

AMENDMENT NUMBER 4

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

RECITALS

A. The Washington Ports and the Oregon Port (the "Parties") are signatories to 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 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.

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

D. 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 associated therewith.

E. The Parties amended the Agreement with Amendment 1 on 16 October 2000, with Amendment 2 on 23 May 2001 and with Amendment 3 on 30 October 2019.

F. The Parties entered into a Memorandum of Agreement with the Department of the Army, U.S. Army Corps of Engineers, Portland District on 31 May 2017 (the "MOA") for the preparation of a Dredged Material Maintenance Plan for the Operation and Maintenance of Dredged Material Disposal Facilities on the Lower Columbia River (the "LCR CMP").

G. The Washington Ports separately entered into their own Washington Ports Agreement ("2022 WPA") on the 31st of October, 2022 for the purposes of: (i) facilitating the Plan

by reaffirming their collaboration as the Washington Non-Federal Sponsors; and (ii) maintenance of local services facilities and disposal areas as provided in the PCA.

H. The Parties wish further to amend the IGA to elaborate on the procedure for site removal from the LCR CMP and to establish the IGA as Master IGA for purposes of the NFS Ports' issuance of additional contracts, associated cost-share agreements, task orders or other related agreements related to their performance of obligations arising under the Project upon consensus of the Parties.

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

AGREEMENT

1. RECITALS

The Recitals above are true and are incorporated into and are a part of this Amendment.

2. MASTER IGA

The Oregon and Washington NFS Ports may also enter into other contracts as needed to address the Oregon and Washington NFS Ports' duties as established in the PCA, IGA, 2022 WPA or other associated agreements between the NFS Ports related to the Project. This 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 NFS 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, IGA, 2022 WPA or other associated agreements between the NFS Ports related to the Project will be established and implemented upon consensus of the Parties.

3. DREDGE MATERIAL PLACEMENT SITES WITHDRAWAL

Paragraph 2.2 of Amendment 2 to this Agreement, which is fully set forth below, is withdrawn as shown by strikethrough:

~~2.2 Site Withdrawal~~

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

~~superior to the site to be withdrawn. In addition, the port shall be responsible for any increase in operating and maintenance costs attributable to the substitute site for which the Non-Federal Sponsors may be responsible under the Project Cooperation Agreement.~~

and the following underscored language is adopted:

3. DREDGE MATERIAL PLACEMENT SITES AND WITHDRAWAL

3.1 Dredged or Excavated Material Disposal Facilities and Mitigation Sites. The 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 Port shall be retained by such 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 at Sections 3.1.3.3 and 3.1.3.4 below, such individually-owned Port Sites shall be held by such individual 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 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 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 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 Port withdraws one of its own project sites and does not provide a replacement project site at its sole expense, then that individual Port shall be solely responsible for reimbursing the other 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 Ports harmless and indemnify them from any consequences, claims, damages or loss of funding that arises therefrom; and

3.1.3.4 Any individual 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 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 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.

Except as provided above, Section 3 of this original Agreement dated 25 February 1999 (Acquisition of Placement Sites) remains in full effect.

4. OREGON ATTORNEY GENERAL APPROVAL

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

5. WASHINGTON STATE OFFICIAL OR AGENCY APPROVAL

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

6. ELECTRONIC SIGNING AND COUNTERPARTS

This IGA 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 IGA, 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 IGA, consistent with the Uniform Electronic Transaction Act, Chapter, ORS 84 and RCW 1.80.

7. MISCELLANEOUS PROVISIONS

Except as expressly provided in this Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect.

8. AUTHORITY OF SIGNERS

The individuals signing below represent that they are authorized by the party for which they sign to contractually bind that party to the provisions of this Amendment.

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 Keene
Executive Director

_____ (Date)

For the Port of Vancouver:

Julianna Marler
Chief Executive Officer

_____ (Date)

For The Port of Portland:

Curtis Robinhold
Executive Director

_____ (Date)

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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 Keene
Executive Director

_____ (Date)

For the Port of Vancouver:

Julianna Marler
Chief Executive Officer

_____ (Date)

For The Port of Portland:

Curtis Robinhold
Executive Director

_____ (Date)

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For the Port of Longview:

For the Port of Kalama:

Dan Stahl
Chief Executive Officer

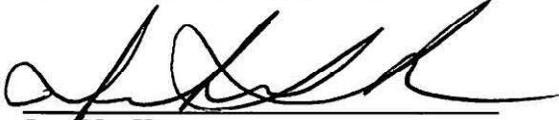
Mark Wilson
Executive Director

_____ (Date)

_____ (Date)

For the Port of Woodland:

For the Port of Vancouver:



Jennifer Keene
Executive Director

Julianna Marler
Chief Executive Officer

10-31-22 (Date)

_____ (Date)

For The Port of Portland:

Curtis Robinhold
Executive Director

_____ (Date)

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For the Port of Longview:

Dan Stahl
Chief Executive Officer

_____ (Date)

For the Port of Kalama:

Mark Wilson
Executive Director

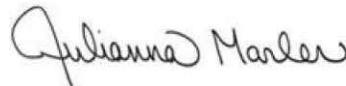
_____ (Date)

For the Port of Woodland:

Jennifer Keene
Executive Director

_____ (Date)

For the Port of Vancouver:



Julianna Marler
Chief Executive Officer

October 10, 2022 (Date)

For The Port of Portland:

Curtis Robinhold
Executive Director

_____ (Date)

will be treated the same as a signed original of this IGA, consistent with the Uniform Electronic Transaction Act, Chapter, ORS 84 and RCW 1.80.

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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 Keene
Executive Director

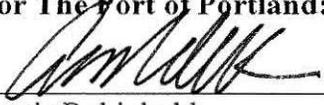
(Date)

For the Port of Vancouver:

Julianna Marler
Chief Executive Officer

(Date)

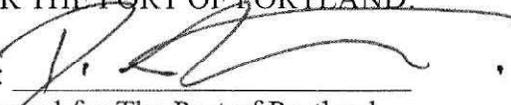
For The Port of Portland:



Curtis Robinhold
Executive Director

10-26-2022 (Date)

APPROVED FOR LEGAL SUFFICIENCY
FOR THE PORT OF PORTLAND:

By: 

Counsel for The Port of Portland

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
Kim Marcotte, 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