

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON**

**RESOLUTION NO. 2014-115**

Authorizing the County Chair to Execute an IGA with the Port of Portland and Metro for Dredging at Shared Dock at Gleason Boat Ramp.

**The Multnomah County Board of Commissioners Finds:**

- a. Metro and the County are parties to an Intergovernmental Agreement dated as of March 21, 1996 (the "Metro-County Agreement") pertaining to the County's transfer to Metro of certain regional parks, natural areas, golf courses, cemeteries and trade/spectator facilities owned by the County and providing, at Section 3.J.4, for MCSO's perpetual, rent-free occupancy and use of certain marine facilities at the M. James Gleason Memorial boat ramp ("Gleason Boat Ramp").
- b. Metro owns the Gleason Boat Ramp, which includes the associated public dock ("Boat Dock"), parking lot ("Parking Lot"), public boat ramp and other related facilities. The Port owns one boat house adjacent to the Boat Dock housing its emergency response/fire and rescue boat, and the County owns three (3) boat houses adjacent to the Boat Dock housing MCSO's emergency response boats.
- c. Metro, the Port and the County have negotiated an intergovernmental agreement, as authorized by ORS Chapter 190, substantially in the form attached hereto as Exhibit A (the "Dredging IGA").
- d. Under the Dredging IGA, the parties agree to participate in Dredging Project Costs for that area which provides access to the boathouses and the Boat Dock (the "Dredging Area"). The Dredging Area has not been dredged since 2003, and access to and from the boathouses and Boat Dock has been impeded, resulting in less than optimal operations for the Port and MCSO.
- e. Under the Dredging IGA, the Port will obtain all required permits and manage the dredging project for the Boat Dock, scheduled for November 2014. For the dredging in November 2014, the estimated cost is TWO HUNDRED TWENTY FIVE THOUSAND DOLLARS AND NO CENTS (\$225,000.00) ("Estimated First Dredging Cost"). Under the Dredging IGA, the Port, Metro and the County would share the Estimated First Dredging Cost in proportion to each party's respective use of the Boat Dock, as follows:

<b>Party</b>	<b>First Dredging Cost Share</b>
Port	\$75,000.00
Metro	\$40,000.00
County	\$110,000.00

- f. Under the Dredging IGA, for each subsequent required maintenance dredging of the Dredging Area, the parties will pay the following percentage share of dredging project costs: the Port – 33%, Metro – 20%, and the County – 47%; unless the need for such dredging is caused by one or more, but not all, parties, in which case the responsible party or parties shall each pay the costs attributable to its proportionate share of the cause of such need.
- g. Under the Dredging IGA, maintenance dredging will occur when access to and from the boathouses and Boat Dock is impeded, and it is reasonably necessary to dredge in order for the Port and MCSO boats to be able to enter and leave their boathouse and/or Boat Dock. Maintenance dredging is anticipated to be needed approximately every five (5) years.

**The Multnomah County Board of Commissioners Resolves:**

- 1. The County Chair is authorized to sign the Dredging IGA with the Port and Metro, in substantially the form attached hereto as Exhibit A. Board approval is needed for any modification or amendment that results in a material increase in the obligations of Multnomah County or a material decrease in the benefits for Multnomah County under the Dredging IGA.

**ADOPTED this 2nd day of October 2014.**



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

*Deborah Kafoury*

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Deborah Kafoury, Chair

REVIEWED:  
JENNY M. MADKOUR, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By *Kenneth M. Elliott*  
Kenneth M. Elliott, Assistant County Attorney

SUBMITTED BY: Jason Gates, Chief Deputy, MCSO.

## INTERGOVERNMENTAL AGREEMENT

This INTERGOVERNMENTAL AGREEMENT ("Agreement") effective \_\_\_\_\_, 2014 ("Effective Date") is between **THE PORT OF PORTLAND**, a port district of the State of Oregon ("Port"), and **METRO**, an Oregon municipal corporation ("Metro"), and **MULTNOMAH COUNTY**, a home rule county and a political subdivision of the State of Oregon ("County").

