



Special Public Notice

**U.S. Army Corps
Of Engineers
Galveston District**

Date Issued: _____

Texas Department of
Transportation
(TXDOT) - WRDA 2000

27 October 2020

**EXTENSION OF TIME TO
FUNDING AGREEMENT
BETWEEN
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
AND TEXAS DEPARTMENT OF TRANSPORTATION
PURSUANT TO
SECTION 214 WATER RESOURCE DEVELOPMENT ACT 2000,
AS AMENDED (DECEMBER 2016)**

PURPOSE OF PUBLIC NOTICE: To inform you of an extension of time on the agreement between the U.S. Army Corps of Engineers, Galveston District, and the Texas Department of Transportation (TXDOT), to transfer funds pursuant to Section 214 of the *Water Resources Development Act of 2000, as amended (December 2016)* to expedite the evaluation of permits under jurisdiction of the Department of the Army (DA).

AUTHORITY: Section 214 of the *Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541)*, as amended, provides:

- (a) 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) 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.
- (c) The authority provided under this section shall be in effect through 31 December 2021.

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

This Public Notice announces the intent of the Galveston District to extend the time to accept and expend funds contributed by TXDOT to expedite processing of their DA permit applications, subject to a series of limitations.

The Galveston District entered into the original Agreement with TXDOT to accept and expend funds from TXDOT pursuant to WRDA 2000, as amended, on 9 October 2015. The Agreement expired on 30 September 2020. The Amendment to extend the time of the current agreement does not change the provisions of the Agreement, with the exception of the expiration date, which is extended to 30 September 2021.

TXDOT requested that a provision be added to the Amendment to provide additional funding for the Agreement. The original Agreement did not set a cap on funding. However, TXDOT did internally cap their funding at the original amount listed in the 2015 Agreement. These original funds were fully expended in FY 2020. The provision to add funding is included to facilitate TXDOT's ability to make additional deposits to fund the Agreement through September of 2021.

Definition of non-Federal public entities: Non-Federal public entities are comprised of various forms of state and local governmental agencies and Indian tribal governments. They include, but are not limited to, local transportation agencies desiring to expedite highway projects, port authorities wanting permits expedited for marine terminals, flood and storm water management agencies, levee districts, or governmental economic development agencies seeking to expedite permit applications for certain kinds of work, including industrial or commercial development. Two or more non-Federal public entities could jointly fund a single account. We expect participating entities would be public agencies with a number of permit applications being simultaneously considered by the Galveston District, and enough future projects in the planning stage to warrant this form of partnership. TXDOT meets the definition of a non-Federal public entity.

How the Galveston District would expend the funds: The 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 would be used to augment the Galveston District Regulatory budget in accordance with the provisions of WRDA 2000. The Galveston District would establish separate accounts for each funding non-Federal public entity to track receipt and expenditure of the funds. Galveston District Regulatory employees would charge their time against the respective account of a non-Federal public entity when they did work to expedite resolution of one of that entity's permit requests. With an increased Regulatory budget, the Galveston District may hire additional employees, paying salaries in part from the non-Federal public entity funding to the degree the employees work on expediting those entities' permit applications.

The kind of activities for which funds would be expended: Funds would mainly be expended on the salaries and overhead of Regulatory Project Managers and Regulatory Specialists, for performing expedited processing activities for participating public entities. Such activities would 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 applicant. Funds would not be expended for review of work products by supervisors, other elements of the

Galveston District, or other persons in the decision making chain of command. No enforcement or compliance activities would be paid from the augmenting funds, nor would the funds be used for paying the costs of public hearings and distribution of public notices.

If a participating entity's funds are expended and are not renewed, their remaining permit applications would be handled like those of any other non-participant, in a manner decided by the assigned Regulator and his or her supervisor.

Procedures Galveston District will use to ensure that the funds will not impact impartial decision making: To ensure that the funds will not impact impartial decision making, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, would apply to all cases using additional funds provided by the participating non-Federal public entities:

- a. All final permit decisions for cases where these funds are used must be reviewed at least by one level above the decision maker. For example, if the decision maker is the Chief, Regulatory Division, then the reviewer would be the District Commander.
- b. All final permit decisions for cases where these funds are used will be made available on the Galveston District Regulatory web page.
- c. The Galveston District will not eliminate any procedure or decisions that would otherwise be required for that type of project and permit application under consideration.
- d. The Galveston District must comply with all applicable laws and regulations.
- e. Funds will only be expended to expedite the final decision on the permit 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.

Benefits non-Federal public entities would receive from their funds: Section 214 of WRDA 2000 is designed to enable the Galveston District Regulatory Program to expedite the processing of public projects. Participating agencies can expect some of their permit applications to receive expedited handling, and to the degree we consider it appropriate, they can set priorities. Their augmentation of our Regulatory budget may allow us to hire additional people, increasing the size of the pool from which we would assign people to expedite these applications. The result for participants should be streamlined permit processing, new tools to resolve jurisdictional determination issues, and a more predictable time-line for obtaining DA authorizations.

Impacts we foresee to our Regulatory Program and to DA permit evaluations that are not subsidized by funds contributed by non-Federal public entities: We do not expect this method of expediting the permit review of certain public projects to negatively impact the Galveston District's Regulatory Program, or to increase the waiting time for permit evaluations that are not subsidized by funds contributed by non-Federal sponsors. Rather, the Regulatory Division could process the remaining applications which are not assigned to the WRDA 2000 employees/contractors on a quicker basis. Reference documents and programmatic tools developed by public entity funding will also be available to the general public. We expect the benefits of implementing this program to translate into an enhanced evaluation capability for all.

Consideration of Comments: The Amendment to extend the time of the current agreement does not change the provisions of the Agreement, with the exception of the expiration date. Therefore, an initial Public Notice (PN) was not required for the proposed Amendment. The Galveston District Commander has determined that acceptance and expenditure of the funds is in compliance with the Act and is not otherwise contrary to the general public interest. The Galveston District will proceed with acceptance and expenditure of funds from TXDOT. The 214 authority to accept and expend funds from non-Federal public entities has no expiration date.

DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS