



AGREEMENT
between
THE UNITED STATES ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
and
THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS
for the
PROVISION OF FUNDING TO EXPEDITE REVIEWS OF MARITIME PROJECTS

THIS AGREEMENT is entered into by and between the Port of Corpus Christi Authority of Nueces County, Texas (hereinafter "PCCA"), a political subdivision of the State of Texas, and the United States Army Corps of Engineers, Galveston District (hereinafter "Corps"), collectively referred to as the "Parties".

WHEREAS, Section 214 of the Water Resources Development Act of 2000, as amended and codified at 33 U.S.C. Section 2352 ("Section 214") allows the Secretary of the Army ("Secretary") to 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 ("DA"), as long as the acceptance and use of funds will not substantively or procedurally impact impartial decision-making with respect to permits, and imposes certain limitations on and requirements applicable to the use of such authority;

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

WHEREAS, the United States Army Corps of Engineers Chief of Engineers, by memorandum dated April 18, 2018, has authorized the United States Army Corps of Engineers District and Division Engineers to accept and expend funds contributed by non-federal entities under Section 214, subject to certain limitations including the publishing of public notice;

WHEREAS, the authority to accept and expend funds under Section 214, increases the flexibility for non-federal public entities to contribute funds to expedite the evaluation and processing of permit applications;

WHEREAS, the Corps shall ensure that expediting the evaluation of a permit application through the use of funds accepted and expended under Section 214 does not adversely affect the timeline for evaluation of permit applications of other entities that have not contributed funds under this section;

WHEREAS, it is acknowledged and understood that the Corps' review of DA permit applications will be completely impartial and in accordance with all applicable Federal laws and regulations and will be performed using the same procedures for decisions that would otherwise be required for the evaluation of permit applications for similar projects or activities not carried out using funds authorized under this section;

WHEREAS, the Corps issued an initial Public Notice dated December 6, 2018, advising the public of its intent to accept and expend funds contributed by the PCCA for the expedited review and processing of permit applications;

WHEREAS, PCCA is authorized by Section 60.152 of the Texas Water Code to enter into this Agreement;

WHEREAS, the Port Commission, as governing body of the PCCA, authorized entering into this agreement by resolution adopted at its meeting of 20 August, 2019 to provide funds to the Corps to expedite the agency's performance of its duties related to the review process for PCCA's maritime projects;

WHEREAS, the Corps currently reviews aspects of certain PCCA projects in the course of processing permit applications and related materials under Section 404 of the Federal Clean Water Act (33 U.S.C. Section 1344), Section 10 of the Federal Rivers and Harbors Act of 1899 (33 U.S.C. Section 403), and Section 103 of the Federal Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. Section 1413);

WHEREAS, the Parties have determined that it would be mutually beneficial for PCCA to provide to the Corps advance funding to achieve expedited review of permit applications for PCCA maritime projects;

WHEREAS, the Corps is willing to provide expedited review of permit applications for PCCA maritime projects following receipt of funding from PCCA as more fully described in this Agreement;

WHEREAS, the Parties estimate that an amount of \$200,000 would be sufficient to fund expedited reviews of PCCA maritime project applications for DA permits and other activities required under this Agreement for one 12-month period; and

WHEREAS, the Galveston District Engineer has determined that acceptance and expenditure of funds received from PCCA under the terms of this Agreement will comply with Section 214 and a public notice regarding that determination was issued on 11 July, 2019.

NOW, THEREFORE, for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by PCCA to expedite review of DA permit applications for PCCA maritime projects under the Corps' jurisdiction, PCCA and the Corps agree as follows:

ARTICLE I. PERSONNEL

1.1 PCCA Personnel

- 1.1.1 PCCA will designate an employee as the PCCA Point of Contact ("PCCA POC") for implementation of this Agreement. The PCCA POC will work directly with the Corps Point of Contact ("Corps POC") on prioritizing project reviews, as well as receipt and tracking of expenditure of funds, non-project-specific efforts designed to expedite reviews for maritime project applications, and overall management and interagency coordination.

- 1.1.2 The PCCA POC may designate an alternate to perform any required functions in his or her absence. The Corps POC will be notified of the alternate PCCA POC, if one is designated.
- 1.1.3 The PCCA POC and any other pertinent PCCA personnel shall meet with the Corps POC on an annual basis, at a minimum, to discuss implementation of this Agreement.

