



AGENDA

Thursday January 29, 2015 - 10:00 AM BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2015-08

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. CITIZEN COMMUNICATION *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Persons wishing to speak shall be allowed to do so after registering on the blue card provided on the table outside of the hearing room prior to the beginning of the meeting. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

II. PUBLIC HEARINGS *(The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the organization they represent. In addition, a synopsis of each item, together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

1. Resolution No. _____ Approval for a Clackamas County Supplemental Budget (Greater than 10% and Budget Reduction) for Clackamas County for Fiscal Year 2014-2015 (Diane Padilla, Budget Manager)

DEVELOPMENT AGENCY

2. Resolution No. _____ Approval of a Clackamas County Development Agency Supplemental Budget (Greater than 10% and Budget Reductions) for Fiscal Year 2014-2015 (Dan Johnson, Development Agency)

III. DISCUSSION ITEMS *(The following items will be individually presented by County staff or other appropriate individuals. Citizens wishing to comment on a discussion item must fill out a blue card provided on the table outside of the hearing room prior to the beginning of the meeting.)*

-NO DISCUSSION ITEMS SCHEDULED

IV. CONSENT AGENDA *(The following items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Study Session. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

A. Finance Department

- 3 1. Resolution No. _____ Approval for Clackamas County Budgeting of New Specific Purpose Revenue for Fiscal Year 2014-2015

- 4 2. Resolution No. _____ Approval for Clackamas County Transfer of Appropriations for Fiscal Year 2014-2015

B. Elected Officials

- 5 1. Approval of Previous Business Meeting Minutes – BCC

C. Technology Services

- 6 1. Approval of Enter into a Franchise Agreement for Fiber Connections with the City of West Linn and the City of Wilsonville

V. DEVELOPMENT AGENCY

- 7 1. Approval of a Disposition and Development Agreement with A4RK, LLC to Convey Real Property
- 8 2. Approval of a Funding Agreement between the Clackamas County Development Agency and Clackamas County Rural Fire Protection District #1
- 9 3. Approval of an Agreement between the Clackamas County Development Agency and Hoodland Fire District No. 4
- 10 4. Approval of a Memorandum of Understanding with Clackamas River Water for Design of a Waterline in Conjunction with the Monterey Avenue Extension Design

VI. COUNTY ADMINISTRATOR UPDATE

VII. COMMISSIONERS COMMUNICATION

NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.

www.clackamas.us/bcc/business.html



MARC GONZALES
DIRECTOR

DEPARTMENT OF FINANCE

January 29, 2015

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Resolution for a Clackamas County Supplemental Budget
(Greater Than Ten Percent and Budget Reduction) for Fiscal Year 2014-2015

Purpose/Outcome	Supplemental Budget changes for Clackamas County FY 2014-2015
Dollar Amount and fiscal Impact	The effect is a decrease in appropriations of \$22,798.
Funding Source	Includes decrease in Interfund Transfers.
Safety Impact	N/A
Duration	July 1, 2014-June 30, 2015
Previous Board Action/Review	Budget Adopted June 26, 2014 and amended December 11, 2014
Contact Person	Diane Padilla, 503-742-5425
Contract No.	N/A

BACKGROUND:

Each fiscal year it is necessary to reduce allocations or allocate additional sources of revenue and appropriate additional expenditures to more accurately meet the changing requirements of the operating departments. The attached resolution reflects such changes requested by departments in keeping with a legally accurate budget. These changes are in compliance with O.R.S. 294.480 (4) which allows for governing body approval of supplemental budget changes for items ten percent or greater of the qualifying expenditures of the budget funds(s) being adjusted. The required notices have been published.

Within the General Fund, the Managing for Results budget is being transferred from County Administration to the section of the fund not allocated to a particular organizational unit (previously titled Non-departmental General Fund).

The County School Fund is recognizing current revenue and budgeting for a transfer to county schools.

The Fleet Services Fund is recognizing lower than estimated interfund transfer from the Sheriff's Fund and reducing new vehicle purchases accordingly.

The effect of this Resolution is a reduction change in appropriations of \$22,798 including revenues as detailed below:

Fund Balance	\$	85.
Federal Operating Grants		1,500.
Interfund Transfer		<u>(24,383.)</u>
Total Recommended	\$	<u>(22,798.)</u>

RECOMMENDATION:

Staff respectfully recommends adoption of the attached supplemental budget and Exhibit A in keeping with a legally accurate budget.