### RECITALS

A. The Port and Metro are authorized to enter into intergovernmental agreements with other governments pursuant to the terms of ORS 190.003 to 190.010.

B. Metro and the County are authorized to enter into intergovernmental agreements with other governments pursuant to the terms of ORS 190.010.

C. The Multnomah County Sheriff's Office ("MCSO") is an agency of the County charged with the enforcement of laws within the County, including navigable water ways.

D. Metro and the County are parties to an *Intergovernmental Agreement* dated as of March 21, 1996 (the "Metro-County Agreement") pertaining to the County's transfer to Metro of certain regional parks, natural areas, golf courses, cemeteries and trade/spectator facilities owned by the County and providing, at Section 3.J.4, for MCSO's perpetual, rent-free occupancy and use of certain marine facilities at the M. James Gleason Memorial boat ramp ("Gleason Boat Ramp").

E. The Port, Metro and MCSO acting on behalf of the County are parties to an *Intergovernmental Agreement* dated April 26, 1996 (Port Agreement No. 96-116) ("Port Agreement") regulating boat moorage at the "Gleason Boat Ramp".

F. As of the Effective Date, subject to all easements and encumbrances, Metro owns the Gleason Boat Ramp which includes the associated public dock ("Boat Dock"), parking lot ("Parking Lot"), public boat ramp and other related facilities. The Port owns a boat house adjacent to the Boat Dock, and the County owns three (3) boat houses adjacent to the Boat Dock. The County boat houses are operated and maintained by MCSO.

G. The parties recognize that access to and from the Boat Dock is a matter of public safety, and the parties desire to work cooperatively to ensure such access is retained and unimpeded.

H. The Port and MCSO desire parking, moorage and access rights at the Gleason Boat Ramp, and Metro desires to grant these rights, on the terms and conditions set forth in this Agreement and, with respect to Metro and the County, as also provided in the Metro-County Agreement.

I. In addition, the parties desire to enter into this Agreement to set forth the maintenance and dredging responsibilities and rights associated with the Gleason Boat Ramp.

NOW, THEREFORE, in consideration of the promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows.

## **1. RECITALS**

The Recitals above are incorporated into and are a part of this Agreement.

## **2. TERMINATION OF PORT AGREEMENT; AMENDMENT OF METRO-COUNTY AGREEMENT**

As of the Effective Date, this Agreement amends and supplements the Metro-County Agreement between Metro and MCSO relating to the responsibilities and rights associated with the Gleason Boat Ramp, excluding the adjacent Portage Property as depicted on **Exhibit A**, attached hereto. As of the Effective Date, this Agreement represents the entire agreement between the Port and Metro relating to their responsibilities and rights associated with the Gleason Boat Ramp and supersedes all previous communications, representations, or agreements, whether verbal or written between the Port and Metro with respect to such responsibilities and rights, including, without limitation, the Port Agreement. Notwithstanding the foregoing, this Section shall not limit or reduce any right or obligation of the Port, Metro and the County, acting by and through MCSO, under the Port Agreement or the Metro-County Agreement arising out of the occupancy or use of the Gleason Boat Ramp prior to the Effective Date. Except as amended or supplemented herein, the Metro-County Agreement remains in full force and effect between Metro and the County.

## **3. TERM**

This Agreement shall commence and be binding upon the Port, Metro and the County, acting by and through MCSO, as of the Effective Date and shall continue until terminated by the Port, Metro or the County by giving one hundred eighty (180) days advance written notice. Notwithstanding this provision, this Agreement may not be terminated with less than eighteen (18) months' written notice after a notice of required dredging is provided by a party as set forth in Section 4.6.2 or until such time as that dredging takes place or it is deemed not necessary through the process set forth therein, whichever is sooner.

## **4. GLEASON BOAT RAMP**

The Gleason Boat Ramp is located along Marine Drive at NE 43<sup>rd</sup> Drive, as depicted on **Exhibit A**, attached hereto.

