

## INTERGOVERNMENTAL AGREEMENT

An Agreement ("Agreement") made on the 17 day of July, 2017, among the Port of Vancouver, the Port of Longview, and the Port of Kalama, USA, each, a municipal corporation organized and existing under the laws of the State of Washington (hereinafter individually referred to as a "Party" and collectively referred to as the "Parties").

### RECITALS

**WHEREAS**, the Parties are Washington Non-Federal Sponsors and parties, with other parties, to the Project Cooperation Agreement dated June 23, 2004, (hereinafter "PCA") for the Columbia River Channel Improvement Project (hereinafter "Project").

**WHEREAS**, the Parties have previously entered into an Intergovernmental Agreement, as amended, for the purpose of stipulating the terms and conditions in which the Parties would allocate the costs related to the Washington Non-Federal Sponsors' share of the Project; and

**WHEREAS**, the Port of Longview, as identified in the Washington Ports Agreement, dated February 22, 1999, and as amended and restated in a Fifth Amendment to the Washington Ports Agreement dated February 2008 (WPA), is responsible for environmental permitting, including acting as the Responsible Official under the State Environmental Policy Act (SEPA);

**WHEREAS**, the Ports of Vancouver, Kalama, and Woodland are also identified in the WPA, and in the Memorandum of Understanding Between the U.S. Army Corps of Engineers, Portland District, Port of Longview, Port of Woodland, Port of Kalama, Port of Vancouver, and Port of Portland for the Development of the Environmental Impact Statement for the Lower Columbia River Federal Navigation Channel Maintenance Plan as SEPA co-lead agencies ("MOU"); and

**WHEREAS**, the Ports of Longview, Vancouver, Kalama, and Woodland (WA Sponsor Ports) have entered into a Co-Lead Agency: Memorandum of Understanding for the Development of the Environmental Impact Statement for the Lower Columbia River Federal Navigation Channel Maintenance Plan, dated June 28, 2017 ("Co-Lead Agency Agreement"); and

**WHEREAS**, the Parties desire that the Port of Longview employ a SEPA Responsible Official ("POL Employee"), pursuant to WAC 197-11-788, 197-11-910, 197-11-944 and the Port of Longview's SEPA Resolution, Resolution 2014-6, as amended, with the education and experience to fulfill this role under the WPA, the Co-Lead Agency Agreement, the MOU, and applicable laws and regulations, and provide said services on behalf of the Parties. A copy of the Port of Longview employment agreement is attached hereto as Exhibit "A" and referred to herein as the "Employment Contract"; and

**WHEREAS**, the Parties interviewed and selected a SEPA Responsible Official that will be employed no longer than for the duration of the SEPA environmental impact analysis process for the Project, and which employment may extend through an appeal process.

Therefore, the Parties agree as follows:

I. PURPOSE

- A. This is an Intergovernmental Agreement entered into under the authority of the Interlocal Cooperation Act, chapter 39.34 RCW.

- B. Pursuant to chapter 39.34 RCW, the purpose of this Intergovernmental Agreement is as set forth in Article I (PURPOSE). Its duration is as specified in Article II (DURATION OF AGREEMENT). Its method of termination is set forth in Article III (TERMINATION OF AGREEMENT). Its manner of financing and of establishing and maintaining a budget is described in Article VI (COST SHARING). No property shall be acquired pursuant to this Agreement that will need to be disposed of upon partial or complete termination of this Agreement.
- C. The purpose of this Agreement is to establish the duties and responsibilities of the Parties in facilitating coordination of funding and management of the Employment Contract.
- D. The intent of the Parties is to cooperatively act pursuant to the provisions of the Interlocal Cooperation Act, chapter 39.34 RCW. There is no intent to create a separate legal or administrative entity by this Agreement.

## II. DURATION

- A. The Parties agree that the initial term of employment will be up to a twenty-four (24) month period, the anticipated duration of the SEPA environmental impact analysis process, but that the POL Employee will be an at-will employee whose employment may be terminated earlier.
- B. The terms of this Agreement is for the period from execution through July 3, 2019, unless earlier terminated or amended as provided herein.
- C. The Parties agree that employment may extend through an appeal process and this Agreement may be amended as described herein to accommodate additional time, and cost-sharing, as required to complete the Project.

## III. TERMINATION OF AGREEMENT

- A. A majority of the Parties may choose to terminate this Agreement by notifying all of the Parties in writing ninety (90) days prior to termination, and in such case the Port of Longview will terminate the Employment Contract according to its terms.
- B. Any termination of this Agreement shall not relieve the Parties of liability for any obligation previously incurred under this Agreement.

## IV. SCOPE

The Project Manager, designated below, will manage the services of the POL Employee in performing the Employment Contract requirements, with input from and coordination with the Parties.

