

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT WEST HAYDEN ISLAND (WHI) LAND USE APPROVALS WORK PROGRAM AND TASKS AMENDMENT NO. 2

This INTERGOVERNMENTAL AGREEMENT (Agreement) is between the CITY OF PORTLAND, a municipal corporation of the State of Oregon (City) and the PORT OF PORTLAND, an Oregon public corporation (Port). Collectively the City and Port are referred to as Parties, and each individually as a Party.

RECITALS:

1. ORS 190.010 authorizes the Parties to enter into this Agreement.
2. West Hayden Island (WHI) is located on the western portion of Hayden Island, west of the BNSF railroad tracks, along the south shore of the Columbia River, approximately nine miles north of downtown Portland. WHI consists of approximately 800 acres and 5.8 miles of Columbia riverfront, used by a variety of wildlife species. The site also includes a dredge material handling facility, a City of Portland sewer outfall, right-of-way and electric transmission lines. In-water areas immediately adjacent to WHI are used for a variety of purposes, including habitat, recreation, and waterborne commerce.
3. WHI is located in unincorporated Multnomah County. Metro brought WHI into Metro's Urban Growth Boundary in 1983 for the expressed purpose of marine industrial land development. In Metro's 1995 2040 Growth Concept Plan, the northern portion of WHI was designated industrial and the southern portion designated as open space. In the 2004 Metro Title 4 decision, all of WHI was designated as Regionally Significant Industrial land and reflected on the updated 2040 growth concept.
4. In 2005 WHI was also identified by Metro as a high value riparian area and as a habitat of concern in the adopted regional inventory of significant natural areas. In consideration of the high urban development value also on the site, WHI received a designation of moderate habitat conservation area in Metro's Title 13 process. The shallow water habitat surrounding West Hayden Island is designated as "critical habitat" for salmonid species listed under the Federal Endangered Species Act.
5. The City has administered land uses on WHI using the Multnomah County zoning ordinance. The current zoning is Multiple Use Forest, MUF-19, with a Significant Environmental Concern (SEC) overlay.
6. The Port purchased WHI in 1994 for expansion of marine industrial facilities after Metro brought WHI into the UGB, in accordance with Metro's responsibility to provide a 20 year land supply for commercial, industrial and residential uses.
7. In the late 1990s, the Port took a number of steps to implement a comprehensive development program for marine facilities at WHI. The Port worked with the City to annex, zone and create a plan district for WHI. In 2000, the Port postponed the annexation, permitting and development planning work.
8. In the summer of 2007, the City began preparation of the Hayden Island Plan (for that portion of the island east of BNSF railroad tracks), which does not include WHI. The Hayden Island Plan was scheduled to coincide with the work on improvements planned for the I-5 corridor across Hayden Island, known as the Columbia Crossing.

