

FILED

BEFORE THE BOARD OF COMMISSIONERS

2000 DEC 20 PM 3:17

FOR TILLAMOOK COUNTY OREGON

JOSEPHINE VELTRI
COUNTY CLERK

In the Matter of Authorizing the Creation of the)
Tillamook Light Wave Intergovernmental)
Agency by Intergovernmental Agreement)

ORDINANCE # 57

DEPUTY

The Board of Commissioners for Tillamook County ordains as follows:

WHEREAS, the Tillamook County Board of Commissioners ("County") desires to enter into an intergovernmental agreement pursuant to ORS 191.010 with the Port of Tillamook Bay and Tillamook People's Utility District; and

WHEREAS, the intergovernmental agreement creates the Tillamook Light Wave Intergovernmental Agency ("TLW IGA"); and

WHEREAS, the County desires to ratify its participation in the intergovernmental agreement and the creation of the TLW IGA.

NOW THEREFORE, the Tillamook County Board of Commissioners ordains as follows:

Section 1. It is the intent of the County to create the TLW IGA pursuant to ORS 190.003 through 190.085 by an intergovernmental agreement with the following parties at this time: the Port of Tillamook Bay; Tillamook County and Tillamook People's Utility District and such additional parties as may join subsequently.

Section 2. The effective date of the intergovernmental agreement is as indicated in the TLW IGA.

Section 3. The public purposes for which the TLW IGA is created is to further the economy and efficiency of each party to the intergovernmental agreement in the construction, maintenance, operation and control of a fiber optic network.

Section 4. The powers, duties and functions of the TLW IGA are described in the intergovernmental agreement attached as Exhibit A to this Ordinance.

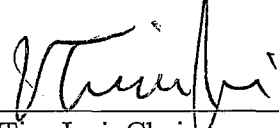
Section 5. The creation of the TLW IGA pursuant to an intergovernmental agreement, substantially in the form of Exhibit A is hereby ratified and approved.

Section 6. Immediate action being necessary to carry out the TLW IGA public purposes on an economic and efficient basis, an emergency is declared to exist and this Ordinance shall take effect immediately upon its execution by the Board.

This ordinance was duly and regularly passed and adopted by the Tillamook County Board of Commissioners this 13th day of December, 2000 and shall be effective immediately.

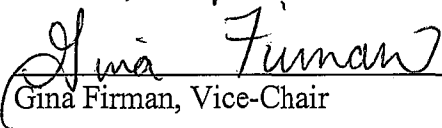
Date of First Reading: December 6, 2000
Date of Second Reading: December 20, 2000

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



Tim Josi, Chair

Aye Nay Abstain/absent
 ✓ /



Gina Firman, Vice-Chair

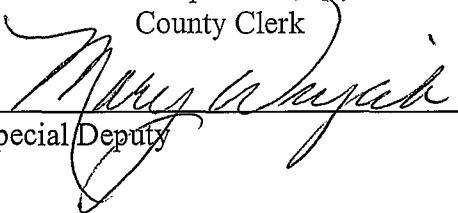
 ✓ /



Sue Cameron, Commissioner


 / ✓

ATTEST: Josephine Veltri,
County Clerk

By 

Special Deputy

APPROVED AS TO FORM:



William K. Sargent,
County Counsel



INTERGOVERNMENTAL AGREEMENT CREATING THE TILLAMOOK LIGHTWAVE INTERGOVERNMENTAL AGENCY

2009 NOV - 1 PM 3:10

JOSEPHINE VELLA
COUNTY CLERK

THIS INTERGOVERNMENTAL AGREEMENT CREATING THE TILLAMOOK LIGHTWAVE INTERGOVERNMENTAL AGENCY (Agreement) is entered into by and between the following parties: the Tillamook People's Utility District, an Oregon PUD formed under ORS Chapter 261 ("TPUD"); the Port of Tillamook Bay, an Oregon municipal corporation formed under ORS Chapter 777 ("Port"); and Tillamook County, a political subdivision of the State of Oregon formed under the Oregon Constitution and ORS Chapter 203 ("County"), (each of which is referred to herein individually as a "Party" and collectively as the "Parties").

