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SCHWABE WILLIAMSON & WYATT AGR 16.00

WASHINGTON PORTS AGREEMENT

An agreement ("Agreement") among the Port of Kalama, the Port of Longview, the Port of Vancouver, and the Port of Woodland (hereinafter "Washington Ports").

RECITALS

The Columbia River is a primary transportation corridor upon which the Washington Ports and the communities lining its shore are dependent for economic well-being.

Existing commerce and its potential for the future is dependent upon Columbia River's capacity for passage of fully loaded vessels.

Over the past decade, the Washington Ports have cooperated with the U.S. Army Corps of Engineers, ("ACOE") and the Ports of Portland and St. Helens, Oregon (collectively "the Oregon Ports") regarding improvements to the Columbia River Federal Navigation Channel. This has included, among other activities, a reconnaissance study, a feasibility study under the auspices of the Columbia River Improvement Project, the Dredged Material Management Plan, and associated environmental impact statements for both maintenance of the existing channel and the plans to increase the channel depth to 43 feet (hereinafter "Channel Deepening Project" or "Project").

Dredging for the Project will extend from the mouth of the Columbia upstream to the railroad bridge located at Vancouver, Washington (river miles 3 to 106.5). There is an additional segment, not involving the Washington Ports, consisting of 11.6 miles of the Willamette River from the point at which it empties into the Columbia upstream to the City of Portland (hereinafter "Willamette Channel").

ACOE has specified that it will impose certain requirements in a forth-coming Project Cooperation Agreement ("PCA") before ACOE will undertake the Channel Deepening Project. These include local cost sharing and various items of local cooperation. Among the latter is the requirement that there be a Non-Federal Sponsor (or Co-Sponsors) which would, among other activities, acquire sites (or the rights to use sites) for the purposes of depositing and managing channel dredge materials over an extended period of years.

The Washington Ports have agreed upon an organizational structure to accomplish these requirements. The Washington and Oregon Ports will serve as the required Non-Federal Sponsor through Co-Sponsorships. The Washington Ports, collectively, will enter into the PCA as Co-Sponsor. The Oregon Ports will serve as the other Co-Sponsor.

The ACOE, through its draft Integrated Feasibility Report for Channel Improvements and Environmental Impact Statement (hereinafter "Feasibility Report"), selected real property where



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the dredge material could be deposited for the lowest cost (Least Cost Disposal Sites Plan). The Washington Ports and Oregon Ports have selected disposal sites that meet Project goals and other goals identified in the Feasibility Report (Sponsor's Preferred Disposal Sites Plan) (A Summary of the Disposal Alternatives are attached hereto as Exhibit "A" and incorporated herein by reference).

The Washington Ports intend to enter into an "Intergovernmental Agreement Among Lower Columbia River Ports For Columbia River Channel Deepening And Maintenance" (hereinafter "Oregon - Washington Ports Agreement") with the Port of Portland and the Port of St. Helens. The purpose of the Oregon - Washington Ports Agreement is to allocate costs of the Project, designate Non-Federal Sponsors to enter into the PCA, create and supervise an intergovernmental agency to hold and manage certain dredged material disposal sites along the lower Columbia River, and to share responsibilities for fulfilling ACOE requirements.

The Washington Ports desire to enter into this Agreement for the purposes of facilitating the Channel Deepening Project by organizing the Washington Ports into the Washington Co-Sponsor; executing the Oregon - Washington Ports Agreement; negotiating and entering into the PCA; and coordinating the funding, acquisition, and maintenance of local service facilities and disposal areas as provided in the PCA.

THEREFORE, the Washington Ports agree as follows:

AGREEMENT

1. **Creation of the Washington Non-Federal Sponsor.**
 - 1.1. The Washington Ports hereby create the Washington Non-Federal Sponsor (hereinafter "Washington Sponsor"), which shall become effective upon the adoption of this Agreement by all Washington Ports. The Washington Ports shall execute any further documents necessary for the creation of the Washington Sponsor.
 - 1.2. The Washington Non-Federal Sponsor shall continue for the duration of the Project or until terminated.
 - 1.3. A Project Committee comprised of the executive directors/managers of each of the Washington Ports shall direct the Washington Sponsor. They shall adopt by-laws and select officers. However, only those Ports sharing equally in the operation costs shall be entitled to vote.
 - 1.4. The Project Committee shall designate a Project Director who will serve at the Project Committee's pleasure and direction and who will be responsible for the successful completion of the Project, including the organization and deployment of staff, accounting for the Project's finances and regular reports to the Project Committee.

- 1.5. The Project Director may be an employee of one of the Washington Ports or hired by the Project Committee as it may decide.
 - 1.6. The Project Committee shall designate a willing Washington Port as the financial agent for the Washington Sponsor. The financial agent's duties shall include: collection and receipt of funds; disbursement of funds; accounting of funds received and disbursed; and allocation of any credits in accordance with this Agreement, the Oregon – Washington Ports Agreement and the PCA.
 - 1.7. The Project Committee may authorize agreements with government agencies, specifically including the Washington Department of Transportation, to advance the purposes of the Washington Sponsor and Project.
 - 1.8. The members of the Project Committee shall be subject to the laws of public meetings.
 - 1.9. The Project Committee shall act by resolution when establishing policy or the making of major decisions.
 - 1.10. Nothing in this Agreement shall be deemed to authorize the Washington Sponsor or the Project Committee to exercise the legislative, eminent domain, taxing or police powers of any of the Washington Ports.
 - 1.11. Operating costs shall be shared equally among the Ports of Longview, Kalama and Vancouver.
 - 1.12. Upon dissolution of the Washington Sponsor, assets shall be shared equally among the Ports of Kalama, Longview, and Vancouver, after deduction of all costs.
2. **Powers or Purposes of the Washington Sponsor.**
- 2.1. The Washington Ports, in accordance with the PCA, hereby give all authority necessary for the Washington Sponsor to perform the duties of the Non-Federal Sponsor under the Project Cooperation Agreement (hereinafter referred to as "PCA"), including, but not limited to:
 - 2.1.1. Provide to the United States all lands, easements, rights of way, suitable borrow areas, or suitable dredged or excavated material disposal areas that the United States determines to be necessary for the construction, operation, or maintenance of the general navigation features as defined in the PCA;
 - 2.1.2. Construct, in a timely manner, local service facilities, as defined in the PCA;

- 2.1.3. Operate and maintain, the local service facilities and dredged or excavated material disposal areas in a manner compatible with the authorized purposes of the Project and any specific directions prescribed by the United States in the dredged or excavated material disposal areas Management Plan and any subsequent amendments thereto;
- 2.1.4. Accomplish all removals, as defined in the PCA;
- 2.1.5. Prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations (as defined in the PCA) or deep draft utility relocations the United States determines to be necessary for that work;
- 2.1.6. Provide, in a timely manner, to the United States such documents as are sufficient to enable the United States to determine the value of any contribution provided by any of the Washington Ports to the United States in order to afford the appropriate credit;
- 2.1.7. Pay any cost difference between the Least Cost Plan and the Sponsor's Preferred Plan as it relates to property not owned by a Port. Any cost difference between the Least Cost Plan and the Sponsor's Preferred Plan relating to property owned by a Port shall be the responsibility of that Port unless otherwise agreed by all parties;
- 2.1.8. Comply with applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended;
- 2.1.9. Indemnify the United States for all damages arising from the construction, operation, or maintenance of the Project, any betterments, and the local service facilities, other than those due to the fault or negligence of the United States or its contractors;
- 2.1.10. Perform, or cause to be performed, any investigations for hazardous substances that the United States or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") and/or the Washington Model Toxic Control Act (hereinafter "MTCA");
- 2.1.11. To the maximum extent practicable, operate, maintain, repair, replace, and rehabilitate the Project in a manner so that liability will not arise under the CERCLA and/or MTCA;
- 2.1.12. To pay for the costs of response and appropriate remediation, if any is required under CERCLA and/or MTCA, but only to the extent agreed to under the terms of the PCA; and

2.1.13. Provide senior representatives to serve on a Project Coordination Team, as provided in the PCA.

2.2. The Washington Ports shall confer authority upon the Washington Sponsor the power to negotiate, with the ACOE, the terms of the PCA. Said terms shall be consistent with the model PCA dated February 29, 1996 and the principles set out herein. Upon completion of the negotiations, the Washington Sponsor shall request approval of the final version of the PCA by each Washington Port. Each Washington Port's approval shall be as required by Washington law and shall include a grant of power to the Washington Sponsor to execute the PCA on the individual port's behalf and to represent the collective interests of the Washington Ports.

