

MEMORANDUM OF AGREEMENT

Tillamook County, Oregon
Cities of Bay City, Garibaldi, Manzanita, Nehalem, Rockaway Beach, Tillamook,
and Wheeler, Oregon
and
Oregon Department of Land Conservation and Development

Project Summary

This Memorandum of Agreement (MOA) is to formalize a working relationship between the Oregon Department of Land Conservation and Development (DLCD) and Tillamook County (COUNTY) and the cities of Bay City, Garibaldi, Manzanita, Nehalem, Rockaway Beach, Tillamook, and Wheeler (CITIES) that is to result in an updated Tillamook County Multi-Jurisdictional Natural Hazards Mitigation Plan (MJNHMP). The project is funded by the Federal Emergency Management Agency (FEMA). DLCD will act as consultant. This is a no-cost agreement inasmuch as no funds are to be exchanged between the COUNTY, the CITIES, and DLCD. The COUNTY and CITIES will provide and document in-kind services as cost-share.

Background

To be eligible to receive certain pre- and post-disaster natural hazard mitigation funds from FEMA, local governments must have a current, FEMA-approved NHMP. NHMPs must be updated and re-approved every five years. The Tillamook County MJNHMP will expire April 9, 2017; therefore it is important for the COUNTY and CITIES to update the MJNHMP as soon as possible. DLCD has received a Pre-Disaster Mitigation grant (PDM 14) from FEMA through OEM to assist the COUNTY and CITIES with the MJNHMP update.

The grant's performance period is from April 21, 2014 through September 30, 2016. Because FEMA's grant award process and then Oregon's subsequent legislative fiscal process have together taken an inordinately long time in this case, we anticipate requesting at least one 12-month no-cost period of performance extension from FEMA to complete the update. The term of this agreement assumes one such extension will be granted.

FEMA does not allow DLCD to disburse the PDM 14 grant funds to local governments to complete updates on their own. Therefore, DLCD will use the grant funds to provide consulting and technical assistance to the COUNTY and CITIES to complete the update, and the COUNTY and CITIES will provide cost-share through in-kind services. The COUNTY and CITIES will document their individual cost-share expenditures. No party will invoice another.

Beyond the performance period of the grant, DLCD is committed to providing technical assistance to the COUNTY and CITIES to integrate the updated MJNHMP into their existing planning mechanisms.

Tasks

See Attachment A, Statement of Work.

PDM grants must culminate in a locally-adopted and FEMA-approved NHMP. Because this project is funded through a PDM grant, the COUNTY and each CITY must not only consider but also adopt a FEMA-approvable NHMP.

Term, Termination and Amendment

This agreement shall remain in effect from the date it is fully executed through September 30, 2017, unless the 12-month no-cost extension to be requested from FEMA is not granted. Any Party may unilaterally terminate the agreement with sixty days' written notice to the other Parties. The terms of this agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement signed by all of the Parties.

Limitation of Liability

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 10, NO PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NO PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

Force Majeure

No Party is responsible for any failure to perform nor any delay in performance of any obligations under this agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this agreement.

Intended Beneficiaries

DLCD, the COUNTY and CITIES are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this agreement.

Notice/Contacts

DLCD:

Name Marian Lahav
Address 635 Capitol Street, NE
Salem, OR 97301-2540
Email marian.lahav@state.or.us
Phone (503) 934-0024

BAY CITY:

Name Lin Downey
Address 5525 B Street
PO Box 3309
Bay City, OR 97107
Email ldowney@ci.bay-city.or.us
Phone (503) 377-2179

MANZANITA:

Name Jerry Taylor
Address 543 Laneda Avenue
Manzanita, Oregon 97130
PO Box 129
Manzanita, OR 97130-0129
Email jtaylor@ci.manzanita.or.us
Phone (503) 368-5343

ROCKAWAY BEACH:

Name Lars Gare
Address 276 Highway 101 S.
PO Box 5
Rockaway Beach, OR 97136
Email citymanager@rockawaybeachor.us
Phone (503) 355-2291

WHEELER:

Name Geoff Wullschlager
Address 775 Nehalem Boulevard
PO Box 177
Wheeler, Oregon 97147
Email citymgrwheeler@nehalem.tel.net
Phone (503) 368-5767

