

INTERLOCAL AGREEMENT  
FOR  
COMBINED DREDGING PLAN & MARINA DREDGING SERVICES

This Agreement is made this 6th day of August, 2018, effective August 9<sup>TH</sup>, 2018 ("effective date"), pursuant to RCW 39.34.030 et seq., and RCW 53.08.240 between the Port of Ilwaco (Ilwaco), a Port District of the State of Washington, and the Port of Chinook (Chinook), a Port District of the State of Washington. In this Agreement, the two Ports are referred to collectively as "the Ports" or "the Parties".

**WHEREAS**, by the authority granted in RCW 39.34.030 et seq. units of local government may enter into agreements with other units of local government, and by RCW 53.08.240 Ports may enter into agreements with other Ports, for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform; and

**WHEREAS**, the Port of Ilwaco and Port of Chinook currently operate under an interlocal agreement for Ilwaco to provide inclusive management services to Chinook; and

**WHEREAS**, the Port of Ilwaco has the personnel, expertise and resources to provide marina dredging related services and equipment for the Port of Chinook marina; and

**WHEREAS**, the Parties anticipate that the provision of dredging services by Ilwaco promotes a cost-effective and efficient use of public resources; and

**WHEREAS**, the Commissions of both Ports will remain accountable to the constituents in their respective Districts and believe cooperative efforts between the Ports best serves their common purposes, communities and users; and

**WHEREAS**, both Ports share the common interest of supporting commercial and recreational fishing given their importance to our local and regional economy and heritage of our coastal community.

**WHEREAS**, the Ports secured funding through the State of Washington Capital Budget for: 1.) A Combined Dredging Plan and 2.) Marina Maintenance Dredging.

**WHEREAS**, such funding for the Ports will be shared as stipulated in the legislative request and will be administrated and accounted for by and through the Port of Ilwaco, in accordance with the Washington State Department of Commerce contracts as specified:

- a) Contract Number: CD19-96619-067: Ports of Ilwaco and Chinook Marina Dredging (net grant amount \$436,500 – with the intent of funds being split \$169,750 for Ilwaco dredging and \$266,750 for Chinook dredging). (**Section I**)
- b) Contract Number: CD18-96616-135: Ports of Ilwaco and Chinook Dredging Plan Development (net grant amount \$74,690 – total spent on one plan including both ports). (**Section II**)

**NOW, THEREFORE**, in consideration of the covenants and agreements hereinafter set forth, the Parties desire to enter into an agreement setting forth the conditions of the combined dredging plan provisions of marina dredging services as follows:

## SECTION I. PORTS OF ILWACO AND CHINOOK MARINA DREDGING

### A. ILWACO RESPONSIBILITIES

1. Ilwaco will undertake marina maintenance dredging activities, including upland disposal site maintenance and marina maintenance dredging. Such work may be performed by Ilwaco at both marinas with the assistance of contractors retained by Ilwaco or Chinook.
  - a. Maintenance dredging in the Ilwaco marina, in accordance with Port of Ilwaco's dredging permit (USACE NWP-2004-78-5) are planned to begin on November 1, 2018 and last through mid-December, 2018. Maintenance of the upland disposal site will be in the summer of 2018, and potentially in 2019 also.
  - b. Ilwaco will undertake in providing marina maintenance dredging services to perform in the Chinook marina in accordance with the Chinook's dredging permit (NWP-2008-472-1). It is anticipated these activities will begin in late December through February 28, 2019. Maintenance of the upland disposal site will be in the summer of 2018, potentially in 2019 also.
2. Ilwaco will provide and maintain the dredge plant, related dredge equipment and staff to perform dredging activities.
3. Project oversight will be provided by Ilwaco management under the current interlocal agreement for inclusive management services.
4. Funding for marina maintenance dredging activities in Ilwaco and Chinook shall be via funds received from the State, which shall be administered by Ilwaco. Review and reimbursement of such expenses shall be done by completed by Ilwaco, with oversight of the Chinook Commission in regards to their marina. Unanticipated costs associated with marina maintenance activities at each port, in excess of funds made available through State funding for the respective marina, shall be the sole responsibility of the respective port.
5. All equipment and services, including those expenses, to perform marina maintenance dredging activities in Ilwaco shall be the responsibility of Ilwaco without recourse to Chinook.

### B. CHINOOK RESPONSIBILITIES

1. Funding for marina maintenance dredging activities for Chinook will be administered by the Port of Ilwaco through funding received from the State of Washington.
2. Chinook will review and approve billing for services performed by Ilwaco as specified in this Agreement, as it may be amended, or as agreed in advance by Chinook. In the event of an emergency Chinook shall be responsible for payment of all additional services and materials necessary to respond to the emergency within the Port of Chinook marina. Funding for such shall be by mutual agreement of the parties; State funding may or may not provide reimbursement for such emergency related payments.
3. Unanticipated costs associated with marina maintenance activities at each port, in excess of funds made available through State funding for the respective marina, shall be the sole responsibility of the respective port.

4. Chinook shall provide the dredging permit and obtain all necessary permits in order to perform dredging work at the Port of Chinook marina.
5. Chinook shall provide a functional upland dredge material disposal site and be responsible for fully maintaining the site outside the terms of this agreement.
6. Chinook will provide Ilwaco with any of its equipment, facilities or property to be charged towards the State funding, to assist with this project, as may be needed.
7. Chinook will provide fuel for the dredge and to be charged towards State funding.
8. Chinook will provide trash service for the dredge to be charged towards the State grant funding. (For debris from the marina floor.)
9. Chinook will coordinate with moorage holders and other users to accommodate dredging efforts, including but not limited to movement of moored boats, blocking off access in areas, posting dredging notifications at all ramps and other needs as may be determined by the parties.
10. Chinook shall continue to have the responsibility for all of its obligations not assumed by Ilwaco under this Agreement.

## **SECTION II. PORTS OF ILWACO AND CHINOOK DREDGING PLAN DEVELOPMENT**

### **A. ILWACO RESPONSIBILITIES**

1. Ilwaco will lead the effort to develop and procure a combined marina maintenance dredging plan to address the long term sustainability of the Ilwaco and Chinook marinas.
2. Ilwaco will undertake the responsibility to develop a scope of work and retain a qualified consultant, in compliance with State rules and regulations, while sharing such efforts with Chinook for review in an effort to mutually develop the plan.
3. Project oversight will be provided by Ilwaco management under the current interlocal agreement for inclusive management services.
4. Funding for the plan will be via funds received from the State, which shall be administered by Ilwaco. Review and reimbursement of such expenses shall be done by completed by Ilwaco.

### **B. CHINOOK RESPONSIBILITIES**

1. Chinook will review and provide feedback during the process of developing the plan, with respect to its marina and related facilities, and before its completion.
2. Chinook shall coordinate with Ilwaco to provide any requested documentation to Ilwaco to share with the consultant regarding development of the plan.
3. Funding for the plan will be via funds received from the State, which shall be administered by Ilwaco, with no anticipated cost for Chinook.

## C. INDEMNITIES

1. At all times during this Agreement, to the fullest extent permitted by law, Chinook shall defend, indemnify, reimburse and hold harmless Ilwaco from and against any and all claims, demands, fines, damages for bodily injury and damage to property, to the extent caused by Chinook or otherwise the responsibility of Chinook but for this Agreement. The duty to defend shall arise immediately and shall include, but not be limited to, all fees and costs of any arbitration, mediation or other settlement efforts, the costs of any experts retained to assist with the defense, the cost of trial preparation.
2. Chinook will also hold Ilwaco harmless for any financial decision made by Chinook and implemented by Ilwaco pursuant to the directive of Chinook's governing Board.
3. At all times during this Agreement, to the fullest extent permitted by law, Ilwaco shall defend, indemnify, reimburse and hold harmless Chinook from and against any and all claims, demands, fines, damages for bodily injury and damage to property, to the extent caused by Ilwaco or otherwise the responsibility of Ilwaco but for this Agreement. The duty to defend shall arise immediately and shall include, but not be limited to, all fees and costs of any arbitration, mediation or other settlement efforts, the costs of any experts retained to assist with the defense, the cost of trial preparation.

## D. INSURANCE

1. At all times during the term of this Agreement, Ilwaco shall maintain insurance sufficient to comply with at least minimum limits for federal and state regulations including Workers Compensation, and Property Damage insurance, and general liability coverage including vehicular coverage, with a combined single limit of not less than \$1,000,000, and property insurance with reasonable deductibles and co-insurance provisions, and shall name Chinook as an additional insured in its general liability policy. In addition, Ilwaco will maintain fidelity bonds for all staff handling Chinook funds.
2. At all times during the terms of this Agreement, Chinook shall maintain general liability insurance coverage including vehicular coverage, with a combined single limit of not less than \$1,000,000, as well as all other statutorily required insurance coverage, and property insurance with reasonable deductibles and co-insurance provisions, and shall name Ilwaco as an additional insured in its general liability policy. Chinook will also provide such additional insurance as Ilwaco's insurer may deem necessary to protect Ilwaco from the operation of the Chinook fueling station.

