

AGREEMENT
BETWEEN
THE CITY OF TACOMA
AND
THE DEPARTMENT OF THE ARMY

THIS AGREEMENT is entered into this 23 day of January, 2015 by and between the DEPARTMENT OF THE ARMY (hereinafter the "Army"), represented by the U.S. Army Corp of Engineers (Corps), Seattle District Engineer and THE CITY OF TACOMA (hereinafter the "City"), represented by the Environmental Services Director.

WITNESSETH, THAT:

Whereas, Section 214 of the Water Resources Development Act (WRDA) of 2000, as amended [WRDA 214 requirements, as amended by the Water Resources Reform and Development Act of 2014, are now codified under 33 U.S.C 2352], provides that The Secretary of the Army (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.

Whereas, the Seattle District, U.S. Army Corps of Engineers ("Seattle District") issued an initial public notice dated July 22, 2014 regarding its intent to accept and expend funds contributed by non-Federal public entities; and

Whereas the Seattle District Commander has determined that expenditure of funds received from the City will be in compliance with the Act; and

Whereas, WRDA Section 214, as amended, has allowed local governments to move forward with vital infrastructure and ecosystem restoration projects in a timely manner; and

Whereas, the Seattle District Engineer has determined that expenditure of funds received from the City will be in compliance with WRDA Section 214, as amended, and a public notice dated December 8, 2014 regarding the District Engineer's decision has been issued; and

Whereas, the City of Tacoma is a political subdivision of the State of Washington and a non-Federal public entity.

Now, Therefore, it is Agreed:

ARTICLE I – PURPOSE AND AUTHORITY

Pursuant to WRDA Section 214, as amended, this Agreement is entered into by and between the Army and the City (collectively referred to as "the parties") for the purpose of establishing a framework governing the respective responsibilities of the parties for the acceptance and

expenditure of funds contributed by the City to expedite the evaluation of permits under the jurisdiction of the Army.

ARTICLE II – SCOPE

- A. Within 60 days of execution of this Agreement, the City will provide to Seattle District, Regulatory Branch, an amount to be agreed upon by the City and Seattle District Regulatory Branch to expedite the evaluation of various City permits under the jurisdiction of the Seattle District Regulatory Branch. Additional funds will be provided to the Seattle District Regulatory Branch by the City as needed when funds balances reach a pre-determined and mutually agreed-upon level. All fund transfers under this Agreement will be directly between the City and Seattle District.
- B. It is understood by the parties that use of the funds accepted hereunder will not impact impartial Corps decision-making with respect to permit decisions, either substantively or procedurally. The Corps regulatory program is funded as an appropriated line item by Congress in the annual Federal budget. Additional funds received from the City, a non-Federal public entity, will be used to expedite the evaluation of permits.
- C. The Seattle District Regulatory Branch will establish a separate account to track receipt and expenditure of funds associated with its review of City permits. Seattle District regulatory employees will charge their time against the account when working to expedite the review of any City permit request.
- D. Funds contributed by the City will mostly be expended on salaries and overhead for Corps Regulatory Branch Project Managers performing expedited processing activities for City permits. Such activities include, but are not limited to, the following: application intake review, correction of drawings, jurisdictional determinations, site visits, preparation of public notices, drafting of correspondence, conducting the public interest review, meetings with the City, and preparation of draft permit decision documents. Funds will also be expended for the administration and tracking of the contributed funds and work performed. Funds will *not* be expended for supervisor review of the work of Project Managers by their supervisors and other persons or elements in the Seattle District or Northwestern Division chain of command. Funds will *not* be expended for enforcement activities.
- E. Funds may be expended by other Corps elements supporting Regulatory Branch permit actions, including but not limited to Environmental and Cultural Resources Branch, Engineering Division and Dredged Material Management Office. Funds may also be expended to hire contractors to perform select duties, including but not limited to site visits, preparation of technical documents, including draft environmental evaluation documents, reviewing drafts of technical or draft environmental evaluation documents, preparing regional general permits for use by the City and others, or copying or other clerical support tasks .

- F. All activities described in this article shall be performed in accordance with a Management Plan approved by the parties and attached hereto as Exhibit 1. The Management Plan may be modified as needed by mutual consent of the Seattle District Regulatory and City Principal Representatives identified in Article IV, below.

ARTICLE III – IMPARTIAL DECISIONS

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

- A. All final Regulatory Branch permit decisions for matters where City funds are used must be reviewed at least one level above the decision-maker. If the decision-maker is the District Engineer, the permit will be reviewed by the Division Commander.
- B. All final permit decisions for matters where City funds are used will be posted to the web.
- C. The Seattle District will not eliminate any procedures or decisions that would be otherwise required for the type of project and permit application under consideration.
- D. The Seattle District shall comply with all applicable laws and regulations.
- E. Funds will only be expended to expedite the review and approval of the permit application or authorization request. Funds will not be expended for review of the decisionmaker's decision. If contracts are used to develop decision documents, such documents shall be drafts only and subject to review and adoption by the Seattle District before the decision is made.

ARTICLE IV – COMMUNICATIONS

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

The Principal Representative of the City is

Geoffrey M. Smyth, P.E., Environmental Services Division Manager
City of Tacoma
326 East D Street
Tacoma, WA 98421-1801

The Principal Representative of the Seattle District is:

Michelle Walker, Chief, Regulatory Branch, or her successor
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 first class mail and the post mark affixed by the United State 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, State of Washington and the City of Tacoma.

ARTICLE VI – DISPUTE RESOLUTION

In the event of a dispute between the parties regarding this Agreement (excluding any specific permit application/decision), the City and Seattle District shall use their best efforts to resolve the dispute through informal consultation and communication and other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

ARTICLE VII – AMENDMENT, MODIFICATION

This Agreement may be amended or modified only by written, mutual agreement of the parties, executed by the Seattle District Engineer and the Environmental Services Director.

ARTICLE VIII – TERMINATION

Either party may terminate this Agreement by providing written notice to the other party's Principal Representative at the listed address above. Such termination shall be effective on the sixtieth (60) calendar day following such notice. In the event of termination, the City shall be responsible for all costs by the Seattle District under this Agreement to the effective date of termination.

This agreement shall remain in force until the Agreement is terminated pursuant to this article, or the authority provided to the Corps to accept funds in accordance with 33 U.S.C. 2352 is

terminated, or until the funds contributed by the City have been expended and not replenished following receipt of a 60-day notice from the Seattle District to the City, whichever occurs first.

Within sixty (60) calendar days of the termination effective date, the Seattle District shall perform an accounting to determine the actual costs of the permit expediting work. Within thirty (30) days of the completion of this accounting, the Seattle District shall return to the City any funds advanced in excess of the actual costs. Funds may be provided to the City by check or electronic fund transfer.

ARTICLE IX - EFFECTIVE DATE

This Agreement shall be effective when signed by both the City 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

CITY OF TACOMA

BY: 

BY: 

John G. Buck
District Engineer
Seattle District
U.S. Army Corps of Engineers

Michael P. Slevin III, P.E. ^{ams}
Environmental Services Director
City of Tacoma

DATE: 23 JAN 15

DATE: 09 JAN 2015