TILLAMOOK COUNTY:

Name Brian Pohl
Address 1510 B Third Street
Tillamook, OR 97141
Email bpohl@co.tillamook.or.us
Phone (503) 812-3408 x3123

GARIBALDI:

Name John O'Leary
Address 107 6th Street
PO Box 708
Garibaldi, OR 97118
Email john@ci.garibaldi.or.us
Phone (503) 322-3327

NEHALEM:

Name Dale Shafer
Address 35900 8th Street
PO Box 143
Nehalem, OR 97131
Email manager@ci.nehalem.or.us
Phone (503) 368-5627

TILLAMOOK:

Name Paul Wyntergreen
Address 210 Laurel Avenue
Tillamook, OR 97141
Email pwyntergreen@tillamookor.gov
Phone (503) 812-2472 x3460

Nothing in this Memorandum of Agreement shall be construed as obligating any other party to expend funds or obligate future payment of money authorized by law and administratively available for this work.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, STATE OF OREGON

By _____ Date _____
Jim Rue, Director

TILLAMOOK COUNTY, OREGON

By _____ Date _____
Mark Labhart, County Commissioner

Nothing in this Memorandum of Agreement shall be construed as obligating any other party to expend funds or obligate future payment of money authorized by law and administratively available for this work.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, STATE OF OREGON

By _____ Date _____
Jim Rue, Director

CITY OF BAY CITY, OREGON

By _____ Date _____
Shaena Peterson, Mayor

Nothing in this Memorandum of Agreement shall be construed as obligating any other party to expend funds or obligate future payment of money authorized by law and administratively available for this work.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, STATE OF OREGON

By _____ Date _____
Jim Rue, Director

CITY OF GARIBALDI, OREGON

By _____ Date _____
Suzanne McCarthy, Mayor

Nothing in this Memorandum of Agreement shall be construed as obligating any other party to expend funds or obligate future payment of money authorized by law and administratively available for this work.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, STATE OF OREGON

By _____ Date _____
Jim Rue, Director

CITY OF MANZANITA, OREGON

By _____ Date _____
Garry Bullard, Mayor

Nothing in this Memorandum of Agreement shall be construed as obligating any other party to expend funds or obligate future payment of money authorized by law and administratively available for this work.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, STATE OF OREGON

By _____ Date _____
Jim Rue, Director

CITY OF NEHALEM, OREGON

By _____ Date _____
Dale E. Stockton, Mayor

Nothing in this Memorandum of Agreement shall be construed as obligating any other party to expend funds or obligate future payment of money authorized by law and administratively available for this work.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, STATE OF OREGON

By _____ Date _____
Jim Rue, Director

CITY OF ROCKAWAY BEACH, OREGON

By _____ Date _____
Joanne Aagaard, Mayor

Nothing in this Memorandum of Agreement shall be construed as obligating any other party to expend funds or obligate future payment of money authorized by law and administratively available for this work.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, STATE OF OREGON

By _____ Date _____
Jim Rue, Director

CITY OF TILLAMOOK, OREGON

By _____ Date _____
Suzanne Weber, Mayor

Nothing in this Memorandum of Agreement shall be construed as obligating any other party to expend funds or obligate future payment of money authorized by law and administratively available for this work.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, STATE OF OREGON

By _____ Date _____
Jim Rue, Director

CITY OF WHEELER, OREGON

By _____ Date _____
Stevie Burden, Mayor

**ATTACHMENT A:
STATEMENT OF WORK**

STATEMENT OF WORK

Tillamook County Multi-Jurisdictional Natural Hazards Mitigation Plan (MJNHMP) Update

PROJECT DESCRIPTION

The purposes of this statement of work are to:

1. Review and update the Tillamook County MJNHMP such that it is ultimately adopted by the COUNTY and CITIES and approved by the Federal Emergency Management Agency (FEMA);
2. Develop a plan for integrating the approved Tillamook County MJNHMP with the COUNTY's and each of the CITIES' existing planning mechanisms by preparing a crosswalk for the COUNTY and each CITY identifying where MJNHMP elements could be integrated with such documents and an action plan for achieving integration.

