

**MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS,
PORTLAND DISTRICT
AND
THE PORT OF PORTLAND, THE PORT OF VANCOUVER, THE PORT OF KALAMA,
AND THE PORT OF LONGVIEW
FOR
OPERATION AND MAINTENANCE OF DREDGED MATERIAL DISPOSAL
FACILITIES
FOR
THE COLUMBIA RIVER PORTION OF THE COLUMBIA AND LOWER WILLAMETTE
RIVERS FEDERAL NAVIGATION CHANNEL, OREGON AND WASHINGTON**

This Memorandum of Agreement (MOA) is entered into by the Department of the Army, U.S. Army Corps of Engineers, Portland District (Government) and the Ports of Longview, Kalama, Vancouver, and Portland, each Port a cost-sharing Non-Federal Sponsor, (collectively, the Parties) for the establishment of a cooperative relationship between the Parties regarding activities on the Columbia River portion of the Columbia and Lower Willamette Rivers Federal Navigation Channel, Oregon and Washington (hereinafter the "Project"), including but not limited to a plan of operations and maintenance of dredged material placement (hereinafter the "Plan").

I. PURPOSE

The purpose of this MOA is to establish a collaborative process among the Parties to support the joint processes pertaining to the Parties' respective roles and interests in the Project, including without limit the Government's responsibilities under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4347, and the Non-Federal Sponsors' responsibilities under the Washington State Environmental Policy Act (SEPA), Chapter 43.21c Revised Code of Washington (RCW) and its implementing regulations at Chapter 197-11 Washington Administrative Code (WAC), for the Plan. The process of collaboration is aimed at creating a framework for the respective Parties to respond to needs of the Parties where a common interest exists among them, and where one or more of the Parties has a greater ability to timely take action.

This MOA contemplates cost-sharing among the Parties, in accord with Section 101 of the Water Resources Development Act (WRDA) of 1986, Public Law 99-662, codified as amended at 33 U.S.C. § 2211, and establishes procedures for the review, approval, and reimbursement of costs and expenses, and the implementation of associated support agreement(s) which shall be subsequently developed, executed and amended from time to time by the Parties in accordance herewith.

The MOA is the master agreement which sets forth general terms and conditions governing the relationship between the Government and the Non-Federal Sponsors that

will apply to all subsequent support agreement(s). Each support agreement will detail specific services, period and means of performance, and funding information.

The Non-Federal Sponsors are prepared to support the joint NEPA-SEPA environmental review process associated with the Plan, and the Government will reimburse the Non-Federal Sponsors for the federal share of support for the joint environmental review process that is associated with the operation and maintenance of disposal facilities.

II. AUTHORITY

The federal navigation channel in the Columbia River has been improved to greater depths over time. The purpose of the Plan is to provide for the operations and maintenance of dredged material disposal facilities for the 43-foot navigation channel Project pursuant to Section 101(b)(13) of the WRDA of 1999, Public Law 106-53, and Division H, Section 123 of the Consolidated Appropriations Act of 2004, Public Law 108-199, and for which the improvement to the depth of 43 feet was subject to completion of a favorable Chief's Report no later than 31 December 1999.

The Corps issued a Chief's Report dated December 23, 1999. The Project was constructed and is now in its operations and maintenance phase. The Project navigation channel is maintained using a system of hydraulic control structures and annual dredging. Dredged material is placed in Project disposal facilities. The Chief's Report provides that the Non-Federal Sponsors may perform operation and maintenance of disposal facilities on behalf of the Government, and allows the Government to reimburse the Non-Federal Sponsors for that work. (Chief's Report dated 23 December 1999, Subject: Columbia and Lower Willamette Rivers Federal Navigation Channel, Oregon and Washington, paragraph 11.b.)

Pursuant to Section 215 of the Flood Control Act (FCA) of 1968, Public Law 90-483, as amended by Section 221 of the FCA of 1970, Public Law 91-611, (authorizing the Chief of Engineers to reimburse non-federal interests for construction costs), codified as amended at 42 U.S.C. § 1962d-5b and Section 101 of the WRDA of 1986, Public Law 99-662 (authorizing cost sharing between the non-federal interest and federal government), codified as amended at 33 U.S.C. § 2211, the Government and the Non-Federal Sponsors entered into a Project Cooperation Agreement (PCA) on June 23, 2004 in order to implement the Project as described in the Chief's Report. The PCA defined the term "dredged or excavated material disposal facility" to mean:

[T]he improvements necessary on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material associated with the construction, operation, and maintenance of the other general navigation features. Such improvements may include, but not necessarily be limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, or de-watering pumps or pipes. (PCA, Article I.P.)

The Plan for the disposal of dredged or excavated material associated with maintaining navigation on the Lower Columbia River is an interest shared by the Parties, for which they are faced with regulatory and environmental review requirements, the timely compliance of which varies among the Parties. The PCA provides that, at the discretion of the Government, the Non-Federal Sponsors may carry out all or a portion of the operation and maintenance of the dredged or excavated material disposal facilities. (PCA, Article VIII.1.A.2.) Subject to the availability of funds, the Government will reimburse the Non-Federal Sponsors an amount equal to the actual costs for such operation and maintenance activities for the disposal facilities. The PCA also provides that the construction of disposal facilities constitutes a part of general navigation features, and that the Government shall reimburse the Non-Federal Sponsors for the operation and maintenance of general navigation features. (PCA, Articles I.B and XXIII.J.)

III. BACKGROUND

In order to operate and maintain a dredged or excavated material disposal facility, the Government must prepare a Dredged Material Management Plan (DMMP) in accordance with Engineering Regulation (ER) 1105-2-100 Appendix E-15. A DMMP establishes Project disposal facilities and how they will be operated and maintained to ensure that there is sufficient capacity for the volume of material likely to be dredged from the Project navigation channel over a 20-year period. ER 1105-2-100 Appendix E-15 requires that the Government consider the full range of measures for dredged material management in the DMMP, including: “management of existing disposal sites to extend their life; various combinations of new disposal sites involving different disposal methods, disposal area locations, and periods of use; and, measures to reduce dredging requirements, including reduced dimensions.” The subject Plan is a DMMP that is titled “Lower Columbia River Channel Maintenance Plan”.

DMMPs are to be consistent with protecting the Nation’s environment and will address the requirements of all applicable environmental statutes, specifically including NEPA. (ER 1105-2-100 Appendix E-15, paragraph e(4).) When the Government prepares or revises a DMMP, it must comply with NEPA. Council on Environmental Quality (CEQ) regulations direct federal agencies to cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and state or local requirements (such as SEPA), including joint planning processes, environmental research and studies, public hearings, and environmental impact statements. (40 C.F.R. § 1506.2.) A joint environmental review process among the Parties, including joint public meetings and receipt and tracking of public comments, will increase efficiency and simplify the receipt of and response to public comments.

IV. RESPONSIBILITIES OF THE PARTIES

a. THE GOVERNMENT’S OBLIGATIONS

The Government will lead the public scoping process, including developing the Federal Register notice of intent (NOI), purpose and need, draft alternatives, and public participation plan. The Government will lead development of the single, joint NEPA-SEPA document. The Government will neither perform nor reimburse the Non-Federal Sponsors for any work related solely to SEPA compliance. In performing the obligations herein, the Government will cooperate with the Non-Federal Sponsor Ports through a SEPA Responsible Official to be designated by the nominal SEPA Lead Agency following consultation with the other Non-Federal Sponsor Ports. The Government will designate a Point of Contact (POC) to coordinate efforts with the SEPA Responsible Official.

b. THE NON-FEDERAL SPONSORS' OBLIGATIONS

The Non-Federal Sponsors will support this joint NEPA-SEPA environmental review process by providing meeting presentation materials, venues, comment management, and other logistical services, limited analysis, and such other related work as may be agreed upon in each subsequent support agreement. (See Part V, below.) The Non-Federal Sponsors are responsible for all work associated with SEPA compliance, among other state requirements. The Non-Federal Sponsors will designate, among themselves, a nominal SEPA Lead Agency under WAC 197-11-942, - 944 and SEPA Responsible Official under WAC 197-11-910, in order to discharge the duties and functions of the Non-Federal Sponsors' SEPA responsibilities. The SEPA Responsible Official will cooperate with the Government. For its part, the Port of Portland is undertaking this obligation based on the understanding of the Government and the Port of Portland that the Lower Columbia River Channel Maintenance Plan is part of the Project, which under ORS 777.277(3) is defined as the channel deepening project.

V. SUPPORT AGREEMENTS

Prior to the Non-Federal Sponsors providing joint environmental review support to the Government under this MOA, the Government and one or more Non-Federal Sponsor(s) must establish a mutually agreed-upon written support agreement containing, at minimum, a detailed scope of work statement, period and means of performance, and estimated cost. Each support agreement must be signed by an authorized representative from the Government and the Non-Federal Sponsor(s) providing the support.

VI. COMPLIANCE WITH FEDERAL LAWS

In accordance with Articles XI and XXIII of the PCA, the Non-Federal Sponsors agree to comply with all applicable Federal laws and regulations, including, but not limited to Section 601 of the Civil Rights Act of 1964, PL 88-352 (42 U.S.C. § 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable federal labor standards requirements including, but not limited to, 40 U.S.C. §§ 3141–3148 and 40

U.S.C. §§ 3701–3708 (revising, codifying and enacting without substantive changes the provision of the Davis-Bacon Act (formerly 40 U.S.C. §§ 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. §§ 327 *et seq.*), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. § 276c). The Non-Federal Sponsors, in contracting for the performance of any operation and maintenance activities on behalf of the Government, shall also include provisions consistent with all applicable Federal laws and regulations.

VII. FINANCIAL DETAILS

a. FINANCIAL RESPONSIBILITIES

The Government's obligations are associated with NEPA compliance, which is a federal responsibility and expense. The Non-Federal Sponsors' obligations include services defined in IV(b) above, expenses for which are subject to Government reimbursement because they are in furtherance of the Government's compliance with NEPA during the preparation of the DMMP, which is required for the operation and maintenance of disposal facilities.

b. AVAILABILITY OF FUNDS

This MOA does not document the obligation of expenditure, invoicing, review and reimbursement of funds (obligation of funds) among the Parties. Any obligation of funds in support of this MOA will be accomplished in accordance with support agreement(s) to be developed, entered into, and amended from time to time by the mutual agreement of the Parties. The obligation of funds is subject to the availability of appropriated funds pursuant to the Department of Defense (DoD) Financial Management Regulation. If during the execution of a support agreement, the Non-Federal Sponsor(s) determine that the forecasted expenses will exceed the amount of funds provided by the support agreement, the Non-Federal Sponsor(s) will promptly deliver, to the Government, a Notice of Increased Expense Forecast. Said notice shall propose a revised budget inclusive of the additional necessary funds and, if feasible to the Non-Federal Sponsor Ports, a revised scope and schedule for work associated with the Plan. The Parties shall attempt to informally agree upon a revised budget, scope and schedule for the work associated with the Plan. The Parties, through their respective authorized representatives, shall meet within thirty (30) days of the delivery of a Notice of Increased Expense Forecast in an effort to resolve the increased expense forecast informally. During the pendency of this informal discussion period, the Parties are not excused from performing their remaining on-going services and obligations as otherwise provided for herein.

If the Parties are unable to resolve the dispute informally within thirty (30) days of the date of Notice of Increased Expense Forecast, either Party may give the other Party (Government or Non-Federal Sponsor Ports) not less than One Hundred Eighty (180) calendar days' advance written Notice of Intent to Terminate the relevant support agreement(s). Failure or delay in giving the Notice of Intent to Terminate shall not

deprive either party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any rights, claims, or remedies in the event of a failure to agree on a revised budget, scope and schedule for the Plan.

c. BILLING

In accordance with PCA Article XXIII.I, within 90 days after the expiration of, or the completion of work under, the support agreement, the billing Party shall provide the Government with such documents as are sufficient to enable the Government to conduct an accounting of such activities in order to determine the amount to reimburse. Examples of documentation include payrolls, payment of contract invoices, and documentation of performance of deliverables under the detailed scope of work. The billing Party shall submit a Request for Advance or Reimbursement (SF-270) along with other required documentation to the Government POC provided in the support agreement.

d. PAYMENT OF VOUCHERS

Payments will be made on a reimbursable basis for actual costs incurred. The Non-Federal Sponsor Ports shall provide the Government with reasonably detailed monthly billing documents (vouchers) for all of its costs, as described in the support agreement and incurred by the Non-Federal Sponsor Ports, within 30 calendar days from the end of any calendar month.

Upon receipt of billing documents, the Government shall conduct an accounting to determine the reasonable, allocable, and allowable costs eligible for reimbursement, subject to an audit in accordance with PCA Article X, and shall have 30 calendar days from the date it received each billing document to advise the Non-Federal Sponsor Ports of any dispute it has with item(s) or amounts shown in the invoice. The basis for determination of allowable costs will be 2 C.F.R. Part 200.

If the Government does not provide the Non-Federal Sponsor Ports with written notice of any disputed item(s) or amounts contained in such billing documents within 30 days of the Government's receipt thereof, then the Government shall remit payment to the Non-Federal Sponsor Ports in full within forth-five (45) days of its receipt of said billing document.

If the Government does timely provide Notice of Dispute about item(s) or amounts in a billing document, the Parties, through their respective designated representatives, shall meet within thirty (30) days of the receipt by the Non-Federal Sponsor Ports of the Notice of Dispute in an effort to resolve the matter informally. During the pendency of this informal discussion period, the Parties are not excused from performing their remaining on-going services and obligations as otherwise provided for herein.

If the Parties are unable to resolve the dispute informally within thirty (30) days of the date of Notice of Dispute, either Party may give the other Party (Government or Non-Federal Sponsor Ports) not less than One Hundred Eighty (180) calendar days' advance written Notice of Intent to Terminate the support agreement. Failure or delay in giving the Notice of Intent to Terminate shall not deprive either party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any rights, claims, or remedies in the event that the failure to agree on item(s) or amounts invoiced to the Government.

The Government will reimburse the billing Party up to the negotiated amount for performance under the support agreement. The Government is not liable for any expenditure in excess of this amount unless agreed to by modification of the support agreement, the procedure for which is described above. The amount of reimbursement is not subject to interest charges, nor is it subject to adjustment to reflect changes in price levels between the time the support agreement is completed and the time that the reimbursement is afforded (PCA Article XXIII.L).

e. AUDITS

The Government may disallow costs and recover previously disbursed funds on the basis of an audit. In accordance with PCA Article X, the billing Party is responsible for compliance with the Single Audit Act Amendments of 1996, as implemented by 2 C.F.R. Part 200. The billing Party shall provide a copy of the auditor's report to the Government POC provided in the support agreement. The Government may perform additional audits at its own expense.

VIII. POINTS OF CONTACT

The following points of contact (POC) will be used by the Parties to communicate in the implementation of this MOA. Each Party may change its point of contact upon reasonable notice to the other Party.

For the Government —

Primary POC: Project Manager (503) 808-4352

Alternate POC: Chief, Waterways Maintenance Section (503) 808-4345

For the Port of Longview —

Primary POC: Director of Planning and Environmental Services (360) 424-3305

Alternate POC: Chief Executive Officer (360) 424-3305

For the Port of Kalama —

Primary POC: Economic Development Manager, (360) 673-2325

Alternate POC: Environmental Manager (360) 673-2325

For the Port of Vancouver —

Primary POC: Economic Development Project Manager (360) 693-3611

Alternate POC: Chief Executive Officer (360) 693-3611

For the Port of Portland —

Primary POC: Senior Manager, Marine Security and Waterways (503) 415-6542

Alternate POC: Director, Marine Operations (503) 415-6732

IX. REVIEW OF AGREEMENT

This MOA will be reviewed annually on or around the anniversary of its effective date for financial impacts and triennially in its entirety.