1.2 Corps Personnel

- 1.2.1 The Corps will designate an employee as the Corps POC for implementation of this Agreement. The Corps POC will provide deliverables and work directly with the PCCA POC on coordinating and/or conducting expedited permit reviews, receipt and tracking of expenditure of funds, non-project-specific efforts designed to expedite reviews for maritime projects, and overall management and interagency cooperation.
- 1.2.2 The Corps will assign one or more highly-qualified and maritime-proficient Regulatory Project Manager(s) or Regulatory Specialist(s) (referred to herein as the "Regulatory Reviewer(s)") in the Galveston District to provide expedited reviews of PCCA permit applications and participate in any related activities that will facilitate expedited reviews of PCCA permit applications. The number of Regulatory Reviewers will be sufficient to meet the commitments made in this Agreement.
- 1.2.3 The Corps POC may designate an alternate to perform any required functions in his or her absence. The PCCA POC will be notified of the alternate Corps POC, if one is designated.
- 1.2.4 The Corps POC may serve as a Corps Regulatory Reviewer.
- 1.2.5 The Corps POC shall coordinate with the Corps Regulatory Reviewer(s) as needed to achieve expedited reviews in compliance with this Agreement.
- 1.2.6 The Corps POC and any other pertinent Corps personnel shall meet with the PCCA POC on an annual basis, at a minimum. The Corps POC and the PCCA POC may also meet at such times as jointly determined to be needed, typically on a monthly basis, to discuss the status of pending projects and implementation of this Agreement

ARTICLE II. FUNDING

- 2.1 Nothing in this Agreement requires PCCA, or obligates PCCA in any way, to provide any funds whatsoever. The Corps is not entitled to rely on the receipt of any funding under this Agreement and will not expedite project

reviews until funding is received. PCCA, in its sole discretion, will determine whether to provide funding and the amount of funding provided under this Agreement.

- 2.2 PCCA may provide the Corps with funds to pay for costs associated with performing expedited reviews of PCCA maritime projects and other activities required under this Agreement.
- 2.3 The Galveston District will establish a separate account to track receipt and expenditure of the funds associated with its review of permit applications for PCCA Projects. Galveston District Regulatory Reviewers, and the Corps POC, will charge their time against this account when they do work to expedite review of permit applications for PCCA maritime projects.
- 2.4 Funds contributed by PCCA hereunder will be expended primarily for permit evaluation by Regulatory Reviewers performing expedited processing activities for PCCA maritime projects, or for management of this Section 214 agreement by the Corps POC. 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 PCCA maritime 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, consultant meetings, agency meetings, public scoping meetings, and meetings with the PCCA in regard to maritime projects. PCCA Section 214 project funds will not be expended for review of Regulatory Reviewer's 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.
- 2.5 The Corps, in expending PCCA-provided funds under this Agreement, will comply with all procurement-related laws and policies that would apply to the Corps expenditure of its own funds.
- 2.6 In the event the Corps does not utilize the entire amount paid by PCCA in a year, the unused funds shall carry over for use in the following year or be returned if the agreement is terminated pursuant to the provisions of Article VII.
- 2.7 No expedited requests for processing will be completed by the Corps until funds are received by the Corps, i.e., no funding in arrears is allowed.

- 2.8 Section 214 funds may not be used to continue activities for the PCCA should a lapse in appropriations result in a shutdown furlough for the Corps.
- 2.9 The PCCA shall not use funds provided by another federal agency (or any non-Federal contribution made to match funds provided by another federal agency) to meet any of its obligations under this Agreement, unless PCCA submits to the Corps a written confirmation from the federal agency that the use of the funds to expedite the permit application process is acceptable.

ARTICLE III. EXPEDITED PERMIT REVIEWS

- 3.1 PCCA represents and agrees that all permit applications and permissions requested pursuant to this Agreement will be submitted to the Corps in the name of the PCCA and that the proponent of any permit and permission requests is PCCA.
- 3.2 The Corps shall, to the maximum extent practicable, complete review of PCCA permit applications, requests for letters of permission, regional general permits, nationwide permit pre-construction notifications and other submittals in less time than is customary for the completion of such reviews.
- 3.3 The Corps shall endeavor to review permit applications, requests for letters of permission, regional general permits, nationwide permit pre-construction notifications and other submittals in accordance with the requested completion dates presented by PCCA, to the extent practicable. The Corps POC will inform the PCCA POC if adhering to a requested priority order would prevent the Corps from meeting any PCCA-requested completion date.
- 3.4 To the extent it will not interfere with the Corps' ability to comply with the performance measures set forth in Article VI, the Corps shall:
 - 3.4.1 Provide PCCA with any requested project development guidance on permitting requirements regarding what is needed for permit review including stream and wetlands assessments and delineations, scopes of analyses, jurisdictional determinations, and mitigation plans;
 - 3.4.2 Respond promptly to any urgent matters identified by PCCA;
 - 3.4.3 Attend all meetings, trainings, conferences, and field visits that both parties deem appropriate;

