

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE PORT OF LONGVIEW
FOR ADDITIONAL DREDGING
IN CONNECTION WITH DREDGING OF
THE COLUMBIA RIVER PORTION OF THE COLUMBIA AND LOWER WILLAMETTE
RIVERS FEDERAL NAVIGATION CHANNEL, OREGON AND WASHINGTON

This MEMORANDUM OF AGREEMENT (hereinafter the "MOA") is entered into this 14th day of March, 2019, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Portland District (hereinafter the "District Engineer"), and the Port of Longview (hereinafter the "Non-Federal Interest"), represented by its Chief Executive Officer.

WITNESSETH, THAT:

WHEREAS, the Columbia River portion of the Columbia and Lower Willamette Rivers federal navigation channel, Oregon and Washington (hereinafter the "Project") was authorized for construction by Section 101(b)(13) of the Water Resources Development Act of 1999, Public Law 106-53, and Division H, Section 123 of the Consolidated Appropriations Act of 2004, Public Law 108-199, and is now in its operation and maintenance;

WHEREAS, the Government, the Non-Federal Interest, and other non-federal sponsor ports entered into a Project Cooperation Agreement ("PCA") on 23 June 2004 in order to implement the Project as described in the Chief of Engineer's Report dated 23 December 1999;

WHEREAS, the Non-Federal Interest requests dredging in calendar year 2019 of its berthing areas one (1) through nine (9) with in-water dredged material placement as described in the permit issued under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) by the Department of the Army to the Non-Federal Interest (hereinafter the "Additional Dredging") and agrees to pay all costs of such dredging; and

WHEREAS, the Government is authorized pursuant to 33 U.S.C. § 701h to carry out the Additional Dredging in connection with dredging of the Project.

NOW, THEREFORE, the Government and the Non-Federal Interest agree as follows:

1. The Non-Federal Interest shall provide to the Government funds to pay all costs, including the costs of environmental compliance, supervision and administration, and engineering and design, associated with the Additional Dredging to be carried out in connection with dredging of the Project. While the Government will endeavor to limit the additional costs associated with the Additional Dredging to the current estimate of \$406,750.00, the Non-Federal Interest acknowledges that the actual costs for the Additional Dredging may exceed such estimated

amount due to claims or other unforeseen circumstances and that the Non-Federal Interest is responsible for all costs, including any claims, related to the Additional Dredging.

2. Within thirty (30) calendar days of execution of this MOA, the Non-Federal Interest shall provide to the Government \$6,000.00 towards the costs of the Additional Dredging. If at any time the Government determines that additional funds are needed, the Government shall notify the Non-Federal Interest in writing of the amount, and a description of the amount, and, no later than fifteen (15) calendar days from receipt of such notice, the Non-Federal Interest shall provide to the Government the full amount of the additional funds.

3. The Non-Federal Interest shall provide the funds to the Government by delivering a check payable to "FAO, USAED Portland G2" to the District Engineer or providing an Electronic Funds Transfer of such funds in accordance with the payment mechanisms identified in Article VI.B.1 of the PCA.

4. The Government shall not commence the Additional Dredging until: (a) all applicable environmental laws and regulations have been complied with, including, but not limited to, the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4347) and Section 401 of the Clean Water Act (33 U.S.C. § 1341); and (b) the Non-Federal Interest has provided to the Government authorization for entry to all lands, easements, and rights-of-way the Government determines to be required for the Additional Dredging.

5. The Government shall provide the Non-Federal Interest with quarterly reports of obligations for the Additional Dredging. The first such report shall be provided within thirty (30) calendar days after the final day of the first full quarter of the Government fiscal year following receipt of the funds pursuant to this MOA. Subsequent reports shall be provided within thirty (30) calendar days after the final day of each succeeding quarter until the Government concludes the Additional Dredging.

6. Upon completion of the Additional Dredging and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of such work and furnish the Non-Federal Interest with written notice of the results of such final accounting. Such final accounting shall in no way limit the Non-Federal Interest's responsibility to pay for all costs associated with the Additional Dredging, including contract claims or any other liability that may become known after the final accounting. If such costs are more than the amount of funds provided by the Non-Federal Interest, the Non-Federal Interest shall provide the required additional funds within thirty (30) calendar days of such written notice by delivering a check payable to "FAO, USAED Portland G2" to the District Engineer or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If such costs are less than the amount of funds provided by the Non-Federal Interest, the Government shall refund the excess to the Non-Federal Interest within thirty (30) calendar days of such written notice, subject to the availability of funds.

7. Before either party to this MOA may bring suit in any court concerning an issue relating to this MOA, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

8. In the exercise of their respective rights and obligations under this MOA, the Government and the Non-Federal Interest each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

9. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and either delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Interest:

Port of Longview
Director of Planning and Environmental Services
10 Port Way, Longview, Washington 98632

If to the Government:

U.S. Army Corps of Engineers, Portland District
Project Manager, Columbia and Lower Willamette Rivers (CENWP-ODN-W)
P.O. Box 2946
Portland, Oregon 97208-2946

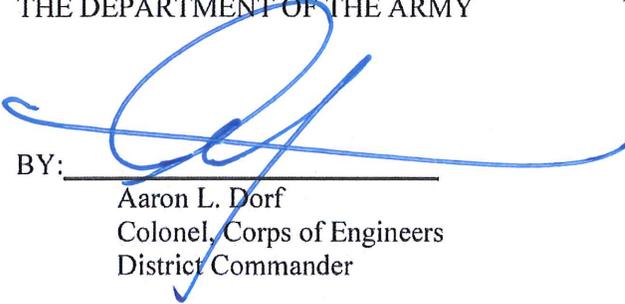
A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

10. This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may unilaterally terminate further performance under this MOA by providing at least 15 calendar days written notice to the other party. In the event of termination, the Non-Federal Interest remains responsible for any and all costs incurred by the Government under this MOA and for any and all costs of closing out or transferring any ongoing contracts.

IN WITNESS WHEREOF, the parties have executed this MOA, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

THE PORT OF LONGVIEW

BY: 

Aaron L. Dorf
Colonel, Corps of Engineers
District Commander

BY: 

Norm Krehbiel
Chief Executive Officer

DATE: 2019-03-14

DATE: 27 February 2019