

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

THIS AGREEMENT is entered into this 26<sup>th</sup> day of February, 2002, 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 SEATTLE, represented by its Executive Director, and the PORT of TACOMA, represented by its Executive Director, (hereinafter the "Ports").

WITNESSETH, THAT:

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

(a) IN GENERAL. - In Fiscal Years 2001 through 2003, 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, 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 entities subject to certain limitations including the publishing of public notices; and

WHEREAS, the Seattle District issued an initial Public Notice dated August 24, 2001 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 Ports will be in compliance with the Act, and a public notice dated December 7, 2001, regarding the District Engineer's decision has been issued; and

WHEREAS, the Ports are non-Federal public entities.

NOW, THEREFORE,

#### ARTICLE I - PURPOSE AND AUTHORITY

Pursuant to Section 214 of the WRDA (Pub.L 106-541), this Agreement is entered into by and between the Army and the Ports (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 Ports to expedite the evaluation of permits under the jurisdiction of the Army.

#### ARTICLE II - SCOPE

A. The Ports will provide to Seattle District an amount to be agreed upon by the Ports and the Seattle District for fiscal years 2002 and 2003 to expedite the evaluation of various Port permits under the jurisdiction of the Seattle District. All funds transferred under this Agreement will be between the Seattle District and the Port of Seattle as Principal Representative for the Ports. It is understood that the use of funds accepted hereunder will not impact impartial decisionmaking with respect to such permits, either substantively or procedurally. The Corps' 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 augment the Seattle District regulatory budget in accordance with the provisions of WRDA.

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

C. Funds contributed by the Ports hereunder will mainly be expended on the salaries and overhead of Corps Regulatory Project Managers performing expedited processing activities for the Ports. 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 Ports. 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 Ports 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, 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 Ports and



others, preparing regional general permits for use by the Ports 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 the project ranking and scheduling list provided to the Seattle District on a bi-monthly basis by the Port of Seattle, in consultation with the Port of Tacoma.

E. If the Ports' funds are expended and are not augmented or renewed, any remaining Port 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 Seattle District, the Port of Seattle and the Port of Tacoma will have regular bi-monthly meetings to discuss the status of existing permit applications and potential upcoming permit actions. At these meetings the Seattle District will provide a detailed running account of the regulatory employees time and any other time or contract expenditures being charged to this account.

### ARTICLE III - IMPARTIAL DECISIONMAKING

A. It is understood and agreed that in order to ensure that the funds will not impact impartial decisionmaking 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 Ports as a participating non-Federal public entities:

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 that type of project and permit application under consideration.
4. The Seattle 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 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 Ports, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this Agreement. The Port of Seattle will be the central point of contact for the Ports on matters relating to this agreement, and their Principal Representative is:

Douglas A Hotchkiss  
Port of Seattle  
P.O. Box 1209  
Seattle, WA 98111  
(206) 728-3192

The principal representative for the Seattle District is:

Thomas F. Mueller, Chief, Regulatory Branch  
U.S. Army Corps of Engineers, Seattle District  
P.O. Box 3755  
Seattle, Washington 98124-3755  
(206) 764-6695

Any notice required by this Agreement shall be written and sent to the Principal Representative by first-class mail of 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 Ports 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<sup>th</sup>) calendar day following notice. In the event of termination, the Ports 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 either September 30, 2003, the Agreement is terminated pursuant to this Article, or until the funds have been expended and not replenished following ninety (90) notice to the Ports, 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 of Seattle any funds advanced in excess of the actual costs. Funds may be provided to the Ports either by check or by electronic funds transfer.

## ARTICLE VIII - EFFECTIVE DATE

This Agreement shall become effective when signed by both the Ports and the Seattle District.

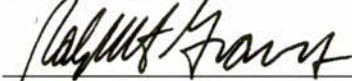
Port of Seattle



Mic Dinsmore,  
Executive Director

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

U.S. Army Corps of Engineers,  
Seattle District



Ralph H. Graves,  
Colonel, Corps of Engineers  
District Engineer

DATE: 26 Feb 02

Port of Tacoma



Andrea Riniker,  
Executive Director

DATE: Feb. 12 2002

RECEIVED

DEC 2 9 2003

ENVIRONMENTAL DEPT.