STATEMENT OF WORK

In addition to and for clarification of the work and deliverables specified below by task, the COUNTY agrees to:

1. Handle meeting and public outreach logistics (space reservations, supplies, audio/visual equipment, distribute meeting materials);
2. Provide an interactive website for the project where citizens can review and comment on draft materials;
3. Provide GIS services.

In addition to and for clarification of the work and deliverables specified below by task, the COUNTY and each CITY agree to:

1. Provide adequate public notice of meetings and events through a variety of means (examples include handouts, newspaper inserts, distribution of flyers to public sites, news releases to radio and television stations, newspaper event listings, utility bill inserts; etc.).
2. Provide information about the project on its website and drive web traffic to the interactive website for the project hosted by the COUNTY;
3. Provide a subscription listserv (not interactive – information out only) or email service to advise interested parties of opportunities to participate in meetings and events and to comment on draft materials;
4. Assist CONSULTANT in working with the Steering Committee and Technical Advisory Committee members to gather data, information, and materials needed for MJNHMP development.
5. Perform administrative functions including tracking and timely reporting its cost share on a quarterly basis; and
6. Execute regular staff responsibilities throughout the public process to review and adopt the updated MJNHMP.

In addition to and for clarification of the work and deliverables specified below by task, DLCD agrees to:

1. Prepare meeting materials and provide them to the COUNTY at least seven days in advance of meetings;

2. Lead and facilitate meetings and public outreach events;
3. Gather and analyze data for MJNHMP;
4. Write, edit, and after FEMA approval finalize MJNHMP;
5. Assist the COUNTY and CITIES with preparation for and execution of (a) City Council workshop(s) and MJNHMP adoption proceeding as necessary.

DLCD, the COUNTY and CITIES agree to take a strategic approach to the MJNHMP update and perform the following tasks:

TASK 1: INITIATE

Purpose

The purpose of Task 1 is to initiate the project by activating the Steering Committee (SC); reviewing and revising the Statement of Work; establishing a project schedule; developing a protocol to ensure clear and effective communication; reviewing the draft Technical Advisory Committee (TAC) membership; and refining the Public Engagement Program (PEP).

The PEP will establish an open and transparent planning process. It will incorporate one public meeting, format and timing to be determined. At least two opportunities for the public to comment will be included, one during drafting and one prior to plan approval. "The public" is understood to include but not be limited to neighboring communities, local and regional agencies involved in hazard mitigation activities; agencies that have the authority to regulate development, businesses, academia, and other private and non-profit interests.

DLCD and the SC will identify and recruit stakeholders and interested parties who, at a minimum, represent each of the "whole community" sectors as set forth in current FEMA documents: a. Emergency management; b. Economic development; c. Land use and development; d. Housing; e. Health and social services; f. Infrastructure; and g. Natural and cultural resources to serve on the TAC.

All meetings will be duly advertised and open to the public.

Task 1.1: Hold Steering Committee Meeting

The purpose of this meeting will be to initiate the project by reviewing and soliciting the SC's input on the Statement of Work, TAC membership, and PEP; establishing the project schedule and communication protocol.

FEMA Requirements: 44 CFR 201.6(b) and (c)(1)

Deliverables

- | | | |
|--------|----|-----------------------------------|
| COUNTY | 1. | Coordinate Initial SC Meeting. |
| DLCD | 2. | Provide meeting agenda. |
| | 3. | Provide meeting materials. |
| | 3. | Provide meeting notes containing: |
| | | a. Revised Statement of Work |
| | | b. Revised Project Schedule |
| | | c. Communication Protocol |

- d. Revised TAC membership list
- e. Revised PEP

Milestone: June 15, 2016

Task 1.2: Confirm Community Partners Committee

With assistance from the COUNTY and CITIES, DCLD will contact and confirm TAC members in accordance with the SC’s input on the PEP.

FEMA Requirements: 44 CFR 201.6(b) and (c)(1)

Deliverables

- DLCD
1. Committee rosters with complete contact information for SC and TAC members.

Milestone: June 30, 2016

TASK 2: Update Tillamook County’s 2012 MJNHMP

Purpose

The purpose of Task 3 is to review and update the Tillamook County MJNHMP approved by FEMA in 2012 such that it meets the requirements of 44 CFR 201.6 as indicated by the September 30, 2011 version of FEMA’s Local Mitigation Plan Review Tool and is therefore approvable by FEMA.