2.3. The Washington Ports, together with the Oregon Ports, shall enter into a cost-sharing Agreement for Preconstruction Engineering and Design in late February or early March, 1999.

2.4. The Washington Ports, together with the Oregon Ports, shall submit a Financing Plan, based upon the provisions of Paragraph 3 below.

3. **Financial.**

3.1. **Cost Sharing.** The Washington Ports' share of the Non-Federal Sponsor costs under the PCA shall be determined by the allocation provided for in the Oregon – Washington Ports Agreement.

3.2. The Washington Ports' share shall then be allocated equally among the Washington Ports of Longview, Kalama and Vancouver. It is anticipated that these costs will include the Washington Ports' share of the following Project costs:

3.2.1. The contribution to the United States for the Non-Federal Sponsor's share of the costs of construction of the general navigation features for the Columbia River;

3.2.2. 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 the 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;

3.2.3. The cash contribution to the United States for the local share of any ecosystem restoration Project construction costs;

- 3.2.4. Any utility relocation costs on the Columbia River for which the Washington Sponsor is responsible under the PCA;
- 3.2.5. 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
- 3.2.6. Any other contributions specifically agreed to between the parties or as set forth in the OR – WA Ports Agreement and the PCA.
- 3.3. Any land enhancement costs shall be borne by any party to this Agreement that benefits, or whose constituents benefit, from land enhancements.
- 3.4. Several of the disposal sites identified in the Sponsor Preferred Plans are now owned by individual port districts which are parties to this Agreement. Title to such sites shall be retained by the owners, but the property shall be made available as project disposal sites, together with appropriate licenses or easements pertaining thereto, at no cost to the project. Individual ports providing such sites may, with the written consent of the Oregon and Washington Non-Federal Sponsors, provide alternative sites in substitution for an original site. Any such proposed substitution shall include consideration for any increase 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 4.
- 3.5. 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 through the contribution or provision of use or interests in sites presently owned by individual ports and in which said ports will retain beneficial interests and will benefit 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 shall have no further or other use, so-called orphan sites. The parties shall cooperate on obtaining the maximum available credit under the Project Cooperation Agreement and, if necessary, shall share equally between the Washington Non-Federal Sponsor and the Oregon Non-Federal Sponsor the opportunity to obtain such credit.

- 3.6. To the extent an individual port's non-cash contribution (as defined in the PCA) is provided by an orphan site and is included in the ten percent (10%) non-cash contribution, the providing port's cash contribution share shall be reduced by the fair market value of said contribution.
4. **Dispute Resolution.** In the event a dispute arises among or between any of the Washington Ports, including, but not limited to the execution or interpretation of the duties, powers, or responsibilities provided herein or as permitted under the PCA, the Washington Ports agree to seek resolution of the dispute through good faith mediation. If the Washington Ports cannot agree upon a mediator, or if mediation should fail to resolve the disagreement, the Washington Ports shall appoint three neutral arbitrators. If the Washington Ports cannot agree upon three neutral arbitrators, the Washington Ports, or any of them, may petition the presiding judge of the Superior Court of Thurston County in the State of Washington to have three arbitrators 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 any of the Washington Ports of any of its governmental powers. The costs of the arbitrators shall be allocated between the Washington Ports in the same manner as Project costs. 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.
5. **Integration.** This Agreement embodies the entire agreement among the Washington Ports regarding the construction and maintenance of the Project and shall supersede all prior and contemporaneous agreements or communications regarding the same subject.
6. **Modification.** This Agreement may be modified only by a written amendment signed by all signatory Washington 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.
8. **Withdrawal.** A Port may withdraw without liability from this Agreement at any time prior to the effective date of the PCA upon written notice to all of the parties.

THE PORT OF LONGVIEW

By *Kenneth B. Hollander*
Title Executive Director
Name Kenneth B. Hollander
Date 2-25-99
Address PO. Box 1258 - Longview, WA 91632

THE PORT OF KALAMA

By Lanny H. Cawley
Title Executive Director
Name Lanny H. Cawley
Date Feb. 25, 1999
Address 380 W. Marine Dr.
Kalama, WA 98625

THE PORT OF WOODLAND

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

THE PORT OF VANCOUVER

By Lawrence Paulson
Title Executive Director
Name LAWRENCE L. PAULSON
Date FEBRUARY 25, 1999

FIRST AMENDMENT
TO
WASHINGTON PORTS AGREEMENT

RECITALS

A. The Port of Kalama, the Port of Vancouver, the Port of Longview and the Port of Woodland (hereinafter referred to collectively as "the Parties") entered into a Washington Ports Agreement, on February 25, 1999 ("Agreement").

B. The Parties wish to expand the Agreement to govern the Parties' rights and responsibilities with respect to Non-Federal Sponsor responsibilities for the navigation project described as "Columbia and Lower Willamette Rivers below Vancouver, Washington, and Portland, Oregon" and authorized by section 101 of the River and Harbor Act of 1962 (sometimes referred to as the 1962 Omnibus Bill for Rivers and Harbors), Title I of Public Law 87-874 ("40-Foot Project").

C. The Parties may enter into a Project Cooperation Agreement ("PCA") or similar agreement with the United States to allow for federal cost sharing with respect to the construction of improvements necessary for the use of dredged material disposal sites required for the 40-Foot Project.

D. The following seven entities are Non-Federal Sponsors for the 40-Foot Project ("40-Foot Sponsors"); those in boldface are also Parties to the Agreement:

<u>Entity</u>	<u>Nature of Assurance of Local Cooperation</u>	<u>Date</u>
Port of Portland	Resolution of Formal Assurances for Local Cooperation	18 Nov 1963
Port of Vancouver	Resolution of Formal Assurances for Local Cooperation	12 Nov 1963
Port of Longview	Resolution of Formal Assurances for Local Cooperation	12 Nov 1963
Port of Kalama	Resolution of Formal Assurances for Local Cooperation	3 Dec 1963
Port of Woodland	Resolution of Formal Assurances for Local Cooperation	21 Nov 1963
State of Washington Dep. Natural Resources	Letter of Approval for Formal Assurances for Local Cooperation	17 Jan 1967
Wahkiakum County, Washington	Agreement between the Department of the Army and Wahkiakum County for Local Cooperation	23 Nov 1993

E. The parties further wish to expand the Agreement to govern the parties' rights and responsibilities prior to execution of any PCA with the United States.

AMENDMENT

1. EXPANSION OF AGREEMENT TO INCLUDE THE 40-FOOT PROJECT

The Parties agree to expand the Agreement, except as expressly excluded by this Amendment, to govern the Parties' rights and responsibilities with respect to the 40-Foot Project, including but not limited to designating Non-Federal Sponsors; sharing responsibilities; allocating costs among the Parties; and creating and supervising an intergovernmental agency to acquire, hold, manage and transfer certain dredged material disposal sites along the lower Columbia River.

2. DUTIES OF NON-FEDERAL SPONSORS PRIOR TO EXECUTION OF PROJECT COOPERATION AGREEMENT

Prior to execution of the PCA between the Non-Federal Sponsors and the United States, the parties agree they shall (1) provide lands, by purchase or by condemnation or both, easements, rights of way, or construction, operation or maintenance of the Project, including those sites identified by the United States in the attached Exhibit A which is incorporated herein by reference; (2) accomplish relocations, as identified by the United States and as provided in the attached Exhibit B; (3) 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; and (4) provide for payment of the cost of response and appropriate remediation, if any is required.

3. APPLICABILITY OF THE AGREEMENT PRIOR TO EXECUTION OF A PROJECT COOPERATION AGREEMENT

The parties agree that to the extent that the Non-Federal Sponsors exercise their powers and perform their duties pursuant to the agreement and prior to the execution of a PCA, the Agreement shall apply to the parties' rights and responsibilities, including but not limited to those relating to cost sharing among the parties.

4. NO INTENTION TO BIND THIRD PARTIES

Nothing in this Amendment or the Agreement shall be deemed to create an obligation or duty on the part of any Party with respect to any 40-Foot Sponsor that is not a Party. Nothing in this Amendment or the Agreement shall be deemed to create an obligation or duty to the United States or the Corps of Engineers on the part of any Party with respect to a responsibility of a 40-Foot Sponsor that is not a Party.

5. INTEGRATION

Except to the extent expressly or by necessary implication modified by this Amendment, all provisions of the Agreement shall remain in full force and effect.



PORT OF KALAMA

By: Larry Lawley
Name: Larry Lawley
Title: Executive Director
Date: 10-17-01

PORT OF LONGVIEW

By: Kenneth O'Hallara
Name: Kenneth O'Hallara
Title: Executive Director
Date: 10/17/01

PORT OF WOODLAND

By: Dave Ripp
Name: Dave Ripp
Title: Executive Director
Date: 10-17-01

PORT OF VANCOUVER

By: Lawrence L. Paulson
Name: Lawrence L. Paulson
Title: Executive Director
Date: 10/17/01



SECOND AMENDMENT TO WASHINGTON PORTS AGREEMENT

RECITALS

- A. The Port of Kalama, the Port of Vancouver, the Port of Longview and the Port of Woodland (hereinafter referred to collectively as "the Washington Ports") entered into a Washington Ports Agreement, on February 25, 1999 ("Agreement").
- B. The Washington Ports expanded the Agreement by amendment on October 17, 2001 ("First Amendment to Washington Ports Agreement"), to govern the parties rights and responsibilities with the respect to Non-Federal Sponsor responsibilities for the navigation project described as "Columbia and Lower Willamette Rivers below Vancouver, Washington and Portland, Oregon" (the "Project").
- C. In response to comments by Washington State Agencies, the Washington Ports have decided to prepare an environmental document that reviews the Project's environmental impacts in accordance with the requirements of the State Environmental Policy Act ("SEPA"), chapter 43.21C RCW.
- D. A number of state and local approvals are required for the Project. These include the State Coastal Zone Consistency Determination and Clean Water Act 401 Water Quality Certification and local shoreline permits, critical areas and related habitat approvals ("State and Local Approvals").

THEREFORE, the Washington Ports agree as follows:

AGREEMENT

1. Preparation of Environmental Document

- 1.1 The Washington Ports hereby agree to prepare an environmental document or documents for purposes of complying with SEPA ("SEPA Environmental Document").
- 1.2 The Washington Ports hereby agree to serve as co-lead agencies for purposes of preparing this document in complying with the procedural requirements of SEPA.
- 1.3 The Washington Ports agree that the Port of Longview will serve as the nominal lead agency for purposes of this Agreement.
- 1.4 The Washington Ports agree to use the SEPA procedures adopted by the Port of Longview for purposes of this Agreement.
- 1.5 The Washington Ports agree to coordinate the SEPA Environmental Document as appropriate with the environmental review being conducted by the United States Army Corps of Engineers under the National Environmental Policy Act

**SECOND AMENDMENT TO
WASHINGTON PORTS AGREEMENT**

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PORT OF KALAMA

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("NEPA"). Such coordination may include preparing a joint document that satisfies both SEPA and NEPA.

1.6 The Port of Longview will circulate a preliminary draft Environmental Document, or other work product to each of the Washington Ports. Each Port will provide comments on such drafts within fourteen (14) calendar days.

2. State and local approvals.

2.1 The Washington Ports hereby agree to coordinate their efforts to obtain the Local and State Approvals required for the project.

3. Selection of Consultants to Prepare Documents and Obtain State and Local Approvals

3.1 The Washington Ports have selected a consulting team to prepare the SEPA Environmental Document and Obtain State and Local Approvals pursuant to a request for proposal and responses thereto. Pacific International Engineering is the project manager for the selected consultant team. The consultant team's scope of work is attached as Exhibit A.

3.2 The Port of Longview shall serve as the administrator of the contracts with the consultant team.

4. Cost Sharing

4.1 The costs of preparing the SEPA document and obtaining State and Local Approvals shall be shared equally among the Ports of Longview, Kalama and Vancouver.

4.2 The Port of Longview shall review and approve all consultant invoices. Once the Port of Longview has approved the invoice, the Port of Longview will invoice each participating Washington Port for its share. Each Port shall pay its proportionate share to the Port of Longview within thirty (30) calendar days.

THE PORT OF LONGVIEW

By [Signature]
Title Exec. Director
Name Kenneth B. Ottobaron
Date Feb. 19, 2002
Address Longview, WA

THE PORT OF KALAMA

By Lanny H. Cawley
Title EXECUTIVE DIRECTOR
Name LANNY H. CAWLEY
Date 2-25-02
Address 380 W. Marine Dr
Kalama WA 98625

THE PORT OF WOODLAND

By David Ripp
Title Executive Director
Name David Ripp
Date 3-13-02
Address P.O. Box 87, Woodland, WA 98674

THE PORT OF VANCOUVER

By Laurence L. Paulsen
Title Executive Director
Name LAURENCE L. PAULSEN
Date March 13, 2002
Address RD. Box 1180 VANCOUVER, WA 98666

**SECOND AMENDMENT TO
WASHINGTON PORTS AGREEMENT**

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**THIRD AMENDMENT
TO
WASHINGTON PORTS AGREEMENT**

RECITALS

A. The Port of Kalama, the Port of Vancouver, the Port of Longview and the Port of Woodland (hereinafter referred to collectively as "the Washington Ports") entered into a Washington Ports Agreement, on February 25, 1999 ("Agreement").

B. The Washington Ports expanded the Agreement by amendment on October 17, 2001 ("First Amendment to Washington Ports Agreement"), to govern the parties' rights and responsibilities with respect to Non-Federal Sponsor responsibilities for the navigation project described as "Columbia and Lower Willamette Rivers below Vancouver, Washington and Portland, Oregon" (the "Project").

C. On the ___ day of _____, 2002, the Washington Ports agreed, via a Second Amendment to Washington Ports Agreement, to prepare an environmental document that reviews the Project's environmental impacts in accordance with the requirements of the State Environmental Policy Act ("SEPA"), chapter 43.21C RCW.

D. The Agreement, as Amended, provides for designation of a financial agent and provides the costs of the Project shall be allocated equally among the Washington Ports of Longview, Kalama and Vancouver.

E. The Department of the Army ("Government") plans, through a demonstration, to test the feasibility of disposing of dredged material from the Columbia River at the Mouth on Benson Beach. The Government requires the Washington Ports to share in the cost of said demonstration, said amount being the difference between the "minimum cost" to dispose of the dredged material and the "incremental cost" to place the material on Benson Beach. The Government requires that a Memorandum of Agreement Between the Government and the Port of Kalama ("MOA") be signed prior to beginning the placement of dredged material on Benson Beach. The MOA provides that the differential in cost shall be no more than \$300,000.00.

F. The Government further requires the Port of Kalama to sign a Certificate of Authority and Certification Regarding Lobbying.

G. The Washington Ports wish to expand the Agreement to govern the Washington Ports' rights and responsibilities with respect to the MOA, the Certificate of Authority and the Certification Regarding Lobbying (hereinafter referred to collectively as the "Documents").

THEREFORE, the Washington Ports agree as follows:

AGREEMENT

1. EXPANSION OF AGREEMENT TO INCLUDE THE DOCUMENTS

The Washington Ports agree to expand the Agreement, except as expressly excluded by this Amendment, to govern the Washington Ports' rights and responsibilities with respect to the Documents, copies of which are attached hereto and incorporated herein by reference as Exhibits "A", "B" and "C" respectively.

2. AUTHORITY OF PORT OF KALAMA

The Washington Ports hereby appoint the Port of Kalama as their financial agent for the restricted purposes of executing the Documents in substantially the same form as in the attached Exhibits "A", "B", and "C". The Port of Kalama is further authorized to perform the terms and conditions set forth therein. The Port of Kalama hereby accepts the appointment, subject to the terms and conditions set forth herein.

3. PORT OF KALAMA'S DUTIES

The Port of Kalama shall execute the Documents. The Port of Kalama shall receive appropriated funds in the amount of \$300,000.00 from the Washington Department of Transportation ("WDOT"), and contribute those funds to the Government per the MOA. The Port of Kalama shall also monitor the Government's accountings and work with the Government to assure contributed funds are being used for the purposes provided in the MOA and to assure that any excess funds are returned to WDOT. The Port of Kalama shall provide copies of the required quarterly accounting reports to the remaining Washington Ports within 30 days of receipt.

4. WASHINGTON PORTS' DUTIES

In consideration of the Port of Kalama's agreement to execute the Documents and perform the duties set forth in Paragraph 3 herein, the Washington Ports agree to:

4.1 Release the Port of Kalama and all officials and employees of the Port of Kalama from, and covenant and agree that neither the Port of Kalama nor any official or employee of the Port of Kalama shall be liable for, and agree to indemnify and hold the Port of Kalama and all officials and employees of the Port of Kalama harmless against, any claim made against the Port of Kalama or any official or employee of the Port of Kalama in or resulting from the Port of Kalama's execution of the Documents, except to the extent any loss, damage, injury or death is attributable to the negligence or willful misconduct of the Port of Kalama or its officials or employees. In case any action shall be brought against the Port of Kalama or any official or employee of the Port of Kalama in respect of which indemnity may be sought against the Washington Ports, the Port of Kalama or such official or employee shall promptly notify the Washington Ports in writing and the Washington Ports shall assume the defense thereof, including the employment of counsel and the payment of all expenses incident to such defense. Note: It is the intent of this provision to reduce the Port of Kalama's liability, except for its negligence or willful misconduct, to equally sharing in any liability with the remaining

Washington Ports;

4.2 Hold the Government harmless as may be required under the provisions of the MOA; and

4.3 Submit "Disclosure Form to Report Lobbying" as may be necessary pursuant to the Certification Regarding Lobbying, required by the Government and attached hereto as Exhibit "B".

5. FINANCIAL OBLIGATIONS

In the event the Port of Kalama, as the signatory on the Documents, becomes responsible for fines, penalties, damages or other costs associated with a breach of the Documents, the Ports of Kalama, Longview and Vancouver agree as follows:

5.1 To contribute equally to the cost of any nonbinding alternative dispute resolution as provided in the MOA; and

5.2 To contribute equally to any fines, penalties, damages or other costs determined in accordance with the MOA; and

5.3 To share equally in any and all other expenses relating to the Port of Kalama's execution of the documents, except to the extent the costs are caused by the negligence or willful misconduct of the Port of Kalama.

6. INTEGRATION

The provisions of this Amendment apply only to the Documents and nothing in this Amendment shall be deemed to affect the Agreement with respect to the Project, as defined in the Agreement, as previously amended. Except to the extent expressly or by necessary implication modified by this Amendment, all provisions of the Agreement shall remain in full force and effect.

PORT OF KALAMA

PORT OF LONGVIEW

By: Lanny D. Cawley
Name: Lanny D. Cawley
Title: EXECUTIVE DIRECTOR
Date: 3-15-02

By: Kenneth B. O'Malley
Name: Kenneth B. O'Malley
Title: EXECUTIVE DIRECTOR
Date: 3-15-02

PORT OF WOODLAND

By: Dave Ripp
Name: David Ripp
Title: Executive Director
Date: 3-15-02

PORT OF VANCOUVER

By: Lawrence L. Paulson
Name: Lawrence L. Paulson
Title: Executive Director
Date: March 15, 2002

FOURTH AMENDMENT TO THE WASHINGTON PORTS AGREEMENT

The Port of Kalama, the Port of Vancouver, the Port of Longview, and the Port of Woodland (hereinafter referred to collectively as the "Washington Ports" or individually as a "Washington Port") hereby amend, as described below, that certain Washington Ports Agreement entered into by the Washington Ports on February 25, 1999 (the "Agreement").

RECITALS

A. The Washington Ports expanded the Agreement by amendments on October 17, 2001 (the "First Amendment"), on February 19, 2002 (the "Second Amendment") and on March 15, 2002 (the "Third Amendment").

B. The Project Cooperation Agreement (the "PCA") with the U.S. Army Corps of Engineers ("ACOE") for Navigation Improvements of the Columbia River Federal Navigation Channel (the "Channel Improvement Project") requires that Non-Federal Sponsors provide all lands, easements, or rights-of-way necessary for the construction of the Channel Improvement Project.

C. The Washington Ports desire to further revise the Agreement by executing this Fourth Amendment to the Washington Ports Agreement (the "Fourth Amendment") to set forth the terms and conditions necessary to permit the Washington Ports to fulfill their obligations, as Non-Federal Sponsors, under the PCA.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto do hereby agree as follows:

AGREEMENT

Except as provided in the First Amendment, Second Amendment, Third Amendment, and Sections 1, 2, and 3, below, all of the terms and conditions of the Agreement remain in effect. Notwithstanding the foregoing, in the event of an inconsistency between the terms of this Fourth Amendment and the Agreement, the terms of this Fourth Amendment shall control. Capitalized terms not defined herein shall have the meanings assigned to them in the Agreement.

1. The following changes shall be made to the RECITALS in the Agreement:

1.1 The sixth Recital is hereby amended to read as follows:

The Washington Ports have agreed upon an organizational structure to accomplish these requirements. Each Washington Port will participate in the Channel Improvement Project as a Non-Federal Sponsor and the Port of Portland will serve as the Non-Federal Sponsor in Oregon on behalf of itself and the Port of St. Helens, Oregon.

1.2 The ninth Recital is hereby amended to read as follows:

The Washington Ports desire to enter into this Agreement for the purposes of facilitating the Channel Improvement Project by setting forth particulars necessary to enable the Washington Ports to fulfill their obligations as Non-Federal Sponsors under the PCA, including without limitation: defining the terms and conditions applicable to the Washington Ports' acquisition of certain real property or real property rights within the State of Washington that will be used as dredged or excavated material disposal facilities and mitigation sites for the Channel Improvement Project; granting consents pursuant to Washington statute RCW 53.08.240 to permit the Washington Ports to hold title in certain disposal facilities and mitigation sites located within the port district of any Washington Port; and coordinating the funding, acquisition, and maintenance of local service facilities and disposal areas as provided in the PCA.

2. Section 1 of the Agreement, Creation of the Washington Non-Federal Sponsor, shall be deleted in its entirety and replaced with the following:

1. **Non-Federal Sponsors for the PCA.**

1.1 Washington Non-Federal Sponsors. Each Washington Port will enter into the PCA for the Channel Improvement Project as a Non-Federal Sponsor. The Washington Ports agree to execute any further documents and take any actions deemed reasonably necessary to execute the PCA and to fulfill their obligations thereunder.

1.2 Duration of Obligations. Each Washington Port shall continue as a Non-Federal Sponsor for the duration of the Channel Improvement Project or until the PCA is terminated.

