

COPY

AMENDMENT NUMBER 2
INTERGOVERNMENTAL AGREEMENT
AMONG
LOWER COLUMBIA RIVER PORTS
FOR
COLUMBIA AND LOWER WILLAMETTE RIVER
FEDERAL NAVIGATION CHANNEL DEEPENING AND MAINTENANCE

RECITALS

A. The parties entered into an Intergovernmental Agreement Among Lower Columbia River Ports for Columbia and Lower Willamette River Federal Navigation Channel Deepening and Maintenance, Port of Portland Agreement No. 99-034, on 25 February 1999 ("Agreement").

B. The parties amended the Agreement on 16 October 2000 to expand the Agreement to govern the parties' rights and responsibilities with respect to Non-Federal Sponsor responsibilities for the navigation project defined therein as the 40-Foot Project.

C. The parties wish to elaborate on the procedures for cost sharing and cost equalization under the Agreement.

AGREEMENT

1. GENERAL PRINCIPLE

Costs incurred by the Non-Federal Sponsors for Project elements which benefit navigation generally, and not one port specifically, shall be shared equally between the Oregon Non-Federal Sponsor and the Washington Non-Federal Sponsor. For purposes of this Amendment No. 2, "port-owned beneficial use site" means a site with respect to which benefits accrue exclusively to the port owning the site. The cost sharing provisions of this Amendment No. 2 shall apply to the 40-Foot Project, to the extent applicable, and to the 43-foot channel project, provided however, that all costs related to the Willamette River included in either project shall be entirely the responsibility of the Oregon Non-Federal Sponsor as more particularly provided in Paragraph 1.4 of the Agreement.

2. REAL ESTATE

2.1 Generally

Real estate-related costs generally are entirely the responsibility of the Non-Federal Sponsors. Costs of acquiring interests in disposal and mitigation sites required for the Project, other than the value of any port-owned beneficial use site, shall be shared equally between the Oregon Non-Federal Sponsor and the Washington Non-Federal Sponsor. A site already owned by a port will not require a cash outlay, and the value of the site shall not be subject to cost sharing (the value of these sites will be included for purposes of applying for Corps credit against the "10 percent amount" due under the Project Cooperation Agreement). The value of port-owned beneficial use sites will not be subject to cost sharing under the Agreement. These sites include, but are not necessarily limited to: (1) on the Oregon side – Port

Westward 2, Railroad Corridor, and West Hayden Island; and (2) on the Washington side – Skamakowa, IP Rehandle, Northport, Martin Bar, Austin, and Gateway 3. All reasonable costs incurred to make a site available for Project purposes, including but not limited to costs associated with permitting, title reports, title insurance, closing, appraisals, survey, platting, mapping, sampling, testing, attorney fees, and relocation assistance benefits, are subject to cost sharing.

2.2 Site Withdrawal

If an individual port wishes to withdraw a site it owns from availability for Project purposes under section 2.2 of the Agreement, that port shall be solely responsible, without cost sharing under the Agreement as amended and at no additional cost to any other party, for providing a substitute site that is acceptable to the Corps, that satisfies all of the Non-Federal Sponsors' obligations under the Project Cooperation Agreement, that is fully permitted, that meets all environmental requirements (including but not limited to the preparation of any supplemental environmental impact statements that might be required under federal or state law and compliance with all Endangered Species Act requirements, including but not limited to any necessary reconsultation) and that provides disposal or mitigation characteristics equivalent or superior to the site to be withdrawn. In addition, the port shall be responsible for any increase in operating and maintenance costs attributable to the substitute site for which the Non-Federal Sponsors may be responsible under the Project Cooperation Agreement.

3. CONSTRUCTION OF GENERAL NAVIGATION FEATURES

General Navigation Features costs are to be shared 75 percent Federal and 25 percent Non-Federal. The Non-Federal portion shall be shared equally between the Oregon Non-Federal Sponsor and the Washington Non-Federal Sponsor.