Task 2.1: Review and Update the Risk Assessment

The risk assessment contains:

1. A characterization and analysis of each of the hazards to which the COUNTY and CITIES are subject (coastal hazards, droughts, earthquakes, floods, landslides, tsunamis, wildfires, windstorms, winter storms) including how climate change may affect them individually and collectively to the extent data is available.
2. An assessment of probability of hazard occurrence.
3. A profile of community characteristics including geography, population demographics, land use and development trends (changes in development), housing and employment, transportation, critical facilities and infrastructure, historic and cultural resources, and identification of NFIP-insured structures that have sustained repetitive flood damages.
4. An assessment of vulnerability to each hazard.
5. An assessment of potential dollar losses to buildings, repetitive flood loss structures, infrastructure, and critical facilities from each hazard (to the extent data is available).
6. Conclusions (to the extent reasonable based on the data and analysis) as to the priorities for mitigation actions.

FEMA Requirements: 44 CFR 201.6(b), (c)(1), (c)(2) and (d)(3)

Deliverables

- COUNTY
1. Coordinate up to 4 TAC and 2 SC meetings.
 2. Produce necessary GIS maps.
- COUNTY and CITIES
3. Provide relevant existing plans, studies, reports, and technical information for review and potential incorporation.

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|------|---|
| DLCD | <ol style="list-style-type: none"> 4. Provide supplemental and updated information for hazard characterization and analysis. 5. Provide information, statistics, and maps for community profile including changes in development. 6. Provide information, statistics, and maps for vulnerability assessment. 7. Provide information, statistics, and maps for potential loss assessment. 9. Facilitate up to 4 TAC and 2 SC meetings. Provide agendas, meeting materials and notes. 10. Provide most current GIS hazard layers (coastal hazards, earthquakes, floods, landslides, tsunamis, wildfires). 11. Incorporate relevant existing plans, studies, reports, and technical information subsequent to TAC review. 12. Conduct probability and vulnerability assessment using the OEM methodology. 13. Provide two drafts of the risk assessment chapter, one initial and one revised subsequent to TAC and SC review. |
|------|---|

Milestone: December 31, 2016

Task 2.2: Review and Update the Mitigation Strategy

The mitigation strategy contains:

1. Goals and mitigation actions based on the conclusions of the risk assessment, emphasizing buildings and infrastructure.
2. Identification of changes in mitigation efforts and priorities.
3. An action plan describing how mitigation actions will be prioritized, implemented, and administered.
4. A description of the COUNTY’s and each CITY’s participation in the National Flood Insurance Program (NFIP) and continued compliance with its requirements.
5. Documentation of the COUNTY’s and each CITY’s existing authorities, policies, programs, and resources for implementing the mitigation actions and its ability to expand on and improve them (Capability Assessment).

FEMA Requirements: 44 CFR 201.6(b), (c)(1), (c)(3) and (d)(3)

Deliverables

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|-------------------|---|
| COUNTY | 1. Coordinate up to 2 TAC meetings and 2 SC meetings. |
| COUNTY and CITIES | <ol style="list-style-type: none"> 2. Provide status of existing mitigation actions. 3. Identify changes in mitigation priorities. 4. Provide description of COUNTY’S and CITIES’ participation in the NFIP and continued compliance with its requirements. 5. Provide documentation of COUNTY’S and CITIES’ existing authorities, policies, programs, and resources for implementing the mitigation actions and its ability to expand on and improve them (Capability Assessment). |
| DLCD | <ol style="list-style-type: none"> 6. Facilitate up to 2 TAC meetings and 2 SC meetings. Provide agenda, meeting materials, and notes. 7. Conduct review and update of goals. |

8. Conduct review, update, and prioritization of mitigation actions.
9. Produce draft mitigation action implementation plan.
10. Provide two drafts of the mitigation strategy chapter, one initial and one revised subsequent to TAC and SC review.

Milestone: February 28, 2017

Task 2.3: Review and Update the Plan Maintenance Process

The plan maintenance process contains:

1. A description of the method and schedule of monitoring, evaluating, and updating the mitigation plan within a five-year cycle.
2. A discussion of how the COUNTY and CITIES will continue public participation during the plan maintenance process.
3. A crosswalk identifying where Tillamook County MJNHMP elements could be appropriately integrated with the COUNTY'S and each of the CITIES' existing planning mechanisms. For the COUNTY, the Oregon Partnership for Disaster Resilience's report on code revisions for improving resilience will be considered in developing the crosswalk.
4. A process by which the COUNTY and CITIES will achieve integration.

FEMA Requirements: 44 CFR 201.6(b), (c)(1), and (c)(4)

Deliverables

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| COUNTY | 1. Coordinate 1 SC meeting OR incorporate into a Task 2.2 meeting. |
| DLCD | 2. Facilitate 1 SC meeting OR incorporate into a Task 2.2 meeting. If separate meeting, provide meeting agenda and notes. |
| | 3. Provide two drafts of the plan maintenance process and integration crosswalk and process, one initial and one revised subsequent to SC review. May be accomplished with Task 2.2. |

Milestone: February 28, 2017

Task 2.4: Hold Public Meetings to Review Draft MJNHMP

The purpose of this meeting is to provide an opportunity for staff to present and discuss the primary content of the MJNHMP and obtain public comment.

FEMA Requirements: 44 CFR 201.6(b)

Deliverables

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| COUNTY | 1. Coordinate 2 public review meetings: 1 in north County and 1 in south County. |
| DLCD, COUNTY, CITIES | 2. Develop materials including joint presentation for the public review meetings. |
| | 3. DLCD and at least one SC representative from the COUNTY and each CITY will attend the public review meetings. |
| DLCD | 4. Facilitate 2 public review meetings. Provide agendas, meeting materials, and notes. |
| | 5. Provide two drafts of responses to comments, one proposed and one revised subsequent to SC review. |

6. Provide final comments and responses to COUNTY and CITIES for web posting.
7. Incorporate public input into the MJNHMP.

Milestone: April 30, 2017

Task 2.5: Document the Planning Process

The updated MJNHMP contains a section documenting the planning process by:

1. Describing how the plan was prepared, who was included, how the public was involved, and the opportunities for neighboring communities, local and regional agencies involved in hazard mitigation activities, agencies that have the authority to regulate development, and other interested parties to be involved;
2. Describing the opportunities for the public to comment during drafting and prior to plan approval;
3. Describing how existing plans, studies, reports, and technical information were incorporated; and
4. Including documentation of meetings and other public input.

Review of this section will be accomplished by means other than a meeting (such as online commenting), unless it can be incorporated into a Task 2.2 or Task 2.3 SC meeting.

FEMA Requirements: 44 CFR 201.6(b), (c)(1)

Deliverables

- DLCD
1. Provide two drafts of the planning process documentation, one initial and one revised subsequent to SC review.

Milestone: May 31, 2017

Task 2.6: Review and Update Remaining Plan Chapters

Other Plan chapters that need to be reviewed and updated include the Executive Summary, Introduction, and List of Acronyms. Developing and including a glossary will be done at the SC's discretion.

FEMA Requirements: 44 CFR 201.6(b), (c)(1)

Deliverables

- DLCD
1. Provide two drafts of the remaining Plan chapters, one initial and one revised subsequent to TAC (as necessary) and SC review.

Review of these sections will be accomplished by means other than a meeting (such as online commenting).

Milestone: May 31, 2017

Task 2.7: Finalize Draft MJNHMP for State and Federal Review

At this point, all sections of the draft MJNHMP will have been written and reviewed by interested parties. This step entails combining them all into a single document, editing the entire document, adding a cover, title page, acknowledgements, page numbers, etc. to finalize the draft MJNHMP for the review and approval process.

FEMA Requirements: 44 CFR 201.6(b)

Deliverables

DLCD 1. Finalized draft MJNHMP

Milestone: June 15, 2017

TASK 3: Review and Approval Process

Purpose

The purpose of Task 3 is to ensure that all the necessary steps toward final FEMA approval are taken; the COUNTY and each CITY adopts the updated MJNHMP without substantive changes; and FEMA approves the adopted MJNHMP.