## V. DESIGNATION OF PROJECT MANAGER

- A. To provide for consistent and effective communication, the Parties appoint Lisa Hendriksen of the Port of Longview as the Project Manager.
- B. Until termination of this Agreement, the Project Manager shall:

1. Manage the Employment Contract;
  2. Agree upon the scheduling and priority of work to be performed by the POL Employee;
  3. Obtain agreement of the Parties on the compensation package to be included in the Employment Contract, and on the cost of employing the POL Employee.
  4. Consult frequently with the Parties to ensure that this Agreement continues to serve each Party's requirements;
  5. Share information and documentation created by the POL Employee; and
  6. Ensure the payment of the necessary funds to the POL Employee.
- C. The Project Manager shall not, without written approval of the Parties, amend the Employment Contract, including but not limited to extending the Employment Contract or increasing the amount paid under the Employment Contract.
- D. The Port of Longview may terminate the Employment Contract, and in such event, this Agreement will continue until a replacement employee is hired, unless this Agreement is terminated according to its terms.

#### VI. COST SHARING

- A. The Parties each agree to equally share in the cost of the Employment Contract. The Port of Longview will bill the Port of Kalama and Port of Vancouver one-third each of the costs associated with the Employment Contract, including all compensation (employer paid taxes, benefits, time off, etc.). The Port of Kalama and the Port of Vancouver shall pay as invoiced to the Port of Longview within thirty (30) days of receipt.
- B. Each Party's obligation shall not exceed one third of \$100,000, without further written agreement by the Parties.

#### VII. NO THIRD PARTY BENEFICIARY

The Parties do not intend there be any third-party beneficiary to this Agreement

#### VIII. NOTICE

Any notices to be given under this Agreement shall at minimum be delivered, postage prepaid and addressed to:

To the Port of Longview:  
10 Port Way  
Longview, WA 98632  
Phone: (360) 425-3305  
Attn: Norm Krehbiel, Chief Executive Officer

To the Port of Vancouver, USA:  
3103 Lower River Road  
Vancouver, WA 98660-1027  
Phone: (360) 693-3611  
Attn: Julianna Marler, Executive Director

To the Port of Kalama:  
380 W. Marine Drive  
Kalama, WA 98625  
Phone: (360) 673-2325  
Attn: Mark Wilson, Executive Director

The name and address to which notices shall be directed may be changed by any of the Parties giving the other Parties notice of such change as provided in this section.

IX. WAIVER

No waiver by either Party of any term or condition of this Agreement incorporated in this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision.

X. WITHDRAWAL

A Party may withdraw at any time, upon written notice to all of the Parties. In the event that a Party withdraws from this Agreement after the receipt of any grant funds from a private or public grant, the withdrawing Party shall remain responsible for the full amount of that Party's contribution under this Agreement.

XI. AMENDMENT

The provisions of this Agreement may be amended with the mutual consent of the Parties. No additions to, or alterations of, the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of all of the Parties.

XII. ATTORNEYS' FEES AND COSTS

All Parties shall bear their own costs enforcing the rights and responsibilities under the Agreement.

XIII. RATIFICATION

Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.

XIV. DOCUMENT EXECUTION AND POSTING

The Parties agree that there shall be three (3) signed originals of this Agreement procured and distributed for signature by the necessary officials of each Party. Upon execution, the executed originals of this Agreement shall be returned to each identified Party. The Port of Longview shall post a copy of this Agreement on the Port of Longview's website pursuant to Chapter 39.34.040

RCW. Upon execution of the originals and posting of a copy on the Port's website, each signed original shall constitute an agreement binding upon all Parties.

XV. SEVERABILITY

If any section or part of this Agreement is held by a court to be invalid, such actions shall not affect the validity of any other part of this Agreement.

XVI. 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.

XVII. DISPUTES

Disputes among the Parties regarding this Agreement shall be referred to mediation using a mediator agreed upon by the Parties to the dispute. If the dispute is not resolved by mediation, the Parties shall be free to pursue any remedies to which they are entitled.

XVIII. ENTIRE AGREEMENT

This Agreement contains all of the agreements of the Parties with respect to the subject matter covered or mentioned therein, and no prior agreements shall be effective to the contrary.

PORT OF LONGVIEW

By: Norman G. Krebbiel

Title: C. E. O.

Name: Norman G. Krebbiel

Date: 19 July 2017

PORT OF KALAMA

By: Mark Wilson

Title: Executive Director

Name: Mark Wilson

Date: 27-Jul-17

PORT OF VANCOUVER, USA

By: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

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PORT OF LONGVIEW

By: *Norman G. Krebbiel*  
Title: C.E.O.  
Name: Norman G. Krebbiel  
Date: 19 July 2017

PORT OF KALAMA

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

PORT OF VANCOUVER, USA

By: *Dawn Egbert*  
Title: Procurement Services Manager  
Name: Dawn Egbert  
Date: 9.19.2017

EXHIBIT A  
EMPLOYMENT CONTRACT