1.3 Authority to Execute Other Agreements. The Washington Ports may negotiate agreements with government agencies, including without limitation the Washington Department of Transportation, to assist the Washington Ports to fulfill their obligations to acquire real property or real estate property rights to be used as dredged or excavated material disposal facilities and mitigation sites for the Channel Improvement Project.

3. Section 2 of the Agreement, Powers or Purposes of the Washington Sponsor, shall be deleted in its entirety and replaced with the following:

2. **Channel Project Sites.**

2.1 Dredged or Excavated Material Disposal Facilities and Mitigation Sites. Exhibit A, which is attached hereto and incorporated by this reference, contains a list of the dredged or excavated material disposal facilities and mitigation sites that the ACOE has currently identified as necessary for the construction, operation, or maintenance of the general navigation features or ecosystem restoration features contemplated by the PCA ("Channel Project Sites"). The list of Channel Project Sites may be amended from time to time by the ACOE.

- 2.2 Real Property or Real Property Rights Owned by a Washington Port. Title or rights in one or more of the Channel Project Sites owned by a Washington Port prior to the Effective Date of the PCA (the “Port Sites”) shall be retained by such Washington Port but shall be made available to the ACOE by the issuance of an authorization for entry thereto, as contemplated by the PCA. The Port Sites shall be held by the Washington Ports for the duration of the Channel Improvement Project; or until the PCA is cancelled or terminated, whichever occurs earlier.
- 2.3 Jointly-Acquired Sites. Title or rights in the Channel Project Sites located in the State of Washington that are to be acquired for the Channel Improvement Project shall be acquired by the Washington Ports jointly and by mutual agreement, with title or rights conveyed equally to each Washington Port (hereinafter, the “Jointly-Acquired Sites”). The Washington Ports shall make the Jointly-Acquired Sites available to the ACOE by the issuance of an authorization for entry thereto, as contemplated by the PCA. Title or rights in the Jointly-Acquired Sites shall be held by the Washington Ports for (i) the duration of the Channel Improvement Project; (ii) until the PCA is cancelled or terminated; or (iii) until the expiration of the rights conveyed in such Jointly-Acquired Sites, as specified in Exhibit A, whichever occurs earlier.
- 2.4 Consent to Acquire Sites In Another Port District. Pursuant to RCW 53.08.240, two or more port districts, acting jointly and by mutual agreement, may acquire real property or real property rights in another port district if such district consents. Jointly-Acquired Sites to be acquired pursuant to Section 2.3 that are located within the boundaries of a port district in the State of Washington are identified in Exhibit A in bold face type (the “Identified Properties”). The list of Identified Properties may be amended from time to time by the ACOE.
- 2.4.1 Consent Among Parties. Each Washington Port consents and agrees to permit each other Washington Port to acquire real property or real property rights within its district, including, the Identified Properties; provided, that such real property or real property rights are (i) acquired jointly by all Washington Ports; and (ii) are acquired for use as dredged or excavated material disposal facilities or mitigation sites determined by the ACOE to be required for the Channel Improvement Project.
- 2.4.2 Third Party Port Districts. The Washington Ports further agree to act jointly and by mutual agreement to take all actions necessary to acquire the Identified Sites required for the Channel Improvement Project that lie within the boundaries of a port district that is not a party to this Agreement as authorized by RCW 53.08.240.

3. Fax Signing and Counterparts.

This Fourth Amendment may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The parties agree that any facsimile copy of a signed counterpart of this Fourth Amendment will be treated the same as a signed original of this Fourth Amendment.

4. Effective Date; Effect of Amendment.

This Fourth Amendment shall be effective as of the date of the last signature hereto. Except expressly modified by this Fourth Amendment, all provisions of the Agreement, as previously amended, remain in full force and effect.

AGREED:

PORT OF KALAMA

PORT OF LONGVIEW

By: Janny Lawby
Its: EXECUTIVE DIRECTOR

By: _____
Its: _____

Date: Jan. 28, 2004

Date: _____

PORT OF WOODLAND

PORT OF VANCOUVER

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

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4. Effective Date; Effect of Amendment.

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AGREED:

PORT OF KALAMA

By: _____

Its: _____

Date: _____

PORT OF LONGVIEW

By: 

Its: Executive Director

Date: 1/20/04

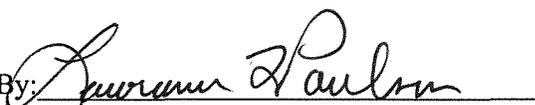
PORT OF WOODLAND

By: _____

Its: _____

Date: _____

PORT OF VANCOUVER

By: 

Its: Executive Director

Date: 1/30/04

3. Fax Signing and Counterparts.

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AGREED:

PORT OF KALAMA

PORT OF LONGVIEW

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

PORT OF WOODLAND

PORT OF VANCOUVER

By: Dave Ripp

By: _____

Its: Port Manager

Its: _____

Date: 1-20-04

Date: _____

Exhibit A

**Dredged or Excavated Material Disposal Facilities and
Mitigation Sites Required under the PCA**

River Mile Marker	Ownership Status	Location/Name	Site Acres (rounded)	Real Estate Interest	O&M Responsibility	Port District
O-105.0	DMMS	West Hayden Island	102	Fee Title	Sponsors	Port of Portland
W-101.0	New	Gateway	40	Fee Title	Sponsors	Port of Vancouver
W-97.1	DMMS	Fazio Sand & Gravel	27	20-year easement	Sponsors	Port of Vancouver
W-96.9	New	Adjacent to Fazio	17	20-year easement	Sponsors	Port of Vancouver
O-91.5	New	Lonestar	45	20-year easement	Sponsors	Port of St. Helens
O-87.8	New	RR Corridor	12	2-year easement	Sponsors	Port of St. Helens
W-86.5	Used	Austin Point	26	Fee Title	Sponsors	Port of Woodland
O-86.2	Used	Sand Island	28	20-year easement	USACE	Port of St. Helens
O-82.6	Used	Reichold	49	20-year easement	Sponsors	Port of St. Helens
W-82.0	Used	Martin Bar	32	Fee Title	Sponsors	Port of Woodland
W-81.0	New Mitigation Site	Woodland Bottoms	32	Fee Title	USACE/WDF W	Port of Woodland
W-80.0	New Mitigation Site	Martin Is. Mitigation	477.68	Fee Title	USACE/WDF W	Port of Woodland
O-77.0	Used	Lower Deer Island	29	20-year easement	USACE	Port of St. Helens
O-75.8	DMMS	Sandy Island	30	20-year easement	USACE	Port of St. Helens
W-71.9	Used	Northport	27	Fee Title	Sponsors	Port of Kalama
O-71.0	New Mitigation Site	Webb District	190	Fee Title	USACE/ODF W	Port of Portland
W-70.1	Used	Cottonwood Is.	62	20-year easement	USACE	Port of Kalama Port of Longview
W-68.7	DMMS	Howard Island	200	20-year easement	USACE	Port of Longview

River Mile Marker	Ownership Status	Location/Name	Site Acres (rounded)	Real Estate Interest	O&M Responsibility	Port District
O-67.0	Used	Rainier Beach	52	2-year easement	Sponsors	Port of St. Helens
W-67.5	Used	International Paper	29	20-year easement	Sponsors	Port of Longview
O-64.8	DMMS	Rainier Industrial	53	20-year easement	USACE	Port of St. Helens
O-63.5	DMMS	Lord Island Upstream	25	13-year easement	USACE	Port of St. Helens
W-63.5	Used	Reynolds Aluminum	13	20-year easement	USACE	Port of Longview
W-62.0	New	Mt. Solo	47	20-year easement	USACE	Port of Longview
W-59.7	DMMS	Hump Island	69	8-year easement	USACE	Port of Longview
O-57.0	DMMS	Crims Island	46	20-year easement	USACE	Port of St. Helens
O-54.0	Used	Port Westward	50	20-year easement	Sponsors	Port of St. Helens
W-46.3/ 46.0	DMMS	Brown Island	72	20-year easement	USACE	Port of Wahkiakum II
W-44.0	New	Puget Is. (Vik Prop.)	100	20-year easement	USACE	Port of Wahkiakum II
O-42.9	DMMS	James River	53	20-year easement	Sponsors	Port of Portland
O-38.3	DMMS	Tenasillahe Island	42	20-year easement	USACE	Port of Portland
O-34.0	DMMS	Welch Island	42	5-year easement	USACE	Port of Portland
W-33.4	Used	Skamokawa	11	20-year easement	Sponsors	Port of Wahkiakum II
O-27.2	DMMS	Pillar Rock Island	56	20-year easement	USACE	Port of Portland
	New Restoration	Miller-Pillar Ecosystem Restoration Feature	235			Port of Portland
O-23.5	DMMS	Miller Sands	151	20-year easement	USACE	Port of Portland
W-21.0	DMMS	Rice Island	27	20-year easement	USACE	Port of Wahkiakum II
	New Restoration	Lois Island Embayment Ecosystem Restoration Feature	191			Port of Portland

