

**MEMORANDUM OF AGREEMENT
BETWEEN CLEAN WATER SERVICES
AND THE U.S. ARMY CORPS OF ENGINEERS,
PORTLAND DISTRICT**

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into as of this 1st day of October, 2018, between Clean Water Services (hereinafter "CWS") and the Department of the Army, represented by the United States Army Corps of Engineers, Portland District (hereinafter the "Portland District"), collectively referred to as "the Parties."

WITNESSETH THAT:

WHEREAS, the United States Army Corps of Engineers ("Corps"), has jurisdiction over certain activities occurring in waters of the United States, including wetlands; and

WHEREAS, Section 214 of the federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000"), as amended, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of permits of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214 of the WRDA 2000, as amended, to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated April 18, 2018, has authorized the Portland District and Division Engineers of the Corps to accept and expend funds contributed by non-Federal entities subject to certain limitations; and

WHEREAS, CWS is a non-Federal public sanitary sewer and stormwater management entity in Washington County, Oregon; and

WHEREAS, CWS' mission is to provide cost-effective services and environmentally sensitive management of water resources for the Tualatin River watershed; and

WHEREAS, CWS' projects fulfill a public purpose as they are integral to CWS' mission; and

WHEREAS, the Portland District has indicated it is not able, without additional resources, to expedite the evaluation of permits of the non-Federal entity (CWS) related to projects for a public purpose; and

WHEREAS, CWS requires expedited and priority review of certain projects within its area of responsibility; and

WHEREAS, the Portland District issued an initial Public Notice dated June 12, 2018, regarding its intent to accept and expend funds contributed by non-Federal public entities for such purposes; and

WHEREAS, the Portland District has determined that the expenditure of funds received from CWS will be in compliance with Section 214 of WRDA 2000, as amended; and

WHEREAS, it is understood and acknowledged by all Parties that the Portland District's review of CWS projects will be completely impartial and in accordance with all applicable Federal laws and regulations.

NOW, THEREFORE, CWS and the Portland District agree as follows:

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

Pursuant to Section 214 of WRDA 2000, as amended, this MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by CWS to expedite the evaluation of permits under the jurisdiction of the Department of the Army. This MOA is not intended as the exclusive means of obtaining Portland District review of CWS projects. This MOA is a vehicle by which CWS may obtain expedited review of CWS projects designated as a priority, outside of the ordinary Portland District review process.

Article II. - SCOPE

A. CWS will provide funds to the Portland District for work performed in federal fiscal year(s) (FY) 2019 through 2023 (i.e., October 1, 2018-September 30, 2023) to expedite the evaluation of CWS projects under the jurisdiction of the Portland District. The phrase "federal fiscal year" in this MOA refers to the period beginning October 1 of each year and ending on September 30 of the following year. The Portland District's regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from CWS will be used to augment the Portland District regulatory budget in accordance with the provisions of Section 214 of WRDA 2000.

B. The Portland District will establish a separate account to track receipt and expenditure of the funds associated with its review of CWS priority projects. Portland District employees will charge their time against the account when they do work to expedite resolution of CWS permit requests.

C. Funds contributed by CWS hereunder will mainly be expended to defray the costs of salary, associated benefits, overhead, and travel expenses for existing or additional personnel (including regulatory staff, support/clerical staff, and staff of other functional areas of the Portland District), and other costs in order to expedite the evaluation of permit requests submitted by CWS. Such activities will include, but not be limited to,

the following: application review, permit database entry, drawing correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, conducting the public interest review, preparation of draft permit decision documents, meetings with CWS and their partners, agencies and applicants, permit compliance, mitigation monitoring, preparation of reports/audits of funds expended to CWS, technical writing, training, travel, copying, coordination activities, technical contracting, programmatic tool development and/or improvement, acquisition of GIS data, and any other permit evaluation-related responsibilities that may be mutually agreed upon. Funds will *not* be expended for review by supervisors or other persons or elements of the Portland District in the decision-making chain of command. Enforcement activities will not be paid for from the funds contributed by CWS, nor will such funds be used to pay for the costs of public hearings and distribution of public notices.

D. Funds may also be expended to hire contract staff for the purpose of augmenting the resources available to the Portland District regulatory staff for expediting priority permit applications submitted by CWS. If such expenditures, when combined with the costs of the regulatory staff, require funding in excess of the amount specified in this MOA, then said contractors shall not be hired until and unless additional funds are approved by CWS and memorialized by written amendment to this MOA.

E. If the CWS' funds are expended and are not renewed, the Parties will terminate this MOA in accordance with Article X.A and any remaining CWS priority permit applications will be processed pursuant to the standard permit application review procedures, in a manner decided by the assigned Regulatory Project Manager and his or her supervisor.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Portland District and CWS, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on specific permit actions. Anne MacDonald, Senior Water Resources Program Manager, shall be the Principal Representative for CWS. William Abadie, Chief, U.S. Army Corps of Engineers, Portland District Regulatory Branch, shall be the Principal Representative for the Portland District. If the Principal Representative for either party changes, such change shall be communicated to the other party in writing as soon as practicable.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. CWS shall:

1. Provide adequate information regarding priority projects and other specific activities to initiate permit evaluation. Upon request, CWS shall provide supplemental information necessary to assure that the Portland District can effectively accomplish the required review.

2. Make a reasonable effort to provide the Portland District with information on other projects with CWS involvement that may affect the Portland District's workload and staff availability (e.g., schedules for projects with individual permits).

3. In consultation with the Portland District, schedule Portland District involvement in the priority projects identified by CWS.

