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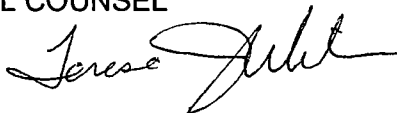
AGENDA COVER MEMO

AGENDA DATE: July 2, 2003

TO: LANE COUNTY BOARD OF COMMISSIONERS

DEPT.: LANE COUNTY OFFICE OF LEGAL COUNSEL

PRESENTED BY: Teresa J. Wilson, County Counsel



AGENDA ITEM TITLE: In the Matter of Approving an Amendment to the Intergovernmental Agreement with the State of Oregon, Oregon Military Department (OMD) for Acquisition of the Armory Site adjacent to the Juvenile Justice Center

I. MOTION: I MOVE TO APPROVE THE AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH THE OMD FOR ACQUISITION OF THE ARMORY SITE ADJACENT TO THE JUVENILE JUSTICE CENTER.

II. ISSUE OR PROBLEM: The OMD would like to have the County amend the Intergovernmental Agreement for the acquisition of the current Armory site such that the County would pay the remainder of the purchase price now, in order to enable the OMD to procure a site different than the one on 30th Avenue for the new armed forces reserve center complex.

III. DISCUSSION:

A. Background. The Intergovernmental Agreement signed in 1998 and attached to this memorandum contains a lengthy description of the cooperation that has existed between the OMD and the County directed towards this transaction. I will not repeat that history here. Since the signing of the Intergovernmental Agreement, the County made a down payment of \$580,000 towards its purchase of the existing Armory on Centennial Boulevard. The OMD purchased property on 30th Avenue, and began the process of obtaining land use approval, which is currently on appeal. The OMD also sought and received a congressional appropriation of \$8.3 million towards the construction of a new armed forces reserve center complex. That appropriation must be obligated in the form of a construction contract prior to September 30, 2003 or the funds will no longer be available.

B. Analysis. The process for acquiring property and obtaining appropriate land use approvals has obviously taken longer than the parties contemplated in the initial intergovernmental agreement. However, both parties have worked diligently and in good faith to move the matters forward as expeditiously as possible. As the OMD clearly did obtain a congressional appropriation for construction, the termination clause in the original intergovernmental agreement did not take effect.

At this point, the OMD has requested the County consider an amendment to the intergovernmental agreement that would provide for the County to pay the remaining purchase price within 30 days of the OMD's request. Within 30 days of receipt of the funds, the OMD would provide the County with a statutory warranty deed to the existing Armory site, and the parties would enter into a lease agreement for the OMD to remain there until the new armed forces reserve center complex is able to be occupied.

The OMD has determined that the Alfred Allen property on 30th Avenue is not suitable, given the time frame they have to obligate the congressional appropriation. They have identified 22.5 acres in Springfield (the "Pierce Property") that they believe is more appropriate to their needs, and which would allow them to complete the necessary construction to preserve the congressional appropriation.

Assuming the Board approves the amendment, and the OMD completes the transaction for the Pierce Property, they will then likely go through the process for declaring the Alfred Allen property as excess property. It is possible that they will apply to the County for funding through Title III for a conservation easement on the wetlands portion of the site; however, there have been no commitments or decisions made with respect to that property at this point.

C. Alternatives/Options. The Board could choose to not authorize the amendment to the intergovernmental agreement. If it did so, staff would then attempt to negotiate for a return of the \$580,000 already paid, or title to the Alfred Allen property. That is not a certainty, as the conditions for termination in the original intergovernmental agreement appear to be at least partially fulfilled in that the OMD did obtain a congressional appropriation for construction, although it is less than the full amount needed. The remaining bond funds set aside for the acquisition and remodeling for the work training center, which is the planned use of the existing armory site, would then be used to construct a smaller training center. A second option is for the Board to direct staff to continue to negotiate with the OMD. If the Board would like staff to pursue other terms than what are offered with the proposed amendment, direction needs to be given as to the Board's desires.

D. Recommendations. I recommend the amendment as proposed.

IV. IMPLEMENTATION/FOLLOW-UP: Upon approval, the County Administrator will have authority to execute the amendment. Payment will occur within 30 days of the OMD's request, and the County would then receive title to the existing armory site within the next 30 days.