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

THIS AGREEMENT is entered into this twenty-second day of December, 2003, 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 Andrea Riniker its Executive Director, (hereinafter the "Port").

WITNESSETH, THAT:

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

(a) IN GENERAL.-In Fiscal Years 2001 through 2003, 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 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, 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 entities subject to certain limitations including the publishing of public notices; and

WHEREAS, the Seattle District issued an initial Public Notice dated August 24, 2001, regarding its intent to accept and expend funds contributed by non-Federal public entities;



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 December 7, 2001, 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) and Section 114 of the Energy and Water Appropriations bill, H 2754 (Pub.L 108-137), 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 an amount to be agreed upon by the Port and the Seattle District for fiscal years 2004 and 2005, and additional years if applicable (sunset clause eliminated), to expedite the evaluation of various Port permits under the jurisdiction of the Seattle District. All funds transferred under this Agreement will be between the Seattle District and the Port of Tacoma. It is understood that the use of funds accepted hereunder will not impact impartial decisionmaking with respect to such 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 augment the Seattle District regulatory budget in accordance with the provisions of WRDA.

B. The Seattle District will establish a separate account to track receipt and expenditure of the funds associated with its review of the Port's permits. Seattle District regulatory employees will charge their time against the account when they do work to expedite resolution of any Port of Tacoma 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 *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 the project ranking and scheduling list provided to the Seattle District on a bi-monthly basis by the Port of Tacoma.

E. If the Port's funds are expended and are not augmented or renewed, any remaining Port 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 Seattle District and the Port of Tacoma will have regular bi-monthly meetings to discuss the status of existing permit applications and potential upcoming permit actions. At these meetings the Seattle District will provide a detailed running account of the regulatory employees time and any other time or contract expenditures being charged to this account.

### 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 that type of project and permit application under consideration.



4. The Seattle 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 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 of Tacoma's principal representative is:

Richard Gilmur  
P.O. Box 1837  
Tacoma, WA 98401-1837  
(253) 383-9464

The principal representative for the Seattle District is:

Thomas F. Mueller, Chief, Regulatory Branch  
U.S. Army Corps of Engineers, Seattle District  
P.O. Box 3755  
Seattle, Washington 98124-3755

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<sup>th</sup>) calendar day following 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 either September 30, 2005, unless the sunset clause is eliminated, the Agreement is terminated pursuant to this Article, or until the funds have been expended and not replenished following 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 of Tacoma 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

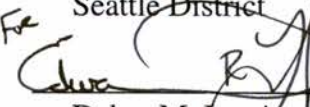
This Agreement shall become effective when signed by both the Port and the Seattle District.

Port of Tacoma



Andrea Riniker  
Executive Director

U.S. Army Corps of Engineers,  
Seattle District

For  UJC EN  
Debra M. Lewis, ACTING CDR  
Colonel, Corps of Engineers  
District Engineer

DATE: December 16, 2003

DATE: 22 Dec 03





REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
SEATTLE DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 3755  
SEATTLE, WASHINGTON 98124-3755

Regulatory Branch

DEC 24 2003

Ms. Anita J. Woods  
Environmental Program Coordinator  
Port of Tacoma  
P.O. Box 1837  
Tacoma, Washington 98401-1837

Reference: WRDA Agreement '04-05

Dear Ms. Woods:

It is with pleasure that I transmit to you and your agency the enclosed Amended Agreement Between the Port of Seattle and the Department of the Army. It was signed by Andrea Riniker on behalf of your agency on December 16, 2003, and by the U.S. Army Corps of Engineers, Seattle District, District Engineer on December 22, 2003.

The Federal Water Resources Development Act (WRDA 2000) authorization had expired on September 30, 2003, but has been extended to September 30, 2005, by Public Law 108-137. This amended agreement extends our first agreement to that same period of time and beyond if the sunset clause is removed prior to September 30, 2005.

If you have any questions concerning this agreement or the manner it is to be implemented, please call Michael Lamprecht at (206) 764-6848.

Sincerely,

  
Thomas F. Mueller  
Chief, Regulatory Branch

**AMENDMENT NO. 1  
TO AGREEMENT BETWEEN  
THE PORT OF TACOMA  
AND THE UNITED STATES  
ARMY CORPS OF ENGINEERS SEATTLE DISTRICT**

WHEREAS, Public Law 109-99, was signed into law on November 11, 2005, extending the sunset clause for Section 214 of the WRDA 2000 to March 31, 2006.

