



COOPERATIVE AGREEMENT No. ****
Between
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
And
THE LOWER COLUMBIA SOLUTIONS GROUP SUPPORTERS
For
BI-STATE REGIONAL SEDIMENT ADAPTIVE MANAGEMENT

This agreement is between the State of Washington, acting by and through its Department of Ecology, hereafter called Ecology, and the following financially contributing agencies and organizations of the Lower Columbia Solutions Group (LCSG), hereafter called LCSG Supporters:

- Oregon Department of Environmental Quality
- U.S. Army Corps of Engineers – Portland District
- U.S. Environmental Protection Agency – Region 10
- Columbia River Crab Fisherman’s Association
- NOAA National Marine Fisheries Service
- US Fish and Wildlife Service
- Port of Portland
- Etc.

Commented [TB(1)]: The LCSG will finalize the names of LCSG Supporters at the December 7, 2018 meeting.

1. BACKGROUND:

The goal of the LCSG is to bring together key interests to increase the beneficial use of dredge sediment at the Mouth of the Columbia River to help protect shipping channel jetties, coastal beaches and nearshore habitats from erosion while avoiding and minimizing adverse environmental, resources, and navigation safety effects.

The LCSG was formed by the Governors of Washington and Oregon in July 2002. The LCSG is a diverse, bi-state partnership of local, state and federal governmental and non-governmental stakeholders interested in and affected by dredge material disposal activities in the Lower Columbia River area. Stakeholders include crabbers, fishing interests, environmentalists, development interests, and local, state and federal government.

The LCSG is co-convened by the Washington and Oregon Coastal Zone Management Programs. The LCSG focuses on finding sustainable solutions to policy issues, research, operations and conflicts. Sustainable solutions integrate economic, social and environmental objectives.

Since 2002, the LCSG has been operating on short-term and inconsistent sources of funding. In 2018, a strategic assessment was conducted that placed focused attention on the group's interests in shifting to more reliable and secure method of financial support. The assessment recommended options for achieving this goal. The LCSG decided on a multi-stakeholder cooperative agreement, to be administered by Ecology.

LCSG Supporters will not receive additional benefits from their financial contribution. Equal opportunities for multi-stakeholder participation, collaboration, and decision making by financial contributors and non-financial contributors will remain a key value of the LCSG process.

2. PURPOSE OF THIS AGREEMENT

Identify Ecology as the member agency responsible for the administration of the contract(s) necessary to carry out LCSG work and to provide funding for the contract payments. This Agreement also describes funding authorization and sources of funding for each of the LCSG Supporters, detailed in the **Appendixes B-K** of this Agreement.

3. COOPERATIVE AGREEMENT PROCESS AND ADMINISTRATION

Ecology will manage the financial contributions of LCSG Supporters, which will include the following process and administration:

- A. Ecology shall use the financial contributions of LCSG Supporters to contract with a neutral third party facilitator to complete the agreed upon tasks listed in the annual scope of work. Ecology is responsible for administering the contract(s) with a neutral third party facilitator.
- B. This Cooperative Agreement is intended to be updated annually. The scope of work, including prioritized tasks, will be developed each year based on the amount of committed contributions from LCSG Supporters.
- C. Ecology will update the Cooperative Agreement each year to reflect the annual scope of work, circulate the Cooperative Agreement for LCSG Supporter authorization, and invoice LCSG Supporters.
- D. This Agreement shall be in place and Ecology shall secure funds from LCSG Supporters prior to initiating any contracts for services.
- E. Any excess or remaining funds after the period of performance will be proportionally reimbursed to LCSG supporters.

4. EFFECTIVE DATE AND DURATION

This Agreement shall become effective on the date on which all parties have signed this Agreement. Unless earlier terminated or extended, this Agreement shall expire on June 30, 2020.

5. SCOPE OF WORK

The financial contributions of LCSG Supporters shall be used to contract with a neutral third party facilitator to complete the agreed upon tasks listed in the annual scope of work (detailed in Appendix A).

6. ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

Commented [TB(2)]: Items 6-24 are standard Dept. of Ecology terms and conditions. We are working on minor adjustments with our fiscal office to help align language with the intended purpose of this agreement, but we likely do have the ability to make significant alterations.

Please let us know if your agency or organization has any significant concerns with these terms and conditions.

7. ASSIGNMENT

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

8. ASSURANCES

Parties to this Agreement agree that all activity pursuant to this agreement will be in accordance with all the applicable current federal, state, and local laws, rules, and regulations.

9. CONFORMANCE

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

10. DISPUTES

Parties to this Agreement shall employ every effort to resolve a dispute themselves without resorting to litigation. In the event that a dispute arises under this Agreement that cannot be resolved among the parties, it shall be determined by a Dispute Board in the following manner. Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, agreement terms, and applicable statutes and rules, and then make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto, unless restricted by law. The cost of resolution will be borne by each party paying its own cost. As an alternative to this process, if state agencies, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control. The parties may mutually agree to a different dispute resolution process.

11. FUNDING AVAILABILITY

ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, for convenience or to renegotiate the Agreement subject to new funding limitations and conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the CONTRACTOR through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the CONTRACTOR. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments.

12. GOVERNING LAW AND VENUE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

13. INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

14. ORDER OF PRECEDENCE

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and state of Washington statutes, regulations, and rules.
- B. Mutually agreed upon written amendments to this Agreement.
- C. This Agreement, number ****
- D. Appendix A, Statement of Work and Budget.
- E. Any other provisions or term of this Agreement, including materials incorporated by reference or otherwise incorporated.

15. RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents, and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These materials shall be subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other materials relevant to this Agreement must be retained for six years after expiration of this Agreement. The Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period. Each party will utilize reasonable security procedures and protections for all materials related to this Agreement. All materials are subject to state public disclosure laws.

16. RESPONSIBILITIES OF THE PARTIES

Each party of this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party will be considered the agent of the other party to this Agreement.

17. RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be "work made for hire" as defined by the United States Copyright Act, Title 17 U.S.C. section 101 and shall be owned by state of Washington, ECOLOGY (if otherwise, need AAG approval). Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

18. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

19. SUBCONTRACTORS

CONTRACTOR agrees to take complete responsibility for all actions of any Subcontractor used under this Agreement for the performance. When federal funding is involved there will be additional contractor and subcontractor requirements and reporting.

Prior to performance, all subcontractors who will be performing services under this Agreement must be identified, including their name, the nature of services to be performed, address, telephone, WA State Department of Revenue Registration Tax number (UBI), federal tax identification number (TIN), and anticipated dollar value of each subcontract. Provide such information to ECOLOGY's Agreement manager.

20. TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) business days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

21. TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement without cause upon thirty (30) calendar day prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

22. WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a written amendment to this Agreement signed by an authorized representative of the parties.

23. AGREEMENT MANAGEMENT

The representative for each of the parties shall be responsible for and shall be the contact person for all communications, notifications, and billings questions regarding the performance of this Agreement (listed in **Appendixes B-K** of this Agreement). The parties agree that if there is a change in representatives that they will promptly notify the other party in writing of such change, such changes do not need an amendment.

The ECOLOGY Representative is:

Bobbak Talebi
Shorelands & Environmental Assistance Program
Washington State Department of Ecology
PO Box 47800
Olympia, WA 98504-7600
(360) 407-6529
Bobbak.Talebi@ecy.wa.gov

24. ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

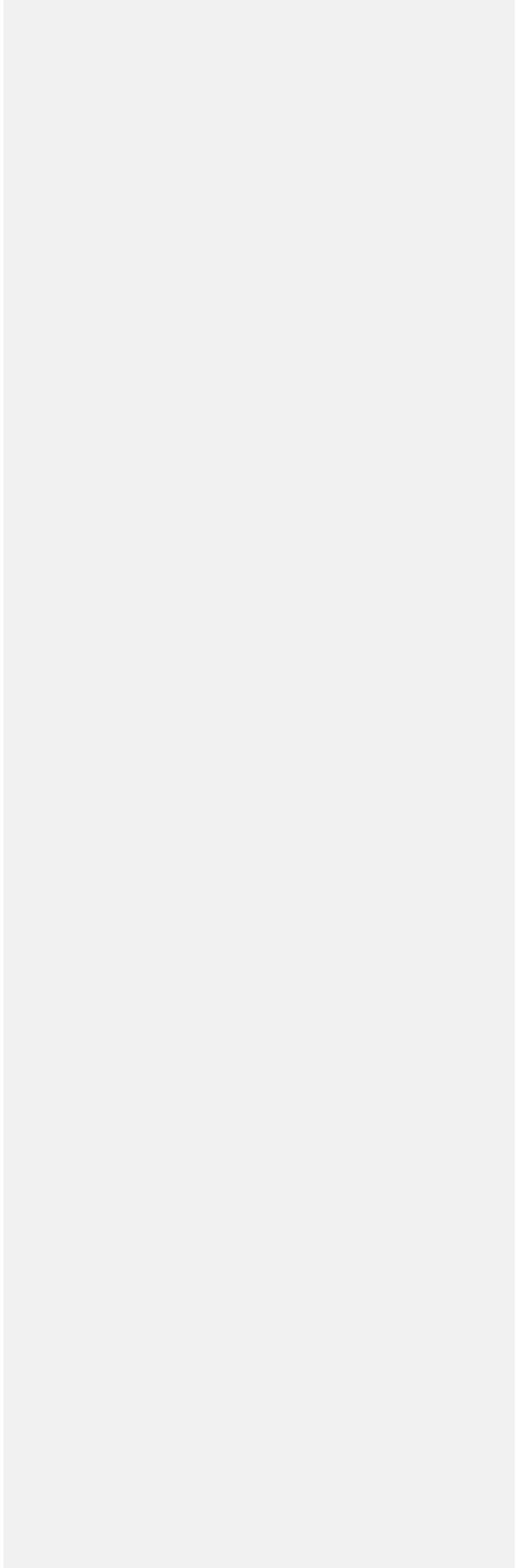
The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

IN WITNESS WHEREOF, the parties below and listed in **Appendixes B-K**, having read this Agreement in its entirety, including all attachments, do agree in each and every particular as indicated by their signatures.

State of Washington
Department of Ecology

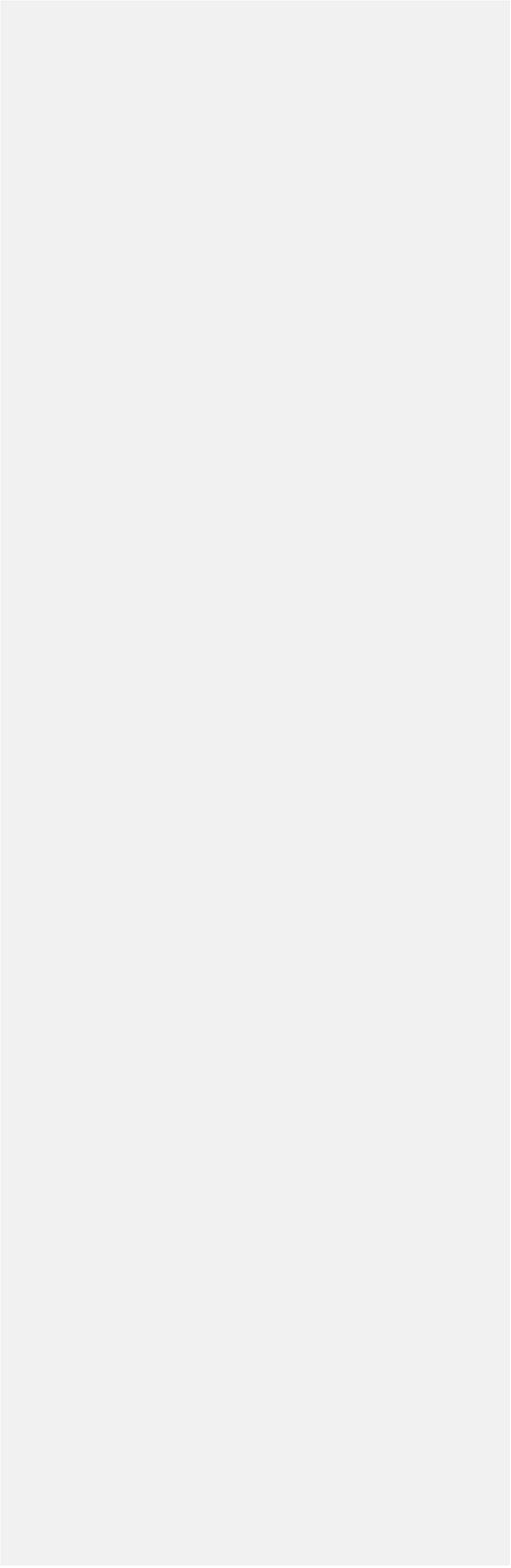
By: _____ Date _____
Brian Lynn
Coastal/Shorelands Section Manager