### **4.1 Moorage**

MCSO shall have the right to moor three (3) emergency response boats and boat houses at the Boat Dock. In the event MCSO requires additional boats, Metro will use reasonable efforts to accommodate such request, provided, that the parties acknowledge it will be extremely difficult for Metro to accommodate this request until such time as the Boat Dock is expanded. The Port shall have the right to moor an emergency response/fire and rescue boat and a boat house at the Boat Dock. MCSO agrees to let the Port connect to MCSO's utility connections. The Port and MCSO shall be responsible for obtaining all necessary permits associated with such party's boat and boat houses. Metro's grant of rights to use the Gleason Boat Ramp under this Agreement is subject to applicable laws and regulations.

#### **4.1.1 Moorage Maintenance and Upgrades**

Except as otherwise stated herein, Metro shall be solely responsible for the maintenance of the Boat Dock. Notwithstanding the above, the Port and MCSO shall each pay (a) their respective costs associated with all reasonably required maintenance of those portions of

the Boat Dock used exclusively by either the Port or MCSO; and (b) their pro rata share of costs associated with the shared portions of the Boat Dock that are used by MCSO, the Port and Metro, recognizing that as of the Effective Date, the Port shares the use of a smaller portion of the Boat Dock than MCSO, as depicted on Exhibit A, because MCSO's boats are moored farther out on the Boat Dock.

Any non-required but desired upgrades that the Port or MCSO desires to undertake are subject to the prior written approval of Metro, which may be withheld in Metro's reasonable discretion. If any party, including Metro, desires to perform such elective upgrades to the Boat Dock with financial contributions from the other parties, such financial contribution must be approved in advance by the other parties.

#### **4.2 Parking**

Port and MCSO shall have access to eight (8) parking spots in the Parking Lot at no charge to either party. Metro shall mark these spots for Port and County exclusive use. Subject to applicable laws and regulations, the County or the Port may tow vehicles that are parked in spaces marked for the County's or the Port's exclusive use.

#### **4.3 Utilities**

MCSO shall have a separate meter from Metro for its utilities. The County shall be responsible for any repair or replacement of this meter. The County may bill the Port for the Port's portion of utility use. The Port shall pay for such utility use within thirty (30) days of receipt of the invoice. The County shall maintain utilities to its own boat houses and the Port's boat house.

#### **4.4 Relocation of Boat Houses**

The Port and the County are solely responsible for the costs of moving and relocating their respective boats and boat houses upon any termination of this Agreement, or if required in any other instance.

#### **4.5 Consideration**

In consideration for the Port's and MCSO's use of the Gleason Boat Ramp for boat moorage and parking for boating public safety and to allow Metro to provide access for boat mooring on the public Boat Dock, the parties agree to participate in Dredging Project Costs (as defined in Section 4.6.1) for that area which provides access to the boathouses and the Boat Dock as illustrated on **Exhibit A** ("Dredging Area"). The Port agrees to manage the dredging project for the Boat Dock occurring in November 2014. This Agreement does not address costs associated with dredging outside of the Dredging Area.

#### **4.6 Dredging Project Costs**

For the first dredging to occur in November 2014, the estimated cost is approximately TWO HUNDRED TWENTY FIVE THOUSAND DOLLARS AND NO CENTS (\$225,000.00) ("Estimated First Dredging Cost"). The Port, Metro and the County shall share the Estimated First Dredging Cost, apportioned as follows:

<b>Party</b>	<b>First Dredging Cost Share</b>
Port	\$75,000.00
Metro	\$40,000.00
County	\$110,000.00

If the actual Dredging Project Costs (as defined in Section 4.6.1) are less than the Estimated First Dredging Cost, each party shall remain responsible for its percentage share (set forth below in the last subparagraph of this Section 4.6) of the actual Dredging Project Costs. If the actual Dredging Project Costs are more than the Estimated First Dredging Cost (such overage referenced herein as the "Excess Dredging Cost"), Metro shall still be responsible for paying FORTY THOUSAND DOLLARS AND NO CENTS (\$40,000.00), the Port shall pay \$75,000 plus Forty One Percent (41%) of the Excess Dredging Cost, and the County shall pay \$110,000 plus Fifty Nine Percent (59%) of the Excess Dredging Cost. For the first dredging, the Port shall invoice the other parties for their share of the Dredging Project Costs after dredging has been performed.