3.1 Disposal Site Improvements

Except for port-owned beneficial use sites, construction costs associated with disposal site improvements required for the Project shall be shared equally between the Oregon Non-Federal Sponsor and the Washington Non-Federal Sponsor. The port owning a beneficial use site shall be entirely responsible for the Non-Federal share of construction costs associated with disposal site improvements at that site.

3.2 Incremental Costs

The incremental difference in cost, if any, in General Navigation Features construction between the U.S. Army Corps of Engineers' Least Cost Plan for deepening the channel and the sponsor's Locally Preferred Plan for deepening the channel will be shared equally between the Oregon Non-Federal Sponsor and the Washington Non-Federal Sponsor, except that any such incremental difference in cost associated with a port-owned beneficial use sites shall be entirely the responsibility of the port owning the site.

4. CONSTRUCTION OF ECOSYSTEM RESTORATION FEATURES

The costs of construction of Ecosystem Restoration Features are to be shared 65 percent Federal and 35 percent Non-Federal. The Non-Federal portion will be shared equally between the Oregon Non-Federal Sponsor and the Washington Non-Federal Sponsor.

5. OPERATION AND MAINTENANCE

5.1 43-Foot Channel

The operation and maintenance of the 43-foot channel generally will be entirely the responsibility of the Corps. Any incremental difference in cost between the U.S. Army Corps of Engineers' Least Cost Plan for maintenance of the 43-foot project and the sponsor's Locally Preferred Plan for which the Non-Federal Sponsors are made responsible under the Project Cooperation Agreement shall be shared equally between the Oregon Non-Federal Sponsor and the Washington Non-Federal Sponsor, except that any such incremental difference in cost associated with a port-owned beneficial use site shall be entirely the responsibility of the port owning the site.

5.2 Disposal Site Improvements

5.2.1 Generally

Operation and maintenance of disposal site improvements generally will be entirely the responsibility of the Corps, except that such costs associated with a port-owned beneficial use site shall be entirely the responsibility of the port owning the site.

5.2.2 Sites Operated and Maintained by the Non-Federal Sponsors

In cases of sites which are not port-owned beneficial use sites, if the Non-Federal Sponsors perform operation and maintenance of disposal site improvements and sell material from the sites, the Corps' payment for operation and maintenance may be reduced by the amount of sale proceeds net of royalty payments and costs of mining and sale. For these cases, the net costs or net proceeds shall be shared equally between the Oregon Non-Federal Sponsor and the Washington Non-Federal Sponsor.

5.3 Ecosystem Restoration Features

The costs of operation and maintenance of Ecosystem Restoration Features for which the Non-Federal Sponsors are responsible shall be shared equally between the Oregon Non-Federal Sponsor and the Washington Non-Federal Sponsor.

5.4 Property Management

Property management costs for which the Non-Federal Sponsors are responsible shall be shared equally between the Oregon Non-Federal Sponsor and the Washington Non-Federal Sponsor, except that such costs associated with a port-owned beneficial use site shall be entirely the responsibility of the port owning the site. The parties may further amend the Agreement to adjust the amount and nature of cost-sharing among the sponsors for the mitigation sites to reflect the final arrangements among fish and wildlife agencies expected to receive lump sum payments for long-term maintenance of those sites.

6. EQUALIZATION

6.1 Tracking and Equalization Schedule

The Port of Portland shall track and report monthly to each party's finance director the costs associated with the Project. Each party shall cause its finance director, in cooperation with the other parties' finance directors, to report on costs quarterly and to make recommendations regarding the timing and nature of equalization payments. Costs will be equalized at least as often as the following times: (1) when acquisition of disposal and mitigation sites is complete; (2) at least once every two years after acquisition of disposal and mitigation sites is complete; (3) when Project construction is complete; and (4) at any other time agreed to by the parties.