DRAFT



DRAFT

APENDIX A: SCOPE OF WORK AND BUDGET



The financial contributions of LCSG Supporters shall be used to contract with a neutral third party facilitator to complete the agreed upon tasks listed in the annual scope of work. The following tasks have been developed for July 1, 2019 through June 30, 2020.

Commented [TB(3)]: Prioritize and finalize at meeting and once we have financial commitments from all LCSG Supporters. Ideally the contractor would work to get financial commitments from each agency prior to the winter meeting, and the meeting itself would be used to decide and prioritize tasks.

TASK 1: COORDINATION WITH CONVENERS

Assist and advise Oregon and Washington project managers and other key participants as appropriate on project meetings, action items and other aspects of project management. Organize regular conferences (in-person meetings or teleconferences) for purposes of project check-in and identification of next steps. Prepare summaries of all meetings and teleconferences.

Budget: \$5,600

- Personnel Hours: 36 hrs. @ \$150/hr. = \$5,400
- Expenses (telephone, internet, copies, other direct expenses): \$200

TASK 2: FACILITATION OF MANAGEMENT AND TECHNICAL TEAMS

Organize and provide neutral facilitation of Technical and Management team meetings and conference calls to plan for 2019 beneficial use site disposal, monitoring and data analysis. Prepare and distribute summaries. Provide in-between meeting coordination with team members.

Budget: \$5,000

- Personnel Hours: 32 hrs. @ \$150/hr. = \$4,800
- Expenses (telephone, internet, copies, other direct expenses): \$200

TASK 3: ORGANIZATION OF SCIENCE-POLICY WORKSHOP OR SIMILAR FORUM

Consult with Management Team on and organize Science-Policy Workshop or other appropriate forum in Spring/Summer 2019 on status of disposal/data collection programs at South Jetty and North Head Sites, options for and feasibility of on-shore disposal, program for implementing adaptive management on an ongoing basis, and other topics. Prepare and distribute report on results.

Budget: \$9,760

- Personnel Hours: 36 hrs. @ \$150/hr. = \$5,400
- Support services: 16 hrs. @ \$85/hr. = \$1,360
- Expenses (room rental, refreshments/meals, lodging, mileage, other direct expenses): \$3,000

TASK 4: PROGRAM INFORMATION

Assist Ecology in updating and maintaining a project contact list. To help update the project website and bibliography of reports, assist Ecology in collecting historic paper and electronic files. Review the project web site, blog and other social media background information.

Budget: \$1,220

- Personnel Hours: 8 hrs. @ 150/hr. = \$1,200
- Expenses (telephone, internet, copies, other direct expenses): \$20

TASK 5: 2020 WORK SCOPE

Prepare recommended 2020 consultant work scope and budget for Management Team review, based upon results of the 2019 LCSG program and direction on desired consultant services to be contracted and the approach to be employed for contracting.

