day of March 2012; Port of Houston Authority authorized by action taken at its Port Commission meeting of December 13, 2011, evidenced by Minute Number: 2011-1213-41

**FUNDS ARE AVAILABLE TO MEET  
THIS OBLIGATION WHEN DUE:**

*Barbara J. Schott*  
Barbara J. Schott, County Auditor  
by *Richard E. Brown*  
3/30/12