

**ADDENDUM #1 TO
MEMORANDUM OF AGREEMENT (MOA) #4971
FOR THE
SOUTHERN FLOW CORRIDOR - LANDOWNER PREFERRED ALTERNATIVE
MANAGEMENT PLAN**

This Memorandum of Agreement, hereinafter **AGREEMENT**, is made and entered into by and between the City of Tillamook, a municipal corporation, hereinafter **CITY**; Tillamook County, by and through its Board of Commissioners, hereinafter **COUNTY**; the Port of Tillamook Bay, by and through its Board of Commissioners, hereinafter **PORT**; the Tillamook Bay Flood Improvement District, by and through its Board of Directors, hereinafter **TBFID**; and the Tillamook Estuaries Partnership, *a non-profit corporation* ~~by and through its Board of Directors~~, hereinafter **TEP**, referred to collectively as **PARTIES**.

(~~Strike through text~~ indicates removals and *italicized text* indicates additions).

RECITALS

PURPOSE

- A. The purpose of this AGREEMENT is to define PARTIES' responsibilities associated with implementation of the Southern Flow Corridor – Landowner Preferred Alternative Management Plan (Plan), which expires December 31, 2022. The Plan provides guidance for the long-term operation and maintenance, adaptive management, and stewardship of the Southern Flow Corridor – Landowner Preferred Alternative Project (Project). PARTIES shall function as the Project Management Team.

BACKGROUND

- B. Borne from the critical need to mitigate flooding within Tillamook County and the City of Tillamook, the Project restored 443 acres of tidal wetlands, creating one of the largest wetland restoration areas in the northwest and also addressed the commercial, residential and agricultural concerns and needs of the region. The successful collaboration of more than 100 federal, state and local partners is estimated to yield substantial ecological and socioeconomic benefits. The more than 17-year process that resulted in one of the largest and most complex restorations in the Pacific Northwest came at a price tag of \$11.17 million.
- C. What seemed as insurmountable for so many years was finally achieved through the partnership of the "Oregon Solutions" Program. In 2006 and 2007 Tillamook County once again suffered large floods and extensive damages. After the 2006 flood, Governor Kulongoski established a flood mitigation effort as an "Oregon Solutions" project. The Oregon Solutions process provided a structure and process for public and private sectors to collaborate in addressing a technically and politically challenging community need. Subsequently, a 34-member Project Team of federal, state and local government agencies, community groups, business organizations, districts and individuals was assembled. In 2007 projects were identified and prioritized. The Project is the centerpiece of that effort.
- D. The Project goal is to reconnect the floodplain and restore the ecological processes and economic values of the upper Tillamook Bay estuary and the Wilson and Trask river deltas in order to: 1) improve

habitat for native fish and wildlife; 2) improve water quality and reduce sedimentation; 3) reduce flood hazards; and 4) enhance the overall health of Tillamook Bay.

- E. The 690-acre Project area encompasses public and private property and involved levee, road, and structure removals, ditch filling, tidal channel construction, and large wood placement.
- F. The land and easement acquisitions occurred between September 2013 and April 2016. Baseline monitoring activities were conducted between October 2013 and May 2015. Design and environmental compliance approvals were finalized between February 2014 and April 2016. Finally, on-the-ground construction work implemented the Project between January 2016 and November 2017.

EXISTING AGREEMENTS

- G. Intergovernmental Agreement (IGA) #3412 exists between COUNTY, Oregon Department of Fish and Wildlife (ODFW), and Tillamook County Soil and Water Conservation District for purposes of managing the COUNTY's original 377-acre property purchase in the Project area. IGA #3412 will terminate 90 days following execution of this AGREEMENT.
- H. Memorandum of Agreement (MOA) #4472 between CITY, COUNTY, PORT, TEP, and TBFID created a Project Management Team and established a rigorous framework for fiscal and operational accountability for managing the Project. MOA #4472 will terminate upon execution of this AGREEMENT.
- I. MOA #4914 exists between COUNTY and TEP for the purposes of defining their roles and responsibilities associated with Project vegetation restoration activities. MOA #4914 will terminate upon execution of this AGREEMENT.
- J. MOA #4639 exists between COUNTY and TEP for the purposes of defining their roles and responsibilities associated with Project monitoring and outreach activities. Pertinent roles have been carried forward into this AGREEMENT and MOA #4639 will terminate upon execution of this AGREEMENT.
- K. IGA #4626 exists between CITY and COUNTY for purposes of including CITY in participation of the Project Management Team and setting forth CITY and COUNTY interests in either conveying COUNTY-owned Sadri property to CITY or entering into a lease for the portion of the containment cell and boat launch that extend into the Sadri property. The IGA expires December 31, ~~2018~~ 2023.
- L. A permanent Conservation Easement exists between COUNTY and the Oregon Watershed Enhancement Board (OWEB) for the purposes of maintaining and protecting the conservation values on approximately 504 acres of the restored Project area. The easement is recorded in the Tillamook County Deed Records (Deed Records) as Instrument No. 2016-002688.
- M. COUNTY Order #05-43 In the Matter of Setting Aside Certain COUNTY Owned Lands in Perpetuity for the Restoration and Protection of Estuarine and Fresh Water Wetland Habitats exists for the purposes of restoring and protecting 81 acres of the Project area. The order is recorded in the Deed Records as Instrument No. 2005-004259.

- ~~N. A Farm Lease exists between COUNTY and Ronald R. Jones and Joyce L. Jones for the purposes of allowing the Joneses to reside on the leased property during the lease period. The lease expires on March 9, 2021.~~
- ~~O. An Option to Exchange Real Property exists between COUNTY and George Victor Allen and Ruth Marie Allen for the purposes of Allen's purchase of 9.42 acres of the COUNTY owned tax lot T1SR10W 24 600. The option is recorded in the Deed Records as Instrument No. 2015-005622.~~
- N. ~~P.~~ The Easement and Water Management Agreement between COUNTY and George Victor Allen and Ruth Marie Allen exists for the purposes of preserving as a viable dairy pasture an Allen-owned parcel adjacent to the Project area. The agreement is recorded in the Deed Records as Instrument No. 2016-001643.
- O. ~~Q.~~ An Easement Agreement – Grant of Flowage Right between COUNTY and Traskview Farm Inc. exists for the purpose of enabling increased floodwaters and prohibiting Traskview from placing obstructions on their adjoining parcel that would impede floodwaters on the parcel. The agreement is recorded in the Deed Records as Instrument No. 2016-004787 and expires August 18, 2066.
- P. ~~R.~~ An Access Easement exists between COUNTY and CITY for the purposes of implementing and maintaining the Project. The easement is recorded in the Deed Records as Instrument No. 2016-003469.
- Q. ~~S.~~ The State of Oregon Department of Environmental Quality (DEQ) Order on Consent to COUNTY exists for the purposes of acquiring and remediating the former Sadri property. The order is recorded in the Deed Records as Instrument No. 2016-000191
- R. ~~T.~~ The Easement and Equitable Servitudes between COUNTY and DEQ exists for the purposes of imposing certain requirements for the construction and future maintenance of the containment cell as part of the remediation effort on the former Sadri property. The agreement is recorded in the Deed Records as Instrument No. 2016-000584.
- S. ~~U.~~ The Easement and Equitable Servitudes between CITY and DEQ exists for the purposes of imposing certain requirements for the construction and future maintenance of the containment cell as part of the remediation effort on the CITY property. The agreement is recorded in the Deed Records as Instrument No. 2016-002574.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants, promises and undertakings hereinafter set forth, PARTIES agree as follows:

1. Rights, Duties, and Obligations of **PARTIES**. PARTIES shall:
 - 1.1 Carry out all responsibilities in PARTIES' respective existing agreements, including but not limited to those referenced in Recitals K-~~US~~.

- 1.2 Use the Plan as the guiding document to provide long-term Project stewardship through the collaboration on all Project discussions and decision-making, including, but not limited to, project monitoring, maintenance, adaptive management, outreach, and budgeting.
- 1.3 Participate in the annual summer Project maintenance and inspection, as set forth in the Plan and in table below, to determine needed maintenance and expenditures over the ensuing twelve-month period, as well as over longer terms.
- 1.4 Provide adequate funding to accomplish PARTIES' respective responsibilities, and to other PARTIES as possible, as summarized in the table below and expounded upon in the Plan.
- 1.5 Implement adaptive management, as needed.
- 1.6 Share updates and information to PARTIES, agencies, and the public.
- 1.7 Collaborate when developing public outreach strategies and consistent Project related communication.
- 1.8 Collaborate on the consideration of any deviations to the prohibited activities set forth in the Plan.
- 1.9 Participate in a review and update the Plan in 2027 ~~Summer 2022~~.