Budget: \$920

- Personnel Hours: 6 hrs. @150/hr. = \$900
- Expenses (telephone, internet, copies, other direct expenses): \$20

TASK 6: CASE STATEMENT

In consultation with LCSG members, develop a case statement(s) designed to increase the program's visibility and for briefings with Congressional and legislative offices, potential partners, and the media. Produce a visibly pleasing handout(s), web text and links, and other appropriate informational pieces. Secure assistance from an agency member(s) with graphics and reproduction.

Budget: \$1,520

- Personnel Hours: 10 hrs. @150/hr. = \$1,500
- Expenses (telephone, internet, copies, other direct expenses): \$20

TASK 7: PROJECT MANAGEMENT/COORDINATION

Assist the Steering Committee, Management and Technical teams, LCSG and National Policy Consensus Center to organize additional meetings, prepare and present information, respond to inquiries, and other tasks needed to accomplish the objectives of the MCR program. Prepare monthly invoices and progress reports.

Budget: \$1,830

- Personnel Hours: 12 hrs. @150/hr. = \$1,800
- Expenses (telephone, internet, copies, other direct expenses): \$30

TASK 8: BRIEFINGS OF CONGRESSIONAL AND LEGISLATIVE OFFICES

In consultation with LCSG members, identify appropriate messages and "asks" of Congressional and Legislative leaders. Organize and participate in presentations on the LCSG program, its accomplishments, and current activities for Congressional and legislative offices in Oregon and Washington. Prepare summaries of all presentations.

For budget estimation purposes, 12 presentations are assumed; 6 in either Southwest WA or Olympia and 6 in Portland or Salem OR.

Budget: \$12,400

- Personnel Hours: 80 hrs. @150/hr. = \$12,000
- Expenses (mileage, telephone, internet, copies, other direct expenses): \$400

TASK 9: OUTREACH TO PNWPA, INDIVIDUAL PORTS AND OTHER POTENTIAL PARTNERS

Organize and participate in presentations on the LCSG program, its accomplishments, and current activities with Pacific Northwest Ports Association, select Lower Columbia River ports,

and other associations and potential partners identified by LCSG. Prepare summaries of all presentations.

For budget estimation purposes, 6 presentations are assumed.

Budget: \$5,050

- Personnel Hours: 32 hrs. @150/hr. = \$4,800
- Expenses (mileage, telephone, internet, copies, other direct expenses): \$250

TASK 10: OUTREACH TO MEDIA

Organize and participate in presentations on the LCSG program, its accomplishments, and current activities with key media outlets in SW Washington and NW Oregon. Prepare summaries of all presentations.

For budget estimation purposes, 6 presentations are assumed.

Budget: \$4,725

- Personnel Hours: 30 hrs. @150/hr. = \$4,500
- Expenses (mileage, telephone, internet, copies, other direct expenses): \$225

TASK 11: UPDATE OF REGIONAL SEDIMENT MANAGEMENT PLAN

Update 2011 MCR Regional Sediment Management Plan to reflect decision-making since its approval on disposal methods, volumes of material to be deposited, details on beneficial site locations, permitting, and other aspects of the program.

Budget: \$925

- Personnel Hours: 6 hrs. @150/hr. = \$900
- Expenses (mileage, telephone, internet, copies, other direct expenses): \$25

TOTAL BUDGET

Combined Primary and Secondary Services Total Budget: \$48,950

- Total Personnel Hours: \$44,560
- Total Expenses: \$4,390

APPENDIXES B-K: LCSG SUPPORTER AGREEMENTS

DRAFT

APPENDIX B: LCSG SUPPORTER AGREEMENTS

Organization Name _____

Financial Commitment: _____

Narrative of Support:

Short summary describing: organization role, interest in this initiative, and why this effort is important to their mission.

Invoice Contact Information:

Name:
Organization:
Phone No.:
Email:

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

IN WITNESS WHEREOF, the parties below, having read this Agreement in its entirety, including all attachments, do agree in each and every particular as indicated by their signatures.

Authorized Representative:

Name:
Organization:
Phone No.:
Email:

Signature Date

Commented [TB(4)]: Does your agency/organization have any additional performance reporting needs?

Commented [TB(5)]: Each LCSG Supporter will fill out an Appendix and send it back with a signature.