RECITALS:

- A. WHEREAS, the Parties hereto are authorized to enter into this Agreement creating an intergovernmental agency pursuant to their respective principal acts and ORS 190.003 to 190.265;
- B. WHEREAS, TPUD is a consumer-owned utility engaged in the distribution and sale of electric energy;
- C. WHEREAS, TPUD requires telecommunications capabilities for the efficient management of electric load, conservation, acquisition and distribution of electrical energy and other utility purposes;
- D. WHEREAS, TPUD further desires to promote economic growth and the expansion or addition of business and industry within Tillamook County through the development of telecommunications infrastructure and related programs;
- E. WHEREAS, the Port is engaged in the ownership, operation and maintenance of port facilities in Tillamook County;
- F. WHEREAS, the Port requires telecommunications capabilities for the efficient management of Port facilities;
- G. WHEREAS, Port further desires to promote its commercial interests through the development of telecommunications infrastructure and related programs;
- H. WHEREAS, County is engaged in the provision of general local governmental services within Tillamook County;
- I. WHEREAS, the County operations require telecommunications capabilities for the efficient provision of local governmental services;
- J. WHEREAS, the County further desires to promote economic development within Tillamook County through the development of telecommunications infrastructure and related programs;

- K. WHEREAS, the Parties intend to further the economy and efficiency of their respective units of local government by forming an intergovernmental agency;
- L. WHEREAS, pursuant to ORS 190.010, an intergovernmental agency may perform any or all functions and activities that a Party to an Agreement, or its officers or agencies, has the authority to perform;
- M. WHEREAS, the Parties intend to use any authority delegated to the Tillamook Lightwave Intergovernmental Agency (as defined herein) to further the economy and efficiency of each Party by the design, construction, ownership, operation and maintenance of a telecommunications network for the benefit of Tillamook County;
- N. WHEREAS, each of the Parties has taken all actions required under applicable acts, charters and law to authorize the execution and performance of this Agreement;
- O. WHEREAS, the Parties intend by this Agreement to set forth the authority, terms, and conditions pursuant to which the Tillamook Lightwave Intergovernmental Agency will act;

NOW, THEREFORE, THE PARTIES agree as follows:

ARTICLE I

TILLAMOOK LIGHTWAVE IGA

1.1 Tillamook Lightwave IGA. There is hereby created the Tillamook Lightwave Intergovernmental Agency ("Tillamook Lightwave IGA"). The parties to the Tillamook Lightwave IGA are TPUD, the Port and the County.

1.2 Effective Date. The effective date of this Agreement is Nov. 1, 2000.

1.3 General Powers. The Tillamook Lightwave IGA shall have the following general powers:

1.3.1 To adopt, through action of its Board (as defined herein), such bylaws, rules, regulations, and policies necessary to further the purposes of this Agreement;

1.3.2 To study the best method to design, construct, own, operate and maintain a telecommunications network for the benefit of Tillamook County;

1.3.3 To perform and exercise, pursuant to the principal acts of the Parties or by ORS 190.003 to 190.265, all powers pursuant to applicable charter, ordinance, or state or federal law which are necessary or desirable to efficiently and effectively design, construct, own, operate and maintain a telecommunications network for the benefit of Tillamook County;

1.3.4 To purchase, own, hold, appropriate, and condemn land, facilities, or right of way either in its own name or in the name of the individual Parties hereto in furtherance of the

construction, ownership, operation or maintenance of a telecommunications network for the benefit of Tillamook County;

1.3.5 To enter into agreements with other public or private entities for the purpose of design, construction, ownership, operation or maintenance of a telecommunications network in Tillamook;

1.3.6 To issue, sell or otherwise dispose of bonds, securities, or other forms of indebtedness, including the power to issue revenue bonds under ORS 288.805 to ORS 288.945;

1.3.7 To hire and discharge employees, by unanimous vote of the Board, as is necessary or desirable to economically and efficiently develop and operate the Tillamook Lightwave IGA; and

1.3.8 To exercise all powers pursuant to the applicable acts or law of the individual Parties which are necessary or desirable to economically and efficiently develop and operate the Tillamook Lightwave IGA.

1.4 Meetings. Meetings of the Tillamook Lightwave IGA shall be conducted in accordance with the provisions of the Oregon Public Meetings Law, ORS 192.610 to 192.710.

1.5 Offices. The principal offices of the Tillamook Lightwave IGA shall be located at Port of Tillamook Bay, 4000 Blimp Blvd., 97141.

1.6 Budgeting. The Board shall provide for an annual work plan and an estimate of expenses for the next fiscal year. Each Party may provide in-kind services to further the purposes of the Tillamook Lightwave IGA as each Party deems necessary or desirable. Such in-kind services shall not be reimbursed from the Tillamook Lightwave IGA or other Parties, unless otherwise agreed.

1.7 Several Liability. Unless as otherwise expressly agreed in writing, there shall be no joint and several liability of the Parties either in contract or tort and all obligations of the Tillamook Lightwave IGA or the Parties shall be several only. Without limiting the foregoing, no Party to the Tillamook Lightwave IGA shall be liable for damages, debts or claims caused solely by the negligent act, omission or other wrongful act by the Tillamook Lightwave IGA or other Parties. The Party causing damage by its sole negligent act, omission or wrongful act shall be individually liable.

