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COUNTY COURT JOURNAL

INTERGOVERNMENTAL AGREEMENT
TILLAMOOK COUNTY AND PORT OF TILLAMOOK BAY
PORT/RAILROAD IMPROVEMENT PROJECT – SOUTHERN FLOW CORRIDOR

This Agreement is made and entered into, in duplicate originals, this 14th day of April, 2010 by and between Tillamook County, a political subdivision of the State of Oregon, hereinafter referred to as "COUNTY" and the PORT of Tillamook Bay, an Oregon Municipal Corporation, hereinafter referred to as "PORT".

RECITALS

1. COUNTY, PORT and others are engaged in an Oregon Solutions project for flood damage reduction on certain lands in Tillamook County within the boundaries of PORT.
2. As part of the Oregon Solutions project, the participants have identified a specific flood reduction project known variously as the Port/Railroad Improvement Project or the Southern Flow Corridor ("the Project"), as more particularly described in the February 2010 Project Exodus Final Report prepared by Northwest Hydraulic Consultants.
3. The Project will dramatically reduce flood elevations within the flood plain adjoining and west of PORT's railroad, between Hoquarten Slough and the Wilson River, including reductions in the one hundred (100) year flood levels from one to one and one-half (1 – 1 ½') feet along Highway 101.
4. Once completed the Project will have significant environmental restoration benefits with approximately six hundred (600) acres of salt marsh creation, many miles of stream restoration and substantial water quality and salmonid habitat benefits.
5. Under ORS 777.120(2), PORT has authority to engage in the control and prevention of river and streambank erosion and the prevention of damage from floodwaters and sediment.

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6. With PORT, as an enrolled participant with COUNTY and the City of Tillamook, as well as with other local, state and federal Oregon Solution's partners, have each previously signed the Declaration of Cooperation and a separate Statement of Assurances. As such, Project is an important prior commitment to the Oregon Solutions' efforts.
7. The Project would remove approximately forty-five thousand (45,000) lineal feet of levee and would construct approximately nine thousand six hundred (9,600') feet of tidal dike, including a gated spillway and various drainage devices within the tidal dike.
8. COUNTY presently owns three hundred seventy-seven (377) acres of the four hundred eighty-three (483) acre Project area.
9. In order to construct the Project, it will be necessary to acquire approximately one hundred six (106) acres of largely marginal farmland from four (4) separate private landowners, together with such other lands as those landowners might require be included in the acquisition as a condition of sale.
10. The three hundred seventy-seven (377) acre COUNTY-owned portion of the Project area is currently subject to certain deed restrictions and conditions relative to the creation and protection of salt water wetland values and is presently managed under an Intergovernmental Agreement and Management Plan ("the Plan"), copies of which are attached hereto and by this reference incorporated herein.
11. The current parties to the Plan are COUNTY, Tillamook County Soil and Water Conservation District, the City of Tillamook, the Oregon Department of Fish and Wildlife, Tillamook Bay Habitat and Estuary Improvement District and the Tillamook Estuary Partnership, who collectively participate in the management of the three hundred seventy-seven (377) acres and each of whom have participated either financially or with in-kind contributions to the operation and maintenance of the said lands and drainage structures thereon.
12. PORT currently has available to it certain FEMA funds for a series of alternative projects under FEMA-1733 DR OR in lieu of restoring its damaged railroad facilities.

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13. FEMA's Disaster Assistance Policy for Alternative Projects, DAP9525.13(VI) authorizes an eligible applicant to perform hazard mitigation measures unrelated to the original facility so long as the applicant can demonstrate project eligibility under the guidelines of DAP9525.13(VII).
14. Under 44 CFR 206.223(a)(3), to be eligible for financial assistance, an item of work must be the legal responsibility of an eligible applicant, in this case, PORT.
15. In order for PORT to demonstrate legal responsibility under the above circumstances, PORT must be the owner of the referenced three hundred seventy-seven (377) acre parcel and the additional lands acquired for the Project.
16. PORT is willing to assume ownership of said lands required for the Project as well as to undertake certain obligations in relation thereto, under the terms and conditions set forth in this Agreement.
17. COUNTY is willing to transfer its ownership of the three hundred seventy-seven (377) acres and such additional lands as might be acquired ("Project Lands") to PORT and to cooperate with implementation of the Project under the terms and conditions set forth in this Agreement.

WITNESSETH

NOW THEREFORE, IT IS HEREBY AGREED by and between the parties as follows: the mutual promises of each party are given in exchange and as consideration for the promises of the other party.

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SECTION 1. COUNTY'S RIGHTS, DUTIES AND AUTHORITIES

- 1.1. Conditions Precedent to PORT's Acquisition of Project Lands
 - 1.1.1. COUNTY will work with the US Fish and Wildlife Service, NOAA Fisheries, the Oregon Watershed Enhancement Board and others as required to obtain approval for PORT's acquisition of the Project Lands.
 - 1.1.2. COUNTY will work with FEMA and PORT to submit documentation and framework information, provide data collection for a Benefit/Cost Analysis, complete all other pre-requisites and obtain Project pre-approval from FEMA GHC as an eligible FEMA Alternative Project.
 - 1.1.3. COUNTY will seek to acquire such additional lands as might be needed for the Project and will thereafter take the steps required to include such additional Project Lands within the Management Plan.
 - 1.1.4. COUNTY, through Oregon Solutions, will be responsible for securing grants and all matching funds required for the Project.
- 1.2. Upon completion of the Conditions Precedent, COUNTY will transfer the Project Lands by deed to PORT, subject to the underlying restrictions, conditions and limitations on the use of the lands for wetlands and other resource values and subject also to easements and exceptions of record.
- 1.3. Oregon Solutions, through COUNTY, will prepare all contract procurement documents, provide Project management and administration and complete the closeout documentation for final design and construction of the Project.
- 1.4. COUNTY will continue to actively participate in the Management Plan for the Project Lands for so long as PORT is the owner of the Project Lands.