6.2 Equalization Payments

"Equalization" means settlement of costs in accordance with the cost-sharing provisions of the Agreement. Project-related costs shall be equalized by direct cash payments or by other arrangements (e.g., provision of in-kind services or advancing funds on behalf of the ports of the other state for other Project elements) which are authorized and agreed to by both Non-Federal Sponsors.

7. MISCELLANEOUS COSTS

Miscellaneous costs incurred for Project purposes shall be shared equally between the Oregon Non-Federal Sponsor and the Washington Non-Federal Sponsor if the costs are approved by each party's executive director or other chief executive. By authorizing this Amendment No. 2, each party's commission delegates to that party's executive director or other chief executive all authority necessary to approve a miscellaneous cost under this section without further commission action, provided that, in the judgment of the executive director or other chief executive, the cost is reasonable and necessary or highly desirable for the Project. Once it has been approved, a miscellaneous cost shall be shared equally between the Oregon Non-Federal Sponsor and the Washington Non-Federal Sponsor to the extent it is actually incurred.

8. PROJECT ABANDONMENT

If the 43-foot channel deepening project is "permanently abandoned" (as that term is used in Washington State legislation), all costs incurred shall be shared in accordance with the cost-sharing procedures established by this Amendment No. 2. Settlement shall occur within one year after permanent abandonment. If the 43-foot channel deepening project is permanently abandoned, costs associated with the 40-Foot Project shall be shared and equalized as provided by the Agreement, Amendment No. 1, and this Amendment No. 2.

9. INTEGRATION

Except as expressly provided otherwise by this Amendment No. 2, all provisions of the Agreement, as amended, shall remain in effect.

10. OREGON ATTORNEY GENERAL APPROVAL

This agreement may be subject to review and approval by the Oregon Attorney General under ORS 190.430(1), in which case, notwithstanding other provisions of this agreement, it shall take effect only upon approval by the Oregon Attorney General. When the agreement has been approved by the Oregon Attorney General, the effective date shall be the date the agreement was fully executed by the parties or any other effective date established by the terms of the agreement.

11. WASHINGTON STATE OFFICIAL OR AGENCY APPROVAL

This agreement may be subject to review and approval by one or more Washington State Officials or Agencies pursuant to RCW 39.34.050, in which case, notwithstanding other provisions of this agreement, it shall take effect only upon approval, as provided in RCW 39.34.050, by any applicable Washington State Official or Agency. When the agreement has been approved by any applicable Washington State Official or Agency, the effective date shall be the date the agreement was fully executed by the parties or any other effective date established by the terms of the agreement.

12. AUTHORITY OF SIGNERS

The individuals signing below represent that they are authorized by the party for which they sign to contractually bind that party to the provisions of this Amendment No. 2.

PORT OF KALAMA

By: Lanny H. Cawley
(signature)
Name: LANNY H. CAWLEY
(print)
Its: EXECUTIVE DIRECTOR
(title)
Date: 5-23-2001

PORT OF LONGVIEW

By: Kenneth B. O'Hollan
(signature)
Name: Kenneth B. O'Hollan
(print)
Its: Executive Director
(title)
Date: MAY 21, 2001

PORT OF PORTLAND

By: F. B. Galligan
(signature)
Name: F. B. Galligan
(print)
Its: Executive Director
(title)
Date: 5-21-01

PORT OF ST. HELENS

By: Peter K. Williamson
(signature)
Name: PETER K. WILLIAMSON
(print)
Its: EXECUTIVE DIRECTOR
(title)
Date: MAY 21, 2001

PORT OF VANCOUVER

By: Lawrence L. Paulson
(signature)
Name: Lawrence L. Paulson
(print)
Its: Executive Director
(title)
Date: MAY 21, 2001

PORT OF WOODLAND

By: Dave Ripp
(signature)
Name: David Ripp
(print)
Its: Executive Director
(title)
Date: May 21, 2001