

After recording return to:

Port of Camas-Washougal
24 South A Street
Washougal, WA 98671

FLOOD PROTECTION (LEVEE) EASEMENT

THIS FLOOD PROTECTION (LEVEE) EASEMENT is made by the City of Washougal and its assigns ("CITY") and the Port of Camas-Washougal and its assigns, each to the extent of its interests in the ownership of the CITY PROPERTY described below (collectively "GRANTOR"), and the Port of Camas-Washougal and its assigns ("PORT" or "GRANTEE") of Clark County, Washington.

WHEREAS, the GRANTOR the City of Washougal is the purchaser, and the GRANTEE the Port of Camas-Washougal is the seller, under a contract for the sale of real property located in Clark County, Washington, which is legally described in Exhibit A (the "CITY PROPERTY"); and,

WHEREAS, the GRANTEE is the holder of certain easements for flood protection purposes affecting adjacent property and desires to hold a similar easement on the CITY PROPERTY to facilitate the flood protection levee authorized by the Flood Control Act 1950, House Document 531, Eighty-first Congress, 2nd session as amended by U.S. Army Corps of Engineers in Permit # _____ dated _____, 2019 and as may be otherwise amended from time to time ("Steigerwald Floodplain Restoration Project" or "PROJECT"), which is partially located on the CITY PROPERTY.

NOW THEREFORE, for and in consideration of the sum of three hundred sixteen thousand, nine hundred and ninety dollars (\$316,990.00) and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Easement

GRANTOR hereby grants and conveys to the GRANTEE the perpetual and assignable right and easement in, over, under, upon and across that portion of the CITY PROPERTY legally described in Exhibit B and shown in Exhibit C (the "EASEMENT AREA"), to construct, maintain, repair, operate, patrol and replace a flood risk reduction levee, including all appurtenances thereto; reserving, however, to the owners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; together with the right of entry and access across the CITY PROPERTY to and from the EASEMENT AREA with all persons, vehicles, materials, and equipment to carry out the rights and purposes of GRANTEE under this Flood Protection (Levee) Easement; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; and

which also includes, at the request of the GRANTEE, filling and grading a portion of the CITY PROPERTY to elevation +39 feet, as shown in Exhibit C.

2. Protection of CITY PROPERTY

GRANTEE will exercise its rights under this easement with the least amount of disturbance to the CITY PROPERTY outside of the EASEMENT AREA as commercially reasonably practical given the purposes of and rights granted under this easement and will, to the fullest extent commercially reasonably practical, restore such portions of the CITY PROPERTY to the condition existing prior to GRANTEE's exercise of such rights after the work requiring the exercise of such rights is completed.

3. Indemnification / Hold Harmless

The PORT shall defend, indemnify and hold the CITY, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, caused by any negligence or other wrongful act or omission in any activities or operations performed by the PORT or on the PORT's behalf pursuant to this Easement Agreement, except to the extent caused by the negligence or other wrongful act or omission of the CITY or its officers, officials, employees, agents, representatives, volunteers, contractors of all levels, consultants of all levels, assignees, licensees, invitees, visitors, or guests. The CITY shall defend, indemnify and hold the PORT, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, caused by any negligence or other wrongful act or omission in any activities or operations by the CITY or on the CITY's behalf related to this Easement, except to the extent caused by the negligence or other wrongful act or omission of the PORT or its officers, officials, employees, agents, representatives, volunteers, contractors of all levels, consultants of all levels, assignees, licensees, invitees, visitors, or guests. The flooding of the CITY's property consistent with the rights and purposes of this Easement, or otherwise to the extent caused by natural elements or other conditions beyond the PORT's control, shall not be the basis of any claim by the CITY or liability of the PORT.

A. Insurance Term

The PORT shall procure and maintain for the duration of the Easement Agreement, insurance against claims for injuries to persons or damage to property caused by operations or activities performed by or on the PORT's behalf pursuant to this Easement.

B. No Limitation

The PORT's maintenance of insurance as required by this Easement shall not be construed to limit the liability of the PORT to the coverage provided by such insurance, or otherwise limit the CITY's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

Applicant shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from operations, products-completed operations, and stop-gap liability. There shall be no exclusion foreseeably arising from explosion, collapse or underground property damage. The CITY shall be named as an additional insured under the PORT's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing at least as broad coverage.
2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

D. Minimum Amounts of Insurance

The PORT shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products- completed operations aggregate limit.
2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

E. Other Insurance Provision

The PORT's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the CITY. Any Insurance, self-insurance, or self-insured pool coverage maintained by the CITY shall be excess of the Applicant's insurance and shall not contribute with it.

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage

The PORT shall furnish the CITY with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the PORT before recording this easement.

H. Notice of Cancellation

The PORT shall provide the CITY with written notice of any policy cancellation, within two business days of their receipt of such notice.

I. Failure to Maintain Insurance

Failure on the part of the PORT to maintain the insurance as required shall constitute a material breach of the Easement Agreement, upon which the CITY may, after giving thirty (30) calendar days' notice to the PORT to correct the breach, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the CITY on demand.

J. CITY Full Availability of Applicant Limits

If the PORT maintains higher insurance limits than the minimums shown above, the CITY shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the PORT, irrespective of whether such limits maintained by the PORT are greater than those required by this Easement Agreement or whether any certificate of insurance furnished to the CITY evidences limits of liability lower than those maintained by the PORT.

All exhibits attached hereto are incorporated herein.

SIGNATURES ARE ON NEXT PAGES

CITY:
City of Washougal

By: _____

Title: _____

Date: _____

State of Washington)
) ss
County of Clark)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the CITY OF WASHOUGAL to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Printed Name of Notary: _____

Notary Public in and for the State of _____

My commission expires on _____

PORT:
Port of Camas-Washougal

By: _____

Title: _____

Date: _____

State of Washington)
) ss
County of Clark)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the PORT OF CAMAS-WASHOUGAL to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Printed Name of Notary: _____

Notary Public in and for the State of _____

My commission expires on _____

EXHIBIT A
LEGAL DESCRIPTION OF CITY PROPERTY

DRAFT

EXHIBIT B
LEGAL DESCRIPTION OF FLOOD PROTECTION (LEVEE) EASEMENT AREA

DRAFT

EXHIBIT C

MAP OF FLOOD PROTECTION (LEVEE) EASEMENT AREA