Sincerely,



Diane Padilla
Budget Manager

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Providing Authorization
Regarding Adoption of a Supplemental
Budget for Items Greater Than 10
Percent of the Total Qualifying Expenditures
and Making Appropriations for Fiscal
Year 2014-15



Resolution No _____

WHEREAS, during the fiscal year changes in appropriated expenditures may become necessary and appropriations may need to be increased, decreased or transferred from one appropriation category to another;

WHEREAS, a supplemental budget for the period of July 1, 2014 through June 30, 2015, inclusive, has been prepared, published and submitted to the taxpayers as provided by statute;

WHEREAS; a hearing to discuss the supplemental budget was held before the Board of County Commissioners on January 29, 2015.

WHEREAS; the funds being adjusted are:

- . General Fund – County Administration
- . General Fund – Not Allocated to Organizational Unit
- . County School Fund
- . Fleet Services Fund;

It further appearing that it is in the best interest of the County to approve this greater than 10 percent change in appropriations for the period of July 1, 2014 through June 30, 2015.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

Pursuant to its authority under OR 294.480, the supplemental budget be adopted and appropriations established as shown in the attached Exhibit A which by this reference is made a part of this Resolution.

DATED January 29, 2015

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

SUMMARY OF SUPPLEMENTAL BUDGET
Exhibit A
CHANGES OF GREATER THAN 10% OF BUDGET
January 29, 2015

Fund Balance	\$	85.
Federal Operating Grants		1,500.
Interfund Transfer		<u>(24,383.)</u>
Total Recommended	\$	<u>(22,798.)</u>

GENERAL FUND - COUNTY ADMINISTRATION

Expense:		
County Administration	\$	<u>(250,000.)</u>
Total		<u>\$ (250,000.)</u>

GENERAL FUND - NOT ALLOCATED TO ORGANIZATIONAL UNIT

Expense:		
Materials and Services	\$	205,000.
Capital Outlay		<u>45,000.</u>
Total		<u>\$ 250,000.</u>

Within the General Fund, the Managing for Results budget is being transferred from County Administration to the section of the fund not allocated to a particular organizational unit (previously titled Non-departmental General Fund).

COUNTY SCHOOL FUND

Revenue:		
Fund Balance	\$	85.
Federal Operating Grants		<u>1,500.</u>
Total		<u>\$ 1,585.</u>
Expense:		
Special Payments	\$	<u>1,585.</u>
Total		<u>\$ 1,585.</u>

County School Fund is recognizing current revenue and budgeting for a transfer to county schools.

FLEET SERVICES FUND

Revenue:		
Interfund Transfer	\$	<u>(24,383.)</u>
Total		<u>\$ (24,383.)</u>
Expense:		
Fleet Services Fund	\$	<u>(24,383.)</u>
Total		<u>\$ (24,383.)</u>

Fleet Services Fund is recognizing lower than estimated interfund transfer from the Sheriff's Fund and reducing new vehicle purchases accordingly.



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DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

January 29, 2015

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

Board of County Commissioners
Acting as Clackamas County Development Agency Board
Clackamas County

Members of the Board:

Approval of a Resolution for a Clackamas County Development Agency Supplemental Budget
(Greater Than Ten Percent and Budget Reduction) for Fiscal Year 2014-2015

Purpose/Outcomes	Supplemental Budget changes for Clackamas County Development Agency FY 2014-2015
Dollar Amount and Fiscal Impact	The Effect is an increase in appropriations of \$883,484
Funding Source	Includes increase in Fund Balance
Safety Impact	Not Applicable
Duration	July 1, 2014 – June 30, 2015
Previous Board Action/Review	Budget Adopted June 26, 2014
Contact Person	Dan Johnson, Agency Manager

BACKGROUND:

Each fiscal year it is necessary to reduce allocations or allocate additional sources of revenue and appropriate additional expenditures to more accurately meet the changing requirements of the operating departments. The attached resolution reflects such changes requested by departments in keeping with a legally accurate budget. These changes are in compliance with O.R.S. 294.480 (4) which allows for governing body approval of supplemental budget changes for items ten percent or greater of the qualifying expenditures of the budget funds(s) being adjusted. The required notices have been published.

