

MAR 02 1999

**INTERGOVERNMENTAL AGREEMENT
AMONG
LOWER COLUMBIA RIVER PORTS
FOR
COLUMBIA AND LOWER WILLAMETTE RIVER
FEDERAL NAVIGATION CHANNEL DEEPENING AND MAINTENANCE**

RECITALS

A. The Port of Vancouver, the Port of Woodland, the Port of Longview, and the Port of Kalama (collectively, the "Washington Ports") are authorized to enter into this agreement under RCW 53.08.240 and RCW 39.34.030.

B. The Port of Portland, and the Port of St. Helens (collectively the "Oregon Ports") are authorized to enter into this agreement under ORS 190.010 and 190.420.

C. In anticipation of congressional authorization of the 43-foot Columbia & Lower Willamette River Federal Navigation Project between Portland-Vancouver and the Pacific Ocean ("Project"), the parties wish to agree upon the following:

1. designation of Non-Federal Sponsors to enter into a Project Cooperation Agreement with the United States;
2. shared responsibilities for fulfilling requirements of Corps of Engineers designated items of local cooperation for the Non-Federal Sponsor;
3. allocation among the parties of the non federal sponsors' share of the Project costs under the Project Cooperation Agreement; and
4. creation and supervision of an intergovernmental agency to acquire, hold, manage and transfer certain dredged material disposal sites along the lower Columbia River.

A.

AGREEMENT

1. NON-FEDERAL SPONSORS

1.1. Designation of Non-Federal Sponsors

There shall be two Non-Federal Sponsors for the Project Cooperation Agreement: one representing the Washington Ports ("Washington Non-Federal Sponsor") and the other representing the Oregon Ports ("Oregon Non-Federal Sponsor"). The Washington Ports shall either designate one of their members or create by appropriate agreement an entity to serve as the Washington Non-Federal Sponsor. The Oregon Ports shall either designate one of their members or create by appropriate agreement an entity to serve as

the Oregon Non-Federal Sponsor. The Non-Federal Sponsors shall be designated no later than March 1, 1999 _____.

1.2. Organization of Non-Federal Sponsors

The Washington Ports shall determine among themselves by appropriate agreement how the actions of the Washington Non-Federal Sponsor are to be controlled or affected by the Washington Ports. The Oregon Ports shall determine among themselves by appropriate agreement how the actions of the Oregon Non-Federal Sponsor are to be controlled or affected by the Oregon Ports. The Washington Ports and the Oregon Ports shall confer upon their respective Non-Federal Sponsors all authority necessary to perform the duties of the Non-Federal Sponsor under the Project Cooperation Agreement.

1.3. Powers, Purposes and Duties of the Non-Federal Sponsors

1.3.1. Negotiation of the Project Cooperation Agreement

The Non-Federal Sponsors shall enter into negotiations with the United States for agreed terms and provisions in the Project Cooperation Agreement.

1.3.2. Performance of Duties under Project Cooperation Agreement

The Non-Federal Sponsors shall perform such duties as provided in the Project Cooperation Agreement.

1.3.3. Definitions

Unless the context clearly requires otherwise, capitalized terms shall have the meanings given them in this Agreement or in the Project Cooperation Agreement.

1.3.4. Anticipated Duties Provided in Project Cooperation Agreement

It is anticipated that the Non-Federal Sponsors, under the Project Cooperation Agreement, shall: provide all lands, easements, rights of way, or other interests, that the United States determines to be necessary for the construction, operation, or maintenance of the General Navigation Features; construct Local Service Facilities; operate and maintain Facilities and Disposal Areas; operate and maintain Local Service Facilities and Dredged or Excavated Material Disposal Areas; accomplish Removals of obstructions; accomplish Relocations; provide for payment of any cost difference between the least cost plan and the sponsor's preferred plan; indemnify the United States for all damages arising from the construction, operation, or maintenance of the Project, except for damages due to the fault or negligence of the United States or its contractors; perform, or cause to be performed, any investigations for hazardous substances determined to be necessary to identify the existence and extent of any hazardous substances; provide for payment of the costs of response and appropriate remediation, if any is required; provide senior representatives to serve on a Project Coordination Team as required; and provide such documents as are sufficient to determine the value of any contribution provided by either Non-Federal Sponsor to the United States in order to afford the appropriate credit.

