



**US Army Corps
of Engineers
Galveston District**

Public Notice

Date Issued: November 4, 2013

**MEMORANDUM OF AGREEMENT
BETWEEN
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
AND
PORT FREEPORT
PURSUANT TO
SECTION 214 WATER RESOURCES DEVELOPMENT ACT 2000 FOR
EXPEDITED SECTION 408 APPLICATION REVIEW**

This Public Notice announces the Memorandum of Agreement (MOA) between the U.S. Army Corps of Engineers, Galveston District ("Galveston District") and Port Freeport to transfer funds pursuant to Section 214 of the Water Resources Development Act of 2000. The Galveston District will allocate funds internally and distribute funds to supporting Corps Districts in order to expedite the Department of Army processing of modifications to the Freeport Ship Channel Project in accordance with 33 U.S.C. 408 (Section 408), subject to a series of limitations specified below.

The Galveston District may accept and expend these funds pursuant to Section 214 of WRDA 2000, Public Law No. 106-541 as amended, which provides that the Secretary of the Army, 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. In doing so, the Secretary must ensure that the use of such funds will not impact impartial decision making with respect to permits, either substantively or procedurally. The authority provided in Section 214 is in effect from October 1, 2000 to December 31, 2016.

The Secretary of the Army has delegated this responsibility to the Chief of Engineers and his authorized representatives, including District Commanders of the U.S. Army Corps of Engineers.

Authorized representatives of the District Commander for the Galveston District have negotiated an agreement with Port Freeport to accept and expend funds to expedite Section 408 review and evaluations of proposed modifications to the Freeport Ship Channel Project.

Definition of non-Federal public entities: Non-federal public entities are defined for Section 214 purposes as state and local governmental agencies and Indian tribal governments. These entities include, but are not limited to, flood and storm water management agencies, port authorities, local transportation agencies, levee districts and governmental economic development agencies. Two or more non-Federal public entities could jointly fund a single account. Participating entities are anticipated to be public agencies with a number of

applications being simultaneously considered by the Corps, and enough future projects in the planning stage to warrant this form of partnership. Port Freeport meets this definition.

How the Galveston District's acceptance of funds from Port Freeport is expected to expedite the processing of the proposed modification: The Corps' Operation and Maintenance Inspection of Completed Works (ICW) program is funded through the Corps' Civil Works program in the annual Federal budget. Funding within the Inspection of Completed Works program is insufficient to completely fund the technical and policy reviews required for approval of flood mitigation project modifications undertaken under Section 408. The Galveston District would receive additional funds from Port Freeport and would add those funds to the Operation and Maintenance ICW budgets of the Galveston District and supporting Districts, in accordance with the provisions of Section 214 of WRDA 2000. Funding to the supporting Districts will facilitate independent reviews by staff outside the Corps resident Galveston District, as required by Corps review policy for levee safety projects.

Activities for which funds will be expended: Funds would be expended primarily on the direct labor and overhead of Galveston District's Civil Works personnel evaluating the engineering plans and report prepared by engineering consultants or the Port Freeport. Such review and processing activities would include, but not be limited to, the following: technical analyses and writing, real estate evaluation, risk analysis, copying or other clerical/support tasks, acquisition of GIS data, site visits, coordination activities, additional personnel (including support/clerical staff), technical contracting, and environmental documentation preparation and review .

Any funds provided by Port Freeport that remain unexpended at completion of the Section 408 review and approval process will be returned by the Galveston District to Port Freeport upon request.

Procedures to be used to ensure impartial decision-making: Approval of the Port Freeport Section 408 permit applications will be in accordance with 33 CFR 208.10, Local flood protection works; maintenance and operations of structures and facilities and relevant Corps Levee Safety guidance. To ensure the funds will not impact impartial decision-making, the following procedures would apply:

- a. No funds received under a Section 214 agreement shall be expended for the District Commander or the Division Commander's consideration and recommendation to the Director of Civil Works regarding the Port Freeport Section 408 permit application.
- b. No funds received under Section 214 shall be used for the District Commander's consideration and final decision on approval or disapproval of a Section 408 permit application.
- c. Draft technical documents or draft decision documents resulting from the use of funds obtained from Port Freeport under Section 214 will be reviewed and signed by a reviewer who is not funded by funds received under Section 214 for the Port Freeport Section 408 permit application.
- d. All final permit decisions for cases where Section 214 funds are used will be made available on the Galveston District website on monthly basis.
- e. The Galveston District will not eliminate any procedures or decisions that would otherwise be

required for that type of project and permit application under consideration.

- f. The Galveston District will comply with all applicable laws and regulations.
- g. Section 214 funds will only be expended to provide priority review of the participating non-federal entity's permit application.

Impacts to the Civil Works Program: We do not expect priority review of the Port Freeport projects to negatively impact the Galveston District's Civil Works Programs, or to increase the time for evaluations of other projects. Reference documents and programmatic tools developed by public entity funding will be available to the general public. The benefits of implementing this program are anticipated to translate into an enhanced evaluation capability for all participants.

Section 214 of WRDA 2000 is designed to enable the Corps' ICW program to expedite the processing of Section 408 applications. This may allow for additional personnel to review the applications, cost effectiveness by streamlined processing, and develop a more predictable schedule for obtaining decision documents for Section 408 applications.

A Public Notice, with a 30-day comment period, was issued September 12, 2013. The Galveston District Commander has determined, after considering public comments, the acceptance and expenditure of the funds is in compliance with Section 214 of WRDA 2000 and is not otherwise contrary to the general public interest. The Galveston District will proceed with acceptance and expenditure of funds from Port Freeport in accordance with the signed MOA.

DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS