

2022 WASHINGTON PORTS AGREEMENT

The Port of Kalama, the Port of Longview, the Port of Vancouver, and the Port of Woodland, each duly organized under the laws of the state of Washington and hereinafter referred to collectively as the "Washington Ports" or individually as a "Washington Port" hereby enter into this 2022 Washington Ports Agreement ____ (the "2022 WPA") this 31st day of October, 2022.

RECITALS

A. The Washington Ports are signatories to a July 24, 2004 Project Cooperation Agreement ("PCA") between the Department of the Army, the Port of Portland and the Washington Ports, pursuant to which they serve as Non-Federal Sponsors ("NFS Ports") of a completed Federal U.S. Army Corps of Engineers ("Corps")-sponsored improvement project described as the Columbia and Lower Willamette Rivers Federal Navigation Channel, Oregon and Washington (hereinafter the "Channel Improvement Project" or "Project"), which included but is not limited to a plan of operations and maintenance of dredged material placement which is still undergoing execution. The Project was subject to environmental review conducted under the National Environmental Policy Act, 42 U.S.C. §§4321 et seq. and the Washington State Environmental Policy Act, Ch. 43.21C Revised Code of Washington.

B. The rights, duties and obligations of the Washington Ports related to the Project were defined by a February 25, 1999 Washington Ports Agreement, as amended five times through January 25, 2008.

C. The Washington Ports, as Non-Federal Sponsors, wish to establish a new 2022 Washington Ports Agreement (the "2022 WPA") in furtherance of the Project. This 2022 WPA replaces in its entirety and supersedes the Washington Ports Agreement, as amended through January 25, 2008, which is, by the force and effect of the signatures appearing below, repealed and of no further effect on the parties hereto.

D. The PCA imposes certain requirements on the Non-Federal Sponsors. These include local cost-sharing and various items of local cooperation which would include, among others, 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.

E. Pursuant to the PCA, the Non-Federal Sponsors are responsible for jointly identifying, acquiring and holding title or rights equally to such real property among those Washington Ports that participate and share equally in the acquisition (hereinafter the "Project Jointly Acquired Sites") to certain lands, easements, right-of-way, suitable borrow areas, and suitable dredged or excavated material disposal areas that will be determined by the Corps to be necessary for the Project.

F. The Washington Ports have an agreed-upon organizational structure to accomplish the requirements of the PCA. Under the PCA, the Washington Ports, collectively, have entered into the PCA as a Non-Federal Sponsor. The Port of Portland, Oregon serves as the other Non-Federal Sponsor.

G. The Washington Ports and the Port of Portland, Oregon have an existing Intergovernmental Agreement Among Lower Columbia River Ports for the Columbia and Lower Willamette River Federal Navigation Channel Operations and Maintenance” (hereinafter “IGA”) as amended, regarding their participation in the Channel Improvement Project. The Washington Ports and the Port of Portland intend to execute a Fourth Amendment to the IGA. The purpose of the IGA is to allocate costs of the Project among the Non-Federal Sponsors, designate Non-Federal Sponsors responsibilities, and to share responsibilities for fulfilling Corps requirements.

H. The Washington Ports enter into this 2022 WPA for the purposes of: (i) facilitating the Plan by reaffirming their collaboration as the Washington Non-Federal Sponsors; (ii) executing the Fourth Amendment to the IGA; and (iii) maintenance of local services facilities and disposal areas as provided in the PCA.

I. Nothing in this 2022 WPA is intended to, nor should it be construed by any court of competent jurisdiction to, conflict with any provisions of the PCA or the IGA.

J. Notwithstanding the content of this 2022 WPA and other Project-related agreements referenced herein to which the parties are signatories, nothing contained in this 2022 WPA in any way abrogates, modifies or may be construed to change any of the Washington Ports’ existing rights to undertake any and all actions necessary for each respective port to discharge its responsibilities as a duly organized port under the laws of the State of Washington.

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

AGREEMENT

1. Purpose of the 2022 WPA

1.1 The purpose of this 2022 WPA is to provide for the Washington Ports’ participation as Non-Federal Sponsors for the Channel Improvement 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 or their designees shall act as a Project Coordination Team (“PCT”) for purposes of administering the undertaking that is the subject of this 2022 WPA.

- 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 take any actions deemed reasonably necessary 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 2022 WPA shall remain in effect for the duration of the Project, or until the PCA is terminated.
- 2.4 Authority to Execute Other Agreements. The Washington Ports may negotiate agreements with any, and all, government agencies and sources, 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.
- 2.5 Consensus Basis for Actions Taken. The Executive Directors of those Washington Ports sharing equally in the Washington Non-Federal Sponsor Ports' share of costs, as provided further herein, shall be entitled to vote on actions of the Washington Ports. Such actions shall be approved by consensus, i.e., a unanimous vote, of the PCT for purposes of administering the undertaking that is the subject of this 2022 WPA. Such actions may include, but not be limited to, purchase of lands, easements, rights of way or other interests that the United States determines, pursuant to the PCA, to be necessary for the construction, operation or maintenance of the Project.
- 2.5.1 For actions in which the Port of Woodland does not have a financial interest or stake in the outcome thereof and which require a vote of the Executive Directors, the Port of Woodland shall not participate in or cast a vote thereon.
- 2.5.2 For actions in which the Port of Woodland does have a financial interest or stake in the outcome thereof and which require a vote of the Executive Directors, the Port of Woodland shall participate in or cast a vote thereon.

3. Dredge Material Placement Sites

- 3.1 Dredged or Excavated Material Disposal Facilities and Mitigation Sites. The Washington Ports shall acquire and make the Project's sites, as defined further herein, available to the Corps by the issuance of an authorization for entry thereto, as contemplated by the PCA.

3.1.1 Real Property or Real Property Rights in Individually-Owned Sites. Title or rights in one or more of the project sites owned by a Washington Port 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 the IGA, and as further provided at Sections 3.1.3.3 and 3.1.3.4 below, such individually-owned Port Sites shall be held by such individual Washington Ports for the duration of the Project or until the PCA is cancelled or terminated, whichever occurs earlier.

3.1.2 Real Property or Real Property Rights in Jointly-Acquired Sites. Separate from and in addition to those individually-owned Port Sites described in Section 3.1.1 above, title or rights in project sites located in the State of Washington that are to be acquired for the Project shall be acquired by the Washington Ports jointly and by mutual agreement, with title or rights conveyed to each Washington Port in proportion to the financial contribution each Washington Port made to the acquisition (above and 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. Except as provided for in the IGA and as further provided at Sections 3.1.3.3 and 3.1.3.4 below, such Jointly-Acquired project sites shall be held by the Washington Ports for the duration of the Project or until the PCA is cancelled or terminated, whichever occurs earlier.

3.1.3 Disposition of Project Sites. Notwithstanding any provisions to the contrary herein and in addition thereto, if a Washington Port individually holding title or rights to a project site under Section 3.1.1 above, or the Washington Ports jointly holding title or rights to a project site under Section 3.1.2 above jointly wish and mutually agree to dispose of such a project site in order to pursue their own respective Port objective(s) unrelated to and before expiration of the Project or the cancellation or termination of the PCA, whichever occurs earlier, then they may do so subject to the following:

3.1.3.1 The proceeds of a sale of a jointly-acquired project site are distributed to each Washington Port in proportion to the financial contribution each Washington Port made to the acquisition of the withdrawn project site;

3.1.3.2 A replacement project site is provided either by the individual Washington Port at its sole expense in the case of Section 3.1.1 or by the Washington Ports at the expense of the

Washington Ports in proportion to the financial contribution each Washington Port made to the acquisition of the withdrawn project site;

3.1.3.3 Unless prohibited by the PCA, if an individual Washington Port withdraws one of its own project sites and does not provide a replacement project site at its sole expense, then that individual Washington Port shall be solely responsible for reimbursing the other Washington Ports for costs they incur as a result, including but not limited to a loss of Project funding, fines and penalties, and the withdrawing Port shall hold the remaining Washington Ports harmless and indemnify them from any consequences, claims, damages or loss of funding that arises therefrom; and

3.1.3.4 Any individual Washington Port will be allowed to withdraw properties without being subject to the provisions of Section 3.1.3.3 above if that Port provides at least one year (365 days) advance notice from the date of intended withdrawal so that any costs associated with the withdrawal can be accounted for within the Washington Ports' respective budgets for the following year.

3.1.3.5 The procedures to be followed for the withdrawal of a site by an individual Washington Port, and the template for requesting and granting consent for such withdrawal, shall be as substantially set forth in Exhibit 1 hereto inclusive of Attachments A and B thereto.

- 3.2. Use of Condemnation Authority. Notwithstanding any other provision of this 2022 WPA, when it is necessary to acquire an Identified Site, as that term is defined in the PCA, 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 as provided for in Section 3.2.1 above.
- 3.2.1 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.
- 3.2.2 The Washington Ports may enter into agreements with State Agencies or other public entities with condemnation powers to acquire Identified Sites.
- 3.3. 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 the PCA, which may be amended from time to time consistent with the language in the PCA.

3.3.1. **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.

3.3.2. **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 Project that lie within the boundaries of a port district that is not a party to this 2022 WPA as authorized by RCW 53.08.240.

4. Financial

4.1. **Budget.** Project budgets are reviewed and approved annually by the Washington Ports Project Coordination Team (“PCT”) in accordance with the PCT’s approved procedures and consistent with Washington law. The Non-Federal Sponsor share of the total budget for the Project 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 is determined by the allocation provided for in the IGA.

4.2.1. Except in such circumstances described in 2.5.1 above where the Port of Woodland does not participate in cost sharing, the Washington Ports shall pay their share of the Non-Federal Sponsor costs as described in this Section 4 – **Financial** from all sources. Woodland shall pay their share as provided for in Section 4.3 of this 2022 WPA.

4.3. The Washington Ports’ share shall then be allocated equally among the Washington Ports of Longview, Kalama, Vancouver and Woodland. 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 the Project

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, as each term is defined in the PCA, provided, however, that where a party to this 2022 WPA obtains beneficial use from the activity on a particular parcel of land acquired

- pursuant to the PCA, the party receiving the benefit shall be solely responsible for the incremental cost related to that beneficial use;
- 4.3.3. The cash contribution to the United States for the local share of any ecosystem restoration Project or Plan 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 the Project, including without limit construction, maintenance, dredge material disposal, and environmental mitigation, except that, where a party to this 2022 WPA obtains beneficial use from the activity on a particular parcel of land acquired pursuant to the PCA, 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 2022 WPA; and
 - 4.3.6. Any other contributions specifically agreed to between the parties or as set forth in the original IGA, as amended, and the PCA.
- 4.4. Any land enhancement costs shall be borne by any party to this 2022 WPA that benefits, or whose constituents benefit, from land enhancements.
 - 4.5. Some of the Project disposal sites that will be identified may also be owned by individual port districts which are parties to this 2022 WPA. Title to such sites to be identified shall similarly be retained by the owners, but the property shall be made available as disposal sites of the Project, together with appropriate licenses or easements pertaining thereto, at no cost to the Project, provided that the Washington Ports may dispose of Project disposal sites as provided in Section 3 above. 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 Section 10.
 - 4.6. The PCA allows up to ten percent (10%) of the Non-Federal Sponsor's share of the Project costs 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 PCA 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.
- 4.8 The Washington Ports expressly agree that the responsibility of the Port of Woodland's share of the financial responsibility contemplated by this 2022 WPA shall be subject to further discussion among the four Washington Ports following the execution hereof. Any decisions made by the Washington Ports regarding the Port of Woodland's future financial participation must be made on the basis of consensus as defined in Section 2.5 above, i.e., unanimously by all the Washington Ports, and shall be reflected in a fully executed amendment hereto, signed by all four Washington Ports of Vancouver, Woodland, Kalama, and Longview.

5. Financial Agent

- 5.1 Authority and responsibilities of the 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, if any, received from the State of Washington pursuant to appropriations from the legislature and providing payment for properties or easements purchased, and tracking Project equalization payments as detailed in the PCA for the Project and/or IGA. By its signature appearing below by a duly authorized agent thereof, the Port of Kalama hereby accepts this appointment, subject to the terms and conditions set forth herein.
- 5.1.2 The Port of Kalama shall be the primary requestor of funds from any source requiring a single applicant, maintain accounts with financial institutions, and take such other actions necessary 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
- 5.2.1 In consideration of the Port of Kalama's agreement to execute the documents and perform the duties set forth in in Paragraph 5.1 above, 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 any 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 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 express 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.

6. Project Environmental Review and Permitting

6.1 Authority and Responsibilities of the Port of Longview

6.1.1 The Washington Ports hereby appoint the Port of Longview as the Washington Ports' nominal SEPA lead agency for environmental review compliance and procuring only those necessary permits required by the PCA, as further defined by that U.S. Army Corps of Engineers' letter dated October 31, 2018 (the "Corps Permitting Letter"), a copy of which is attached hereto as Exhibit A, and applicable law for the implementation of the Project.

6.1.2 The Washington Ports, as Cooperating Agencies under the National Environmental Policy Act, 43 U.S.C. 4321 et seq., hereby appoint the Port of Longview as the Washington Port's nominal NEPA lead cooperating agency for NEPA environmental review.

6.1.3 By its signature appearing below by a duly authorized agent thereof, the Port of Longview hereby accepts this appointment, subject to the terms and conditions set forth herein.

6.2 Washington Ports' Duties

6.2.1 In consideration of the Port of Longview's agreement to perform the duties set forth in Paragraph 6.1 above, the Washington Ports agree to release the Port of Longview and all officials and employees of the Port of Longview from, and covenant and agree that neither the Port of Longview nor any official or employee of the Port of Longview shall be liable for, and agree to indemnify and hold the Port of Longview and all officials and employees of the Port of Longview harmless against, any claim, including but not limited to claims for fines, penalties, damages, or any other costs, made against the Port of Longview or any official or employee of the Port

of Longview in or resulting from the Port of Longview's performance of the duties set forth in Paragraph 6.1 above, except to the extent that any loss, damage, injury or death is attributable to the negligence or willful misconduct of the Port of Longview or its officials or employees. In case any action shall be brought against the Washington Ports, the Port of Longview 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. It is the express intent of this provision to reduce the Port of Longview's liability, except for its negligence or willful misconduct, to equally sharing in any liability with the remaining Washington Ports.

7. Project Real Property Title and Interests

7.1 Authority and Responsibilities of the Port of Vancouver

7.1.1 The Washington Ports hereby appoint the Port of Vancouver as their real property title and interest representative for the restricted purpose of executing the documents necessary to obtain, procure, encumber and dispose of Jointly Acquired Sites for the Project. By its signature appearing below by a duly authorized agent thereof, the Port of Vancouver hereby accepts this appointment, subject to the terms and conditions set forth herein.

7.1.2. The Washington Ports hereby appoint the Port of Vancouver as their public relations representative for the restricted purpose of executing the documents necessary to hire and oversee a public relations firm as necessary for the Project. By its signature appearing below by a duly authorized agent thereof, the Port of Vancouver hereby accepts this appointment, subject to the terms and conditions set forth herein.

7.2 Washington Ports' Duties

7.2.1 In consideration of the Port of Vancouver's agreement to execute the documents and perform the duties set forth in in Paragraph 7.1 above, the Washington Ports agree to release the Port of Vancouver and all officials and employees of the Port of Vancouver from, and covenant and agree that neither the Port of Vancouver nor any official or employee of the Port of Vancouver shall be liable for, and agree to indemnify and hold the Port of Vancouver and all officials and employees of the Port of Vancouver harmless against, any claim, including but not limited to claims for fines, penalties, damages, or any other costs, made against the Port of Vancouver or any official or employee of the Port of Vancouver in or resulting from the Port of Vancouver'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 Vancouver or its officials or employees. In case any action shall be brought against the Washington Ports, the Port of Vancouver 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. It is the express intent of this provision to reduce the Port of Vancouver's liability, except for its negligence or willful misconduct, to equally sharing in any liability with the remaining Washington Ports.

8. Project Administration Management

- 8.1 The Port of Longview shall be responsible for administering the contract for the Project Manager for the Project.
- 8.2 The Washington Ports may also enter into other contracts as needed to address the Washington Ports' duties as established in the PCA, IGA, 2022 WPA or other associated agreements between the Washington Ports related to the Project. The IGA, as amended in 2022, shall constitute the Master Intergovernmental Agreement ("Master IGA") for purposes of enabling such additional contracts, associated cost-share agreements, task orders or other related agreements related to Non-Federal Sponsor Ports' performance of obligations arising under the Project. Any additional contracts, associated cost-share agreements, task orders, or other related agreements not specifically identified in the PCA, 2022 WPA or IGA will be established and implemented upon consensus of the Washington Ports.

9. Termination.

- 9.1 The Washington Ports may terminate this 2022 WPA in its entirety if the Corps provides notice of termination of the PCA. Termination of this 2022 WPA pursuant to this Section 9.1 shall be based on the mutual agreement of all the Washington Ports, which agreement shall not be unreasonably withheld.
- 9.2 The Washington Ports may terminate part of this 2022 WPA upon the written agreement of all Washington Ports as further provided in Section 12 of this 2022 WPA.
- 9.3 The Washington Ports anticipate that the Corps will continue to need the Jointly Acquired Sites should the Washington Ports terminate all or part of this 2022 WPA. If the Corps determines that it does not need a Jointly Acquired Site and notifies the Washington Ports that the Corps is releasing it, the Washington Ports may dispose of any such Jointly Acquired Sites as provided in Section 9.3.1 below.

9.3.1 The Washington Ports by mutual agreement may dispose of a released Jointly Acquired Site pursuant to applicable Washington law.

10. Dispute Resolution

10.1 In the event any dispute, controversy or claim between or among the Washington Ports arises under this 2022 WPA, the PCA or is in any way connected with or related to this 2022 WPA or the PCA or is in any way connected with or related to any right, duty or obligation arising therefrom or from the relationship of the Parties hereunder (a "Dispute or Controversy"), including, but not limited to, a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this 2022 WPA, the Washington Ports with a financial stake or interest in the issue, as contemplated in Section 2.5.2 above, for which there is a Dispute or Controversy shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance herewith. An amendment to the 2022 WPA shall not be a "Dispute or Controversy".

10.1.1 In the event a Dispute or Controversy arises, any Washington Port with a financial stake or interest in the Dispute or Controversy shall have the right to notify the others that it has elected to implement the procedures set forth in this Section 10. Within thirty (30) days after delivery of any such notice by one such Washington Port to the other Washington Ports regarding a Dispute or Controversy, representatives of those Washington Ports with a financial stake or interest in the Dispute or Controversy selected by each such Party shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy.

10.1.2 Should a mutual resolution and settlement not be obtained at the meeting of the designated representatives of those Washington Ports with a financial stake or interest in the Dispute or Controversy for the purpose of a mutual good faith attempt to resolve and settle the Dispute or Controversy or should no such meeting take place within such thirty (30) day period, then the Washington Ports with a financial stake or interest in the Dispute or Controversy shall seek resolution of the Dispute or Controversy through an agreed-upon mediator approved by all Washington Ports with a financial stake or interest in the issue for which there is a Dispute or Controversy.

10.1.2.1 If the Washington Ports with a financial stake or interest in the Dispute or Controversy cannot agree upon a mediator, or if mediation should fail to resolve the Dispute or Controversy, the Washington Ports with a financial stake or interest in the Dispute or Controversy shall appoint three neutral arbitrators. If the Washington Ports with a financial stake or interest in the Dispute

or Controversy cannot agree upon three neutral arbitrators, such 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 Dispute or Controversy 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 with a financial stake or interest in the Dispute or Controversy in the same manner as Project and Plan costs in Section 4.1 above. Arbitration shall be in accordance with the rules of the American Arbitration Association, unless the parties unanimously agree to an alternative procedure proposed by the appointed arbitrators.

11. Integration.

This 2022 WPA 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 2022 WPA 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 2022 WPA shall not be required.

13. Severability.

If any provision of this 2022 WPA is determined by a court with proper jurisdiction to be invalid or unenforceable, the remaining provisions shall be fully enforceable for the purpose of implementing the intent of this 2022 WPA.

14. Electronic Signing and Counterparts.

This 2022 WPA 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 electronic copy of a signed counterpart of this 2022 WPA, including counterparts bearing electronic signatures consistent with the Electronic Signatures in Global and National Commerce, 15 U.S. Code Chapter 96, will be treated the same as a signed original of this 2022 WPA, consistent with the Uniform Electronic Transaction Act, Chapter 1.80 Revised Code of Washington.

15. Effective Date; Effect of Amendment.

This 2022 WPA shall be effective as of the date of the last signature hereto.

IN WITNESS WHEREOF, the Washington Port parties hereto have executed this Amendment, which shall become effective as provided in Section 15 above.

For the Port of Longview:



Dan Stahl
Chief Executive Officer

14 Oct '22 (Date)

For the Port of Kalama:



Mark Wilson
Executive Director

_____ (Date)

For the Port of Woodland:



Jennifer Wray-Keene
Executive Director

_____ (Date)

For the Port of Vancouver:



Julianna Marler
Chief Executive Officer

_____ (Date)

IN WITNESS WHEREOF, the Washington Port parties hereto have executed this Amendment, which shall become effective as provided in Section 15 above.

For the Port of Longview:

Dan Stahl
Chief Executive Officer

_____(Date)

For the Port of Kalama:



Mark Wilson
Executive Director

11-Oct-22 (Date)

For the Port of Woodland:

Jennifer Wray-Keene
Executive Director

_____(Date)

For the Port of Vancouver:

Julianna Marler
Chief Executive Officer

_____(Date)

IN WITNESS WHEREOF, the Washington Port parties hereto have executed this Amendment, which shall become effective as provided in Section 15 above.

For the Port of Longview:

Dan Stahl
Chief Executive Officer

_____(Date)

For the Port of Kalama:

Mark Wilson
Executive Director

_____(Date)

For the Port of Woodland:



Jennifer Wray-Keene
Executive Director

10-31-22 (Date)

For the Port of Vancouver:

Julianna Marler
Chief Executive Officer

_____(Date)

IN WITNESS WHEREOF, the Washington Port parties hereto have executed this Amendment, which shall become effective as provided in Section 15 above.

For the Port of Longview:

Dan Stahl
Chief Executive Officer

_____(Date)

For the Port of Kalama:

Mark Wilson
Executive Director

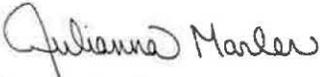
_____(Date)

For the Port of Woodland:

Jennifer Wray-Keene
Executive Director

_____(Date)

For the Port of Vancouver:



Julianna Marler
Chief Executive Officer

_____(Date)

EXHIBIT 1

PROCEDURES FOR WITHDRAWAL OF INDIVIDUAL DREDGE MATERIAL PLACEMENT SITE

**PROCEDURES FOR WITHDRAWAL OF INDIVIDUAL
DREDGE MATERIAL PLACEMENT SITE**

1. The port proposing to withdraw a site (the “Requesting Port”) completes and delivers the *Request to Withdraw Site from Columbia River Channel Improvement Project* (Attachment A hereto) to the Non-Federal Sponsors whose consent is sought (the “Consenting Ports”) accompanied by a completed *Consent to Site Withdrawal* (Attachment B hereto) describing the site to be withdrawn and the reasons therefor.
2. The Receiving Ports execute the *Consent to Site Withdrawal* and return it to the Requesting Port.
3. Upon receipt of the fully executed *Consent to Site Withdrawal*, the Requesting Port provides a copy of the executed document, including the respective signature pages, to:
 - a. each of the Consenting Ports for their files;
 - b. Fred Meyer or his designee, Port of Portland, for entry of a copy into:
 - i. the Project database at the Port of Portland; and
 - ii. the permanent Project file maintained at the Port of Portland.
4. Each Consenting Port places a copy of the completed *Request to Withdraw Site from Columbia River Channel Improvement Project* and *Consent to Site Withdrawal* into their respective disposal site notebooks’ section for the withdrawn site or in such other Project files that each Consenting Port maintains.
5. The Requesting Port will then formally notify the U.S. Army Corps of Engineers of the withdrawal of the site. Notice of the completed withdrawal transaction should be addressed to:

_____, Corps of Engineers
Portland District
PO Box 2946
Portland, OR 97208-2946

EXHIBIT 1

Attachment A

*Request to Withdraw Site from Lower Columbia
River Channel Maintenance Project*

Letterhead of
PORT OF [PORT PROPOSING WITHDRAWAL OF SITE], WASHINGTON

[DATE]

Lower Columbia River Channel Maintenance Project

Non-Federal Sponsors

[LIST NON-WITHDRAWING PORTS]

RE: Request to Withdraw [NAME OF SITE TO BE WITHDRAWN] from Lower Columbia River Channel Maintenance Project (“LCRCMP” or “Project”)

Dear Fellow Non-Federal Sponsors:

Each of you and the undersigned Port of [NAME OF PORT WITHDRAWING A SITE] are signatories to a July 24, 2004 Project Cooperation Agreement (“PCA”) between the Department of the Army, the Port of Portland and the Washington Ports of Kalama, Longview, Woodland and Vancouver, pursuant to which they serve as Non-Federal Sponsors (“NFS Ports”) of a Federal U.S. Army Corps of Engineers (“Corps”)-sponsored maintenance project described as the Lower Columbia River Channel Maintenance Project (hereinafter the “LCR CMP” or “Project”), which includes but is not limited to a Dredged Material Maintenance Plan (“DMMP”) for operations and maintenance of dredged material placement. The Washington ports of Longview, Kalama, Woodland and Vancouver are additionally signatories to that 2022 Washington Ports Agreement (“WPA”) establishing the rights and responsibilities of the Washington ports relative to each other under the PCA.

The LCR CMP was subject to review in an Environmental Impact Statement (“EIS”) pursuant to the National Environmental Policy Act, 43.21C U.S. Code, (“NEPA”) and the Washington Environmental Policy Act, RCW 43.21C, (“SEPA”). The LCR CMP EIS examined the Project’s available disposal sites and a backup site to each currently available disposal site.

[SITE TO BE WITHDRAWN] is listed as a disposal site in the LCR CMP DMMP at Section _____. The Port of [NAME OF PORT WITHDRAWING SITE] desires to withdraw the [SITE TO BE WITHDRAWN] from the list of available sites for dredge material disposal. Section 3.1 of the 2022 WPA addresses site withdrawal. The [NAME OF PORT WITHDRAWING SITE] has confirmed with the Corps that [there is no remaining need for capacity to place dredged material at this site under the LCR CMP][the remaining need for capacity to place dredged material at this site will be met by acquisition of the backup site identified in the LCR CMP DMMP and evaluated in the Project EIS].

The Port of [NAME OF PORT WITHDRAWING A SITE] will adhere to the site withdrawal provisions of the 2022 Washington Ports Agreement. Kindly provide your consent to this request by signing and returning to me the enclosed letter.

Thank you in advance for your cooperation.

Sincerely,

[NAME/TITLE]
Port of [WITHDRAWING PORT]

ELA:ea

Encl.

cc: Project Coordinating Team
Derek Koellmann, Anchor QEA

EXHIBIT 1

Attachment B

*Consent to Withdrawal of Site from Lower
Columbia River Channel Maintenance Project*

LOWER COLUMBIA RIVER CHANNEL MAINTENANCE PROJECT

[DATE]

[EXECUTIVE DIRECTOR NAME]

[NAME OF NFS PORT PROPOSING WITHDRAWAL OF SITE]

[ADDRESS]

RE: Consent to Withdrawal of [NAME OF SITE TO BE WITHDRAWN] from Lower Columbia River Channel Maintenance Project (“LCR CMP”)

Dear [DIRECTOR],

The undersigned ports are signatories to a July 24, 2004 Project Cooperation Agreement (“PCA”) between the Department of the Army, the Port of Portland and the Washington Ports of Kalama, Longview, Woodland and Vancouver, pursuant to which they serve as Non-Federal Sponsors (“NFS Ports”) of a Federal U.S. Army Corps of Engineers (“Corps”)-sponsored maintenance project described as the Lower Columbia River Channel Maintenance Project (hereinafter the “LCR CMP” or “Project”), which includes but is not limited to a Dredged Material Maintenance Plan (“DMMP”) for operations and maintenance of dredged material placement. The Washington ports of Longview, Kalama, Woodland and Vancouver are additionally signatories to that 2022 Washington Ports Agreement (“WPA”) establishing the rights and responsibilities of the Washington ports relative to each other under the PCA.

This letter responds to your letter dated [DATE] requesting the undersigned Non-Federal Sponsor Ports' written consent to the Port of [WITHDRAWING PORT]'s proposal to withdraw the [NAME OF SITE TO BE WITHDRAWN] dredge material disposal site from the Project. By this letter, the undersigned ports consent to the proposal. This consent is conditioned on the Port of [WITHDRAWING PORT]'s compliance with all requirements for site withdrawal under the 2022 WPA. The primary requirements are summarized below.

Under Section 3.1.3.2 of the 2022 WPA, the party withdrawing a site from the project is solely responsible, without cost sharing under the 2022 WPA and at no additional cost to any other party, to provide a substitute site that:

- (a) provides disposal characteristics equivalent or superior to the [NAME OF SITE TO BE WITHDRAWN];
- (b) satisfies all of the Non-Federal Sponsors' obligations under the June 23, 2004 Project Cooperation Agreement (“PCA”);
- (c) is fully permitted to the extent required by law;
- (d) meets all environmental review requirements, including but not limited to the preparation of any environmental review documents required under federal or state law, and
- (e) complies with all applicable Endangered Species Act requirements, including any necessary consultation.

Except as provided in subsections 3.1.3.3 and 3.1.3.4 of the 2022 WPA, the port withdrawing a site is also 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 PCA.

