

Memorandum of Agreement

Agency: City of Seattle, Department of Planning and Development	Agency: Port of Seattle
Agency Address: 700 Fifth Avenue, Suite 2000 P.O. Box 34019 Seattle, WA 98124-4019	Agency Address: Pier 69 2177 Alaskan Way Seattle, WA 98121
Project Manager Bob Laird, Operations Director	Project Manager Paul E. Meyer Manager, Environmental Review and Permitting
Project Contact Roberta Baker, Land Use Review Manager	Project Contact Paul E. Meyer
Finance Analyst Stu Lorimer	Finance Analyst Dave Kleiber
Accountant Sheila Chavez	Accountant
Accounting Contact Sheila Chavez 206-233-7882.	Accounting Contact
Financial Designee	Financial Designee

Charge Information:

ORG = 2241 / Account= UMUPOTHER / Project 522115 / Activity 371

MEMORANDUM OF AGREEMENT

Executed By

The Department of Planning and Development
a department of the City of Seattle, hereinafter referred to as "DPD";
Department Authorized Representative: Diane Sugimura
Key Tower, Suite 1900
Seattle, WA. 98104-1703

and

The Port of Seattle,
hereinafter referred to as "the Port"
Authorized Representative: Tay Yoshitani
Address:
Pier 69
2711 Alaskan Way
Seattle, WA 98121

IN WITNESS WHEREOF, the parties have executed this MOA by having their representatives affix their signatures below.

Seattle Department of Planning and Development

By: _____
Diane Sugimura
Director, DPD

Date: _____

Port of Seattle

By: _____
Tay Yoshitani
Chief Executive Officer, Port of Seattle,

Date: _____

MOA with Port of Seattle for DPD Permit Coordination

This MOA contains six (6) Articles.

In consideration of the terms, conditions, covenants, and performance of the scope of work contained herein the parties agree to the following:

ARTICLE I: DESCRIPTION OF SERVICES:

This MOA is a continuation of a prior MOA between DPD and the Port that has been in effect since August 2006. Like the earlier MOA, this MOA outlines the manner in which the two agencies shall implement a cooperative agreement. The MOA is intended to clearly identify services and funding for coordinated processing of the Port's proposals. Development activities throughout the City contribute to the substantial work load of DPD reviewers. This workload impacts all applications for review, including the Port's. In order to retain adequate capacity for timely review of both the Port and all applications under review at DPD the Port will provide funding support to accommodate priority review of Port projects by DPD, and DPD will provide staff support and a priority focus on the Port's projects.

ARTICLE II: SCOPE OF WORK

Within the context of this MOA, The Port's operational goals are to:

1. Obtain timely permit approvals;
2. Minimize conflicts regarding permits;
3. Obtain clear permit application requirements, reviews and comments
4. Have predictability in timely permit approvals;
5. Understand City codes and procedures; and

DPD's operational Goals are to:

1. Anticipate the Port's priorities and permit requirements;
2. Ensure the Port's responsiveness to code and procedural requirements;
3. Address citizen concerns in the planning and permitting of projects;
4. Complete its mission of enforcing State and City land use and environmental regulations;
5. Provide Management support across programs for coordinated review of the Port's projects subject to this MOA.
6. Provide timely permit approvals.

To accomplish the stated operational goals for each agency and to continue to address the volume and complexity of projects to be proposed by the Port, the Port agrees to provide funding support over and above what is required for traditional permit processing for individual projects. Additionally, the Port shall continue to provide DPD with a monthly schedule of projects showing current and anticipated projects. The schedule shall clearly indicate the Port's priorities for processing. The Port and DPD also understand that applicants retain responsibility for permit applications to meet City standards and that DPD requests for corrections and information are addressed by applicants in a timely manner. DPD and the Port also understand that once applications meet City standards and

MOA with Port of Seattle for DPD Permit Coordination

correction and other information has been provided, DPD will make permit decisions in a timely manner consistent with agreed upon schedules.

The funding support provided by the Port shall allow DPD to dedicate resources to provide coordination between related Port projects and to meet peak workload demands within timeframes responsive to the Port's priorities. However, nothing in this MOA shall preclude the City from fully enforcing all pertinent regulations and permit conditions that apply to a Port project. Prior to application or whenever schedule adjustments are necessary, DPD and the Port shall discuss and determine a permitting schedule that is consistent with the overall project needs and all required public processes. DPD and the Port's representatives shall continue to meet on a monthly basis to review project status and establish a permit processing schedule for each following two (2) month period.