River Mile Marker	Ownership Status	Location/Name	Site Acres (rounded)	Real Estate Interest	O&M Responsibility	Port District
Shallow Water Site	Used	Ocean	580		USACE	
Deep Water Site	New	Ocean	8,980		USACE	

* "W" and "O" refer to the Washington or Oregon shoreline. The number refers to the approximate river mile on the navigation channel.

** DMMS = site is in the No Action Alternative (existing 40-foot channel maintenance)

New = site is new for this Project

Used = site previously used by Corps for disposal

WASHINGTON PORTS AGREEMENT
Fifth Amendment and Restatement of Agreement

The Port of Kalama, the Port of Longview, the Port of Vancouver, and the Port of Woodland (hereinafter referred to collectively as the "Washington Ports" or individually as a "Washington Port") hereby amend and restate that certain Washington Ports Agreement entered into by the Washington Ports on February 25, 1999 (the "Agreement").

RECITALS

A. The Washington Ports have been actively involved in assessing the feasibility and environmental impacts of Navigation Improvements of the Columbia River Federal Navigation Channel (the "Channel Improvement Project") since the 1990's.

B. The Washington Ports entered into the Agreement for the purpose participating as non-federal sponsors for the Channel Improvement Project.

C. The Washington Ports expanded the Agreement by amendments on October 17, 2001 (the "First Amendment"), on February 19, 2002 (the "Second Amendment"), on March 15, 2002 (the "Third Amendment"), and January 30, 2004 (the "Fourth Amendment").

D. The Washington Ports entered into an "Intergovernmental Agreement Among Lower Columbia River Ports For Columbia River Channel Deepening And Maintenance" (hereinafter "Oregon—Washington Ports Agreement") with the Port of Portland and the Port of St. Helens. The Oregon—Washington Ports Agreement allocates costs of the Channel Improvement Project.

E. The Washington and Oregon Ports entered into a Project Cooperation Agreement (the "PCA") with the U.S. Army Corps of Engineers ("Corps") for the Channel Improvement Project on June 21, 2004.

F. The Project Cooperation Agreement identifies disposal, mitigation and restoration sites needed for the Channel Improvement Project.

G. The Washington Ports have been performing their responsibilities pursuant to the PCA.

H. The PCA requires that Non-Federal Sponsors provide all lands, easements, or rights-of-way necessary for the construction of the Channel Improvement Project and the Agreement, as amended, includes provisions that provide for this purpose.

I. The Washington Ports have identified additional procedures and protocols that would be helpful in providing the necessary property, including procedures and protocols that specifically address using the Washington Ports' eminent domain authority.

J. Certain provisions of the Agreement, as previously amended, are no longer necessary to implement the Channel Improvement Project.

K. The Agreement, as previously amended, would be easier to use if the Agreement is restated to consolidate operative terms into one document and to eliminate outdated provisions.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements herein contained, the Washington Ports do hereby agree as follows:

AGREEMENT

1. Purpose of the Agreement

1.1. The purpose of this Agreement is to provide for the Washington Ports' participation as Non-Federal Sponsors for the Channel Improvement Project and to govern their roles and responsibilities with regards to the maintenance of the 40 foot navigation channel (the "40 Foot Project") as permitted by law.

2. Non-Federal Sponsors for the PCA.

2.1. Administration of the Undertaking. The Executive Directors of the Washington Ports shall act as a joint board for purposes of administering the undertaking that is the subject of this Agreement.

2.2. Washington Non-Federal Sponsors. Each Washington Port as a party to the PCA for the Channel Improvement Project participates in the Project as a Non-Federal Sponsor. The Washington Ports agree to execute any further documents and take any actions deemed reasonably necessary to execute the PCA and to fulfill their obligations thereunder.

2.3. Duration of Obligations and Agreement. Each Washington Port shall continue as a Non-Federal Sponsor for the duration of the Channel Improvement Project or until the PCA is terminated. This Agreement shall remain in effect for the duration of the Channel Improvement Project, or until the PCA is terminated.

2.4. Authority to Execute Other Agreements. The Washington Ports may negotiate agreements with government agencies, including without limitation, the Washington Department of Transportation, to assist the Washington Ports to fulfill their obligations to acquire real property or real estate property rights to be used as dredged or excavated material disposal facilities and mitigation sites for the Channel Improvement Project.

3. Channel Project Sites.

3.1. Dredged or Excavated Material Disposal Facilities and Mitigation Sites. Exhibit A, which is attached hereto and incorporated by this reference, contains a list of the dredged or excavated material disposal facilities and mitigation sites that the Corps has currently identified as necessary for the

construction, operation, or maintenance of the general navigation features or ecosystem restoration features contemplated by the PCA ("Channel Project Sites"). The list of Channel Project Sites may be amended from time to time by the Corps.

- 3.2. Real Property or Real Property Rights Owned by a Washington Port. Title or rights in one or more of the Channel Project Sites owned by a Washington Port prior to the Effective Date of the PCA (the "Port Sites") shall be retained by such Washington Port but shall be made available to the Corps by the issuance of an authorization for entry thereto, as contemplated by the PCA. Except as provided for in Section 2.2 of Amendment 2 of the Intergovernmental Agreement Among Lower Columbia River Ports for the Columbia and Lower Willamette River Federal Navigation Channel Deepening and Maintenance dated May 21, 2001 (the "Oregon-Washington Ports Agreement"), the Port Sites shall be held by the Washington Ports for the duration of the Channel Improvement Project or until the PCA is cancelled or terminated, whichever occurs earlier.
- 3.3. Jointly-Acquired Sites. Title or rights in the Channel Project Sites located in the State of Washington that are to be acquired for the Channel Improvement Project shall be acquired by the Washington Ports jointly and by mutual agreement, with title or rights conveyed equally to each Washington Port (hereinafter the "Jointly-Acquired Sites"). The Washington Ports shall make the Jointly-Acquired Sites available to the Corps by the issuance of an authorization for entry thereto, as contemplated by the PCA. Title or rights in the Jointly-Acquired Sites shall be held by the Washington Ports for (i) the duration of the Channel Improvement Project; (ii) until the PCA is cancelled or terminated; or (iii) until the expiration of the rights conveyed in such Jointly-Acquired Sites, as specified in Exhibit A, whichever occurs earlier.
- 3.4. Use of Condemnation Authority. Notwithstanding any other provision of this Agreement, when it is necessary to acquire an Identified Site by eminent domain, the Washington Ports may elect to act (a) jointly as provided for in Section 3.3, (b) with less than all four Washington Ports, or (c) individually.
 - 3.4.1 The Washington Ports, whether acting individually or jointly to condemn an Identified Site shall conduct such condemnation pursuant to applicable laws of the state of Washington.
 - 3.4.2 The Washington Ports may enter into agreements with State Agencies or other public entities with condemnation powers to acquire Identified Sites.