It is our understanding that the Corps will advise the Port of [WITHDRAWING PORT] of project needs for replacement capacity for the project and that the Port of [WITHDRAWING PORT] will fulfill those requirements as provided in the PCA. In addition, should the Corps require the parties to take any action with respect to the PCA as a result of this withdrawal, including amendment, we will expect all parties to take such action as efficiently as possible. We appreciate the Port of [WITHDRAWING PORT]'s commitment to comply with the 2022 WPA's withdrawal requirements as part of its proposal, and to otherwise continue to meet all project requirements including cost share obligations.

Sincerely,

PORT OF [CONSENTING PORT]

By: [NAME/TITLE]

Date signed

PORT OF [CONSENTING PORT]

By: [NAME/TITLE]

Date signed

PORT OF [CONSENTING PORT]

By: [NAME/TITLE]

Date signed

PORT OF [CONSENTING PORT]

By: [NAME/TITLE]

Date signed

EXHIBIT A

To Sec. 6.1.1

**USACE CORRESPONDENCE OF 10.31.2018
REGARDING PROCUREMENT OF PERMITS AND
CLEARANCES**



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, PORTLAND DISTRICT
PO BOX 2946
PORTLAND, OR 97208-2946

October 31, 2018

RECEIVED NOV 08 2018

Lisa Hendriksen
Planning and Environmental Services Director
10 Port Way
Longview, WA 98632

Dear Ms. Hendriksen:

Over the past several months, the US Army Corps of Engineers (Corps) has been working with the non-Federal Sponsors (NFS) to clarify the legal requirements of both Corps and the NFS in regard to obtaining environmental compliance and permits for the construction, maintenance, and operation of the Columbia and Lower Willamette Rivers Federal Navigation Channel project (Project), which includes dredged material disposal facilities. The Project Cooperation Agreement (PCA), signed in 2004, is the underlying agreement between the Corps and the NFS. The PCA describes Project actions but does not describe the compliance requirements of Corps and the NFS associated with those actions. This letter is intended to clarify and simplify the responsibilities of each party to obtain environmental compliance and permits for specific common actions described in the PCA.

Article VIII, of the PCA describes the O&M responsibilities for the project. Article VIII, Subparagraph 1.A.1 of the PCA ("the Non-Federal Sponsors shall be solely responsible for the operation and maintenance" of these listed facilities). This subparagraph lists the disposal sites contemplated at the time the PCA was executed for construction. Since the execution of the PCA to present several of the sites listed in the PCA under this subparagraph have become unavailable. The current list of disposal sites that fall under this subparagraph are:

- o Skamokawa-Vista Park (W-33.4)
- o James River (0-42.9)
- o Martin Bar (W-82.0)
- o Austin Point (W-86.5)
- Fazio Sand and Gravel (W-97.1)
- o Gateway (W-101.0)
- West Hayden Island (0-105.0)

The intent of calling out these sites in the PCA was to provide the NFS the ability to use material placed in the disposal site in-between disposal events as deemed appropriate by the NFS. The NFS is required to obtain all necessary permits for actions

associated with removing material after a dredging and disposal event. Additionally, NFS permits need to include the ability to repair any portion of dredge material berms that may have been altered by NFS actions.

The Corps will obtain all necessary clearances and permits for the federal action of maintaining the Columbia River. As it relates to disposal placement the Corps is defining that action as all actions necessary to deliver the material to the site, preparing the upland site for the delivery of material (increasing berms around the site, if required), the control of the slurry and dredged material on the site, the dewatering of the site and the return water to the Columbia River.

We appreciate the partnership between the NFS and the Corps on the Columbia River, and thank you for your continued support of this very important international transportation corridor. If you have questions, please contact Jessica Stokke, Project Manager for Columbia River navigation channel maintenance at (503) 808-4352 or email at jessica.b.stokke@usace.army.mil.

Sincerely,



Kevin J. Brice, P.E., PMP
Deputy District Engineer
for Project Management

cc:

Laura Hicks, CRCIP Project Manager, Corps,
Karla Ellis, Chief, Waterways Maintenance Section, Corps
Jessica Stokke, C&LW Project Manager, Corps
Amy Gibbons, Chief, Environmental Resources Branch, Corps
Amanda Dethman, Chief, Real Estate Division, Corps

Project Coordination Team Leaders

...-tJsa Hendriksen, Port of Longview
Eric Yakovich, Port of Kalama
Jim Hagar, Port of Vancouver
Jennifer Keene, Port of Woodland
Fred Myer, Port of Portland