9. Given the timing of the Hayden Island Plan and the Columbia Crossing, the City and the Port desire to work collaboratively together on future planning for WHI. The City and Port are initiating a process to develop a legislative proposal for annexation of WHI into the City of Portland for City Council consideration, and proceed with zoning the land in a manner compatible with Metro's 2040 Growth Concept Plan, Metro Titles 4, 11 and 13, and pertinent city, state and federal policies and regulations contingent upon the work contained in this agreement.
10. Metro Code section 3.07.1330(B)(4)(a), which is part of Title 13 (Nature in Neighborhoods), requires the City to develop a district plan in cooperation with the Port of Portland. The City uses a "plan district" framework, as defined in the Portland Zoning Code, to implement locally-specific area plans (which Metro refers to as "district plans"). The City and Port's objective is to complete the City legislative process for annexation, Comprehensive Plan and Map designation, zoning, and plan district adoption. Longer term, more detailed planning efforts, including any federally required environmental impact analyses, will be deferred until such time as there is a specific proposal.
11. The Port and the City recognize that the annexation and future development of WHI may have significant social, economic, energy, and environmental impacts.
12. The City and the Port are embarking on this in a full faith effort to consider annexation and application of appropriate City zoning to WHI, and the final decision in this process will be made by the Portland City Council.
13. It is in the City and Port's interest to outline the process and associated costs of the integrated land use planning effort between the City and Port, including work tasks, timelines, expected products and funding mechanisms.
14. The WHI planning process is envisioned as a collaborative effort between the City, Port and regional stakeholders to be conducted within the framework of, and consistent with, state and local land use policies and regulations. The process acknowledges the future importance of WHI in the bi-state regional economy and its importance in the regional ecosystem and open space network. The process will examine creative approaches to addressing annexation, Comprehensive Plan and Map designations, and zoning for future uses.
15. The City and Port acknowledge that decisions made in this process may be controversial. Accordingly, it is in the City and Port's interest that the process be fact-based, and managed in a way that maintains trust among stakeholders and avoids a real or perceived bias toward a specific outcome.
16. The City and the Port entered into Intergovernmental Agreement No.30000526, effective May 29 2009, passed by Council on May 28, 2009 (City Ordinance 182856), and subsequently amended on June 9, 2010 (City Ordinance 183884). The City and Port have worked collaboratively with a Community Working Group (CWG) since the original adoption of this IGA. Initial Foundation Studies are complete, and the City Council considered the CWG's recommendations on July 29, 2010.
17. On July 29, 2010 City Council adopted Resolution No. 36805, which directed the Bureau of Planning and Sustainability to prepare a proposal for annexation of WHI with the intent to protect at least 500 acres as open space, and identify no more than 300 acres for future deep water marine terminal development. The resolution also outlined a set of parameters and next steps for WHI planning. Based on that resolution, the Parties agree an extension of the IGA would be mutually beneficial.

TERMS AND CONDITIONS

1. GENERAL AGREEMENT

This Agreement outlines the work the Parties will undertake to bring forward to the City Council a proposal to annex, adopt Comprehensive Plan designations, zone and create a plan district for WHI using a City legislative annexation process, updated based upon the Council Resolution No. 36805. The project will involve development of specific concept plans for City Council and Port Commission consideration. Community involvement is a central element of this planning process. Draft plans should be presented to the public in a neutral manner, without presuming the outcome of the process (see Section 2.E below).

Included is a description of the work program and tasks that the City will undertake and the portion of the planning costs that will be reimbursed by the Port.

The City and Port agree that while the Port is paying for a portion of the costs associated with this work, there is no guarantee that any or all of the work product will be adopted by the City Council, or the Port Commission, or adopted in the form recommended by the Planning Commission to the City Council.

2. CITY RESPONSIBILITY

- A The City agrees to work collaboratively with the Port in an ongoing planning process, as described in Exhibit 1, "Revised Work Program for Integrated Port and City West Hayden Island Annexation, Zoning and Planning." The planning process will include a public outreach component and solicitation of input from stakeholders as described in Exhibit 1; as well as an Advisory Committee, which will include Port representation, as described in Exhibit 2, "Advisory Committee Charter". The Bureau of Planning and Sustainability will prepare for and participate in periodic work sessions with both the City Council and Port Commission, at key project milestones, as described in Exhibit 1.
- B Consistent with the applicable state, regional and local annexation procedures, the Bureau of Planning and Sustainability (BPS) will prepare and present a proposal to City Council to annex, adopt Comprehensive Plan designations, zone and create a plan district for WHI. BPS will produce a written plan/report and documentation consistent with the project purpose described in Exhibit 1. BPS will coordinate with the Portland Bureau of Transportation (PBOT) as necessary to provide required transportation planning findings. The PBOT work plan is as outlined in Exhibit 3, Interagency Agreement between Portland Bureau of Transportation and Portland Bureau of Planning and Sustainability for the West Hayden Island Land Use Planning Process (hereafter referred to as the PBOT Agreement).
- C BPS will contract with a variety of consultant(s), as described in the List of Technical Reports in Exhibit 1. The purpose of these consultant contracts is to prepare a concept plan, complete technical work necessary to evaluate annexation of WHI, and to answer questions posed by City Council in its July 2010 resolution. The consultant(s) selected must meet minimum qualifications established by the City, including experience commensurate with the specific scope of work. The consultant(s) shall be selected by the City using City procurement processes. The City will include a member of the Advisory Committee or a person chosen by the

Advisory Committee on all consultant selection committees.

- D The City will manage an Advisory Committee process and hire a professional facilitator as described in Exhibit 1.
- E Notwithstanding Section 2.B above, nothing in this Agreement is intended to commit the City to annex WHI, limit or prohibit the City from initiating changes to the *Zoning Code*, or predetermine the outcome of any annexation proceedings or legislative land use proceedings concerning WHI in accordance with the law.

3. PORT RESPONSIBILITY

- A. The Port agrees to work collaboratively with the City in an ongoing annexation and planning process, as described in Exhibit 1 to the Agreement per Metro Title 13. The WHI annexation and planning process will include stakeholder involvement and public outreach as described in Exhibit 1. The Port will participate in this planning process consistent with its public mission to enhance the region's economy and quality of life by providing access to national and global markets.
- B. The Port will participate in the Advisory Committee. The Advisory Committee Charter is attached as Exhibit 2.
- C. The Port will provide studies, expertise, baseline information and data to BPS at the request of the City and/or Advisory Committee to complete all phases of the technical studies, concept plan development and the legislative land use process.
- D. The Port's goal is to create a WHI Plan District that allows for marine industrial and open space land use designation consistent with the Port's mission, state, regional and local land use policies and regulations. Nothing in this Agreement is intended to be construed as Port approval of a specific annexation, comprehensive plan and map designation, zoning or plan district of its property on WHI. The Port reserves all rights to object to City Council determinations regarding planning for WHI and/or to withdraw its consent to annex WHI.

4. PAYMENT

The Port agrees to reimburse the City for certain reasonable costs associated with the City's management and staffing of the annexation and planning process in the amounts and on the terms specified in this Agreement and based on the work scope as outlined in Exhibit 1.

FY 2008/2009 and 2009/2010

- A. **Staff Time and Materials.** The Port agrees to reimburse the City for its actual cost of salary and benefits for staff time spent on the WHI annexation project for the following specific staff: one full time Senior planner; one full time City Planner 2; and additional assistance from environmental planning staff, PBOT planning staff, graphics staff, and communications staff. The total amount reimbursed by the Port for all staff and materials will not exceed \$245,000, for the City's FY 08/09 and FY 09/10.
- B. **Foundation Studies.** The Port agrees to reimburse the City for facilitation, economic, and environmental consultant work not to exceed \$195,000 during the City's FY

2009/10, based on mutually developed work scopes that have been informed by the CWG discussion.

FY 2010/2011

- C. Staff Time and Materials. The Port agrees to reimburse the City for its actual cost of salary and benefits for staff time spent on the WHI annexation project for the following specific staff: one full time Community Outreach and Information Representative; one full time City Planner 2; and additional assistance from environmental planning staff, PBOT planning staff, graphics staff, and communications staff. City staff at BES, OHWR, and Parks and Recreation will be involved in some elements of the project work plan as described in the Exhibit 1. The total amount reimbursed by the Port for all staff and materials in the City's FY 2010/11 will not exceed \$195,500.
- D. Consultant Services. The Port agrees to reimburse the City for external consultant services not to exceed \$191,000 during the City's FY 2010/11, based on work scopes that have been informed by the July 2010 City Council Resolution.

FY 2011/2012

- E. Staff Time and Materials. The Port agrees to reimburse the City for its actual cost of salary and benefits for staff time spent on the WHI annexation planning process for the following specific staff: one Community Outreach and Information Representative; one City Planner 2; and additional assistance from environmental planning staff, PBOT planning staff, graphics staff, and communications staff. City staff at BES, OHWR, and Parks and Recreation will be involved in some elements of the project work plan as described in the Exhibit 1. The total amount reimbursed by the Port for all staff and materials in the City's FY 2011/12 will not exceed \$67,000.
- F. Consultant Services. The Port agrees to reimburse the City for external consultant services not to exceed \$37,500 during the City's FY 2011/12, based on work scopes that have been informed by the July 2010 City Council Resolution.

Generally:

- G. The Port agrees to reimburse the City for tasks identified in the PBOT Agreement. The amount of that reimbursement will be counted against the not to exceed limits stated in paragraphs A through F above. The PBOT Agreement identified expected apportionment of those tasks to FY 2009/10, 2010/11 and 2011/12.
- H. The Port will not pay for sick time, holidays, and vacation. The City will not bill the Port (and the Port will not pay) for any time the WHI planning staff spends working on any other project or administrative work. Within the budgetary limits described above, the Port also agrees to reimburse the City for materials costs such as printing the plan, copies of materials discussed at project-related meetings, and incidental costs related to CWG meetings. The Port will be billed monthly, in arrears, and will have thirty (30) days to pay the invoice. Each invoice will be accompanied by time recordings, in a form acceptable to the Port, showing the planning hours worked by planning staff exclusively on the Port's project.

- I. Reimbursement is not contingent on the City reaching specific conclusions in any of the individual work products, or contingent on the outcome of any annexation proceedings or legislative land use proceedings concerning WHI in accordance with the law.

5. COMMUNICATIONS

All formal communications and notices relating to the administration of this Agreement shall be directed to the following persons:

Port of Portland – Susie Lahsene
Bureau of Planning and Sustainability – Eric Engstrom

6. TERM

This Agreement shall be effective upon execution by both Parties and will terminate on December 31, 2011. The Parties may extend the term of the Agreement by mutual written agreement.

7. TERMINATION

Any one of the Parties may terminate this Agreement without cause with 30 days written notice to the other Party. In the event of termination, the City shall invoice the Port for work performed through the date of termination and the Port shall pay in accordance with paragraph 4.

8. AMENDMENTS

This Agreement and its terms and conditions may be amended by mutual written agreement of the Parties. Amendments shall be valid only when reduced to writing and signed by both Parties. Any amendment to this Agreement will incorporate a detailed schedule and budget for reimbursable costs incurred by the City, as described in Paragraph 4 above.

9. LAWS GOVERNING

This Agreement shall be construed and governed, in all respects, in accordance with the laws of the State of Oregon. Should any portion of this Agreement or any amendments thereto be adjudicated by a court of competent jurisdiction to be in violation of any local, state, federal law or regulation, then such portion or portions shall become null and void, and the parties may terminate this Agreement or they may agree to promptly renegotiate the Agreement to bring this Agreement into compliance with said laws.

10. MEDIATION

The Parties intend that this IGA will be used as a tool toward achieving their mutual goal of annexation, Comprehensive Plan and Map designation and a Plan District for WHI. In the event, however, that either the City or the Port believes that there is a conflict that cannot be resolved through this joint working process, either Party may request a review of issues by the Mayor and Executive Director of the Port, which may include mediation.

11. ENTIRE AGREEMENT

This Agreement, including Exhibit 1, Exhibit 2 and Exhibit 3, contains the entire agreement between the two Parties and supersedes any and all other agreements, written or oral, expressed or implied, pertaining to the subject matter hereof.

APPROVED BY:

CITY OF PORTLAND

By: _____
By: _____
Sam Adams, Mayor

Date: _____
Date: _____

By: _____
LaVonne Griffin-Valade, Auditor

Date: _____

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Approved as to form:
CITY ATTORNEY

By: _____
Linda Meng, City Attorney

Date: _____

PORT OF PORTLAND

Bill Wyatt, Executive Director

Approved as to form:
COUNSEL FOR THE
PORT OF PORTLAND

By: _____