3.5. Consent to Acquire Sites in Another Port District. Pursuant to RCW 53.08.240, two or more port districts, acting jointly and by mutual agreement, may acquire real property or real property rights in another port district if such district consents. Jointly-Acquired Sites to be acquired pursuant to Section 3.3 that are located within the boundaries of a port district in the State of Washington are identified in **Exhibit A** in bold face type (the "Identified Properties"). The list of Identified Properties may be amended from time to time by the Corps.

3.5.1. Consent Among Parties. Each Washington Port consents and agrees to permit each other Washington Port to acquire real property or real property rights within its district, including the Identified Properties; provided that such real property or real property rights are (i) acquired jointly by all Washington Ports; and (ii) acquired for use as dredged or excavated material disposal facilities or mitigation sites determined by the Corps to be required for the Channel Improvement Project.

3.5.2. Third Party Port Districts. The Washington Ports further agree to act jointly and by mutual agreement to take all actions necessary to acquire the Identified Sites required for the Channel Improvement Project that lie within the boundaries of a port district that is not a party to this Agreement as authorized by RCW 53.08.240.

4. **Financial.**

4.1. Budget. The total budget for the Channel Improvement Project has been established based on the estimates in Chapter 8 of the Final Supplemental Environmental Impact Statement for the Columbia River Channel Improvement Project dated January 2003. The Non-Federal Sponsor share of the total budget is established by applying the cost-sharing provisions in Article II of the PCA.

4.2. Cost Sharing. The Washington Ports' share of the Non-Federal Sponsor costs under the PCA shall be determined by the allocation provided for in the Oregon-Washington Ports Agreement.

4.2.1. The Washington Ports shall pay their share of the Non-Federal Sponsor costs from: (a) the appropriations for the Project by the Washington State Legislature, (b) reimbursements from the Oregon Ports as provided for in the Oregon-Washington Ports Agreement, and (c) contributions from the Washington Ports of Longview, Kalama, and Vancouver as provided for in Section 4.3 of this Agreement.

4.3. The Washington Ports' share shall then be allocated equally among the Washington Ports of Longview, Kalama and Vancouver. It is anticipated

that these costs will include the Washington Ports' share of the following Project costs:

- 4.3.1. The contribution to the United States for the Non-Federal Sponsor's share of the costs of construction of the general navigation features for the Columbia River;
 - 4.3.2. 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;
 - 4.3.3. The cash contribution to the United States for the local share of any ecosystem restoration Project construction costs;
 - 4.3.4. Any utility relocation costs on the Columbia River for which the Washington Sponsor is responsible under the PCA;
 - 4.3.5. 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
 - 4.3.6. Any other contributions specifically agreed to between the parties or as set forth in the Oregon-Washington Ports Agreement and the PCA.
- 4.4. Any land enhancement costs shall be borne by any party to this Agreement that benefits, or whose constituents benefit, from land enhancements.
 - 4.5. Several of the disposal sites identified in the Sponsor Preferred Plans are now owned by individual port districts which are parties to this Agreement. Title to such sites shall be retained by the owners, but the property shall be made available as Project disposal sites, together with appropriate licenses or easements pertaining thereto, at no cost to the Project. Individual ports providing such sites may, with the written consent of the Oregon Washington Non-Federal Sponsors, provide alternative sites in substitution for an original site. Any such proposed substitution shall include consideration 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 10.

- 4.6. 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 through the contribution or provision of use or interests in sites presently owned by individual ports and in which said ports will retain beneficial interests and will benefit 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 shall have no further or other use, so-called orphan sites. The parties shall cooperate on obtaining the maximum available credit under the Project Cooperation Agreement and, if necessary, shall share equally between the Washington Non-Federal Sponsor and the Oregon Non-Federal Sponsor the opportunity to obtain such credit.
- 4.7. To the extent an individual port's non-cash contribution (as defined in the PCA) is provided by an orphan site and is included in the ten percent (10%) non-cash contribution, the providing port's cash contribution share shall be reduced by the fair market value of said contribution.

5. **Financial Agent.**

5.1. Authority and Responsibilities of Port of Kalama.

- 5.1.1. The Washington Ports hereby appoint the Port of Kalama as their financial agent for the restricted purposes of executing the documents necessary to receive and disburse funds received from the Department of Transportation ("DOT") pursuant to appropriations from the legislature for the Project. The Port of Kalama is further authorized to perform the terms and conditions set forth therein. The Port of Kalama hereby accepts the appointment, subject to the terms and conditions set forth herein.
- 5.1.2. The Port of Kalama shall request funds from the DOT, maintain accounts with financial institutions, and take such other actions necessary to administer these funds. The Port of Kalama shall provide copies of accounting reports to the remaining Washington Ports on a regular basis.

- 5.2. Washington Ports' Duties. In consideration of the Port of Kalama's agreement to execute the documents and perform the duties set forth in Paragraph 5.1 herein, the Washington Ports agree to release the Port of Kalama and all officials and employees of the Port of Kalama from, and

covenant and agree that neither the Port of Kalama nor any official or employee of the Port of Kalama shall be liable for, and agree to indemnify and hold the Port of Kalama and all officials and employees of the Port of Kalama harmless against, any claim, including but not limited to claims for fines, penalties, damages, or other costs, made against the Port of Kalama or any official or employee of the Port of Kalama in or resulting from the Port of Kalama's execution of the documents, except to the extent any loss, damage, injury or death is attributable to the negligence or willful misconduct of the Port of Kalama or its officials or employees. In case any action shall be brought against the Port of Kalama or any official or employee of the Port of Kalama in response of which indemnity may be sought against the Washington Ports, the Port of Kalama or such official or employee shall promptly notify the Washington Ports in writing and the Washington Ports shall assume the defense thereof, including the employment of counsel and the payment of all expenses incident to such defense. **Note:** It is the intent of this provision to reduce the Port of Kalama's liability, except for its negligence or willful misconduct, to equally sharing in any liability with the remaining Washington Ports; and

6. **Termination.**

- 6.1. Complete Termination. The Washington Ports may terminate this Agreement in its entirety if the Corps provides notice of termination of the PCA. Termination of this Agreement pursuant to this Section 6.1 shall be based on the mutual agreement of the Washington Ports; such agreement shall not be unreasonably withheld.
- 6.2. Partial Termination. The Washington Ports may terminate part of this Agreement by amending the document as provided for in Section 12 of this Agreement.
- 6.3. Disposition of Property Upon Termination. The Washington Ports anticipate that the Corps will continue to need the Channel Sites, even if the Washington Ports were to terminate all or part of this Agreement. If the Corps determines that it does not need a Channel Site and notifies the Washington Ports that the Corps is releasing it, the Washington Ports may dispose of Sites as provided in Sections 6.3.1 and 6.3.2.
 - 6.3.1. Port Sites. A released Port Site may be disposed of by the Port that owns it pursuant to applicable law.
 - 6.3.2. Jointly Acquired Sites. The Washington Ports by mutual agreement may dispose of a released Jointly Acquired Sites pursuant to applicable law.

7. **Project Permitting.**

The Port of Longview shall be responsible for administering contracts necessary for land use permitting and related environmental review required for the Identified Sites.

8. **Project Manager Administration.**

The Port of Vancouver shall be responsible for administering the contract for the Project Manager for the Channel Improvement Project.

9. **40-Foot Project.**

This Agreement, except as expressly excluded herein, governs the Washington Ports' rights and responsibilities with respect to the 40-Foot Project, including but not limited to designating Non-Federal Sponsors; sharing responsibilities; allocating costs among the Washington Ports; and acquiring, holding, managing and transferring certain dredged material disposal sites along the Columbia River. Nothing in this Section 9 shall be deemed to create an obligation or duty on the part of any Washington Port with respect to any 40-Foot Sponsor that is not a party to this Agreement. Nothing in this Section shall be deemed to create an obligation or duty to the United States or the Corps of Engineers on the part of any Washington Port with respect to a responsibility of a 40-Foot Sponsor that is not a party to this Agreement.

