

Interlocal Agreement Between the Port of Walla Walla, Mill Creek Flood Control Zone District, the City of Walla Walla and the Downtown Walla Walla Foundation for Cost Sharing for the Mill Creek General Investigation Study

This agreement is made and entered into by and between the Port of Walla Walla (Port), the Mill Creek Flood Control Zone District (District) the City of Walla Walla (City) and the Downtown Walla Walla Foundation (Foundation), also referred to as the “Parties” to share costs of the Feasibility Cost Sharing Agreement with the US Army Corps of Engineers for a General Investigation study of the Mill Creek Flood Control Channel.

WHEREAS, RCW Chapter 39.34 authorizes the District, Port and City to jointly exercise powers, privileges and authority through interlocal agreement; and

WHEREAS, the Mill Creek Flood Control Project, which protects more than 23,000 residents and 10,000 structures, was completed in 1948; and

WHEREAS, the Mill Creek Flood Control Channel, which runs through the City of Walla Walla, is owned by the US Army Corp of Engineers (Corps of Engineers) for the first .92 of a mile, while the Walla Walla Flood Control Zone District owns the lower 6.9 miles of the channel; and

WHEREAS, the Mill Creek Flood Control Zone District is supervised by the Walla Walla County Board of County Commissioners and the Walla Walla County Engineer, pursuant to RCW 86.15.050 and 86.15.060; and

WHEREAS, the Mill Creek Flood Control Project and Channel have been identified by the Parties as vital infrastructure for the City of Walla Walla and the community; and

WHEREAS, the Parties have sought federal funding to study the Mill Creek Flood Control Project for a General Investigation study since 2015; and

WHEREAS, the Parties have received notice that federal funding is available for the US Army Corps of Engineers to begin a General Investigation Study; and

WHEREAS, the General Investigation Study may require a contribution of local funds; and

WHEREAS, the Parties understand that a General Investigation Study will include the entirety of the Mill Creek Basin; and

WHEREAS, the District intends to sign a Feasibility Cost Sharing Agreement with the U.S. Army Corps of Engineers to initiate a General Investigation Study of the Mill Creek Flood Control Channel; and

WHEREAS, the Parties have previously agreed to provide support for the General Investigation Study; and

WHEREAS, the Parties desire to outline their joint responsibilities and obligations;

NOW THEREFORE, it is mutually agreed by and between the District, Port, City and Foundation that:

1. The District, by and through the Walla Walla County Board of County Commissioners, will sign a Feasibility Cost Sharing Agreement with the US Army Corps of Engineers for the completion of a General Investigation Study (Study).
2. The Parties agree that this Interlocal Agreement for cost-sharing, based on the benefits to each Party, is necessary to establish the fair and reasonable apportionment of costs between the Parties.
3. The Parties agree to diligently pursue the completion of the Study and to provide such support and assistance as necessary to accomplish completion of the Study.
4. Local matching costs are expected to not exceed five hundred thousand dollars (\$500,000). The Parties agree to utilize the attached cost share schedule (Attachment A) through December 2020.
5. Total expenditures will not exceed \$300,000 for the District, \$100,000 for the City, \$65,000 for the Port and \$35,000 for the Foundation, unless this Agreement is amended.
6. Each Party shall contribute the amount noted on the attached cost share schedule. In-kind contributions may be utilized only if such contributions are credited by the US Army Corps of Engineers against local costs. In-kind contributions must be approved in advance by the District and the Corps of Engineers.
7. No Party may utilize federal funding to pay its share of the cost share Agreement, unless the federal agency providing the funds verifies in writing that the funds are authorized to be used for the Study.
8. The District will invoice the Parties in accordance with the attached cost share schedule. Payments are due no later than 60-days after the date of the invoice.
9. The District will serve as the lead agency and will serve as the local non-federal sponsor in accordance with state and federal requirements.
10. The Parties will meet once a month with the District to update the Parties on the progress of the General Investigation Study.

11. Parties may submit any input on the Study to the Corps of Engineers, through the Corps of Engineers' public outreach process. The District shall not be responsible for forwarding any Party's comments to the Corps of Engineers.
12. A Party shall be individually responsible to pay for additional costs incurred at the request of that Party. A Party shall be individually responsible for additional costs directly caused by the failure of that Party to meet its obligations under this Agreement.
13. If the Agreement is not extended as set forth in Section 14, this Agreement shall expire on January 1, 2021.
14. The term of this Agreement may be extended for one additional year until January 1, 2022, by mutual agreement of all Parties, if necessary to complete work under the General Investigation Study. The extension agreement shall be executed at least fifteen (15) days prior to the expiration of this Agreement. The chairman of the Board of County Commissioners and the executive officer of each other Party are authorized to approve and execute such a one-year extension without further authorization from the legislative body of each Party.
15. The District may terminate this Agreement with 60-days' notice to the other Parties, provided that the Parties shall only be responsible for their respective proportional cost share incurred up to the date of termination of this Agreement. Any funds that are unexpended and returned by the Corps of Engineers to the District after termination will be reimbursed to the other Parties in proportion to the Cost share schedule. Parties other than the District may withdraw from this Agreement with 180-days' notice to the other Parties. In such an event, the remaining Parties will meet in good faith to determine a revised cost allocation or determine whether to mutually terminate the agreement.
16. The Director of the Walla Walla County Public Works Department will be responsible for administering this Agreement.
17. Executed copies of this Agreement shall be filed or posted online as required by Section 39.34.040 of the Revised Code of Washington prior to this Agreement becoming effective.
18. The Parties are and shall at all times be deemed to be independent contractors in the provision of the services set forth in this Agreement. Nothing herein shall be construed as creating the relationship of employer and employee, or principal and agent, between the Parties. Each Party shall retain all authority for provision of services, standards of performance, discipline and control of personnel, and other matters incident to its performance of services pursuant to this Agreement. Nothing in this Agreement shall make any employee of any Party an employee of any other Party for any purpose, including but not limited to, for withholding of taxes, payment of benefits, workers'