- 3.4.4 Work collaboratively with PCCA to develop a dynamic process improvement plan and programmatic approaches to streamline permit reviews, such as the development of regional general permits, where applicable; and
- 3.4.5 Streamline the permitting process, after consultation with PCCA, by providing training to PCCA and PCCA contractor personnel for the purpose of developing consistent understanding of Corps policies, regulations, and procedures, as well as permit application requirements.

ARTICLE IV. IMPARTIAL DECISION-MAKING

The Corps will use the following procedures for the purpose of ensuring that PCCA's provision of funds will not impact impartial Corps decision-making with respect to PCCA projects:

- 4.1 All final decisions on projects for which the Corps uses PCCA-provided Section 214 funding must be reviewed and approved in writing by at least one level above the normal decision-maker. For purposes of this agreement, the decision-maker is the person that has been delegated signature authority. For example, if the decision-maker would be the Corps Team Leader, then the reviewer would be the Branch Chief. If the decision maker is the District Engineer (District Commander), the final decision must be reviewed and approved in writing by the Division Engineer (Division Commander). It is understood and agreed by the parties that use of the funds accepted by the Corps pursuant to this Agreement will not impact Government decision-making with respect to PCCA projects and applications.
- 4.2 All final decisions on projects for which the Corps uses PCCA-provided Section 214 funding must be made available on the Corps webpage. The information will be posted in a clearly identifiable area indicating that the Corps used PCCA-provided funding for the review of the projects.
- 4.3 The Corps will not eliminate any procedures or decision criteria that would otherwise be required for the type of project and permit application under consideration.
- 4.4 The Corps must comply with all applicable laws and regulations.
- 4.5 PCCA-provided Section 214 funds will only be expended to expedite the final decision or other submittal according to the terms and conditions of this Agreement. Funds will not be expended for the required review and approval of the decision-maker's decision. If the Corps uses an outside

contractor to develop decision documents, such decision documents must be drafts only and must be reviewed and adopted by Corps regulatory program employees before the permit decision is made.

ARTICLE V. REPORTING

- 5.1 The Corps will track submission and status of all standard permit applications, requests for letters of permission, nationwide permit pre-construction notifications, and other submittals, and compile such information into a monthly status report for PCCA.
- 5.2 The Corps will compile a Quarterly Report for PCCA, which will include expenditures by action type, as well as funds expended for travel, training, and vehicle use. The Parties shall assess the expedited process outlined in this Agreement to confirm that reviews performed after Agreement execution were completed in less time than was customary for those performed prior to Agreement execution.
- 5.3 Prior to preparing the first quarterly report under this Agreement, the Corps will work with PCCA to develop and finalize a template to make all quarterly submissions consistent and that will, at a minimum, show expenditures by permit application/project, including all travel expenditures and travel purpose summaries. Reports are due within 30 calendar days after the end of each calendar quarter.
- 5.4 PCCA will issue an annual satisfaction letter to the Corps, discussing PCCA's assessment of the success of this Agreement. The letter will be submitted to the Corps by October 15 of each year that the agreement remains in place, for inclusion in the Corps annual report to Headquarters.

The Corps will provide PCCA an annual report with accounting details for the Corps fiscal year (FY) which ends on the last day in September. This report will be provided by November 15, following the end of the Corps FY.

ARTICLE VI. PERFORMANCE MEASURES

- 6.1 This Article VI will apply to all PCCA submittals made after PCCA's initial payment of funds under Article II.