ARTICLE II

GOVERNANCE AND MEMBERSHIP

2.1 Board of Directors. The Tillamook Lightwave IGA shall be governed by a Board of Directors ("Board"). The governing body of each Party shall appoint one (1) representative to the Board and one (1) alternate representative. An alternate representative shall act in a Board capacity only during the absence of that Party's representative. Representatives and alternate representatives shall serve at the pleasure of their respective governing bodies. In the event of a

vacancy, the governing body of the Party that appointed the departed representative shall appoint a successor.

2.2 Officers. After the effective date of this Agreement, the Board shall elect from its membership a President, a Vice President, and a Secretary/Treasurer (collectively, the "Officers") who shall serve a term consisting of the remainder of 2000 and the following calendar year. Thereafter, annually, at the beginning of each calendar year, the Board shall elect from its membership Officers who shall serve a term of one (1) year. Officers shall serve at the pleasure of the Board or until their successors shall be appointed and take office.

2.2.1 Duties of President. The President shall preside at all meetings of the Tillamook Lightwave IGA and shall submit such recommendations and information as she or he may determine appropriate to discuss at the Tillamook Lightwave IGA meeting. The President shall perform the duties and responsibilities of the Tillamook Lightwave IGA in accordance with the obligations and limitations set forth in this Agreement. The President shall otherwise not hold herself or himself out to have the authority to bind the members of the Tillamook Lightwave IGA to any financial or other obligations.

2.2.2 Duties of Vice President. The Vice President shall perform the duties of the President in the absence or the incapacity of the President. In the case of the resignation or the death of the President, the Vice President shall perform the duties of the President until such time as the Board shall elect a new President.

2.2.3 Secretary/Treasurer. The Secretary/Treasurer shall keep the minutes and the official records of the Tillamook Lightwave IGA and perform such other duties required of a Secretary/Treasurer. The Secretary/Treasurer shall be responsible for the fiscal administration of all funds of the Tillamook Lightwave IGA. The Secretary/Treasurer and either the President or the Vice President shall act as co-signers of checks drawn upon the accounts of the Tillamook Lightwave IGA. The Secretary/Treasurer may delegate the administrative functions of her or his office to another person or persons who need not be on the Board.

2.2.4 Additional Duties. The Officers of the Tillamook Lightwave IGA shall perform such other duties and functions as may from time to time be required by the Tillamook Lightwave IGA bylaws, or other rules and regulations.

2.3 Voting Rights. Except as otherwise expressly provided in this Agreement, the Board shall exercise its voting rights in the following manner:

2.3.1 Manner of Acting. A majority vote of the Board shall be necessary to decide any issue except that a unanimous vote of the Board shall be required to decide financial matters described in Section 2.3.2, for the addition of new members pursuant to Section 2.3.3, for the hiring and discharging of employees pursuant to Section 1.3.7, for the acceptance of or amendment to the scope of work pursuant to Sections 2.5.1 and 2.5.2, and for the dissolution of the Tillamook Lightwave IGA pursuant to Section 3.1;

2.3.2 Financial Matters. Any decision of Tillamook Lightwave IGA involving the

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procurement of goods or services, or the incurrence of any financial obligation, including the issuance or sale of bonds, securities or other forms of indebtedness, shall require the affirmative authorization of each individual Party to be bound, such authorization to be expressed by resolution, ordinance or other binding commitment of the Party's governing body. Parties not affirmatively authorizing such actions shall in no instances be liable. The procurement of goods and services shall be performed by resolution or separate agreement which specifies (1) the apportionment of fees, costs, or revenue derived from the functions and activities; and (2) the manner in which such revenue shall be accounted for. Such resolution or separate agreement may or may not involve the participation of the Tillamook Lightwave IGA; however, such participation of the Tillamook Lightwave IGA shall not create liability for a Party that has not affirmatively authorized such action;

2.3.3 New Members. The Board may authorize a new Party to join the Tillamook Lightwave IGA only if approved by a unanimous vote of the Board;

2.4 Insurance. The Tillamook Lightwave IGA shall provide for adequate insurance to cover the directors, officers, employees, staff, agents and activities undertaken by the Tillamook Lightwave IGA.

2.5 Scope of Work. A scope of work shall be presented for each specific task or project to be undertaken by the Tillamook Lightwave IGA. The scope of work shall contain a reasonably detailed description of the activities to be undertaken by Tillamook Lightwave IGA, a description of any necessary contractual arrangements, an itemization of the costs to be incurred in pursuing these activities, an allocation of costs, in-kind services and ownership interest in the Project among the participating Parties, a plan for project governance, an estimate of the expected revenues from such activities and an allocation of such revenues among the participating Parties.

2.5.1 Acceptance. Each scope of work shall be negotiated on a case by case basis and if approved by each Party shall be attached as an addendum to this Agreement.

