

**INTERGOVERNMENTAL AGREEMENT  
FOR COST SHARING OF  
LOWER COLUMBIA RIVER NAVIGATION IMPROVEMENTS**

This Intergovernmental Agreement (the "**Agreement**") is among the Port of Portland, the Port of Vancouver, the Port of Longview, and the Port of Kalama.

**Recitals**

A. The Port of Portland is authorized to enter into this Agreement under ORS 190.010 and 190.420.

B. The Port of Vancouver, the Port of Longview, and the Port of Kalama (collectively, the "**Washington Ports**") are authorized to enter into this Agreement under RCW 53.08.240 and RCW 39.34.030.

C. The parties intend to participate in a study being performed by the U.S. Army Corps of Engineers, Portland District ("**USACE**"), to assess the feasibility of developing certain navigation improvements, specifically anchorage infrastructure improvements, on the Lower Columbia River, Oregon and Washington (the "**Study**"). The subsequent project for development of such improvements, should the Study recommend one, is referred to herein as the "**Project**."

D. The parties' role in the Study and the Project, if one is recommended, will be to collectively serve as the "**Non-Federal Sponsors**." The parties wish to formally designate themselves as the Non-Federal Sponsors for purposes of the Study and the Project.

E. The Study is to be initially federally funded up to \$100,000, and the parties intend to enter into (as Non-Federal Sponsors) a Feasibility Cost Sharing Agreement with the USACE (the "**FCSA**") to provide for the parties' partial funding of the costs of the Study that exceed \$100,000. The parties wish to allocate among themselves the Non-Federal Sponsors' share of the Study costs under the FCSA.

F. If the Study recommends that the Project be undertaken, the parties intend to enter into (as Non-Federal Sponsors) a Project Cooperation Agreement with the USACE (the "**PCA**") to provide for the parties' partial funding of the costs of the Project. The parties wish to allocate among themselves the Non-Federal Sponsors' share of the Project costs under a PCA, should one be recommended.

G. The parties further wish to provide for other collaboration toward completion of the Study and the Project.

**Agreement**

**1. NON-FEDERAL SPONSORS**

**1.1. Applicability**

The provisions of this Section 1 apply to both the FCSA and to the PCA, should a PCA be recommended.

**1.2. Designation as Non-Federal Sponsors**

Each party will be a Non-Federal Sponsor. The Washington Ports may be referred to collectively herein as the "**Washington Non-Federal Sponsors**." The Port of Portland may be referred to herein as the "**Oregon Non-Federal Sponsor**."

### **1.3. Organization of Non-Federal Sponsors**

The Washington Ports will determine among themselves by appropriate agreement how the actions of the Washington Non-Federal Sponsors are to be controlled or effected by the Washington Ports.

### **1.4. Powers, Purposes, and Duties of the Non-Federal Sponsors**

1.4.1. Negotiation of the FCSA and PCA. The Non-Federal Sponsors may negotiate with the USACE for mutually acceptable terms and provisions in the FCSA and PCA.

1.4.2. Performance of Duties under the FCSA and PCA. The Non-Federal Sponsors will perform such duties as are required under the FCSA and PCA.

1.4.3. Anticipated Duties under the FCSA and PCA. It is anticipated that the Non-Federal Sponsors, under the FCSA and PCA, may be required, without limitation, to: pay a portion of the Study and Project costs as may be mutually agreed under the FCSA and PCA, respectively; hold the USACE harmless for damages arising from the construction, operation, or maintenance of the Project, except for damages due to the fault or negligence of the USACE or its contractors; and provide representatives to serve on a Project coordination team as required.

### **1.5. Notices and Informal Written Communications under the FCSA and PCA**

The Port of Portland will serve as the sole point of contact for formal notices and informal written communications (including e-mail) provided to or from the USACE under the FCSA and PCA. The parties will work in good faith to establish a communication protocol among the parties to ensure that the Port of Portland promptly: (i) distributes to the Washington Ports complete copies of all formal notices and informal written communications received from the USACE under the FCSA and PCA; and (ii) provides formal notice to the USACE (and informal written communications, when appropriate) under the FCSA and PCA of matters the parties mutually agree to communicate to the USACE.

### **1.6. Satisfaction of USACE Requirements**

Each party is responsible for satisfying the USACE that it is authorized to perform the duties of a Non-Federal Sponsor under the FCSA and PCA with respect to activities within its state. The parties will cooperate in satisfying the USACE that a reliable and practical funding plan is in place and capable of implementation.

### **1.7. Decision Making and Dispute Resolution**

All decisions permitted or required by the Non-Federal Sponsors under the FCSA or PCA must be made by the mutual agreement of the parties. In the event a dispute arises between the parties, including without limitation the execution or interpretation of the duties, powers, or responsibilities provided herein or as permitted under the FCSA or PCA, the parties will in good faith seek resolution of the dispute through mediation. The mediator must be agreed upon by all parties. If the parties cannot agree upon a mediator, or if mediation fails to result in resolution of the disagreement, each of the Port of Portland and the Washington Ports will appoint one neutral arbitrator. The two appointed arbitrators will appoint a third neutral arbitrator. If the two neutral arbitrators cannot agree upon a third neutral arbitrator, any of the parties may petition the Chief Judge of the Oregon U.S. District Court to have a third neutral arbitrator appointed. The disagreement will be submitted to the arbitrators for a binding decision, provided that nothing in the arbitrators' decision will be deemed to impair the exercise by any party of any of its governmental powers. The costs of the arbitrators will be allocated between the parties in the same manner as Study and Project costs. Each party will pay its own attorney fees, if any. Arbitration must 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.