- 6.2 The Corps will strive to adhere to the following review timelines, to the extent practicable:
- 6.2.1 The Corps will acknowledge receipt of all hard copy or electronic correspondence from PCCA (excluding standard permit applications, requests for letters of permission, regional general permit applications, and nationwide permit pre-construction notifications) within 5 working days of receipt.
 - 6.2.2 The Corps will assign each standard permit application, request for letter of permission, regional general permit (if applicable), and nationwide permit pre-construction notification a permit number within 10 working days of receipt.
 - 6.2.3 Within 15 calendar days of receipt of a PCCA standard permit application, request for letter of permission, or pre-construction notification, the Corps will determine whether the application is complete or if additional information is needed, and notify PCCA of its determination and any additional needed information.
 - 6.2.4 For each standard permit application, permit modification, and request for letter of permission, the Corps will, to the extent possible, complete its review and issue a decision within 180 calendar days, on average, following receipt of a complete application or request. Exceptions include complex or controversial activities, ESA delays, Section 106 delays, extended comment periods, plan modifications, and delays associated with 204 or 408 approval, redesigning of proposed projects or jurisdictional boundaries, or delays in providing requested materials to the Corps.
 - 6.2.5 For each nationwide permit pre-construction notification, the Corps will, to the extent possible, complete its review and issue a decision in fewer than 45 calendar days, on average, of receiving a complete pre-construction notification. Exceptions include complex or controversial activities, ESA delays, Section 106 delays, extended comment periods, plan modifications, and delays associated with 204 or 408 approval.
 - 6.2.6 In the event the Corps fails to meet the expedited permit review timelines set forth in Sections 6.2.4 to 6.2.5 for any review, the Corps will provide PCCA with a written explanation detailing the causes of and reasons for the delay(s) in the monthly status update.

- 6.2.7 If, with respect to any project, PCCA requests completion sooner than any of the proposed timelines specified in this Article VI, the Corps will strive to meet the requested deadline.

- 6.3 If, at any time, there are insufficient PCCA-provided Section 214 funds in the designated account to cover the cost of performing expedited review of a permit application under this Agreement, the Corps shall notify PCCA, and the application will be processed on a non-expedited basis until such time that PCCA replenishes the account with an amount of funds as determined by the Corps to be sufficient to cover the costs of the expedited review.

- 6.4 Any remaining funds not applied to an expedited review shall carry over in accordance with Article II.

ARTICLE VII. TERM AND TERMINATION

- 7.1 This Agreement shall remain in force until 12 SEPT 2024, or until one of the Parties chooses to terminate its participation and provides the other Party with 60 days written notice of termination, whichever occurs first.

- 7.2 In the event of termination, the Corps will return any unused funds within 30 days. Upon return of the unused funds, any application in processing as of the effective date of the termination will no longer be required to meet the expedited processing timelines set forth in this Agreement. Unused funds shall be returned to PCCA by either check or electronic funds transfer. PCCA shall remain responsible for all costs properly incurred by the Corps under this Agreement prior to the effective date of termination and for the costs of closing out or transferring any on-going contracts.

ARTICLE VIII. DISPUTE RESOLUTION

- 8.1 The parties agree that, in the event of a dispute between the parties regarding the implementation of this Agreement, the PCCA and the Corps 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. A dispute relating to a final decision by the Corps on a PCCA permit application or other submittal shall not be subject to resolution by such means.

ARTICLE IX. MISCELLANEOUS

- 9.1 This Agreement may be modified or amended only by written, mutual agreement of the Parties.
- 9.2 If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions will remain in full force and unaffected to the fullest extent permitted by law.
- 9.3 This Agreement is the entire agreement between the Parties concerning the provision of funding to expedite permitting-related reviews of maritime projects, and supersedes all prior written or verbal statements, understandings, commitments, or promises.
- 9.4 This Agreement is entered into for the sole benefit of PCCA and the Corps. Nothing in this Agreement shall be construed as giving any benefits, rights, remedies, or claims to any other entity, including, without limitation, the public in general.
- 9.5 Nothing in this Agreement shall be construed as waiving either PCCA's or the Corps sovereign immunity.
- 9.6 This Agreement may be executed in multiple counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement.
- 9.7 This Agreement and all documents and action pursuant to it shall be governed by the applicable statutes, regulations, directives, policies and procedures of the United States.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

**U.S. DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
GALVESTON DISTRICT**



Timothy R. Vail
Colonel, Corps of Engineers
District Engineer

Date: 09/12/19

**PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS**



Sean Strawbridge
Chief Executive Officer
Port of Corpus Christi Authority of
Nueces County, Texas

Date: 7-8-19