V. ATTACHMENTS:

- December, 1998 Intergovernmental Agreement
- Board Order
- Amendment to Intergovernmental Agreement

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT is entered into as of December 31, 1998, by and between LANE COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as "COUNTY," and the STATE OF OREGON, acting by and through its Military Department (Oregon National Guard), hereinafter referred to as the "NATIONAL GUARD."

RECITALS

A. ORS 190.110 and the Lane County Home Rule Charter provide that the State and a unit of local government may enter into agreements providing for cooperation and performance of their authorized functions and activities.

B. After beginning negotiations and discussions in 1993, the NATIONAL GUARD and COUNTY agreed in 1994 to work cooperatively in the development of a new armed forces reserve center adjacent to Lane Community College and the subsequent sale of the NATIONAL GUARD's existing facility and property in Eugene to the COUNTY for use in conjunction with the COUNTY'S Juvenile Justice Center and Youth Campus.

C. In July, 1994, the NATIONAL GUARD leased to COUNTY a portion of the existing NATIONAL GUARD site for the first project on the Youth Campus, construction of a youth care facility for delinquent children by a private, non-profit corporation, Looking Glass Youth and Family Services, Inc. As part of that lease, COUNTY agreed to use its best efforts to locate a parcel suitable for the NATIONAL GUARD needs for construction of an armed forces reserve center. The NATIONAL GUARD agreed to use its best efforts to obtain legislative approvals for a sale of its existing site to the COUNTY, and for funding the design and construction of a new armed forces reserve center. The agreed upon objective for both parties was for the National Guard to sell its existing facility and property at fair market value for the use of the COUNTY in conjunction with its Juvenile Justice Center and the Youth Campus, and for the NATIONAL GUARD to have a modern, efficient armed forces reserve center that could meet the consolidated needs of a variety of military and reserve organizations.

D. The parties identified certain property (the Marquess property) near Lane Community College as an initial preferred site for a new armed forces reserve center, as its location near the college would permit a cooperative use between the College and the NATIONAL GUARD.

E. The 1995 Oregon Legislature approved SB 285 (ch. 435) which authorizes lands zoned for exclusive farm use to be also used for an armed forces reserve center if within one-half mile of a community college. The 1995 Oregon Legislature also approved SB 286 (ch. 361) which provides a methodology for COUNTY funding of the acquisition of a site in furtherance of its Juvenile Justice Center and Youth Campus.

F. COUNTY amended its land use code by Ordinance 10-95 to provide for an armed forces reserve center as a legal use on land zoned exclusive farm use in Lane County if within one-half mile of the main campus of a community college.

G. In the intervening years, COUNTY has sold several pieces of foreclosed property and set the funds aside in furtherance of the objectives of the parties.

H. Also during the intervening years, COUNTY and the NATIONAL GUARD conducted several investigations on and negotiations with the property owner for the Marquess property, which were not concluded successfully.

I. The NATIONAL GUARD received congressional authorization and appropriation in FY97 for the design of the armed forces reserve center. Design is held at the conceptual stage pending the GUARD's acquisition of a site.

J. The NATIONAL GUARD has diligently worked with the United States Congress to secure funding of the project for construction of the new armed forces reserve center. The NATIONAL GUARD and COUNTY have actively cooperated in presenting this project to various levels of the United States Congress and the Administration.

K. COUNTY and the NATIONAL GUARD have since identified another piece of property near Lane Community College (Alfred Allen property) as the new preferred alternative site for a new armed forces reserve center, which will continue the advantages of cooperative use as described in Recital D above.

L. On November 19, 1998, the Oregon Legislative Emergency Board approved the disposal by the NATIONAL GUARD of the current Eugene armory site as surplus property.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Subject to the conditions described below, the NATIONAL GUARD agrees to sell, and the COUNTY agrees to buy the current site of the NATIONAL GUARD, 5.20 acres and buildings, located at 2515 Centennial Boulevard, Eugene, OR (hereinafter, "the Property") for the appraised value of the Property as of the date of this agreement, but not to exceed \$1,900,000. Payment for this acquisition shall occur as follows:

a. Upon execution of this agreement and receipt of the appraisals of the Property and the Alfred Allen property, the COUNTY shall make a down payment to the NATIONAL GUARD equal to the appraised value of the Alfred Allen property, but not to exceed \$580,000. The appraisal of the Alfred Allen property shall take into account the current zoning and the existence of the wetlands.

