Amended Communication Protocol Agreement
Between
U.S. Army Corps of Engineers, Seattle District (Corps),
Whatcom Country Planning and Development Department (County),
Washington State Department of Ecology (Ecology),
and
CH2M Hill, Inc.
for the
Pacific International Terminals, Inc. Gateway Pacific Terminals Project
And the
BNSF Railway Custer Spur Expansion Project
Environmental Impact Statement

1. PURPOSE: The purpose of this Communication Protocol Agreement (CPA) is to identify communications requirements and protocols to ensure there is no conflict of interest regarding the formulation of a separate NEPA EIS document and SEPA EIS document for the evaluation of proposed Gateway Pacific Terminal dry bulk commodities export and import facility and the BNSF Railway Custer Spur improvement project, both located at Cherry Point in Whatcom County.

2. RESPONSIBILITIES: The separate federal NEPA and State/County SEPA EISs are being prepared under a third-party contractor arrangement, pursuant to National Environmental Policy Act (NEPA) requirements at 40 CFR 1506.5(c) and Washington State Environmental Policy Act (SEPA) requirements at RCW 43.21C, WAC 197-11, and Whatcom County Code 16.08. The 3rd party contractor, CH2M Hill, Inc. and associated subcontractors (3rd Party Team), has been selected from a field of candidates solicited by Whatcom County, and is subject to the sole supervision and control of the County, Ecology, and the Corps (collectively, the Parties or the Co-leads1) in the development of synchronized but separate NEPA and SEPA documents. While Pacific International Terminals and BNSF Railway (collectively, the applicants) are indirectly funding the 3rd Party Team, they have no supervisory authority or control over the 3rd Party Team in preparation of the two EISs.

Communication strategies and protocols are formulated in this CPA to ensure and maintain the integrity of the NEPA and SEPA processes, preclude any source of bias in the formulation of the NEPA and SEPA EISs, as well as avert any potential appearance of improper influence. However, these are not intended to be so restrictive as to eliminate all efficiency from the information exchange process. The Corps, County, and Ecology intend that the NEPA EIS and the SEPA EIS be coordinated, synchronized, and consistent to the maximum extent possible. The following is not an all-inclusive list of communication limitations and documentation procedures, but they set forth general policies and practices necessary to preserve the independence and integrity of the County, State, and Federal evaluation and decision-making processes. In light of circumstances encountered during development of the two EISs, revisions

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1 For the purpose of this communication protocol agreement, “co-lead agencies” refers to the collaborative effort by the County, Ecology, and the Corps to produced two separate documents to meet each agency’s respective SEPA or NEPA responsibilities. Pursuant to WAC 197-11-944, the County and Ecology agree to share the responsibilities of being SEPA co-lead agencies for this SEPA document. The Corps is the sole lead agency for the NEPA document.
to this CPA may be necessary. Revisions will only be made with the approval of all signatory parties.

The Corps will independently evaluate the NEPA document and the County and Ecology will independently evaluate the SEPA document prepared by the 3rd party contractor upon its completion. The Corps will assume responsibility for the scope and content of the NEPA document and the County and Ecology will assume responsibility for the scope and content of the SEPA document.

The Co-leads will be responsible for providing relevant information on actions and status to the applicants.

Communication and interaction between the Co-leads will be conducted in accordance with the provisions of the amended Memorandum of Understanding dated 18 September 2013.

Pacific International Terminals Inc. shall promptly provide to County all necessary funding to develop the EIS pursuant to the guidance and direction of County, throughout the effective period of this CPA.

**Communication protocols to be followed include:**

a. The Parties intend that the separate NEPA and SEPA documents will be consistent to the maximum extent possible. If the 3rd Party Team, Corps, County, or Ecology have reason to believe that information being developed or analyzed would overlap in the NEPA document and SEPA document, then the Parties will meet to discuss how to collaboratively develop the data to be utilized in the separate documents. The Parties anticipate that they will provide direction to the 3rd Party Team by consensus in areas where the NEPA and SEPA documents overlap. In areas where the documents do not overlap, or if there is disagreement among the co-leads regarding specific issues, the Corps has final authority to provide instructions and guidance to the 3rd Party Team relative to the preparation of the NEPA EIS, compliance with federal policies and procedures, impact assessments, data interpretation, and conclusions and the County and Ecology jointly have final authority to provide instructions and guidance to the 3rd Party Team relative to the preparation of the SEPA EIS, compliance with state and local policies and procedures, impact assessments, data interpretation, and conclusions. Direction to the 3rd Party Team is the exclusive responsibility of the Co-leads. The 3rd Party Team may neither take nor request direction or guidance from the applicants, including company representatives, consultants, agents, and attorneys, on any aspect of the EIS preparation.

b. Any direct communication, contact, coordination, meetings, document review or consultation between the 3rd Party Team and the applicants must be approved by the co-leads for areas of NEPA and SEPA overlap. For areas of NEPA and SEPA that do not overlap, any direct communication, contact, coordination, meetings, document review or consultation between the 3rd Party Team and the applicants regarding NEPA must be approved by the Corps or regarding SEPA must be approved by the County and Ecology.
Any type of contact or communication between the 3rd Party Team and applicants must be documented by the 3rd Party Team through e-mail, memoranda, conversation records, or other notes as appropriate. This documentation is the responsibility of the 3rd Party Team and is to be provided to the co-leads.

c. Direct communication between the 3rd Party Team and the applicants is expected to occur. However, this contact must be limited to collection of data and information (including site access) as well as amplification and clarification of information submitted by the applicants, unless otherwise expressly approved by the co-leads. This will normally include technical reports and data held and/or prepared by the applicants. Additionally, at the request of the co-leads, the applicants may be required to supply various work products and data for the preparation of the NEPA document or SEPA document. If the materials are requested for use by the 3rd Party Team for both EISs, the applicant will send the information to the co-leads and may courtesy copy the 3rd Party Team. If either the Corps or the County or Ecology expressly request information from the applicant to address an area that does not overlap between the NEPA and SEPA EISs, the applicant will send the information only to the requesting party and not to all of the Co-leads jointly; the applicant may also courtesy copy the 3rd Party Team in such an instance. The applicants will be notified if the information requested is a NEPA and SEPA overlap information, NEPA only information, or SEPA only information.

d. Work products prepared by 3rd Party Team relevant only to the SEPA EIS will be submitted directly to the County and Ecology. Work products prepared by the 3rd Party Contractor Team relevant only to the NEPA EIS will be submitted directly to the Corps. Work products prepared by 3rd Party Team that the co-leads mutually agree overlap in the SEPA EIS and NEPA EIS will be submitted to the co-leads. 3rd Party Team work products will only be shared with the applicants with the approval of the co-leads.

e. The 3rd Party Team will provide the co-leads with weekly status and updates. The co-leads will be responsible for sharing this information with the applicants as deemed necessary by each agency.

f. Inquiries or contacts from members of the public, received by the 3rd Party Team concerning the NEPA document, SEPA document review, or the projects, will be directed to the respective agency. The 3rd Party Team shall not release any work product to any persons not a party to this communication protocol without direction from the Corps, County, or Ecology.

g. The 3rd Party Team will deal solely with the County regarding budget and contracting issues (contracts, billings, etc.). The 3rd Party Team will submit their monthly billing after the close of every month to: Whatcom County PDS, Attn: Tyler Schroeder, 5280 Northwest Dr., Bellingham, WA 98226. The County will be the sole point of communication with the applicants on matters concerning funding of the EIS and associated activities. Monthly billings shall follow the protocol specified in the Contract for Services Agreement between Whatcom County and CH2M Hill; Section 20.1 “Accounting and Payment for Consultant Services.”
h. Modifications to the 3rd Party Contractor contract will include language that requires the Corps to review and provide comment on the scope of work specific to the NEPA document prior to the County agreeing to the commencement of the deliverables.

3. PROJECT MANAGERS:

Project managers for each signatory to the CPA are:

For the County:
Tyler R. Schroeder - Planning Supervisor
Whatcom County Planning and Development Services
5280 Northwest Drive
Bellingham, Washington 98225
(360) 676-6907 ext. 50202
tschroed@co.whatcom.wa.us

For the Corps:
Randel Perry
Seattle District Regulatory Branch
Northwest Field Office
1440 10th Street, Suite 102
Bellingham, Washington 98225-7028
(360) 734-3156 (office)
(360) 393-2867 (cell)
randel.j.perry@usace.army.mil

For Ecology:
Alice Kelly
Department of Ecology
Northwest Regional Office
3190 160th Ave SE
Bellevue, WA 98008
(425) 649-7128 (office)
(425) 681-6236 (cell)
alice.kelly@ecy.wa.gov

For CH2M Hill, Inc.
Jodi Ketelsen
CH2M HILL
1100 112th Avenue NE, Suite 400
Bellevue, WA 98004
(425) 233-3104 (office)
(425) 283-8806
4. **NON-FUND OBLIGATING DOCUMENT:** This CPA is neither a fiscal nor a funding obligation document, and does not reflect or constitute an obligation of funds of the United States, Washington State, or Whatcom County. This CPA does not establish a contracting or funding relationship between the Corps or Ecology and the 3rd party contractor. Any endeavor involving reimbursement, contribution of funds, or a transfer of anything of value between parties to this instrument must be addressed in separate documentation, in accordance with applicable laws, regulations and procedures. Specifically, this CPA does not establish authority for noncompetitive award to the contractor of any future contract or other agreement.

5. **EXPIRATION:** This CPA shall be in effect for a period of three (3) years from the executed date and shall terminate at the end of that period unless otherwise modified, terminated, or renewed in writing by all parties.

6. **MODIFICATION AND AMENDMENT:** This CPA may be modified or amended in writing, by mutual agreement of all parties.

7. **TERMINATION:** The Corps, County, or Ecology in writing, may terminate this CPA at any time before the date of expiration, with 30 days written notice.

8. **PARTICIPATION IN SIMILAR ACTIVITIES:** This instrument is no way restricts the Corps, County, or Ecology from participating in similar activities with other public or private agencies, organizations, and individuals.

9. **EFFECT OF AGREEMENT:** This CPA does not in any manner affect statutory authorities and responsibilities of the signatory parties. This CPA is not intended, nor may it be relied upon, to create rights in extrinsic persons or entities, enforceable in litigation with the United States, Washington State, Whatcom County, or any party hereto.

10. **EFFECTIVE DATE:** This Agreement shall be effective as of 19 September 2013.

11. **ACCEPTANCE:** The following signatures indicate the respective acceptance of the provisions of this document:

The Corps, by and through:

Michelle Walker
Chief, Seattle District Regulatory Branch
U. S. Army Corps of Engineers

9/19/13 (DATE)
The County, by and through:

Jack Louws
County Executive
Whatcom County Planning and Development Services Department

9/4/13
(DATE)
Ecology, by and through:

Josh Baldi  
Northwest Regional Office Director  
Washington State Department of Ecology  

9.18.13  
(DATE)
CH2M Hill, Inc. by and through:

Jodi Ketelsen
Project Manager
CH2M Hill, Inc

Sept. 6, 2013 (DATE)