1.4. Willamette River Elements of the Project

The Oregon Non-Federal Sponsor shall be solely responsible for paying costs and performing the duties under the Project Cooperation Agreement, including but not limited to those set out above in Paragraph 1.3, and exercising the rights of the Non-Federal Sponsor under the Project Cooperation Agreement, with respect to those elements of the Project located in, or related to, the Willamette River.

1.5. Satisfaction of Project Cooperation Agreement Requirements

Each Non-Federal Sponsor shall be responsible for satisfying the United States that it is authorized to perform the duties of the Non-Federal Sponsor under the Project Cooperation Agreement with respect to activities within the state it represents. The Non-Federal Sponsors shall cooperate in satisfying the United States that a reliable and practical funding plan is in place and capable of implementation.

1.6. Separate Local Sponsors on Project Cooperation Agreement

The two Non-Federal Sponsors shall jointly enter into the Project Cooperation Agreement with the United States.

1.7. Decision Making and Dispute Resolution

All decisions permitted or required by the Non-Federal Sponsors under the Project Cooperation Agreement shall be made by the mutual agreement of the Non-Federal Sponsors. In the event a dispute arises between the Non-Federal Sponsors, including, but not limited to the execution or interpretation of the duties, powers, or responsibilities provided herein or as permitted under the PCA, the Non-Federal Sponsors agree to seek resolution of the dispute through good faith mediation. The mediator shall be agreed upon by both parties. If the Non-Federal Sponsors cannot agree upon a mediator, or if mediation fails to result in resolution of the disagreement, each Non-Federal Sponsor shall appoint one neutral arbitrator. The two appointed arbitrators shall appoint a third neutral arbitrator. If the two neutral arbitrators cannot agree upon a third neutral arbitrator, the Non-Federal Sponsors, or either of them, may petition the Chief Judge of the Oregon U.S. District Court to have a third neutral arbitrator appointed. The disagreement shall be submitted to the arbitrators for a binding decision, provided that nothing in the arbitrators' decision shall be deemed to impair the exercise by either Non-Federal Sponsor or by any port of any of its governmental powers. The costs of the arbitrators shall be allocated between the Non-Federal Sponsors in the same manner as Project costs. Each Non-Federal Sponsor shall pay its own attorney fees, if any. Arbitration shall be in accordance with the rules of the American Arbitration Association, unless the parties unanimously agree to an alternate procedure proposed by the appointed arbitrators.

1.8. Authority

Except as expressly provided otherwise by this Agreement, each signatory port hereby confers on its respective Non-Federal Sponsor all authority reasonably necessary to allow the Non-Federal Sponsor to perform all duties required of or actions permitted by the Non-Federal Sponsor under the Project Cooperation Agreement and by a Non-

Federal Sponsor under this Agreement, including without limitation the power to contract and the power to buy, sell, and manage real property. Nothing in this Agreement shall be deemed to authorize a Non-Federal Sponsor to exercise the legislative authority, taxing authority, or police power of any of the signatory ports.

2. FINANCIAL

2.1. Cost Sharing

The Non-Federal Sponsor share of the Project costs under the Project Cooperation Agreement, except those costs related to the Willamette River, shall be allocated between the Non-Federal Sponsors in the following manner:

2.1.1. Equally Shared

The following shall be shared equally (50/50) between Non-Federal Sponsors:

- 2.1.1.1.** The cash contribution to the United States for the local share of the General Navigation Features, as defined in the Project Cooperation Agreement, for the Columbia River;
- 2.1.1.2.** The cash contribution to the United States for the cost of the Sponsor's preferred plan in excess of the least cost plan, provided, however that, where a party to this Agreement obtains beneficial use from the activity on a particular parcel of land acquired pursuant to the Project Cooperation Agreement, the party receiving the benefit shall be solely responsible for the incremental cost related to that parcel;
- 2.1.1.3.** The cash contribution to the United States for the local share of the Ecosystem Restoration Project Construction Cost, as defined in the Project Cooperation Agreement;
- 2.1.1.4.** Any utility relocation costs on the Columbia River for which the Non-Federal Sponsors are responsible under the Project Cooperation Agreement;
- 2.1.1.5.** Acquisition costs for necessary lands, easements, and rights-of-way for Project construction, Project maintenance, dredge material disposal, and environmental mitigation, except that, where a party to this Agreement obtains beneficial use from the activity on a particular parcel of land acquired pursuant to the Project Cooperation Agreement, the party receiving the benefit shall be responsible for the acquisition costs related to that parcel, but only up to the net value of the benefit realized by that party during the term of this Agreement; and
- 2.1.1.6.** Any other contributions specifically agreed to in this Agreement and the Project Cooperation Agreement.