For each subsequent required maintenance dredging of the Dredging Area, the parties to this Agreement agree to pay the following percentage share of dredging project costs: the Port – 33%, Metro – 20%, and the County – 47%; unless the need for such dredging is caused by one or more, but not all, parties, in which case the responsible party or parties shall each pay the costs attributable to its proportionate share of the cause of such need.

#### **4.6.1 Payment of Dredging Project Costs**

Eligible costs for this cost share arrangement will include all out-of-pocket costs incurred by the Port for third-party work performed, such as work performed through contracts for dredging, sediment disposal, sediment testing, permitting fees, surveys, consultant design, and any other third-party contracted work required for the dredging project ("Dredging Project Costs"). The Port will absorb the costs of the Port Project Manager, and they will not be included in the Dredging Project Costs subject to the cost share arrangement outlined in Section 4.5. Payment shall be due at the following address within thirty (30) calendar days after receipt of the Port's invoice:

The Port of Portland  
P.O. Box 5095  
Portland, OR 97208-5095

#### **4.6.2 Frequency of Dredging**

The parties agree that maintenance dredging as governed by this Agreement should occur when access to and from the boathouses and Boat Dock is impeded, and it is reasonably necessary to dredge in order for the Port and MCSO boats to be able to enter and leave their boathouse and/or Boat Dock. Maintenance dredging is anticipated to be needed approximately every five (5) years. It is understood that the actual dredging need will be dependent upon natural processes such as those driving sedimentation rates and that dredging may be required more or less frequently. When it appears dredging is required, any party may notify the others that dredging is needed for access and provide reasonable documentation that such dredging is necessary. If all parties agree that dredging is necessary, the party requesting dredging may pursue such required dredging project and shall be reimbursed by the other parties for their proportionate share in accordance with Section 4.6. If a party objects to the documentation presented and believes dredging is not required, it must respond in writing within thirty (30) calendar days presenting reasonable evidence to the contrary. At that time, the parties will commence good faith informal discussions to resolve the matter. If such matter cannot be

resolved through these discussions, the Chief Operating Officer of Metro, the Executive Director of the Port, and the Multnomah County Sheriff shall meet to attempt to resolve the matter. If after such meeting, the parties cannot agree upon a resolution, they agree to enter into mediation as set forth in Section 6.7.

## **5. INDEMNIFICATION**

Subject to the limitations set forth in the Oregon Tort Claims Act and the Oregon Constitution, the Port agrees to indemnify, hold harmless and defend Metro and the County, and their respective commissioners, directors, officers, and employees from and against, and to reimburse Metro and the County for, all claims, actions, damages, injuries, costs, loss, or expenses incidental to the investigation and defense thereof, arising out of the acts or omissions of the Port, its agents, contractors, or employees.

Subject to the limitations set forth in the Oregon Tort Claims Act and the Oregon Constitution, Metro agrees to indemnify, hold harmless and defend the Port and the County, and their respective commissioners, directors, officers, and employees from and against, and to reimburse the Port and the County for, all claims, actions, damages, injuries, costs, loss, or expenses incidental to the investigation and defense thereof, arising out of the acts or omissions of Metro, its agents, contractors, or employees.

Subject to the limitations set forth in the Oregon Tort Claims Act and the Oregon Constitution, the County agrees to indemnify, up to the limits set forth under ORS 30.272, hold harmless and defend the Port and Metro, and their respective commissioners, directors, officers, and employees from and against, and to reimburse the Port and Metro for, all claims, actions, damages, injuries, costs, loss, or expenses incidental to the investigation and defense thereof, arising out of the acts or omissions of and the County, its agents, contractors, or employees.