The **Clackamas Town Center Debt Service Fund** is recognizing additional beginning fund balance, and decreasing contingency to allow for additional debt service funding. These adjustments are requested to address a debt service payment appropriated in the FY 2013/2014 budget which was not processed. Allocation of these funds allows for the expenditure planned for FY 2013/2014 to be executed in FY 2014/2015.

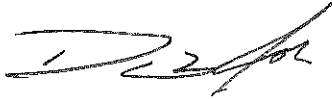
The effect of this Resolution is an increase change in appropriations of \$883,484 including revenues as detailed below:

Fund Balance	\$ 883,484.
Total Recommended	<u>\$ 883,484</u>

RECOMMENDATION:

Staff respectfully recommends adoption of the attached supplemental budget and Exhibit A in keeping with a legally accurate budget.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Johnson", written in a cursive style.

Dan Johnson
Development Agency Manager

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Providing Authorization
Regarding Adoption of a Supplemental
Budget for Items Greater Than 10
Percent of the Total Qualifying Expenditures
and Making Appropriations for Fiscal
Year 2014-15



Resolution No _____

WHEREAS, during the fiscal year changes in appropriated expenditures may become necessary and appropriations may need to be increased, decreased or transferred from one appropriation category to another;

WHEREAS, a supplemental budget for the period of July 1, 2014 through June 30, 2015, inclusive, has been prepared, published and submitted to the taxpayers as provided by statute;

WHEREAS; a hearing to discuss the supplemental budget was held before the Board of County Commissioners on January 29, 2015.

WHEREAS; the funds being adjusted are:

Clackamas Town Center Debt Service Fund

It further appearing that it is in the best interest of the County to approve this greater than 10 percent change in appropriations for the period of July 1, 2014 through June 30, 2015.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

Pursuant to its authority under OR 294.480, the supplemental budget be adopted and appropriations established as shown in the attached Exhibit A which by this reference is made a part of this Resolution.

DATED January 29, 2015

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

SUMMARY OF SUPPLEMENTAL BUDGET

Exhibit A

**CHANGES OF GREATER THAN 10% OF BUDGET
January 29, 2015**

CLACKAMAS TOWN CENTER DEBT SERVICE FUND

Revenue:	
Fund Balance	\$ 883,484.
Total	<u>\$ 883,484.</u>
Expense:	
Debt Service	\$ 897,359.
Contingency	(13,875.)
Total	<u>\$ 883,484.</u>

Clackamas Town Center Debt Service Fund is recognizing fund balance and reducing contingency and budgeting for debt payment.



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MARC GONZALES
DIRECTOR

DEPARTMENT OF FINANCE

January 29, 2015

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Resolution for Clackamas County for Budgeting of
New Specific Purpose Revenue for Fiscal Year 2014-2015

Purpose/Outcome	Budget changes for Clackamas County FY 2014-2015
Dollar Amount and fiscal Impact	The effect is an increase in appropriations of \$2,280,623.
Funding Source	Includes Federal and State Operating Grants, Local Government & Other Agencies and Miscellaneous Revenue.
Safety Impact	N/A
Duration	July 1, 2014-June 30, 2015
Previous Board Action/Review	Budget Adopted June 26, 2014 and amended December 11, 2014
Contact Person	Diane Padilla, 503-742-5425
Contract No.	N/A

BACKGROUND:

Each fiscal year it is necessary to appropriate additional expenditures and allocate additional sources of revenue to more accurately meet the changing requirements of the operating departments of the County. The attached resolution reflects those changes that departments have requested which pursuant to O.R.S. 294.326, qualify as grants in trust for specific purposes in keeping with legally accurate budget.

The Behavioral Health Fund is recognizing Oregon Health Authority revenue and budgeting to add a full-time Mental Health Specialist, a Case Manager and a Program Planner for the Older Adult Mental Health Program, Hospital Diversion-Kids Program and Crisis Follow-up Program.

The Social Services Fund is recognizing additional grant revenue for the Mountain Express, Warming Centers and Dementia Programs and budgeting for associated costs.

The Community Development Fund is recognizing additional Home Investment Partnerships Program revenue and budgeting for the Town Center Greens affordable housing project.

The Community Solutions Fund is recognizing additional revenue from the Workforce Investment Council of Clackamas County and budgeting to add one full-time Job Development Specialist and program costs.

The Technology Services Fund is recognizing miscellaneous revenue and budgeting for two Microcomputer Programmer Analyst positions originally budgeted in the Behavioral Health and Community Health Center Funds.