SECTION 2. PORT'S RIGHTS, DUTIES AND AUTHORITIES

- 2.1. PORT will cooperate with COUNTY to complete the Conditions Precedent described in Section 1.1 of this Agreement
- 2.2. Upon completion of the said Conditions Precedent, PORT will accept title to the Project Lands from COUNTY subject to the underlying restrictions, conditions

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and limitations on the use of the lands for wetlands and other resource values and subject also to easements and exceptions of record.

- 2.3. Upon PORT's acquisition of the Project Lands, PORT will enter into the IGA to become a party to the Management Plan and thereafter will manage the Project Lands in accordance with the provisions of the existing Management Plan or as such Plan might thereafter be amended by the parties to the Plan.
- 2.4. PORT will maintain the completed Project for the useful life of the improvements as required by FEMA.

SECTION 3. INSURANCE

- 3.1. Each party agrees to maintain insurance sufficient to meet sums specified by ORS 30.270.

SECTION 4. LIABILITY; INDEMNIFICATION

- 4.1. Each party shall indemnify and hold harmless the other party from all claims, costs, damages or expenses of any kind, including attorneys' fees and other costs and expenses of litigation, for personal or property damage arising out of that party's performance required by this Intergovernmental Agreement. It is the intent of this Section that each party assumes any and all liability for its respective torts, errors and omissions.

SECTION 5. EFFECTIVE DATE

- 5.1. This Agreement shall take effect on April 14, 2010.

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SECTION 6. TERM

- 6.1. The term of this Agreement shall be from the date upon which it is fully executed by the parties and continue in force and effect until terminated pursuant to the provision of Section 7 of this Agreement.

SECTION 7. TERMINATION

7.1. Without Notice

- 7.1.1. The parties mutually consent to termination in writing.

7.2. With Notice

- 7.2.1. Any party breaches any duty, term or condition of this Agreement.
7.2.2. Either party commits a fraud or misrepresentation upon the other party.

SECTION 8. GENERAL PROVISIONS

8.1. Waiver; Modification

- 8.1.1. Failure by either party to enforce any provision of this Agreement does not constitute that party's continuing waiver of that provision, any other provision or of the entire Agreement. The rights and duties under this Agreement shall not be modified, delegated, transferred or assigned, except upon the written-signed consent of both parties.

8.2. Attorneys' Fees

- 8.2.1. Attorney fees, costs and disbursements necessary to enforce this Agreement through mediation, arbitration and/or litigation, including appeals, shall be awarded to the prevailing party, unless otherwise specified herein or agreed.

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8.3. Legal Representation

8.3.1. In entering into this Agreement, each party has relied solely upon the advice of their own attorney. Each party has had the opportunity to consult with counsel or now waives that right. Each party represents and warrants to the other that they are fully satisfied with the representation received from their respective attorneys.

8.4. Notices

8.4.1. Any notice required or permitted under this Agreement shall be in writing and deemed given when:

8.4.1.1. actually delivered, or

8.4.1.2. Three (3) days after deposit in the United States Post, certified mail, postage prepaid, addressed to the other party at their last known address.

8.5. Language

8.5.1. The headings of the Agreement paragraphs are intended for information only and shall not be used to interpret paragraph contents. All masculine, feminine and neuter genders are interchangeable. All singular and plural nouns are interchangeable, unless the context requires otherwise.

8.6. Integration

8.6.1. This Agreement supersedes all prior oral or written Agreements between PORT and COUNTY regarding this site. It represents the entire Agreement between the parties. Time is of the essence in all terms, provisions, covenants and conditions in this Agreement.

8.7. Savings

8.7.1. Should any clause or section of this Agreement be declared by a Court to be void or voidable, the remainder of this Agreement shall remain in full force and effect.

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8.8. Jurisdiction; Law

8.8.1. This Agreement is executed in the State of Oregon and is subject to Tillamook County and Oregon law and jurisdiction. Venue shall be in Tillamook County, Oregon, unless otherwise agreed by the parties.

IN WITNESS WHEREOF, COUNTY and the PORT have executed this Agreement on the date first above written.

Dated this 12 day of April 2010.

PORT OF TILLAMOOK BAY

Michele Bradley
 Michele Bradley
 General Manager

THE BOARD OF COMMISSIONERS
 FOR TILLAMOOK COUNTY, OREGON

Dated April 14, 2010

Aye Nay Abstain/Absent

Mark Labhart
 Mark Labhart, Chair

Charles J. Huffmnan
 Charles J. Huffmnan, Vice-Chair

Tim Josi
 Tim Josi, Commissioner

ATTEST: Tassi O'Neil,
 County Clerk

APPROVED AS TO FORM:

By: Susan L. Beecraft
 Special Deputy

William K. Sargent
 County Counsel

