

AMENDED AGREEMENT
BETWEEN
THE PORT OF TACOMA
AND
THE DEPARTMENT OF THE ARMY

THIS AGREEMENT is entered into this 6th day of July, 2006, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Army"), represented by the U.S. Army Corps of Engineers (Corps), Seattle District Engineer and the PORT OF TACOMA, represented by its Director of Environmental Programs, (hereinafter the "Port").

WITNESSETH, THAT:

WHEREAS, Section 214 of the Water Resources Development Act of 2000, Public Law No. 106-541 ("WRDA Section 214"), 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.
- (c) Duration of Authority.--The authority provided under this section shall be in effect from October 1, 2000, through December 31, 2006.

WHEREAS, Public Law 108-137, was signed into law on December 1, 2003, extending the sunset clause for Section 214 of the WRDA 2000 to September 30, 2005; and

WHEREAS, Public Law 109-209, was signed into law on March 24, 2006, extending the sunset clause for Section 214 of the WRDA 2000 to December 31, 2006; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out this section to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated July 17, 2001, has authorized the Corps' District and Division Engineers to accept and expend funds contributed by non-federal public entities subject to certain limitations including the publishing of public notices; and

WHEREAS, the Seattle District issued an initial Public Notice dated May 15, 2006, regarding its intent to accept and expend funds contributed by non-Federal public entities; and

WHEREAS the Seattle District Engineer has determined that expenditure of funds received from the Port will be in compliance with the Act, and a public notice dated June 29, 2006, regarding the District Engineer's decision has been issued; and

WHEREAS, the Port is a non-Federal public entity.

NOW, THEREFORE,

ARTICLE I - PURPOSE AND AUTHORITY

Pursuant to Section 214 of WRDA (Pub.L 106-541) ("Section 214"), as amended, this Agreement is entered into by and between the Army and the Port (collectively referred to as "the parties") 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 to expedite the evaluation of permits under the jurisdiction of the Army.

ARTICLE II - SCOPE

A. The Port will provide to Seattle District at the beginning of each fiscal year beginning October 1, 2006, an amount, to be agreed upon by the Port and the Seattle District to expedite the evaluation of various Port permits under the jurisdiction of the Seattle District. All funds transfers under this Agreement will be between the Seattle District and the Port. It is understood that the use of funds accepted hereunder will not impact impartial decisionmaking with respect to permits, either substantively or procedurally. The Army Corps of Engineers' regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received from non-Federal public entities will be used to expedite the evaluation of permits.

B. The Seattle District will establish a separate account to track receipt and expenditure of the funds associated with its review of the Port permits. Seattle District regulatory employees will charge their time against the account when they do work to expedite resolution of any Port permit request.

C. Funds contributed by the Port hereunder will mainly be expended on the salaries and overhead of Corps Regulatory Project Managers performing expedited processing activities for the Port. Such activities will include, but not be limited to, the following: application intake review, drawings correction, jurisdictional determinations,

site visits, public notice preparation, preparation of correspondence, conduct of the public interest review, preparation of draft permit decision documents, and meetings with the Port. Funds will also be expended for the administration and tracking of the funds contributed under Section 214. Funds will *not* be expended for review of Project Managers' work by supervisors or other persons or elements of the Seattle District in the decisionmaking chain of command. Enforcement or compliance activities will not be paid for from the funds contributed by the Port hereunder, nor will such funds be used for paying the costs of public hearings and distribution of public notices.

D. Funds may also be expended by other Corps elements (including but not limited to Environmental Resource Section, Engineering Division, PSDDA, etc.) or to hire contractors to perform select duties, such as site visits, technical writing, copying, reviewing drafts of reference general biological assessments for use by the Port and others, preparing regional general permits for use by the Port and others, Essential Fish Habitat determinations, and other technical documents, including draft environmental documents. All activities described in this paragraph and paragraph C. above will be performed in accordance with a management plan to be agreed upon by the parties.

III. IMPARTIAL DECISIONMAKING

A. It is understood and agreed that in order to ensure that the funds will not impact impartial decision making with respect to Port permit applications, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, will apply to all cases using additional funds provided by the Port 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 decisionmaker, unless the decisionmaker is the District Engineer. For example, if the decisionmaker is the Chief, Regulatory Branch, then the reviewer would be the Chief, Operations Division.
2. All final permit decisions for cases where these funds are used will be made available on the Seattle District Regulatory web page.
3. The Seattle District will not eliminate any procedures or decisions that would otherwise be required for the type of project and permit application under consideration.
4. The Seattle District shall 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 decisionmaker's decision. If contracts are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Corps

regulatory program employees before the decision is made.

ARTICLE IV - COMMUNICATIONS

To provide for consistent and effective communication between the Seattle District and the Port, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this Agreement. The Port principal representative is:

Pam Jenkins
Director, Environmental Programs
Port of Tacoma
Post Office Box 1837
Tacoma, Washington 98401
(253) 428-8659

The principal representative for the Seattle District is:

Michelle Walker, Chief, Regulatory Branch
U.S. Army Corps of Engineers, Seattle District
P.O. Box 3755
Seattle, Washington 98124-3755
(206) 764-6915

Any notice required by this Agreement shall be written and sent to the Principal Representative by first-class mail or recognized overnight courier. Notices shall be deemed delivered (i) on the third day after mailing when sent by first-class mail and the post mark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; or (ii) on the second business day after deposit with a recognized overnight courier.

ARTICLE V - APPLICABLE LAWS

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

ARTICLE VI - 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 and the Seattle 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 VII - 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 Principal Representative of the other party at the listed address above. Such termination shall be effective upon the sixtieth (60) calendar day following such notice. In the event of termination, the Port shall continue to be responsible for all costs incurred by the Seattle District under this Agreement prior to the effective date of such termination.

B. This Agreement shall remain in force until Section 214 expires, the Agreement is terminated pursuant to this Article, or until the funds have been expended and not replenished following 60 days notice to the Port, whichever occurs first.

C. Within sixty (60) days of termination, or the expiration of the Agreement, the Seattle District shall conduct an accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, the Seattle District shall return to the Port any funds advanced in excess of the actual costs. Funds may be provided to the Port either by check or by electronic funds transfer.

ARTICLE VIII - EFFECTIVE DATE


This Agreement shall become effective when signed by both the Port of Tacoma and the Seattle District, U.S. Army Corps of Engineers.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

DEPARTMENT OF THE ARMY:


PORT OF TACOMA:

BY:



John K. Leighow
Acting District Engineer,
Seattle District,
U.S. Army Corps of Engineers

BY:



Pam Jenkins
Director, Environmental Programs
Port of Tacoma

DATE: 7/6/06

DATE: 6-29-06