## I. MISCELLANEOUS PROVISIONS

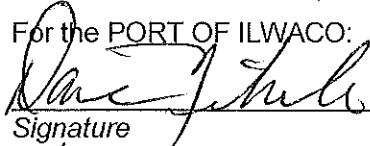
1. This Agreement shall be effective upon dual execution by both Ports, and remain in effect until July 31, 2019, or upon earlier termination as authorized in this Agreement. If terminated early by either party, reimbursement of costs incurred by either port shall be determined by mutual agreement of the port commissions.
2. Ilwaco will administer the State funding in accordance with the contracts developed by the State of Washington Department of Commerce: CD19-96619-067 and CD18-96616-13; no additional fees for administering the contract are contemplated for Chinook beyond the existing interlocal agreement for inclusive management services.

3. In regards to Section I: Dredging at the Chinook marina is desperately needed. Ilwaco will make all efforts to perform dredging in an effective and productive manner. There are not any specific performance metrics included in this agreement. Chinook will prioritize areas to be dredged, in advance, and Ilwaco will attempt to improve the priority areas first prior to moving to other areas of lesser priority. Ilwaco provides no guarantee to Chinook for the priority areas but will make the best effort to effectively manage the project within budget parameters and operational constraints. A pre-dredge survey and post dredge survey of the areas will be performed by Chinook, as specified under the Port's dredging permit.
4. In regards to Section II: a dredging plan for both marinas is needed to identify specific alternatives for the long term sustainability of both ports. It is understood the scope of the plan will intend to establish a basis for pursuing additional outside funding. Cost estimates will be incorporated in the plan for this purpose. It will be the decision of each port as to how, or if, the alternatives identified in the plan are pursued and potentially funded. This agreement does not constitute a mechanism for implementation of the alternatives or the specific future funding of such alternatives.
5. Either Party may terminate its participation by providing ten (10) days written notice to the other Party. Any amounts due and owing by a terminating Party shall continue as a debt and shall be paid within twenty-one (21) days of termination. If the agreement is terminated any residual State funding allocated between the parties will be subject to a determination by the State, and potentially by mutual agreement of the parties, disbursed or withheld as concluded.
6. Each Party is an independent contractor and there is no employment relationship between the Parties.
7. Each Port shall continue to comply with all applicable local, state and federal regulations and laws.
8. Notwithstanding any provision of this Agreement, neither Ilwaco nor Chinook shall be authorized to perform or receive or pay for any service which is not authorized by the laws of the State of Washington.
9. This Agreement shall be governed by the laws of the State of Washington. Any action commenced in connection with this Agreement shall be in the Superior Court of Pacific County.
10. Any notice under this Agreement shall be in writing and shall be effective when actually delivered in person or when deposited in the U.S. mail, registered or certified, postage prepaid and addressed to the Manager of each respective Port.
11. Time is of the essence in the performance of the terms of this Agreement.
12. This Agreement contains the entire understanding of the Parties and supersedes all prior agreements, oral or written, and all other communications between the Parties relating to the subject matter of this Agreement.
13. This Agreement may be modified or amended by mutual agreement of the Port Commissions at any time. However, the Parties shall not waive, alter, modify, supplement or amend this Agreement without a written instrument signed by both Parties. The Parties contemplate that the Agreement may require modification or amendment as the services

necessary to be provided and cost for those services are clarified over the term of the Agreement. The Parties understand that the services provided by this Agreement may evolve as the Agreement matures, and may change in quantity depending on the amount of work required, particularly seasonal and emergency work. These kinds of changes are not the type of changes that require prior Board approval.

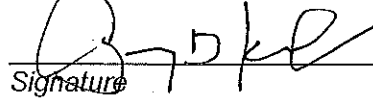
14. In the event that a dispute arises under or related to the terms of this Agreement including, but not limited to, its enforcement or interpretation, the Parties agree to meet and confer to attempt to resolve the dispute through the Executive Director of Ilwaco and Chair of each Port Commission prior to the initiation of litigation.
15. The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
16. Ilwaco and Chinook are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons.

For the PORT OF ILWACO:

  
Signature

*chairman*  
Title

For the PORT OF CHINOOK:

  
Signature

*CHAIRMAN*  
Title

Attest:

  
Tricia Needham, Auditor, Port of Ilwaco