NOW, THEREFORE,

The December 22, 2003 Agreement between the Port of Tacoma (Port) and the Department of the Army, represented by the United States Army Corps of Engineers, Seattle District Engineer (Seattle District) collectively referred to as "the Parties," is amended as follows:

ARTICLE VII. – AMENDMENT, MODIFICATION AND TERMINATION

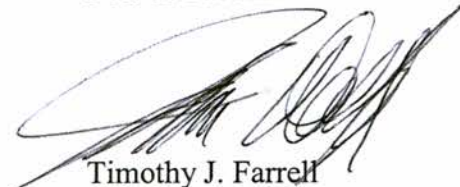
Paragraphs B and C of Article VII are deleted and replaced with the following:

B. The provisions of this Agreement shall remain in force consistent with the provisions of the statutory authority until March 31, 2006, unless the Agreement is first terminated under this article.

C. Within sixty (60) days of termination, or the expiration of the Agreement, without further amendment or renewal, 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 provide to the Port an accounting of the costs and 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.

This Amendment shall become effective when signed by both the Port and the Seattle District.

Port of Tacoma



Timothy J. Farrell  
Executive Director

DATE: 

U.S. Army Corps of Engineers,  
Seattle District

Debra M. Lewis  
Colonel, Corps of Engineers  
District Engineer

DATE:





REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
SEATTLE DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 3755  
SEATTLE, WASHINGTON 98124-3755

JUL 6 2006

Regulatory Branch

Ms. Pam Jenkins  
Director, Environmental Programs  
Port of Tacoma  
Post Office Box 1837  
Tacoma, Washington 98401

Reference: WRDA Agreement '06

Dear Ms. Jenkins:

It is with pleasure that I transmit to you and your agency the enclosed Amended Agreement between the Port of Tacoma and the Department of the Army. It was signed by you on behalf of your agency on June 29, 2006, and by the U.S. Army Corps of Engineers, Seattle District, Acting District Engineer on July 6, 2006.

The Federal Water Resources Development Act (WRDA 2000) authorization had expired on March 31, 2006, but has been extended to December 31, 2006, by Public Law 109-209. This amended agreement extends our first agreement to that same period of time and beyond if the sunset clause is removed or extended.

If you have any questions concerning this agreement or the manner it is to be implemented, please contact Jessica Winkler at (206) 764-5528 or by e-mail at [Jessica.G.Winkler@usace.army.mil](mailto:Jessica.G.Winkler@usace.army.mil).

Sincerely,

Michelle Walker  
Chief, Regulatory Branch

Enclosure

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

THIS AGREEMENT is entered into this 6<sup>th</sup> 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 of 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

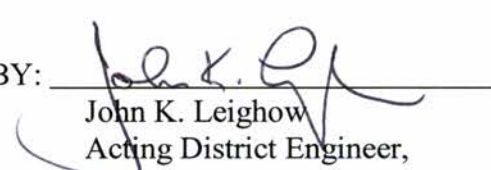
This Agreement shall become effective when signed by both the Port of Tacoma and the Seattle District, U.S. Army Corps of Engineers.

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

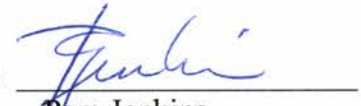
DEPARTMENT OF THE ARMY:

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



## 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.

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DEPARTMENT OF THE ARMY:

BY: \_\_\_\_\_

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

DATE: 7/6/06

PORT OF TACOMA:

BY: \_\_\_\_\_

Pam Jenkins  
Director, Environmental Programs  
Port of Tacoma

DATE: 6-29-06

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PL 110-114  
9 Nov 2007

## H.R.1495

**Water Resources Development Act of 2007 (Enrolled as Agreed to or Passed by Both House and Senate)**

### TITLE II--GENERAL PROVISIONS

#### SEC. 2001. NON-FEDERAL CONTRIBUTIONS.

Section 103 of the Water Resources Development Act of 1986 (33 U.S.C. 2213) is amended by adding at the end the following:

`(n) Non-Federal Contributions-

`(1) PROHIBITION ON SOLICITATION OF EXCESS CONTRIBUTIONS- The Secretary may not--

`(A) solicit contributions from non-Federal interests for costs of constructing authorized water resources projects or measures in excess of the non-Federal share assigned to the appropriate project purposes listed in subsections (a), (b), and (c); or

`(B) condition Federal participation in such projects or measures on the receipt of such contributions.