2.1.2. Oregon Non-Federal Sponsor

The following shall be paid entirely by the Oregon Non-Federal Sponsor:

2.1.2.1. The cash contribution to the Federal Government for the local share of the Willamette River General Navigation Features;

~~2.1.2.2. Any Relocation costs on the Willamette River; and~~

2.1.2.3. Such other costs relating to the Willamette River element of the Project.

2.1.3. Land Enhancement Costs

Any land enhancement costs shall be borne by any party to this Agreement that benefits, or whose constituents benefit, from the land enhancements.

2.2. Party-Owned Land

Title to any disposal site identified in the Sponsor Preferred Plan which is owned by a party to this Agreement shall be retained by the owner, but shall be made available as a project disposal site by the conveyance of an interest in the property as may be required by the Project Cooperation Agreement, which may include but not necessarily be limited to a license, lease, or easement, at no cost to the project. An individual port responsible for providing a site identified in the Sponsor Preferred Plan may, with the written consent of both the Oregon and Washington Non-Federal Sponsors, provide an alternative, substitute site. Any such proposed substitution shall include consideration from the port proposing the substitution for any increased project costs attributed to the change of the site. Consent to such a proposed substitution shall not be unreasonably withheld. In the event of a dispute regarding consent to a proposed substitution, the parties shall employ the dispute resolution procedures of paragraph 1.7.

2.3. Credit for Contributed Sites

2.3.1. The PCA allows up to ten percent (10%) of the Non-Federal Sponsor's share of the costs of construction of the General Navigation Features to be satisfied by non-cash contributions, including the value of lands, easements, and rights of way. It is anticipated that this credit under the PCA will be obtained in part through the contribution or provision of interests in sites which presently are owned by individual ports, in which those ports will retain beneficial interests, and from which they will enjoy benefits arising from the disposal activities. It is also anticipated that individual ports will acquire new properties solely for purposes of the project and for which the individual ports will have no further or other use,(so-called "orphan sites"). The parties shall cooperate in obtaining the maximum available credit under the Project Cooperation Agreement and shall share equally between the Washington Non-Federal Sponsor and the Oregon Non-Federal Sponsor the opportunity to obtain such credit.

2.3.2. To the extent an individual port's non-cash contribution (as defined in the Project Cooperation Agreement) is provided by an orphan site and is included in the ten percent (10%) non-cash contribution, the providing port's cash contribution share under this Agreement shall be reduced by the fair market value of that non-cash contribution.

2.3.3. There shall be no credit toward project cost allocation between the Oregon Non-Federal Sponsor and the Washington Non-Federal Sponsor for any non-cash contribution related to the Willamette River element of the Project.

3. DREDGED MATERIAL DISPOSAL SITE ACQUISITION

Interests in dredged material disposal sites required under the Project Cooperation Agreement on the Washington side of the Columbia River shall be obtained by one or more Washington Ports, the Washington Non-Federal Sponsor, or by another governmental entity in Washington. Interests in dredged material disposal sites required under the Project Cooperation Agreement on the Oregon side of the Columbia River shall be obtained by one or more Oregon Ports, the Oregon Non-Federal Sponsor, or by another governmental entity in Oregon.

4. LOWER COLUMBIA RIVER LAND MANAGEMENT AGENCY

4.1. Creation

The Washington Ports and Oregon Ports shall create a Lower Columbia River Land Management Agency ("Agency") to hold and manage certain dredged material disposal sites, mitigation sites, access easements, and other interests in real property necessary for the construction or maintenance of that portion of the Project in the Columbia River.