## 2. FINANCIAL

### 2.1. Applicability

The provisions of this Section 2 apply to both the FCSA and to the PCA, should a PCA be recommended.

### 2.2. Cost Sharing

The Non-Federal Sponsors' collective share of the Study and Project costs specifically agreed to under the FCSA and PCA, respectively, will be allocated among the parties equally and shared in the following manner:

<u>FCSA:</u>		<u>PCA:</u>	
Port of Portland	25%	Port of Portland	25%
Port of Vancouver	25%	Port of Vancouver	25%
Port of Longview	25%	Port of Longview	25%
Port of Kalama	25%	Port of Kalama	25%

### 2.3. Separate Liability of Non-Federal Sponsors under FCSA and PCA

Each party will enter into the FCSA and the PCA with the USACE as an individual Non-Federal Sponsor; no Non-Federal Sponsor will be subject to joint and several liability for another Non-Federal Sponsor's payment obligations under the FCSA or the PCA except as may be required under applicable law.

### 2.4. Payment

2.4.1. FCSA. For purposes of all valid payment obligations of the Non-Federal Sponsors under Sections B, C, and D of Article IV of the FCSA, the parties elect to make payment to the USACE by check, as permitted under FCSA Article IV, Section B.1. Promptly upon notice of required payment by the USACE, but no later than ten (10) business days prior to the required deadline for payment under the FCSA, each party to this Agreement will separately issue and submit to the Port of Portland, for the Port of Portland's timely remission to the USACE consistent with Section 1.5 of this Agreement, a check in the full amount of the party's allocated payment share under this Agreement.

2.4.2. PCA. The parties anticipate that the PCA, should one be recommended, will permit payment by check as permitted under the FCSA. In such event, the parties will follow the same payment protocol for valid payment obligations of the Non-Federal Sponsors under the PCA as this Agreement provides at Section 2.4.1 for payments under the FCSA. If the PCA does not permit payment by check, the parties will negotiate in good faith to mutually agree upon an appropriate payment protocol.

2.4.3. Other Terms. No party will be required to advance funds to the USACE on behalf of another party to this Agreement.

## 3. DURATION

Unless sooner terminated pursuant to the provisions of this Agreement or extended by amendment of this Agreement, the duration of this Agreement shall correspond to the duration of the Study and/or the Project as authorized by Congress, shall adjust automatically to any congressionally-approved changes in the duration of the Study and/or the Project, and shall expire or terminate automatically upon the expiration or termination of the Study and/or Project authorization.

#### **4. WITHDRAWAL**

Prior to the effective date of the FCSA, a party may withdraw from this Agreement at any time, without liability, upon written notice to all of the parties. After the effective date of the FCSA or the PCA, a party may only withdraw from this Agreement pursuant to the terms of the FCSA or the PCA. In the event one or more parties withdraws from this Agreement after the effective date of the FCSA or the PCA, the remaining parties will negotiate in good faith to re-allocate their respective shares of the Non-Federal Sponsors' collective Study and Project costs after renegotiation of such obligation with the USACE pursuant to the terms of the FCSA and PCA.

#### **5. MISCELLANEOUS**

##### **5.1 Integration**

This Agreement embodies the entire agreement between the Port of Portland and the Washington Ports regarding the subject matter of this Agreement, and will supersede all prior and contemporaneous agreements or communications regarding such subject matter.

##### **5.2 Modification**

This Agreement may be modified only by a written amendment signed by all parties.

##### **5.3 Severability**

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

[Signature page follows]

Dated effective: April 12, 2011

PORT OF PORTLAND

PORT OF LONGVIEW

By: [Signature] for

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

Name: Bill Wyatt

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

Title: Executive Director

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

Date signed: 7 Apr 2011

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

Approved as to legal sufficiency for the Port of  
Portland:

By: [Signature] 4/6/11  
Counsel for the Port of Portland

PORT OF KALAMA

PORT OF VANCOUVER

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

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

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

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

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

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

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


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

Dated effective: April 12, 2011

PORT OF PORTLAND

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

PORT OF LONGVIEW

By:   
Name: Kenneth B. O'Hollaren  
Title: Executive Director  
Date signed: 4/12/11

Approved as to legal sufficiency for the Port of  
Portland:

By: \_\_\_\_\_  
Counsel for the Port of Portland

PORT OF KALAMA

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

PORT OF VANCOUVER

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

Dated effective: April 12, 2011

PORT OF PORTLAND

PORT OF LONGVIEW

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

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

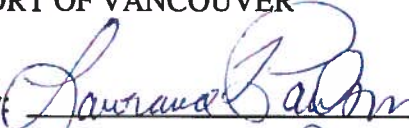
Approved as to legal sufficiency for the Port of  
Portland:

By: \_\_\_\_\_  
Counsel for the Port of Portland

PORT OF KALAMA

PORT OF VANCOUVER

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

By:   
Name: Lawrence L. Paulsen  
Title: Executive Director  
Date signed: April 6, 2011

Dated effective: April 12, 2011

PORT OF PORTLAND

PORT OF LONGVIEW

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

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

Approved as to legal sufficiency for the Port of  
Portland:

By: \_\_\_\_\_  
Counsel for the Port of Portland

PORT OF KALAMA

PORT OF VANCOUVER

By: Lanny Lawley  
Name: Lanny Lawley  
Title: Executive Director  
Date signed: April 7, 2011

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