`(2) LIMITATION ON STATUTORY CONSTRUCTION- Nothing in this subsection shall be construed to affect the Secretary's authority under section 903(c).'

#### SEC. 2002. FUNDING TO PROCESS PERMITS.

Section 214(c) of the Water Resources Development Act of 2000 (33 U.S.C. 2201 note; 114 Stat. 2594; 119 Stat. 2169; 120 Stat. 318; 120 Stat. 3197) is amended by striking '2008' and inserting '2009'.

#### SEC. 2003. WRITTEN AGREEMENT FOR WATER RESOURCES PROJECTS.

(a) In General- Section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b)



Public Law 109-434  
109th Congress

An Act

To extend through December 31, 2008, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

Dec. 20, 2006  
[H.R. 6316]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. FUNDING TO PROCESS PERMITS.**

Section 214(c) of the Water Resources Development Act of 2000 (33 U.S.C. 2201 note; 114 Stat. 2594; 117 Stat. 1836; 119 Stat. 2169; 120 Stat. 318) is amended by striking "December 31, 2006" and inserting "December 31, 2008".

Approved December 20, 2006.

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**LEGISLATIVE HISTORY—H.R. 6316:**

CONGRESSIONAL RECORD, Vol. 152 (2006):

Dec. 5, considered and passed House.

Dec. 6, considered and passed Senate.



Public Law 109-209  
109th Congress

An Act

Mar. 24, 2006  
[H.R. 4826]

To extend through December 31, 2006, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. FUNDING TO PROCESS PERMITS.**

Section 214(c) of the Water Resources Development Act of 2000 (33 U.S.C. 2201 note; 114 Stat. 2594; 117 Stat. 1836; 119 Stat. 2169) is amended by striking "March 31, 2006" and inserting "December 31, 2006".

Approved March 24, 2006.

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**LEGISLATIVE HISTORY—H.R. 4826:**

CONGRESSIONAL RECORD, Vol. 152 (2006):

Mar. 14, considered and passed House.

Mar. 16, considered and passed Senate.

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Public Law 109-99  
109th Congress

An Act

To extend through March 31, 2006, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities and to expedite the processing of permits.

Nov. 11, 2005  
[H.R. 3765]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. FUNDING TO PROCESS PERMITS.**

Section 214 of the Water Resources Development Act of 2000 (33 U.S.C. 2201 note; 114 Stat. 2594; 117 Stat. 1836) is amended—

(1) in subsection (a) by striking “In fiscal years 2001 through 2005, the” and inserting “The”; and

(2) by adding at the end the following:

“(c) DURATION OF AUTHORITY.—The authority provided under this section shall be in effect from October 1, 2000, through March 31, 2006.”

Approved November 11, 2005.

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**LEGISLATIVE HISTORY—H.R. 3765:**

**CONGRESSIONAL RECORD, Vol. 151 (2005):**

Sept. 20, considered and passed House.

Oct. 7, considered and passed Senate, amended.

Oct. 18, House concurred in Senate amendments.

○



US Army Corps  
of Engineers

# *Special Public Notice*

Regulatory Branch  
Post Office Box 3755  
Seattle, Washington 98124-3755  
Telephone (206) 764-3495

Public Notice Date: June 29, 2006

Name: WRDA 2000

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The purpose of this Special Public Notice is to inform the general public that the Seattle District, U.S. Army Corps of Engineers (Seattle District) has decided to accept and expend funds contributed by certain non-Federal public entities. These entities are the City of Seattle, the Port of Seattle, and the Port of Tacoma. The funds would be used to expedite processing of the participating agencies' Department of the Army permit applications.

On June 21, 2006, the Seattle District Commander determined that acceptance and expenditure of such funds would be in accordance with Section 214 of the *Water Resources Development Act of 2000* (WRDA 2000, Public Law No. 106-541) as amended.