10. **Dispute Resolution.**

In the event a dispute arises among or between any of the Washington Ports, including, but not limited to the execution or interpretation of the duties, powers, or responsibilities provided herein or as permitted under the PCA, the Washington Ports agree to seek resolution of the dispute through good faith mediation. If the Washington Ports cannot agree upon a mediator, or if mediation should fail to resolve the disagreement, the Washington Ports shall appoint three neutral arbitrators. If the Washington Ports cannot agree upon three neutral arbitrators, the Washington Ports, or any of them, may petition the presiding judge of the Superior Court of Thurston County in the State of Washington to have three arbitrators 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 any of the Washington Ports of any of its governmental powers. The costs of the arbitrators shall be allocated among the Washington Ports in the same manner as Project costs. 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.

11. **Integration.**

This Agreement embodies the entire agreement among the Washington Ports regarding the construction and maintenance of the Project and shall supersede all prior and contemporaneous agreements or communications regarding the same subject.

12. **Modification.**

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

13. **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.

14. **Fax Signing and Counterparts.**

This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The parties agree that any facsimile copy of a signed counterpart of this Agreement will be treated the same as a signed original of this Agreement.

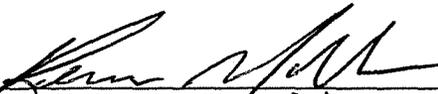
15. **Effective Date; Effect of Amendment.**

This Agreement shall be effective as of the date of the last signature hereto.

AGREED:

THE PORT OF LONGVIEW

THE PORT OF KALAMA

By 
Title Executive Director
Name Kenneth B. O'Holloran
Date Feb. 5, 2008
Address P.O. Box 1258
Longview WA 98632

By _____
Title _____
Name _____
Date _____
Address _____

11. **Integration.**

This Agreement embodies the entire agreement among the Washington Ports regarding the construction and maintenance of the Project and shall supersede all prior and contemporaneous agreements or communications regarding the same subject.

12. **Modification.**

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

13. **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.

14. **Fax Signing and Counterparts.**

This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The parties agree that any facsimile copy of a signed counterpart of this Agreement will be treated the same as a signed original of this Agreement.

15. **Effective Date; Effect of Amendment.**

This Agreement shall be effective as of the date of the last signature hereto.

AGREED:

THE PORT OF LONGVIEW

By _____
Title _____
Name _____
Date _____
Address _____

THE PORT OF KALAMA

By Lanny Cawley
Title Executive Director
Name Lanny Cawley
Date 1-25-2008
Address 380 West Marine Drive
Kalama WA 98625

THE PORT OF WOODLAND

By David Ripp
Title Executive Director
Name David Ripp
Date 1-17-08
Address P.O. Box 87
Woodland, WA 98674

THE PORT OF VANCOUVER

By _____
Title _____
Name _____
Date _____
Address _____

THE PORT OF WOODLAND

By _____
Title _____
Name _____
Date _____
Address _____

THE PORT OF VANCOUVER

By Lawrence Paulson
Title Executive Director
Name LAWRENCE L. PAULSON
Date January 22, 2008
Address _____

Exhibit A

Dredged or Excavated Material Disposal Facilities and Mitigation Sites Required under the PCA

River Mile Marker	Ownership Status	Location/Name	Site Acres (rounded)	Real Estate Interest	O&M Responsibility	Port District
O-105.0	DMMS	West Hayden Island	102	Fee Title	Sponsors	Port of Portland
W-101.0	New	Gateway	40	Fee Title	Sponsors	Port of Vancouver
W-97.1	DMMS	Fazio Sand & Gravel	27	20-year easement	Sponsors	Port of Vancouver
W-96.9	New	Adjacent to Fazio	17	20-year easement	Sponsors	Port of Vancouver
O-91.5	New	Lonestar	45	20-year easement	Sponsors	Port of St. Helens
O-87.8	New	RR Corridor	12	2-year easement	Sponsors	Port of St. Helens
W-86.5	Used	Austin Point	26	Fee Title	Sponsors	Port of Woodland
O-86.2	Used	Sand Island	28	20-year easement	USACE	Port of St. Helens
O-82.6	Used	Reichold	49	20-year easement	Sponsors	Port of St. Helens
W-82.0	Used	Martin Bar	32	Fee Title	Sponsors	Port of Woodland
W-81.0	New Mitigation Site	Woodland Bottoms	32	Fee Title	USACE/ WDFW	Port of Woodland
W-80.0	New Mitigation Site	Martin Is. Mitigation	477.68	Fee Title	USACE/ WDFW	Port of Woodland
O-77.0	Used	Lower Deer Island	29	20-year easement	USACE	Port of St. Helens
O-75.8	DMMS	Sandy Island	30	20-year easement	USACE	Port of St. Helens
W-71.9	Used	Northport	27	Fee Title	Sponsors	Port of Kalama
O-71.0	New Mitigation Site	Webb District	190	Fee Title	USACE/ ODFW	Port of Portland
W-70.1	Used	Cottonwood Is.	62	20-year easement	USACE	Port of Kalama Port of Longview

EXHIBIT A

To Washington Ports Agreement

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River Mile Marker	Ownership Status	Location/Name	Site Acres (rounded)	Real Estate Interest	O&M Responsibility	Port District
W-68.7	DMMS	Howard Island	200	20-year easement	USACE	Port of Longview
O-67.0	Used	Rainier Beach	52	2-year easement	Sponsors	Port of St. Helens
W-67.5	Used	International Paper	29	20-year easement	Sponsors	Port of Longview
O-64.8	DMMS	Rainier Industrial	53	20-year easement	USACE	Port of St. Helens
O-63.5	DMMS	Lord Island Upstream	25	13-year easement	USACE	Port of St. Helens
W-63.5	Used	Reynolds Aluminum	13	20-year easement	USACE	Port of Longview
W-62.0	New	Mt. Solo	47	20-year easement	USACE	Port of Longview
W-59.7	DMMS	Hump Island	69	8-year easement	USACE	Port of Longview
O-57.0	DMMS	Crims Island	46	20-year easement	USACE	Port of St. Helens
O-54.0	Used	Port Westward	50	20-year easement	Sponsors	Port of St. Helens
W-46.3/ 46.0	DMMS	Brown Island	72	20-year easement	USACE	Port of Wahkiakum II
W-44.0	New	Puget Is. (Vik Prop.)	100	20-year easement	USACE	Port of Wahkiakum II
O-42.9	DMMS	James River	53	20-year easement	Sponsors	Port of Portland
O-38.3	DMMS	Tenasillahe Island	42	20-year easement	USACE	Port of Portland
O-34.0	DMMS	Welch Island	42	5-year easement	USACE	Port of Portland
W-33.4	Used	Skamokawa	11	20-year easement	Sponsors	Port of Wahkiakum II
O-27.2	DMMS	Pillar Rock Island	56	20-year easement	USACE	Port of Portland
	New Restoration	Miller-Pillar Ecosystem Restoration Feature	235			Port of Portland
O-23.5	DMMS	Miller Sands	151	20-year easement	USACE	Port of Portland

EXHIBIT A
To Washington Ports Agreement
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River Mile Marker	Ownership Status	Location/Name	Site Acres (rounded)	Real Estate Interest	O&M Responsibility	Port District
W-21.0	DMMS	Rice Island	27	20-year easement	USACE	Port of Wahkiakum II
	New Restoration	Lois Island Embayment Ecosystem Restoration Feature	191			Port of Portland
Shallow Water Site	Used	Ocean	580		USACE	
Deep Water Site	New	Ocean	8,980		USACE	

- * "W" and "O" refer to the Washington or Oregon shoreline. The number refers to the approximate river mile on the navigation channel.
- ** DMMS = site is in the No Action Alternative (existing 40-foot channel maintenance).
New = site is new for this Project.
Used = site previously used by Corps for disposal.