Maintenance and Inspection Considerations Summary

Maintenance Element	Responsible Party(ies)	Potential Funding Source(s)
Publicly-Owned Levees	COUNTY	COUNTY, TBFID
Spillway	COUNTY	COUNTY, TBFID
Tide Gates, Culverts, and Associated Drainage	COUNTY	COUNTY, TBFID
Containment Cell and Leave Surface	COUNTY, CITY*	COUNTY, CITY*
Invasive Species	COUNTY, CITY, TEP	COUNTY, CITY, TEP
Beaver Dams	COUNTY, TBFID	COUNTY, CITY, TBFID, ODFW
Public Access	COUNTY, CITY	COUNTY, CITY, ODFW, Transient Lodging Tax
Cameras	COUNTY, TEP	COUNTY, TEP
<i>Greenhouse Gas Monitoring Tower</i>	<i>TEP</i>	<i>TEP, Grants</i>

**COUNTY is the responsible party for the former Sadri property if and until the former Sadri property is transferred to CITY.*

2. Rights, Duties, and Obligations of **CITY**. CITY shall:

- 2.1 Provide parking and general property upkeep of CITY-owned portions of the Project area.
- 2.2 Enforce the prohibited activities pursuant to CITY's Code of Ordinances §§92.01 through 92.99 on CITY-owned portions of the Project area.

3 Rights, Duties, and Obligations of **COUNTY**. COUNTY shall:

- 3.1 Convene PARTIES each summer to conduct an inspection of the Project area.
- 3.2 Authorize emergency repairs as needed.
- 3.3 If maintenance, emergency repair, adaptive management, or other activity is identified by PARTIES and that activity may trigger environmental concurrence from a federal, state, or local jurisdiction, serve as lead agency to contact the appropriate jurisdiction(s) to determine the best course of action and/or obtain same.
- 3.4 Upon the occurrence of one or more triggers for adaptive management as described in the Plan, notify OWEB, United States Fish and Wildlife Service (USFWS), and the National Oceanic and Atmospheric Administration (NOAA) Restoration Center representatives. Such notice shall be provided as soon as reasonably possible to allow agency participation in the discussions and decision making.
- 3.5 Collaborate with PORT, Northwest Hydraulic Consultants, Inc. (NHC), or other contractor, as necessary, to respond to claims regarding impacts to the Peterson farm (tax lots 1S10W 23 1200, 1S10W 26 802, and 1S10W 26 900) levee, evaluate same and develop any necessary plan of action.
- ~~3.6 Monitor the former Brown property (tax lot 1S10W 23 1400) through at least September 22, 2019 to ensure certain invasive vegetation species are not present and submit post-project monitoring reports to the Oregon Department of State Lands (DSL) during the five-year period of this Plan.~~
- ~~3.7 Reimburse TEP for monitoring and educational activities reimbursable through USFWS funding contract #FWS-NFPP-11.~~
- 3.6 ~~3.8~~ Provide parking and general property upkeep of COUNTY-owned portions of the Project area.
- ~~3.7 Enact an ordinance for the enforcement of prohibited activities on COUNTY-owned portions of the Project area.~~
- 3.7 ~~3.10~~ Maintain records of meetings, inspections, maintenance conducted, and expenditures related to implementation of the Plan.

4. Rights, Duties, and Obligations of **PORT**. PORT shall:

- ~~4.1 Following flood events, coordinate with TBFID to inspect and monitor the maintenance elements listed in the table contained herein and any other Project elements that may be affected by an event.~~
- 4.1 ~~4.2~~ Monitor high wind and high-water events that have the potential to cause negative impact to the Peterson farm levee, as necessary and following communication from the Peterson family and only in a manner that is safe to perform.
- 4.2 ~~4.3~~ Collaborate with COUNTY, NHC, or other contractor, as necessary, to respond to claims regarding impacts to the Peterson farm (tax lots 1S10W 23 1200, 1S10W 26 802, and 1S10W 26 900) levee, evaluate same and develop any necessary plan of action.

5. Rights, Duties, and Obligations of **TBFID**. TBFID shall:

- 5.1 Following flood events, ~~coordinate with PORT to~~ inspect and monitor the maintenance elements listed in the table contained herein and any other Project elements that may be affected by an event.

6. Rights, Duties, and Obligations of **TEP**. TEP shall:

- 6.1 Seek and administer monitoring ~~and outreach~~ funding and procure and administer contracts necessary to implement the ~~outreach and~~ post-project monitoring pursuant to the ~~Tillamook SFC Outreach Plan (and any future updates)~~ and *SFC Project Effectiveness Monitoring Plan*. Support the ~~outreach and~~ monitoring efforts with staff time as available.
- 6.2 Lead and convene the Monitoring Advisory Committee and make adaptive management recommendations, as needed, to PARTIES.
- ~~6.3 Lead and convene Outreach Committee. Update and lead implementation of the Outreach Plan.~~
- 6.3 ~~6.4~~ Store and manage all monitoring data, except for flood modeling data, and respond to requests for monitoring data. Provide published reports on the TEP and Project websites.
- 6.4 ~~6.5 Invoice COUNTY for monitoring and educational activities reimbursable through USFWS funding contract #FWS-NEPP-11.~~
- 6.5 ~~Manage the COUNTY-owned camera installed on Cape Meares. The camera is exclusively for COUNTY and Project use. Store all photos and videos produced from the COUNTY-owned camera, formerly located on Cape Meares, for outreach, monitoring, and reporting purposes.~~
- 6.6 ~~6.7~~ Administer and maintain the Project *information on the TEP website* for the purposes of documenting the Project's history, sharing outcomes, and public education.
- 6.7 *Install and manage the greenhouse gas monitoring tower on Project site. Store all produced data for monitoring and reporting purposes. Seek funding for ongoing maintenance as required.*

7. TERMINATION.

- 7.1 This AGREEMENT shall terminate upon the written mutual consent of PARTIES.

8. INDEMNITY. Each party shall include appropriate indemnity clauses in any design or construction contracts issued for the Project. Such indemnity clauses shall require consultants, subconsultants, contractors, subcontractors, and suppliers to defend, indemnify and hold the PARTIES harmless from all claims, costs, damages, or expenses of any kind, including attorneys' fees and other costs and expenses of litigation, for personal injury or property damage to the extent such claims, costs, damages, or expenses arise out of that party's fault.

9. GENERAL PROVISIONS.

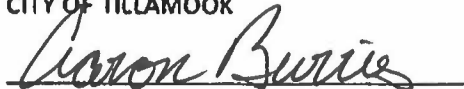
- 9.1 **MODIFICATION & WAIVER.** The rights and duties under this AGREEMENT shall not be modified, delegated, transferred or assigned, except upon the written-signed consent of the parties. Failure to enforce any provision of this AGREEMENT shall not operate as a waiver of such provision or of any other provision.
- 9.2 **ATTORNEY FEES.** 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.

- 9.3 LEGAL REPRESENTATION 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.
- 9.4 NOTICES. Any notice required or permitted under this AGREEMENT shall be in writing and deemed given when:
 - 9.4.1 actually delivered if not sent by mail as described below, or
 - 9.4.2 three days after deposit in United States certified mail, postage prepaid, addressed to the other party at their last known address.
- 9.5 LANGUAGE. 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.
- 9.6 SAVINGS. 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.
- 9.7 JURISDICTION; LAW. 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.
- 9.8 NO THIRD PARTY BENEFICIARIES. There are no intended third-party beneficiaries of this AGREEMENT.

11. AGREEMENT TERM. The term of this AGREEMENT shall begin November 1, 2018 and end December 31, 20222027.

ACKNOWLEDGMENT: EACH PARTY REPRESENTS TO THE OTHER BY THEIR SIGNATURES BELOW THAT EACH HAS READ, UNDERSTANDS, AND AGREES TO ALL COVENANTS, TERMS AND CONDITIONS OF THIS AGREEMENT. EACH PARTY REPRESENTS TO THE OTHER TO HAVE THE ACTUAL AND/OR APPARENT AUTHORITY TO BIND THEIR RESPECTIVE LEGAL PERSONS, CORPORATE OR OTHERWISE, IN CONTRACT.

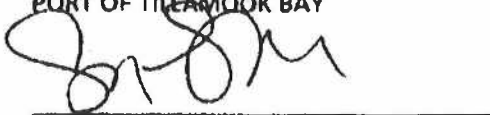
CITY OF TILLAMOOK



Aaron Burris, Mayor

DATED THIS 21 DAY OF Sept, 2023

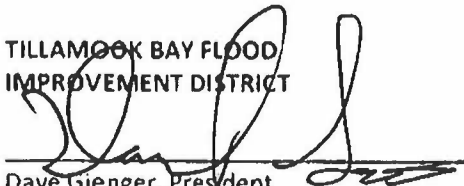
PORT OF TILLAMOOK BAY



Sierra Lauder, Board President

DATED THIS 18 DAY OF August, 2023

TILLAMOOK BAY FLOOD
IMPROVEMENT DISTRICT

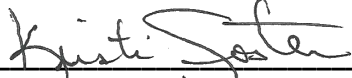


Dave Gienger, President

DATED THIS 23 DAY OF August, 2023

TILLAMOOK ESTUARIES PARTNERSHIP

DATED THIS 24 DAY OF July, 2023



Kristi Foster, Executive Director

**THE BOARD OF COMMISSIONERS
FOR TILLAMOOK COUNTY, OREGON**

DATED THIS 11th DAY OF October, 2023

Erin D. Skaar, Chair

Aye Nay Abstain/Absent
____ ____ / _____

Mary Faith Bell, Vice-Chair

____ ____ / _____

David Yamamoto, Commissioner

____ ____ / _____

ATTEST: Tassi O’Neil, County Clerk

APPROVED AS TO FORM

By: _____
Special Deputy

William K. Sargent, County Counsel