The effect of this Board Order is an increase in appropriations of \$2,280,623 including new revenues as detailed below:

Federal Operating Grants	\$ 1,654,700.
State Operating Grants	478,675.
Local Government and Other Agencies	36,430.
Miscellaneous Revenue	<u>110,818.</u>
Total Recommended	<u>\$ 2,280,623.</u>

RECOMMENDATION:

Staff respectfully recommends adoption of the attached supplemental budget and Exhibit A in keeping with a legally accurate budget.

Sincerely,



Diane Padilla
Budget Manager

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Providing
Authorization to Appropriate Grants
For Specific Purposes within the Fiscal
Year 2014-15



Resolution No. _____

WHEREAS, during the fiscal year changes in appropriated expenditures may become necessary and appropriations may need to be increased, decreased or transferred from one appropriation category to another;

WHEREAS, appropriation of grants entrusted for specific purposes within Clackamas County budget for the period of July 1, 2014 through June 30, 2015, inclusive is necessary to authorize the expenditure of funds, for the needs of Clackamas County residents;

WHEREAS; the fund being adjusted is:

- . Behavioral Health Fund
- . Social Services Fund
- . Community Development Fund
- . Community Solutions Fund
- . Technology Services Fund;

It further appearing that it is in the best interest of the County to approve these grants entrusted for specific purpose of appropriations for the period of July 1, 2014 through June 30, 2015.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

Pursuant to its authority under OR 294.326, appropriation of specific purpose grants is authorized as shown in the attached Exhibit A which by this reference is made a part of this Resolution.

DATED _____

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

NEW SPECIFIC PURPOSE REVENUE REQUESTS

Exhibit A

Federal Operating Grants	\$ 1,654,700.
State Operating Grants	478,675.
Local Government & Other Agencies	36,430.
Miscellaneous Revenue	<u>110,818.</u>
 Total Recommended	 <u>\$ 2,280,623.</u>

BEHAVIORAL HEALTH FUND

Revenue:	
State Operating Grants	\$ 401,675.
Total	<u>\$ 401,675.</u>
 Expense:	
Behavioral Health	\$ 256,505.
Contingency	145,170.
Total	<u>\$ 401,675.</u>

Behavioral Health Fund is recognizing Oregon Health Authority revenue and budgeting to add a full-time Mental Health Specialist, a Case Manager and a Program Planner for the Older Adult Mental Health Program, Hospital Diversion-Kids Program and Crisis Follow-up Program.

SOCIAL SERVICES FUND

Revenue:	
Federal Operating Grants	\$ 54,700.
State Operating Grants	77,000.
Local Government & Other Agencies	36,430.
Total	<u>\$ 168,130.</u>
 Expense:	
Social Services	\$ 168,130.
Total	<u>\$ 168,130.</u>

Social Services Fund is recognizing additional grant revenue for the Mountain Express, Warming Centers and Dementia Programs and budgeting for associated costs.

COMMUNITY DEVELOPMENT FUND

Revenue:	
Federal Operating Grants	\$ 1,500,000.
Total	<u>\$ 1,500,000.</u>

Expense:	
Community Development	\$ 1,500,000.
Total	<u>\$ 1,500,000.</u>

Community Development Fund is recognizing additional Home Investment Partnerships Program revenue and budgeting for the Town Center Greens affordable housing project.

COMMUNITY SOLUTIONS FUND

Revenue:	
Federal Operating Grants	\$ 100,000.
Total	<u>\$ 100,000.</u>

Expense:	
Community Solutions	\$ 100,000.
Total	<u>\$ 100,000.</u>

Community Solutions Fund is recognizing additional revenue from the Workforce Investment Council of Clackamas County and budgeting to add one full-time Job Development Specialist and program costs.

TECHNOLOGY SERVICES FUND

Revenue:	
Miscellaneous Revenue	\$ 110,818.
Total	<u>\$ 110,818.</u>

Expense:	
Technology Services	\$ 110,818.
Total	<u>\$ 110,818.</u>

The Technology Services Fund is recognizing miscellaneous revenue and budgeting for two Microcomputer Programmer Analyst positions originally budgeted in Behavioral Health and Community Health Center Funds



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MARC GONZALES
DIRECTOR

DEPARTMENT OF FINANCE

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

January 29, 2015

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Resolution for Clackamas County for
Transfer of Appropriations for Fiscal Year 2014-2015

Purpose/Outcome	Budget changes for Clackamas County FY 2014-2015
Dollar Amount and fiscal Impact	No fiscal impact. Transfer of existing appropriations.
Funding Source	N/A
Safety Impact	N/A
Duration	July 1, 2014-June 30, 2015
Previous Board Action/Review	Budget Adopted June 26, 2014 and amended December 11, 2014.
Contact Person	Diane Padilla, 503-742-5425
Contract No.	N/A

BACKGROUND: Periodically during the fiscal year it is necessary to transfer appropriations to more accurately reflect the changing requirements of the operating departments.

Transfers are a method of moving budgeted appropriations during the fiscal year as required by state budget law per ORS 294.450. There is no financial impact incurred as a result of transfers as appropriations for these amounts have been accomplished through the initial budget process.

The attached resolution accomplishes the above mentioned changes as requested by the following operating departments in keeping with a legally accurate budget.

The General Fund – Not Allocated to Organizational Unit is increasing its interfund transfer to the Children, Youth and Families Fund for additional support for the Family Stepping Stones Program and reducing contingency.

The General Fund – Purchasing and Mail Operations organizational units are realigning their expenditure accounts to better reflect actual costs.

The Behavioral Health Fund is realigning its expenditures to transfer one position out to Technology Services and transfer one position in from the Finance Department.

The Children, Youth and Families Fund is recognizing increased General Fund support for the Family Stepping Stones Program.

The Clackamas Health Centers Fund is realigning revenues and transferring a full-time Microcomputer Programmer Analyst position to the Technology Services Fund.

The Capital Projects Reserve Fund is transferring from contingency to capital outlay to have funds for the Jail roof project available as may be needed.

RECOMMENDATION:

Staff respectfully recommends adoption of the attached supplemental budget and Exhibit A in keeping with a legally accurate budget.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane Padilla". The signature is written in black ink and is positioned above the printed name.

Diane Padilla
Budget Manager

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Providing Authorization
To Transfer Appropriations Within
the Fiscal Year 2014-15



Resolution No. _____

WHEREAS, during the fiscal year changes in appropriated expenditures may become necessary and appropriations may need to be increased, decreased or transferred from appropriation category to another;

WHEREAS, transfer of appropriations for the period of July 1, 2014 through June 30, 2015, inclusive is necessary to continue to prudently manage the distribution of those expenditures for the needs of Clackamas County residents;

WHEREAS; the funds being adjusted are:

- . General Fund – Not Allocated to Organizational Unit
- . General Fund – Purchasing
- . General Fund – Mail Operations
- . Behavioral Health Fund
- . Children, Youth and Families Fund
- . Clackamas Health Centers Fund
- . Capital Projects Reserve Fund;

It further appearing that it is in the best interest of the County to approve this transfer of appropriations for the period of July 1, 2014 through June 30, 2015.

BE RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

Pursuant to its authority under OR 294.450, transfer of appropriation within the fiscal year budget is authorized as shown in the attached Exhibit A which by this reference is made a part of this Resolution.

DATED _____

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

TRANSFER REQUEST

Exhibit A

GENERAL FUND – NOT ALLOCATED TO ORGANIZATIONAL UNIT

Decrease:		
Expenses:		
Contingency		\$ 20,000.
Total		<u>\$ 20,000.</u>
 Increase:		
Expenses:		
Interfund Transfer		\$ 20,000.
Total		<u>\$ 20,000.</u>

General Fund – Not Allocated to Organizational Unit is increasing its interfund transfer to the Children, Youth and Families Fund for additional support for the Family Stepping Stones Program and reducing contingency.

GENERAL FUND – PURCHASING – MAIL OPERATIONS

Expense:		
General Fund – Purchasing		(2,500.)
General Fund – Mail Operations		2,500.

Purchasing and Mail Operations organizational units are realigning their expenditure accounts to better reflect actual costs.

BEHAVIORAL HEALTH FUND

Expense:		
Behavioral Health		0.

Behavioral Health Fund is realigning its expenditures to transfer one position out to Technology Services and transfer one position in from the Finance Department.

CHILDREN, YOUTH AND FAMILIES FUND

Revenue:		
Intefund Transfer		\$ 20,000.
Total		<u>\$ 20,000.</u>
 Expense:		
Children, Youth and Families		\$ 20,000.
Total		<u>\$ 20,000.</u>

Children, Youth and Families Fund is recognizing increased General Fund support for the Family Stepping Stones Program.

CLACKAMAS HEALTH CENTERS FUND

Revenue:	
State Operating Grants	\$ 245,386.
Charge for Services	(96,053.)
Interfund Transfer	<u>(149,333.)</u>
Total	<u>\$ 0.</u>

Expense:	
Clackamas Health Centers	0.

Clackamas Health Centers Fund is realigning revenues and transferring a full-time Microcomputer Programmer Analyst position to the Technology Services Fund.

CAPITAL PRDOJECTS RESERVE FUND

Decrease:	
Expenses:	
Contingency	\$ 334,400.
Total	<u>\$ 334,400.</u>

Increase:	
Expenses:	
Capital Outlay	\$ 334,400.
Total	<u>\$ 334,400.</u>

Capital Projects Reserve Fund is transferring from contingency to capital outlay to have funds for the Jail roof project available as may be needed.

Approval of Previous Business Meeting Minutes:

January 11, 2015

(minutes attached)

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports of this meeting can be viewed at <http://www.clackamas.us/bcc/business.html>

Thursday, January 15, 2015 – 6:00 PM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

PRESENT: Commissioner John Ludlow, Chair
Commissioner Jim Bernard
Commissioner Paul Savas
Commissioner Martha Schrader
Commissioner Tootie Smith

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. PRESENTATION

1. Presentation of the 2014 Clackamas County Small Grant Recipients
Caroline Hill, County Administration presented the staff report. She introduced a short video highlighting three of the recipients. She then announced the 38 Small Grant Recipients.

~Board Discussion~

II. CITIZEN COMMUNICATION

<http://www.clackamas.us/bcc/business.html>

1. Tena Olson, Oregon City –spoke about awareness of Veteran’s PTSD issues.
2. Les Poole, Gladstone – concerns regarding Metro and Climate Smart.

III. DISCUSSION ITEMS

~NO DISCUSSION ITEMS SCHEDULED

IV. CONSENT AGENDA

Chair Ludlow asked the Clerk to read the consent agenda by title – the then asked for a motion.

MOTION:

Commissioner Smith: I move we pass the consent agenda.
Commissioner Schrader: Second.
Clerk calls the poll.
Commissioner Bernard: Aye.
Commissioner Smith: Aye.
Commissioner Schrader: Aye.
Commissioner Savas: Aye.
Chair Ludlow: Aye – the motion passes 5-0.

A. Health, Housing & Human Services

1. Approval of Amendment No. 1 of the Sub-recipient Grant Agreement with Clackamas County Children’s Commission for Home Visit Services – Children, Youth & Families

B. Elected Officials

1. Approval of Previous Business Meeting Minutes – BCC

V. DEVELOPMENT AGENCY

1. Resolution No. **2015-03** Authorizing Transfer of Appropriations for Fiscal Year 2014-2015 for the Clackamas County Development Agency

VI. WATER ENVIRONMENT SERVICES

1. Approval of a Grant Application Submittal for the Mt. Scott Creek Oak Bluff Restoration Project

VII. COUNTY ADMINISTRATOR UPDATE

<http://www.clackamas.us/bcc/business.html>

VIII. COMMISSIONERS COMMUNICATION

<http://www.clackamas.us/bcc/business.html>

MEETING ADJOURNED – 6:57 PM

NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.

www.clackamas.us/bcc/business.html



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

January 29, 2015

Board of County Commissioners
Clackamas County

Members of the Board:

Approval to enter into a Franchise Agreement with
The City of West Linn and the City of Wilsonville

Purpose/Outcome	CBX is looking for approval to enter into a franchise agreement with the City of West Linn and the City of Wilsonville.
Dollar Amount and Fiscal Impact for West Linn	CBX has offered a free fiber connection to the City of West Linn for the elimination of all franchise fees within the city limits of West Linn. No franchise fees (annual savings of ~ \$2,300.00)
Dollar Amount and Fiscal Impact for Wilsonville	CBX has offered a net of two free fiber connections to the City of Wilsonville for the elimination of all franchise fees within the city limits of Wilsonville. No franchise fees (annual savings of ~\$2,300.00) and access to Wilsonville's fiber and conduit.
Funding Source	N/A
Safety Impact	N/A
Duration	Upon approval by the board, the initial term is 10 years with an automatic 10 year renewal.
Previous Board Action/Review	Similar to the signed Franchise Agreements with the City of Canby and the City of Milwaukie.
Contact Person	Dave DeVore, Deputy CIO for technology Services, (503) 723-4996
Contract No.	

BACKGROUND:

Clackamas County received a federal grant to develop a dark fiber network throughout Clackamas County. The grant funded a 180 mile dark fiber network all on the east side of the Willamette River. At the same time, Clackamas County Technology Services entered into an agreement with Portland General Electric (PGE) for a 12 mile fiber co-build that connected the grant funded dark fiber network to the west side of the Willamette River.

CBX is now looking to expand the dark fiber network on the west side of the Willamette River. The City of West Linn and the City of Wilsonville (The City's) would like the benefits that the CBX fiber network could bring to their communities. High speed affordable fiber connectivity could allow the cities to compete in an ever expanding global market. The City's understands the advantages that the CBX fiber network could bring to their community and they have agreed to not charge CBX a franchise fee for the use of The City's rights-of-way.

Not only will this agreement benefit The City's, but the West Linn-Wilsonville School District would like to expand their CBX fiber usage to reach all of their schools. Currently, Willamette Primary School and the Three Rivers Charter School are connected and utilizing the CBX dark fiber. The school district could truly benefit from a faster, more secure fiber connections that could reduce the school districts operating budget.

This franchise agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends approval to enter into this franchise agreement. This franchise agreement will allow CBX to provide fast effective fiber connectivity to the public and commercial entities within the city limits of West Linn and Wilsonville at an affordable cost. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Respectfully submitted,



Dave Cummings, Chief Information Officer
Technology Services

**FRANCHISE AGREEMENT
FOR BROADBAND INFRASTRUCTURE**

City: City of West Linn, an Oregon municipal corporation
Franchisee: Clackamas County, a political subdivision of the State of Oregon, its successors and assigns
Term: Ten (10) year initial term with one (1) ten (10) year renewal

RECITALS

1. Clackamas County Broadband Express installs and maintains dark fiber optic cable.
2. Clackamas County is extending dark fiber optic cable throughout the County to make its network available to public agencies and private telecommunications companies through lease agreements.
3. The County desires to extend its dark fiber network through the City of West Linn.
4. The City believes it is advantageous to the City and its residents to allow opportunities for additional fiber network providers to install infrastructure to increase competition.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS.

- 1.1. Emergency: a situation involving, or where the failure of Franchisee to act would result in:
 - 1.1.1. an unscheduled outage affecting one or more customers, or
 - 1.1.2. danger to public safety.
- 1.2. Facilities: Franchisee's lines, anchors, wires, cables, conduits, laterals, and other tangible components, fixtures and equipment necessary for the operation of Franchisee's dark fiber optic cable network.
- 1.3. Franchise: this Franchise Agreement as fully executed by the City and Franchisee and adopted by the City Council pursuant to an enacting ordinance.
- 1.4. Public rights of way ("Public ROW"): area upon, over, along, and across the surface of, and the space above and below the streets alleys, roads, highways, sidewalks, bridges, other public ways that the City has jurisdiction over, and public utility easements that are designated for providers of utility services and regulated under the West Linn Municipal Code.

2. GRANT OF FRANCHISE.

- 2.1. The City grants to Franchisee a nonexclusive franchise to erect, construct, repair, maintain, upgrade and operate a dark fiber optic cable network ("dark fiber network") within the City's Public ROW. Franchisee has the right to install, repair, maintain, upgrade and operate its Facilities. This Franchise is not exclusive, and nothing in this Franchise shall prevent the City from granting others rights and privileges to utilize the Public ROW.
- 2.2. All Facilities currently within the Public ROW, or installed during the Term, are covered by this Franchise and are deemed lawfully placed. The City may require relocation of Facilities in accordance with Section 8.