4.2. Duration

Unless sooner terminated pursuant to the provisions of this Agreement or extended by amendment of this Agreement, the duration of the Agency shall correspond to the duration of the Project as authorized by Congress, shall adjust automatically to any congressionally approved changes in the Project, and shall expire or terminate automatically upon the expiration or termination of the Project authorization.

4.3. Management

The Agency shall be controlled jointly by the Non-Federal Sponsors. Each Non-Federal Sponsor shall appoint three individuals to represent the Non-Federal Sponsor on an Agency Steering Committee. The day-to-day operations of the Agency shall be managed by the Steering Committee. The Steering Committee shall adopt rules to govern its activities and the activities of any individuals serving as Agency staff, may authorize contracts by the Agency, and may authorize the hiring of Agency staff. Decisions by the Steering Committee shall be by majority vote of all six Steering Committee members. Steering Committee members may attend meetings and vote in person or by telephone. If the Steering Committee members deadlock, the matter shall be submitted to the Non-Federal Sponsors for resolution. Disagreement between the Non-Federal Sponsors shall be resolved as set forth in Section 1.7 of this Agreement. The

Agency's use of the employees of any signatory port as the Agency's own staff shall be governed by a separate intergovernmental agreement between the Agency and the port.

4.4. Transfer of Sites to the Agency

The interest in a mitigation or dredged material disposal site, or in an access easements or other interests in real property, may be transferred to the Agency. If necessary to satisfy the requirements of the Project Cooperation Agreement, the Agency may then transfer an interest in the site to the United States. Satisfaction of requirements under the Project Cooperation Agreement shall be considered sufficient consideration for any transfer of a site to the Agency or the United States.

4.5. Limitations on Agency Authority

Nothing in this Agreement shall be deemed to authorize the Agency or the Agency Steering Committee to exercise the legislative, eminent domain, taxing, or police powers of any of the ports.

4.6. Agency Operating Costs

Agency operating costs shall be shared equally (50/50) between the Non-Federal Sponsors.

4.7. Adjustments to Comply With Cost Sharing Obligations

Adjustments shall be made annually as necessary to reconcile actual participation with the cost sharing obligations established by this Agreement.

4.8. Withdrawal

Either Non-Federal Sponsor may withdraw without liability from this Agreement at any time prior to the effective date of the Project Cooperation Agreement upon written notice to all of the parties. A Non-Federal Sponsor may only withdraw after the effective date of the Project Cooperation Agreement pursuant to the terms of the Project Cooperation Agreement.

4.9. Dissolution of the Agency

Upon dissolution of the Agency, assets shall be shared equally (50/50) between the Non-Federal Sponsors, after deduction of all costs.

5. INTEGRATION

This Agreement embodies the entire agreement between the Washington Ports and the Oregon Ports regarding the construction and maintenance of the Project, and shall supersede all prior and contemporaneous agreements or communications regarding the Project.

6. MODIFICATION

This Agreement may be modified only by a written amendment signed by all signatory ports, provided that the signature of a port that has effectively withdrawn from this Agreement shall not be required.

7. SEVERABILITY

If any provision of this Agreement is determined by a court with proper jurisdiction to be invalid or unenforceable, the remaining provisions shall be fully enforceable for the purpose of effecting the intent of this Agreement.

PORT OF KALAMA

By: Lanny D. Cawley
Name: Lanny D. Cawley
Title: Executive Director
Date: Feb. 25, 1999

PORT OF LONGVIEW

By: Kenneth B. Ottobian
Name: Kenneth B. Ottobian
Title: Executive Director
Date: 2-25-99

PORT OF PORTLAND

By: Mike Thorne
Name: Mike Thorne
Title: Executive Director
Date: 2-25-99

PORT OF ST. HELENS

By: Peter K. Williamson
Name: PETER K WILLIAMSON
Title: GENERAL MANAGER
Date: FEB. 25, 1999

PORT OF VANCOUVER

By: Lawrence L. Proulx
Name: LAWRENCE L. PROULX
Title: Executive Director
Date: FEBRUARY 25, 1999

PORT OF WOODLAND

By: Dave Ripp
Name: David Ripp
Title: Port Manager
Date: 2-25-99