2.5.2 Amendments. No change in a scope of work shall occur without each Party's written consent.

ARTICLE III

TERM AND TERMINATION

3.1 Term. The term of this Agreement shall be perpetual unless, by a unanimous vote, the Parties act to dissolve the Tillamook Lightwave IGA.

3.1.1 Dissolution. Upon dissolution, each Party to the Tillamook Lightwave IGA on the date of dissolution shall remain liable solely for its individual share of any Tillamook Lightwave IGA expenditure that has been specifically incurred by the Party in accordance with the terms of this Agreement or by other resolutions or separate agreements of the Party. Upon dissolution, the assets of the Tillamook Lightwave IGA shall be distributed to the members on the basis of the rights and obligations of each Party to the assets held as of the date of the dissolution.

3.2 Voluntary Withdrawal by a Party. Any Party may elect to terminate their participation in this Agreement and withdraw from the Tillamook Lightwave IGA by giving written notice to the President and each member of the Tillamook Lightwave IGA. Withdrawal shall be effective forty-five (45) days from the date of notice. The withdrawing Party shall continue to pay its apportioned share of, or be responsible for, any debt attributable to that Party incurred prior to the Party's written notice of withdrawal, and shall hold harmless the remaining Parties and the Tillamook Lightwave IGA for those financial responsibilities and obligations attributable solely to the withdrawing Party.

ARTICLE IV

DISPUTE RESOLUTION

4.1 Dispute Resolution. If a dispute arises between the Parties or between the Tillamook Lightwave IGA and the Parties regarding breach of this Agreement or interpretation of any term of this Agreement, the Parties shall first attempt to resolve the dispute by negotiation, followed by binding arbitration if negotiation fails to resolve the dispute.

4.1.1 Negotiation. The Board Member or other persons designated by each of the disputing Parties will negotiate on behalf of the Parties they represent. The nature of the dispute shall be reduced to writing and shall be presented to each of the disputing Parties who shall then meet and attempt to resolve the issue. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each disputing Party and ratified by the Tillamook Lightwave IGA which shall be binding upon the Parties.

4.1.2 Binding Arbitration. If the dispute cannot be resolved by negotiation within forty-five (45) days, the parties shall submit the matter to binding arbitration. The Parties shall attempt to agree on an arbitrator. If they cannot agree upon an arbitrator within ten (10) days, the Parties shall submit the matter of determining an arbitrator to the Presiding Judge of the Tillamook County Circuit Court. The common costs of the arbitration shall be borne equally by the Parties. Each Party must bear its individual costs and fees.

ARTICLE V

AMENDMENT

5.1 This Agreement may be amended by mutual written agreement of the Parties, signed by all of the Parties.

ARTICLE VI

GENERAL PROVISIONS

6.1 Merger. This Agreement embodies the entire agreement and understanding between the Parties relating to the formation of the Tillamook Lightwave IGA hereto and supersedes all prior

agreements and understandings relating to the subject matter hereof.

6.2 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

6.3 Notice. Any notice herein required or permitted to be given shall be given in writing, shall be effective when actually received, and may be given by hand delivery or by certified mail, first class postage prepaid, addressed to the Parties as follows:

General Manager
Tillamook People's Utility District Port of Tillamook Bay Tillamook County
PO Box 433
Tillamook, OR 97141

6.4 Counterparts. This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, any one of which shall constitute an agreement between and among the Parties.

6.5 IN WITNESS WHEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

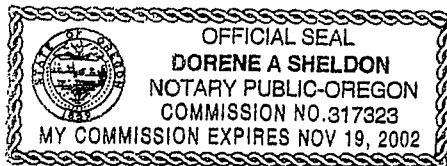
Patrick Ashby
Patrick Ashby,
General Manager
Tillamook People's Utility District

Date: October 17, 2000

STATE OF OREGON)
) ss.
County of Tillamook)

SIGNED OR ATTESTED before me on this 17th day of October, 2000, by Patrick Ashby.

Dorene A. Sheldon
Title: Administrative Assistant
My Commission Expires: 11-19-02



[Handwritten Signature]

Jack Crider
Manager
Port of Tillamook Bay

Date: October 31, 2000



STATE OF OREGON)
) ss.
County of Tillamook)

SIGNED OR ATTESTED before me on this 31 day of October, 2000, by Jack Crider



[Handwritten Signature: Janet Farstad]

Title: Project Admin.
My Commission Expires: 7/27/02

[Handwritten Signature: Gina Firman]

Via-Chair, Board of Commissioners
Tillamook County

Date: November 1, 2000



STATE OF OREGON)
) ss.
County of Tillamook)

SIGNED OR ATTESTED before me on this 1st day of Nov, 2000, by Gina Firman

[Handwritten Signature: Mary D. Wapner]

Title: Notary Public/Board Ass't
My Commission Expires: 10-06-01