X. MODIFICATION OF AGREEMENT

This MOA may only be modified by the written agreement of the Parties, duly signed by their authorized representatives.

XI. NO AGENCY OR JOINT VENTURE

Although the Parties intend and agree to cooperate in the timely processing of environmental review or other tasks for the Plan as established by mutual agreement of the Parties from time to time, the Parties renounce the existence of any form of agency relationship or joint venture between the Government and the Non-Federal Sponsor Ports and nothing contained herein or in any document executed in connection herewith shall be construed as creating any such legal relationship.

XII. DISPUTE RESOLUTION

Except as provided otherwise herein, any disputes relating to this MOA will, subject to any applicable law, Executive Order, Directive, or Instruction, be resolved by consultation between the Parties or in accordance with Department of Defense Instruction (DoDI) 4000.19.

XIII. TERMINATION OF AGREEMENT

This MOA may be terminated by either Party by giving at least 180 days written notice to the other Party. The MOA may also be terminated at any time upon the mutual written consent of the Parties.

XIV. EFFECTIVE DATE AND EXPIRATION

Unless modified or extended per Part X hereof, this MOA takes effect beginning on the day after the last Party signs and expires three years after the day the last Party signs.


AGREED:

For the Government:

Jose L. Aguilar
Colonel, Corps of Engineers
District Commander

(Date)

For the Port of Longview:



Norm Krehbiel
Chief Executive Officer

15 June 2017

(Date)

For the Port of Kalama:

Mark Wilson
Executive Director

(Date)

For the Port of Vancouver:

Julianna Marler
Chief Executive Officer

(Date)

For the Port of Portland:

Bill Wyatt
Executive Director

(Date)

AGREED:

For the Government:

Jose L. Aguilar
Colonel, Corps of Engineers
District Commander

(Date)

For the Port of Longview:

Norm Krehbiel
Chief Executive Officer

(Date)

For the Port of Kalama:



Mark Wilson
Executive Director

31-May-17

(Date)

For the Port of Vancouver:

Julianna Marler
Chief Executive Officer

(Date)

For the Port of Portland:

Bill Wyatt
Executive Director

(Date)

AGREED:

For the Government:

Jose L. Aguilar
Colonel, Corps of Engineers
District Commander

(Date)

For the Port of Longview:

Norm Krehbiel
Chief Executive Officer

(Date)

For the Port of Kalama:

Mark Wilson
Executive Director

(Date)

For the Port of Vancouver:


Julianna Marler
Chief Executive Officer

5/31/2017
(Date)

For the Port of Portland:

Bill Wyatt
Executive Director

(Date)

AGREED:

For the Government:

Jose L. Aguilar
Colonel, Corps of Engineers
District Commander

(Date)

For the Port of Longview:

Norm Krehbiel
Chief Executive Officer

(Date)

For the Port of Kalama:

Mark Wilson
Executive Director

(Date)

For the Port of Vancouver:

Julianna Marler
Chief Executive Officer

(Date)

For the Port of Portland:

Bill Wyatt

FDR: Bill Wyatt
Executive Director

6/21/17

(Date)

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

By: *[Signature]*

Counsel for the Port of Portland

AGREED:

For the Government:

Jose L. Aguilar
Colonel, Corps of Engineers
District Commander

(Date)

For the Port of Longview:

Norm Krehbiel
Chief Executive Officer

(Date)

For the Port of Kalama:

Mark Wilson
Executive Director

(Date)

For the Port of Vancouver:

Julianna Marler
Chief Executive Officer

(Date)

For the Port of Portland:

Bill Wyatt
Executive Director

(Date)