On May 15, 2006, the Seattle District circulated the initial a Special Public Notice announcing our preliminary intent to accept and expend such funds, and stated that we had initiated funding discussions with the City of Seattle, the Port of Seattle, and the Port of Tacoma. The May 2006 Special Public Notice also discussed the kind of activities for which funds would be expended, and the safeguarding procedures which would be used to ensure that the funds will not impact impartial decisionmaking. Those procedures include the following:

- 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 District Commander. For example, if the decision maker is the Chief, Regulatory Branch, then the reviewer would be the Chief, Operations Division.
- All final permit decisions for cases where these funds are used will be made available on the Seattle District Regulatory web page.
- The Seattle District will not eliminate any procedures or decisions that would otherwise be required for that type of project and permit application under consideration.
- The Seattle District must comply with all applicable laws and regulations.

- 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 the U.S. Army Corps of Engineers regulatory program employees, before the decision is made.

Copies of the May 2006 Special Public Notice, this Special Public Notice, and the memorandum documenting the Seattle District's decision to accept and expend funds under WRDA Section 214 are available from the Seattle District Regulatory Branch at the letterhead address.





123 STAT. 3478

PUBLIC LAW 111-120—DEC. 22, 2009

Public Law 111-120  
111th Congress

An Act

Dec. 22, 2009  
[H.R. 4165]

To extend through December 31, 2010, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. FUNDING TO PROCESS PERMITS.**

Section 214(c) of the Water Resources Development Act of 2000 (33 U.S.C. 2201 note; 114 Stat. 2594; 119 Stat. 2169; 120 Stat. 318; 120 Stat. 3197; 121 Stat. 1067) is amended by striking “2009” and inserting “2010”.

Approved December 22, 2009.

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**LEGISLATIVE HISTORY—H.R. 4165:**

CONGRESSIONAL RECORD, Vol. 155 (2009):

Dec. 8, considered and passed House.

Dec. 10, considered and passed Senate.



111TH CONGRESS  
1ST SESSION

# H. R. 4165

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IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2009

Received

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## AN ACT

To extend through December 31, 2010, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. FUNDING TO PROCESS PERMITS.**

2 Section 214(c) of the Water Resources Development  
3 Act of 2000 (33 U.S.C. 2201 note; 114 Stat. 2594; 119  
4 Stat. 2169; 120 Stat. 318; 120 Stat. 3197; 121 Stat.  
5 1067) is amended by striking “2009” and inserting  
6 “2010”.

Passed the House of Representatives December 8,  
2009.

Attest: LORRAINE C. MILLER,  
*Clerk.*



Public Law 111-315  
111th Congress

An Act

Dec. 18, 2010  
[H.R. 6184]

To amend the Water Resources Development Act of 2000 to extend and modify the program allowing the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. FUNDING TO PROCESS PERMITS.**

Section 214 of the Water Resources Development Act of 2000 (33 U.S.C. 2201 note; 114 Stat. 2594; 117 Stat. 1836; 119 Stat. 2169; 120 Stat. 318; 120 Stat. 3197; 121 Stat. 1067; 123 Stat. 3478) is amended—

Notice.

(1) by striking subsection (a) and inserting the following:

“(a) IN GENERAL.—The Secretary, after public notice, may accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army.”;

(2) by redesignating subsection (c) as subsection (e);

(3) by striking subsection (b) and inserting the following:

“(b) EFFECT ON PERMITTING.—

“(1) IN GENERAL.—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.

“(2) IMPARTIAL DECISIONMAKING.—In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall—

“(A) be reviewed by—

“(i) the District Commander, or the Commander’s designee, of the Corps District in which the project or activity is located; or

“(ii) the Commander of the Corps Division in which the District is located if the evaluation of the permit is initially conducted by the District Commander; and

“(B) utilize the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.

“(c) LIMITATION ON USE OF FUNDS.—None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under subsection (b)(2)(A).

“(d) PUBLIC AVAILABILITY.—The Secretary shall ensure that all final permit decisions carried out using funds authorized under

this section are made available to the public, including on the Internet.”; and

(4) in subsection (e) (as redesignated) by striking “2010” and inserting “2016”.

**SEC. 2. COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010.**

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved December 18, 2010.

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**LEGISLATIVE HISTORY—H.R. 6184:**

CONGRESSIONAL RECORD, Vol. 156 (2010):

Dec. 1, considered and passed House.

Dec. 7, considered and passed Senate.