compensation pursuant to Title 51 RCW, or any other rights or privileges accorded their respective employees by virtue of their employment.

19. It is understood and agreed that each Party will be solely responsible for its own negligence and will, to the extent of its negligence, indemnify and hold harmless the other Parties from any and all claims, losses, or causes of action, suits and actions in equity of any kind.
20. All Parties shall bear their own attorney's fees and costs of enforcing their rights and responsibilities under this Agreement.
21. No Party shall transfer, assign, or subcontract, in whole or in part, any or all of its respective rights or obligations under this Agreement without the prior written consent of the other Parties.
22. The Parties do not intend by this Agreement to assume any contractual obligations to anyone other than each other. The Parties do not intend to create any third-party beneficiary to this Agreement.
23. Notices shall be given, at a minimum, by postage prepaid mail to a Party at its address of its principal office in care of its official clerk or executive officer.
24. No waiver by any 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.
25. 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.
26. 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 the Parties.
27. Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
28. Acts taken in conformity with this Agreement prior to its execution are hereby ratified and confirmed.
29. If any term, provision, covenant or condition of this Agreement shall be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby. To this end, the provisions of this Agreement are declared to be severable.

30. This Agreement, and any rights and obligations hereunder, shall be construed and interpreted in accordance with the laws of the State of Washington.

31. Any dispute or proceeding arising out of this Agreement shall be submitted to the Superior Court of the State of Washington for Walla Walla County.

32. This agreement does not create any separate legal or administrative entity.

PORT OF WALLA WALLA

August 13, 2018
Date

Jared Hawkins
Approved as to Form
Jared Hawkins, Port Counsel

Patrick H. Reay
Patrick H. Reay, Executive Director

WALLA WALLA COUNTY BOARD OF COUNTY COMMISSIONERS

Attest:

Connie R. Vinti
Connie R. Vinti, Clerk of the Board

September 4, 2018
Date

James R. Johnson
Chair


John T. Jones
Commissioner

John T. Jones
Commissioner

Jerome Maltz deputy
Approved as to Form
Walla Walla County
Prosecuting Attorney

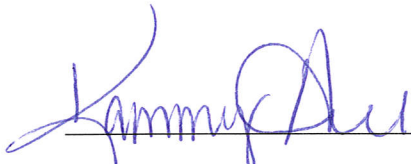
CITY OF WALLA WALLA

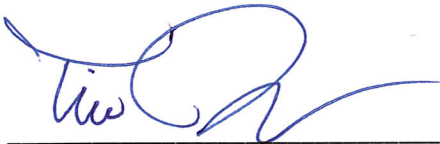
8/27/2018
Date



Nabil Shawa, City Manager

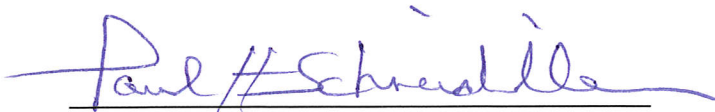
Attest:


Kammy Hill, City Clerk



Approved as to Form
Walla Walla City Attorney

DOWNTOWN WALLA WALLA FOUNDATION



Paul H. Schneidmiller, President

8/16/18
Date

Attachment A

Cost Share Schedule

Year 2018	
By September 30, 2018 or when the FCSA is signed	
	Total
City of Walla Walla	\$30,000
Port of Walla Walla	\$19,500
Walla Walla County/MCFCZD	\$90,000
Downtown Foundation	\$10,500
Combined Sponsor Total	\$150,000

Year 2019	
Jan-Sep 2019 (Corps FY 19)	
	Total
City of Walla Walla	\$70,000
Port of Walla Walla	\$45,500
Walla Walla County/MCFCZD	\$210,000
Downtown Foundation	\$24,500
Combined Sponsor Total	\$350,000

Calendar Year 2020				
Jan-Sep 2020 (Corps FY 20)		Oct –Dec 2020 (Corps FY 21)		
				Calendar Year Total
City of Walla Walla	\$0	City of Walla Walla	\$0	\$0
Port of Walla Walla	\$0	Port of Walla Walla	\$0	\$0
Walla Walla County/MCFCZD	\$0	Walla Walla County/MCFCZD	\$0	\$0
Downtown Foundation	\$0	Downtown Foundation	\$0	\$0
Combined Sponsor Total				\$0