b. Upon the NATIONAL GUARD obtaining congressional appropriation for the construction of the new armed forces reserve center, COUNTY shall pay to the NATIONAL GUARD the remainder of the purchase price, i.e., the amount described in Section 1 above, less the down payment made pursuant to Section 1(a). At that time, the NATIONAL GUARD shall deliver to the COUNTY a statutory warranty deed of the Property to the COUNTY, conveying the Property free and clear of all liens and encumbrances except those approved by the COUNTY. The COUNTY shall lease the Property back to the NATIONAL GUARD center at the rate of \$1 per year, for a two year period, to permit construction of the new armed forces reserve center.

c. Within 30 days after execution of this agreement and within a reasonable period of time prior to title transfer, the NATIONAL GUARD shall deliver to COUNTY a preliminary title report showing the condition of title to the Property, with copies of all exceptions listed. The COUNTY shall review the title, and within 30 days, notify the NATIONAL GUARD of its disapproval of any exceptions. Any exceptions not objected to shall be deemed as approved. If

COUNTY disapproves of any exceptions, the NATIONAL GUARD shall have 30 days to either remove them or provide the COUNTY with reasonable assurance of the manner in which they will be removed prior to closing under paragraph 1(b) above. Failure to remove the exceptions or provide acceptable assurance is grounds for the COUNTY to terminate the agreement, termination to occur in the same manner as provided in paragraph 9 below. During the period of time between payment under paragraph 1(a) above and 1(b) above, the NATIONAL GUARD shall not permit any encumbrances on the title without the COUNTY'S written consent, which shall not be unreasonably withheld.

d. The parties shall cooperate to provide the COUNTY with a Level I Environmental Report on the Property at least 60 days prior to the COUNTY assuming possession. If the Report indicates any environmental problem, a Level II Report shall be conducted, and the NATIONAL GUARD shall be responsible for any necessary cleanup. During the period from the date of this agreement through the time possession is delivered to the COUNTY when the NATIONAL GUARD moves to the new armed forces reserve center, the NATIONAL GUARD shall be responsible for ensuring that there are no environmentally hazardous materials or waste on or under the property, or that if there are any, that they are managed in a manner consistent with applicable environmental laws and regulations.

2. The NATIONAL GUARD shall construct and move to the new armed forces reserve center, in a timely fashion. So long as it does so in a reasonable manner, the COUNTY shall not unreasonably withhold extensions of the lease of the current site at the agreed upon rate of \$1 per year.

3. The COUNTY and NATIONAL GUARD shall cooperate to secure the NATIONAL GUARD's acquisition, by option or otherwise, of property which is identified by the NATIONAL GUARD as suitable for its needs.

4. The NATIONAL GUARD will continue to work diligently with the National Guard Bureau, the United States Congress, the Administration and the State of Oregon to complete the funding and construction of a new armed forces reserve center.

5. The parties agree to join in a collaborative process with Lane Community College, for the development of a program for the mutual benefit and use of the new armed forces reserve center.

6. The NATIONAL GUARD shall take reasonable care of the Property during the period until closing under Paragraph 1(b) above, as well as during any period in which the Property is leased back to the NATIONAL GUARD, including providing prudent insurance or self-insurance.

7. The applicable provisions of the Lane Manual setting forth standard provisions for public contracts (LM 21.130) are incorporated by this reference as it fully set forth.

8. This agreement began as of the date noted above.

9. This agreement shall terminate if funding has not been obtained for the construction of the new armed forces reserve center by December 30, 2002. If this agreement is so terminated, the NATIONAL GUARD shall either 1) return the funds paid under paragraph 1(a) above to Lane County, together with interest at the rate earned by the Local Government Investment Pool from the date of COUNTY payment to the NATIONAL GUARD, or 2) if the funds have been used to acquire property, the NATIONAL GUARD shall transfer title to the property so acquired to the COUNTY.

10. Nothing in this agreement shall have the effect of binding the COUNTY to any particular result in any proceedings leading to a land use decision which arises out of this transaction.
11. No amendment to this agreement shall be effective unless made in writing and signed by both parties.