4. To the best of its ability, ensure the participation of all essential personnel, customers, and decision makers during the permit evaluation process.

5. Work closely with the Portland District to resolve workload conflicts and adjust priorities and schedules in order to make optimal use of available staff resources.

6. Provide the Portland District with any quantitative or qualitative information necessary to assist the Corps with preparation of the annual report of work performed under this MOA as required per Part 4(j) of the Corps' 19 January 2018 Implementation Guidance for Section 1125 of the Water Resources Development Act (WRDA) of 2016 ("WRDA 2016") – Use of Funding Agreements within the Regulatory Program.

B. The Portland District shall:

1. Expedite permits in accordance with the purpose, terms, and conditions of this MOA. The Portland District shall not redirect resources from, or otherwise postpone, other CWS projects submitted through the standard Portland District review process.

2. Consult with CWS regarding an adjustment of priorities or establishment of relative priorities if the current and/or projected workload of CWS priority projects and activities exceeds the Portland District's ability to provide the services specified in this MOA.

3. Provide CWS an annual summary report of progress made under this MOA. This report will describe achievements, including any improvements the Portland District has documented in coordinating and improving the efficiency of environmental reviews, and will summarize expenditures to date. The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOA.

4. Designate a Regulatory Project Manager who will make his or her best efforts to attend periodic meetings with CWS.

5. Provide CWS with a copy of the annual report the Corps is required to prepare per Part 4(j) of the 19 January 2018 Implementation Guidance for Section 1125 of WRDA 2016 – Use of Funding Agreements within the Regulatory Program.

Article V. FUNDING

A. Clean Water Services will pay the Portland District an amount not to exceed \$244,500 per year, for purposes of funding a project manager for up to 5 years, including overhead, associated support personnel, travel and other costs for the term of this MOA. This funding level is based on a first year amount not to exceed \$218,000 and a maximum 3% per year escalation clause per Section V.B.

B. Costs incurred by the Portland District under this MOA may increase due to the Federal Government's General Schedule increases and locality pay adjustments. In the event of such increases, the Portland District will promptly notify CWS of the additional amount necessary to continue services under this MOA.

C. Prior to the Portland District incurring any financial obligations or performing any work under this Agreement, CWS shall provide an advanced deposit of \$75,000 in initial funds. The advanced deposit of funds will be used to cover initial labor, travel, and other costs directly related to CWS permit requests. At the end of each quarter, costs will be verified by the Portland District and a detailed billing provided to the CWS Principal Representative.

D. Any carry-over funds from year to year will be credited to the following fiscal year's payment, or refunded if this MOA is terminated or expires.

Article VI. - APPLICABLE LAWS

All applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of environmental permit applications undertaken by Portland District will be governed by Portland District regulations, policies, and procedures.

Article VII. - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute between the Parties, CWS and the Portland District shall use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The Parties agree that, in the event such measures fail to resolve the dispute, they shall refer the dispute for resolution to an appropriate forum in accordance with Federal law.

Article VIII. - PUBLIC INFORMATION

The Portland District will not be responsible for justifying or explaining CWS programs or projects to other agencies, departments and offices. The Portland District may provide, upon request from CWS, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the Portland District is responsible only for public information regarding Portland District regulatory activities.

CWS will give the Portland District advance notice before making formal, official statements regarding Portland District activities funded under this MOA.

Article IX. - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA will not affect any pre-existing or independent relationships or obligations between CWS and the Portland District.

B. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

Article X. - AMENDMENT, MODIFICATION, AND TERMINATION

A. This Agreement may be modified or amended only by written, mutual agreement of the Parties. Either party may terminate this MOA prior to its expiration date by providing written notice to the other party. Such termination shall be effective upon the sixtieth (60th) calendar day following notice, unless a later date is set forth. In the event of termination, CWS shall continue to be responsible for all costs incurred by the Portland District under this MOA prior to the effective date of such termination and for the costs of closing out or transferring any on-going CWS priority projects.

B. Within ninety days (90) days of termination or expiration of the MOA, the Portland District shall conduct accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, the Portland District shall return to CWS any funds advanced in excess of the actual costs. Funds may be provided to CWS either by check or by electronic funds transfer.

Article XI. - EFFECTIVE DATE AND DURATION

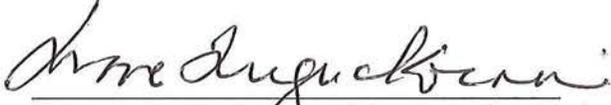
This MOA will become effective once signed by both CWS and the Portland District, but not before October 1, 2018. This MOA shall remain in force until the earlier of the following events: (1) September 30, 2023; or 2) the MOA is terminated pursuant to Article X.

Article XII. – INTEGRATION

This MOA, including any documents incorporated by reference or attachments thereto, constitute the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

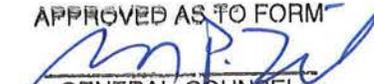
IN WITNESS WHEREOF, the Agreement is executed by CWS, acting by and through its General Manager or designee, pursuant to CWS Minute Order 18-64 authorizing such execution, and by the Portland District, through its authorized officer. By affixing their signatures below, each signatory certifies and affirms that s/he has the authority to enter into this MOA on behalf of his/her organization and to bind that organization to the terms of this MOA.

For Clean Water Services:



William Gaffi, General Manager (or designee)

Date: 8/16/18

APPROVED AS TO FORM


GENERAL COUNSEL
CLEAN WATER SERVICES

For the U. S. Army Corps of Engineers, Portland District:



Aaron L. Dorf
Colonel, Corps of Engineers
District Commander

Date: 2018-08-30