

Contract No. 59261  
This number must appear  
on all invoices.

AGREEMENT  
AMONG  
THE PORTS OF PORTLAND AND VANCOUVER, USA  
AND  
THE DEPARTMENT OF THE ARMY

THIS AGREEMENT is entered into this 15 day of November, 2006, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Army"), represented by the U.S. Army Corps of Engineers (hereinafter the "Corps"), Portland District Engineer, and the Ports of Portland and Vancouver, USA (hereinafter collectively the "Ports"), represented by Bill Wyatt, Executive Director of the Port of Portland, and Lawrence Paulson, Executive Director of the Port of Vancouver.

WITNESSETH, THAT:

WHEREAS, Section 214 of the Federal 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 decision making 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 WRDA 2000 to September 30, 2005, and

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; and

WHEREAS, Public Law 109-209 was signed into law on March 24, 2006, extending the sunset clause now in Section 214(c) 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 entities to expedite the evaluation of permits subject to

certain limitations, including the publishing of public notices; and

WHEREAS, the Corps' Portland District (hereinafter the "Portland District") issued an initial Public Notice dated July 19, 2006, regarding its intent to accept and expend funds contributed by the Ports of Portland and Vancouver for such purposes;

WHEREAS the Portland District Engineer has determined that expenditure of funds received from the Ports will be in compliance with the Act, and a public notice dated NOVEMBER 15, 2006 regarding the Portland 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 WRDA, as amended (Pub L 109-209) 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 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 additional funds to the Portland District, an amount to be agreed upon by each Port and the Portland District, for Federal fiscal years 2006 and 2007, and additional years if applicable (sunset clause eliminated), to expedite the evaluation of various Port of Portland and Port of Vancouver, USA permits under the jurisdiction of the Portland District. It is understood that the use of funds accepted hereunder will not impact impartial decision making with respect to such permits, either substantively or procedurally. The Corps' regulatory program is funded as a congressionally appropriated line item in the annual Energy and Water Resources Development Act. Additional funds received from non-Federal public entities will be used to augment the Portland District regulatory budget in accordance with the provisions of Section 214 of WRDA.

B. The Portland District will establish separate accounts to track receipt and expenditure of the funds associated with its review of Port of Portland's permits and Port of Vancouver, USA permits, respectively. The Portland District regulatory employees will charge their time against the appropriate account when they do work to expedite resolution of a Port of Portland or a Port of Vancouver, USA permit request.

C. Funds contributed by the Port of Portland and the Port of Vancouver, USA hereunder will be expended separately on the salaries and overhead of Corps Regulatory Project Managers performing expedited processing activities for each Port. It is the

intent of the parties that each Port shall only contribute funds to cover the salaries, overhead and expenses related to the performance of expedited processing activities for their respective permit/project applications. Such activities will include, but not be limited to, the following: application intake review, review of NEPA documents, 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 Portland District in the decision making 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 District elements (including but not limited to Environmental Resource Section, Engineering Division, etc.) or to hire contractors to perform select duties necessary to expedite the Ports' permit requests, such as site visits, technical writing, copying, technical contracting for review of specific items such as biological assessments for endangered species, writing drafts of reference biological assessments to be used by funding entities and the general public alike, preparing regional general permits, essential fish habitat determinations, and other technical documents, including draft environmental documents. Hiring of contractors to perform select duties will only be allowed with prior written approval from the Ports.

E. If a Port's funds are expended and are not renewed by one or both of the Ports, or in the event of termination, any remaining permit applications for the non-participant Port 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 Portland District will provide each Port with separate quarterly reports that show expenditures by that respective Port's permit/project, including the number of hours worked and type of expenditure (direct labor including overhead, other). Reports are due fifteen (15) working days following the end of each calendar quarter.

### ARTICLE III - IMPARTIAL DECISION MAKING

It is understood and agreed that in order to ensure that the funds will not impact impartial decision making with respect to the Ports' 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 entity:

1. All final permit decisions for cases where these funds are used must be reviewed at least by one level above the decision maker, unless the decision maker is the District Engineer. For example, if the final decision maker 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 Portland District Regulatory web page.
3. The Portland 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 Portland District must comply with all applicable laws and regulations.
5. Funds will only be expended to expedite the final decision on each Port's permit/project 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 Corps regulatory program employees before the decision is made.

#### ARTICLE IV – COMMUNICATIONS

To provide for consistent and effective communication between the Portland 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.

#### 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, Washington State with respect to the Port of Vancouver, and Oregon State with respect to the Port of Portland.

#### 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 Portland 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 other party. Such termination shall be effective upon the sixtieth (60th) calendar day following notice, unless a later date is set forth. The Ports shall be responsible for those costs outlined in Article II of this agreement which are incurred by the Portland District, prior to the effective date of the termination, including the costs of closing out or transferring any contracts entered into pursuant to Article II.D.

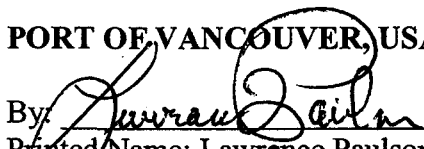
B. This Agreement shall remain in force until the earlier of: (1) December 31, 2006, unless the sunset clause in Section 214 of WRDA is eliminated; (2) the Agreement is terminated pursuant to this Article; or (3) the funds have been expended and not replenished following notice to the Ports.

C. Within ninety (90) days of termination or expiration of the Agreement, the Portland District shall conduct an accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, the Portland District shall return to the Ports 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

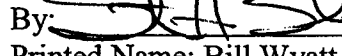
This Agreement shall become effective when signed by the Ports and the Portland District.

**PORT OF VANCOUVER, USA**

By:   
Printed Name: Lawrence Paulson  
As Its: Executive Director


DATE: Nov 17, 2006

**THE PORT OF PORTLAND**

By:   
Printed Name: Bill Wyatt  
As Its: Executive Director

DATE: 10 Nov 2006

**U.S. ARMY CORPS OF ENGINEERS,  
PORTLAND DISTRICT**

By:   
Printed Name: Deborah Chenoweth  
As Its: Chief Operations Division

DATE: 12/08/06

**APPROVED AS TO THE LEGAL  
SUFFICIENCY FOR THE PORT**

By:   
Counsel for the Port of Portland