## **6. GENERAL PROVISIONS**

### **6.1 Capacity To Execute**

The parties each warrant and represent to one another that this Agreement constitutes a legal, valid and binding obligation of that party. The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the party for whom they purport to be acting.

### **6.2 Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

### **6.3 Defined Terms**

Capitalized terms shall have the meaning given them in the text herein.

### **6.4 Entire Agreement**

This Agreement represents the entire agreement between the parties relating to the parties' responsibilities addressed in this Agreement. This Agreement has been thoroughly negotiated between the parties; therefore, in the event of ambiguity, there shall be no presumption that such ambiguity should be construed against the drafter.

## **6.5 Governing Law**

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Oregon. Jurisdiction shall be with Multnomah County Courts or the Federal Court located in Portland, Oregon.

## **6.6 Headings**

The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

## **6.7 Mediation**

All disputes arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal proceedings. The Port, Metro and the County shall endeavor to resolve any disputes initially by mediation. The mediator shall be an individual mutually acceptable to the parties. A request for mediation shall be given in writing to the other party or parties. The Port, Metro and the County shall share the mediator's fee and any filing fees equally. The mediation shall be held in Portland, Oregon at a location mutually acceptable to the Port, Metro and the County. The mediation hearing shall occur within thirty (30) calendar days of the request for mediation. Notwithstanding the foregoing, the Port, Metro and the County shall not be required to submit to mediation any claims in equity, such as claims for injunctive relief.

## **6.8 Modification**

Except as specifically set forth herein, this Agreement may not be modified or amended except by a written instrument duly executed by the authorized signatories for the parties hereto.

## **6.9 Notices**

All notices required under this Agreement shall be deemed to be properly served if sent by certified mail, return receipt requested, or delivered by hand to the last address furnished by the Port, Metro and the County. Until hereafter changed by notice in writing, notices shall be sent as follows:

to the Port at:

The Port of Portland  
P.O. Box 3529  
Portland, OR 97208  
Attention: Fire Chief

to Metro at:

Metro  
600 N.E. Grand Avenue  
Portland, OR 97232  
Attention: Office of Metro Attorney

With a copy to:

Metro  
600 N.E. Grand Avenue



Portland, OR 97232  
Attention: Director of Parks & Environmental Services

to the County at:

Multnomah County Sheriff's Office  
501 S.E. Hawthorne Blvd.  
Portland OR 97214  
Attention: Chief Deputy, Law Enforcement

With a copy to:

Multnomah County Attorney  
Attention: Real Property Group  
501 S.E. Hawthorne Blvd., Suite 500  
Portland, OR 97214

The date of service of such notice by mail is agreed to be three (3) calendar days after the day such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail or, if delivered by hand, then the actual date of hand delivery.

#### **6.10 Termination**

Unless terminated pursuant to other provisions of this Agreement, this Agreement may be terminated by mutual written consent of the Port, Metro and the County.

IN WITNESS WHEREOF, the parties have subscribed their names hereto effective as of the year and date first written above.

#### **METRO**

#### **THE PORT OF PORTLAND**

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

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

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

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

As Its: \_\_\_\_\_

As Its: \_\_\_\_\_

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

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

APPROVED FOR LEGAL SUFFICIENCY  
FOR METRO:

APPROVED FOR LEGAL SUFFICIENCY  
FOR THE PORT OF PORTLAND:

By: \_\_\_\_\_  
Counsel for Metro

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

#### **MULTNOMAH COUNTY**

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

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

As Its: \_\_\_\_\_

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

APPROVED FOR LEGAL SUFFICIENCY:  
JENNY M. MADKOUR, MULTNOMAH  
COUNTY ATTORNEY:

By: \_\_\_\_\_  
Assistant County Attorney

# EXHIBIT A