STATE OF OREGON by and through its
Military Department

By:

Raymond F. Rees
General Raymond F. Rees

Title: The Adjutant General

Date: 6 January 99

LANE COUNTY

By:

William A. Van Vactor
William A. Van Vactor

Title: County Administrator

Date:

12/31/98

APPROVED AS TO FORM

Date 12-29-98 lane county

Stephen J. Vactor
OFFICE OF LEGAL COUNSEL

IN THE BOARD OF COUNTY COMMISSIONERS
OF LANE COUNTY, OREGON

ORDER NO. 03-7-2-

-) IN THE MATTER OF APPROVING AN AMENDMENT
-) TO THE INTERGOVERNMENTAL AGREEMENT WITH
-) THE STATE OF OREGON MILITARY DEPARTMENT
-) FOR ACQUISITION OF THE ARMORY SITE
-) ADJACENT TO THE JUVENILE JUSTICE CENTER

WHEREAS, Lane County and the State of Oregon, acting by and through its Military Department, known as the Oregon Military Department (OMD), have been working cooperatively since 1994 towards the OMD acquiring a site and funding for a new armed forces reserve center complex, and towards a sale of the existing Eugene National Guard Armory site to the County for use in conjunction with the Lane County Juvenile Justice Center and Youth Campus, and

WHEREAS, Lane County and the OMD executed an intergovernmental agreement in December 1998, by which the County would acquire the current National Guard Armory site at a purchase price of \$1.9 million, and OMD and County would cooperate in securing a site for the construction of a new armed forces reserve center, and

WHEREAS, there has been partial performance of that intergovernmental agreement, in that the County has made a substantial down payment toward the acquisition of the current National Guard Armory site, the OMD has procured a site along 30th Avenue (the Alfred Allen property), and the OMD has obtained approximately one third of the required congressional appropriation towards construction of the new armed forces reserve center, and

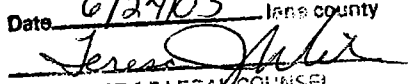
WHEREAS, the OMD has determined that the Alfred Allen site is not suitable presently to allow construction of the new armed forces reserve center complex within the time required to ensure preservation of the congressional appropriation received to date, and

WHEREAS, the OMD has identified 22.5 acres in Springfield (Pierce Property) as a potential alternative site,

WHEREAS, both parties are willing to amend the intergovernmental agreement to extend the time for construction of the new armed forces reserve center, and to provide for immediate payment of the full purchase price for County acquisition of the current National Guard Armory site in order to enable the OMD to acquire the Springfield site and to proceed promptly with the first phase of construction of the new armed forces reserve center complex,

NOW, THEREFORE IT IS HEREBY ORDERED that the County Administrator is authorized to execute an amendment to the 1998 intergovernmental agreement with the OMD in a form substantially similar to that attached hereto as Exhibit A and incorporated by this reference, and any other necessary documents, to complete the transaction.

DATED this ____ day of July, 2003.

APPROVED AS TO FORM
Date 6/24/03 Lane County

OFFICE OF LEGAL COUNSEL

Peter Sorenson, Chair
Lane County Board of Commissioners

AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

This is Amendment No. 1 to Intergovernmental Agreement, No. AGI-030001 dated December 31, 1998 (the "Agreement") between the State of Oregon acting by and through its Military Department (referred to as "National Guard" in the Agreement and referred to in this Amendment as "OMD"), and Lane County (hereinafter referred to as "COUNTY").

RECITALS

The following Recitals are added to Recitals A through L in the Agreement:

- M. OMD is proceeding with plans to build a new armed forces reserve center (hereinafter "the Project"). The correct congressional language states that the Project is an Armed Forces Reserve Center Complex, consisting of an armed forces reserve center and an organizational maintenance shop. The Project is the number one priority project for OMD in Oregon.
- N. OMD received \$580,000 in May 1999 from the COUNTY. The monies received were a down payment towards the purchase of the current site of OMD, 5.20 acres and buildings, located at 2515 Centennial Boulevard, Eugene, Oregon (hereinafter, "the Property"). The \$580,000 received by OMD was used to purchase 33.5 acres of property located on 30th Avenue across from Lane Community College in Eugene, Oregon (the "Alfred Allen property"). The Alfred Allen property was purchased as the site for the Project. OMD possesses the title to the Alfred Allen property.
- O. The appraised value of the Property as of December 31, 1998 was \$1,900,000. The remaining amount owed to OMD for the Property, after subtracting the \$580,000 down payment received in May 1999, is \$1,320,000.
- P. OMD received an appropriation for the Project during the 107th Congress 1st Session (between October 1, 2001 and December 31, 2001). Report 107-333 authorized \$8,300,000, toward construction costs for the Project. The appropriation must be obligated in the form of a construction contract prior to September 30, 2003 or the appropriation will expire and the funds will no longer be available.
- Q. OMD will complete the Project in two (2) phases in order to coincide with each appropriation for construction. Phase one will obligate the current appropriation of \$8,300,000 with a Design-Build contract in September 2003. Phase two will commence upon receipt of necessary appropriations to fund a Design-Build contract, currently slated in the Future Years Defense Plan for fiscal year 2005. Both appropriations are required in order for construction of the Project to be completed and the existing armory to be vacated by OMD.
- R. OMD has determined that the Alfred Allen property on which the Project was to be constructed is not suitable presently to allow construction of the Project within the time required to ensure preservation of the congressional appropriation received to date. It will be necessary to cease development efforts on the Alfred Allen property and procure a new site for the Project.
- S. OMD has identified 22.5 acres in Springfield (hereinafter the "Pierce Property") as a potential site for the Project. OMD, with the cooperation of COUNTY, is in the process of acquiring the Pierce Property.

AGREEMENT TO AMEND

NOW THEREFORE, THE PARTIES AGREE TO AMEND THE AGREEMENT AS FOLLOWS:

1. Sections 1.b, 1.c, 2, 5, and 9 are hereby deleted from the Agreement.
2. The COUNTY, within five (5) days of OMD's written request, shall pay OMD \$10,000 as a partial payment to be applied against the purchase price of the Property of \$1,900,000. The \$10,000 partial payment will be used by OMD to obtain a 90-day option to purchase the Pierce Property from the owner.
3. The COUNTY, within thirty (30) days of OMD's written request, shall pay OMD \$1,310,000. This final payment, together with the original down payment received in May 1999 of \$580,000, and the \$10,000 partial payment referenced in paragraph 2 above, shall constitute full payment of the purchase price of the Property of \$1,900,000.
4. Within thirty (30) days of receipt of the full purchase price from COUNTY, OMD shall deliver a statutory warranty deed of the Property to the COUNTY, conveying the Property free and clear of all liens and encumbrances except those approved by the COUNTY.
5. Concurrently with OMD's conveyance of the statutory warranty deed to the Property to COUNTY, COUNTY shall lease the Property back to OMD on terms and conditions to be mutually agreed upon by the parties at the time of the lease. The lease agreement to be executed by COUNTY and OMD shall include at least the following terms:
 - a. The lease term shall begin on the date of conveyance of the Property to COUNTY and shall continue through the date the Armed Forces Reserve Center Complex to be built on the Pierce Property (or on any subsequently acquired property that OMD determines to be most suitable for the location of the Armed Forces Reserve Center Complex) is occupied by OMD.
 - b. The annual lease payment for OMD's use of the Property shall be one dollar (\$1).
 - c. During the term of the lease, OMD shall be responsible for payment of all utilities and other costs associated with operating the buildings on the Property.
 - d. During the term of the lease, OMD shall make such repairs to the buildings on the Property as it deems to be minimally necessary to continue its operations and to deliver the Property to COUNTY in approximately the same condition as exists on the date of this Amendment, normal wear and tear to the buildings excepted.
 - e. COUNTY shall have no right to occupy or inspect the Property during the lease term except as permitted by OMD and then in accordance with the security policies and procedures of OMD.
6. This Agreement, as amended herein, will stay in effect until construction of the Project is complete or at such time as both parties agree to terminate the Agreement.
7. The following statutory notice is added to the Agreement:

"THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS

INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.”

Except as expressly amended above, all other terms and conditions of the Agreement remain in full force and effect.

**STATE OF OREGON acting by and through
its Military Department**

LANE COUNTY

Signature _____
Alexander H. Burgin

Signature _____
William A. Van Vactor

Title: _____
The Adjutant General

Title: _____
County Administrator

Date: _____

Date: _____

**Approved as to legal sufficiency:
STATE OF OREGON
Department of Justice**

Signature: _____
Assistant Attorney General

Date: _____