There are two levels of review prior to approval: state and federal. Revisions to the draft MJNHMP may be required at one or both levels. The Oregon State Office of Emergency Management (OEM) will perform the first review and when it deems the draft MJNHMP approvable will submit it to FEMA. When FEMA establishes that the draft is approvable, it will issue an “Approvable Pending Adoption (APA)” letter to the COUNTY and each CITY.

Upon receipt of FEMA’s APA letter, the COUNTY and each CITY will schedule and advertise a public meeting to adopt the draft MJNHMP (generally done by resolution). Following adoption, the COUNTY and each CITY will submit the adopted MJNHMP with evidence of adoption to DLCD which will forward it to OEM. OEM will review the package and forward it to FEMA. Upon receipt, FEMA will issue its letter of approval. Should the COUNTY or any CITY make substantive changes to the draft MJNHMP with adoption, the review process would begin again.

PDM grants must culminate in a locally-adopted and FEMA-approved NHMP. Because this project is funded through a PDM grant, the COUNTY and each CITY must not only consider but also adopt a FEMA-approvable NHMP.

Task 3.1: Submit Draft MJNHMP for State and Federal Review

DLCD will submit draft MJNHMP on behalf of the COUNTY and CITIES to OEM for review. OEM will review the draft MJNHMP and when it is FEMA-approvable will submit it to FEMA for formal review. DLCD, the COUNTY and CITIES will make any necessary revisions with review by the SC and public as appropriate until FEMA issues the APA letter.

FEMA Requirements: 44 CFR 201.6(d)(1) and (d)(2)

Deliverables

COUNTY and CITIES 1. Submit draft MJNHMP to DLCD to forward to OEM for review.

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|----------------------|--|
| DLCD, COUNTY, CITIES | 2. Make any required changes and resubmit until OEM and FEMA are satisfied that the draft MJNHMP is approvable as evidenced by receipt of FEMA’s APA letter. |
| DLCD | 3. Complete FEMA local MJNHMP review tool to be submitted with draft MJNHMP to OEM. |

<u>Milestone:</u>	Submittal:	June 15, 2017
	Completed State and FEMA reviews:	July 30, 2017

Task 3.2: Adopt and Submit MJNHMP to FEMA

The COUNTY will submit the final draft MJNHMP to the Board of County Commissioners at a regular Board meeting and each CITY will submit the final draft MJNHMP to its respective City Council for adoption at a regular City Council meeting. (A special meeting may be held at the discretion of the jurisdiction.) Following adoption, the COUNTY and each CITY will submit the adopted MJNHMP with evidence of adoption to DLCD and DLCD will submit the package to FEMA. Should the COUNTY or any CITY make substantive revisions to the final draft MJNHMP, the review and approval process would begin again.

FEMA Requirements: 44 CFR 201.6(c)(5)

Deliverables

- | | |
|-------------------|--|
| COUNTY and CITIES | 1. Schedule draft MJNHMP for adoption at regular Board and City Council meetings, respectively. |
| | 2. Draft staff reports. |
| | 3. Resubmit adopted MJNHMP with evidence of adoption to DLCD for submission to FEMA. |
| DLCD | 4. At the request of the COUNTY or any CITY and to the extent possible or practicable, attend Board or City Council meeting(s) for adoption. |
| | 5. On behalf of the COUNTY and CITIES, submit MJNHMP evidence of adoption packages to FEMA. |
| | 6. Insert evidence of adoption and FEMA approval letter(s) into the MJNHMP. |

Milestone: September 15, 2017

PROJECT BUDGET and PAYMENT SCHEDULE

No funds will be exchanged. DLCD will use PDM 14 federal cost share grant funds to execute its tasks. The COUNTY and each CITY will provide the local cost share by using its own, **non-federal funds** to execute its tasks and will report expenditures to DLCD on a quarterly basis. The COUNTY and CITIES together will provide a **minimum** local cost share of \$3,250.00.

POST-PDM GRANT ACTIVITY: INTEGRATION

DLCD is committed to providing technical support to the COUNTY and CITIES for the integration of the updated Tillamook County MJNHMP into the COUNTY’s and each CITY’s existing planning mechanisms as described in Task 2.3, #3 and #4 and DLCD deliverable #3.