The Port's funding resources provided under this MOA shall be applied in the following manner:

1) Coordination for Projects:

DPD shall assign 0.5 FTE from current DPD staff in the form of an experienced Senior Land Use Planner who will be assigned to the review and/or coordination of land use review on Master Use Permits and Construction permits for Port projects subject to this MOA. DPD agrees to consult with the Port prior to the assignment of the Senior Land Use Planner to Port projects in order to ensure a match between the Port and DPD's needs. DPD will make the final selection of the assigned planner based on the needs of the Port and current resource demands at DPD. This Senior Land Use Planner shall be DPD's main contact person for the Port's project work and shall:

- Monitor progress of permit review and work with management and staff to make permit decisions in a manner consistent with the agreed upon schedule
- Coordinate production needs within DPD;
- Coordinate with the Port when development priorities change;
- Help coordinate permit issues including those that cut across DPD programs and City Department jurisdictions; and
- Be available for coaching the Port permit application during pre-submittal phases of development planning
- Provide guidance as to the applicability of shoreline exemption rules to a proposal
- Assist in review and process of exemption requests if during permit coordination scheduling the Port and City agree that an exemption request will exceed four weeks

2) Supervisory Oversight of Assigned Support

DPD management who manage the staff providing the assigned project support (see #1 above) will be accountable to the DPD and the Port Directors for the provision of timely and professional services provided under this MOA. As part of the ongoing provision of these services, DPD management will present a status report at its monthly meeting with the Port.

3) Optional Additional Project Support:

At the request of the Port, DPD shall assign another Senior Land Use Planner to be compensated on a hourly basis to act as the main coordinator with the Port on any additional unanticipated development needs in excess of 0.5 FTE.

**ARTICLE III:
TIME OF PERFORMANCE**

The terms of this MOA shall commence on January 1, 2011, and terminate automatically on December 31, 2011, provided, however, that if either party wants to terminate the agreement earlier it may do so by providing 90-days written notice. In June 2011, the Port and DPD shall review the MOA and make any mutually agreed upon changes or modifications in duties, tasks or funding levels prior to extending the MOA. Modifications to the MOA before the end of the term of the MOA may be initiated by either DPD or the Port as per Article V of this agreement

**ARTICLE IV:
PAYMENT**

Compensation:

The Port agrees to pay DPD's cost of providing the services in this MOA, as described below.

1) *DPD Coordination for projects:* The Port shall pay an amount not to exceed \$ 54,348.00 for support of the 0.5 FTE assigned Senior Land Use Planner to review and/or coordinate the Port's development proposals.

2) *Optional coordination for additional project support (item #3, Article II, above):* If utilized, the Port shall compensate DPD at the hourly rate set by current DPD Fee Subtitle for the time spent by a Senior Land Use Planner acting as the Port's permit coordinator on additional projects. DPD will bill the Port monthly for services rendered by posting monthly charges for coordination activity for Activity and Low Org as appropriate at the time of service request. Rate will be adjusted annually to reflect cost of living and salary increases.

Manner of payment:

The Port shall pay DPD the amount of \$ 4,529.00/month to support the 0.5 FTE Senior Land Use Planner assigned to review and/or coordinate the Port's development proposals. DPD will monthly submit an invoice to the Port and the Port will pay DPD within 30 days of receipt of invoice. Invoices shall be based on DPD hourly time sheet tracking system and provide sufficient information to meet the needs of the Port of Seattle accounting.

If the option for additional coordination staff is requested, compensation for the hourly coordination shall be invoiced by DPD and included in the monthly payments. Invoices shall be based on DPD hourly time sheet tracking system and provide sufficient information to meet the needs of the Port of Seattle accounting.

**ARTICLE V:
AMENDMENTS**

No modification or amendment of the provisions hereof shall be effective unless in writing and signed by authorized representatives of the parties hereto. The parties expressly reserve the right to modify the MOA by mutual agreement. If either party desires a change or modification in duties or tasks specified in the MOA or desires a change in the level of funding, the party requesting the change shall make such request in writing, and

MOA with Port of Seattle for DPD Permit Coordination

following delivery thereof, the parties shall negotiate in good faith the terms and conditions of the change which, if adopted, shall be the subject of a separate written agreement, identified as an amendment to this MOA. If the Port desires a change in funding levels, it must provide DPD with 90 days written notice.

ARTICLE VI: AUTHORITY

The City of Seattle and the Port recognize that the fee charged in this MOA is to recover the reasonable costs to the City for services described in the MOA for processing Port permits, as allowed under RCW 82.02.020. These costs are authorized under SMC 22.900B.020 A as special fees for services that are not otherwise specified in the City's fee ordinance.

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

THIS AGREEMENT is entered into this 6th day of July, 2006, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Army"), represented by the U.S. Army Corps of Engineers (Corps), Seattle District Engineer and the PORT OF SEATTLE, represented by its Director of Seaport Finance and Asset Management, (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:

Wayne A. Grotheer
Director, Seaport Finance and Asset Management
Port of Seattle
Post Office Box 1209
Seattle, Washington 98111
(206) 728-3190

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 Seattle 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 SEATTLE:

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

BY: 
Wayne A. Grotheer
Director, Seaport Finance and
Asset Management
Port of Seattle

DATE: 7/6/06

DATE: 7/5/06