3. **TERM.** The Franchise Term ("Term") shall be ten (10) years, beginning on the effective date of the implementing Ordinance. After the expiration of the initial ten year term, the Franchise shall automatically renew for an additional ten (10) year term unless either party gives notice to the other party of its intent to terminate the Franchise ninety (90) days before the Franchise expires. Section 14, Compensation, shall be reviewed prior to renewal if either party notifies the other in writing of an intent to discuss compensation at least one hundred twenty (120) days before the first term expires.
4. **CHARTER AND GENERAL ORDINANCES APPLY.**
 - 4.1. To the extent authorized by law, this Franchise is subject to the Charter of the City of West Linn and the City's general ordinance provisions, including the applicable provisions of the West Linn Municipal Code, Community Development Code, and Public Works Standards, and state statutes and regulations in existence during the Term.
 - 4.2. This Franchise shall not be construed to give Franchisee any credit or exemption from any nondiscriminatory, generally applicable:
 - 4.2.1. business tax, or other tax levied now or in the future,
 - 4.2.2. tax on Franchisee's taxable real or personal property, or
 - 4.2.3. permit fees or inspection fees required as a condition of construction for any improvements upon Franchisee's real property and imposed under a generally applicable ordinance or resolution.
5. **FRANCHISEE'S WORK IN PUBLIC ROW.** Nothing in this Franchise shall waive the requirements of the various codes and ordinances of the City regarding permits, permit fees, business licenses, fees generally applicable to other similar businesses operating within the City, or the manner of construction unless the Franchise language specifically states otherwise.
6. **CITY AUTHORITY OVER PUBLIC ROW.** Nothing in this Franchise shall in any way be interpreted to prevent, or in any way limit, the City from:
 - 6.1. modifying or performing any work in its Public ROW,
 - 6.2. granting other franchises for use of Public ROW,
 - 6.3. adopting general ordinances regulating the use of or activities in the Public ROW, or
 - 6.4. exercising its rights, privileges or property interest in its Public ROW, whether currently owned or acquired in the future.
7. **CONSTRUCTION, MAINTENANCE, AND REPAIR OF PUBLIC ROW.**
 - 7.1. Franchisee shall perform work in a good and workmanlike manner and in compliance with all rules, regulations, or ordinances which may, during the term of this Franchise, be adopted by the City, or any other authority having jurisdiction over Public ROW. Prior to commencing excavation or construction, Franchisee shall give appropriate notice to other franchisees, licensees or permittees of the City that own or maintain facilities that may be affected by the proposed excavation or construction.
 - 7.2. Franchisee shall obtain all necessary permits for excavation and construction, and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City. The plans will be evaluated by the standards applied to the construction of other similar facilities in the City.
 - 7.3. Franchisee may excavate or construct, as approved by the City, in any Public ROW for the purpose of placing, erecting, laying, maintaining or repairing Facilities. Franchisee shall repair and replace the excavated portion of the Public ROW in accordance with

the West Linn Public Works Standards to at least the same condition that it was in prior to excavation. If Franchisee fails to restore the Public ROW to at least the same condition that it was in prior to excavation, the City shall give Franchisee written notice that the Public ROW must be restored by a specific date, not to exceed thirty (30) days from the date of the written notice. The City reserves the right to make necessary repairs and charge the cost to Franchisee if Franchisee fails to restore the Public ROW within the applicable timeframe. The City Engineer may also excuse Franchisee from restoring the Public ROW if the work is part of a coordinated project requiring another person to restore the Public ROW.

- 7.4. Franchisee shall construct and maintain its Facilities so that the Facilities do not interfere with City sewer systems, water systems, stormwater systems, or other City facilities.

8. RELOCATION OF FACILITIES.

8.1. Permanent Relocation Required by City.

8.1.1. *Relocation of Same Facilities.* This subsection covers permanent relocation of overhead Facilities that will remain overhead, and underground Facilities that will remain underground. The City shall have the right to require Franchisee to change the location of Facilities located in the Public ROW when it is necessary for any public project or public improvement in the Public ROW, and, unless otherwise agreed, the expenses of relocation shall be paid by Franchisee. The City agrees to provide a suitable location in the Public ROW, if such space is available, as mutually agreed, for Facilities, to accommodate and permit relocation and upgrade of Facilities in order to maintain sufficient service.

8.1.2. *Undergrounding Required.* As permitted by, and in accordance with City ordinance and any applicable law, administrative rule, or regulation, the City may require Franchisee to convert any overhead Facilities to underground Facilities at the same or different locations. Any such underground relocation shall be consistent with applicable long-term development plans or projects of the City, or as approved by the City. The expense of relocation or removal shall be paid by Franchisee. However, if the City requests a subsequent relocation of all or part of the same Facilities less than two years after the initial relocation that is necessary or convenient for a public project, the subsequent relocation shall be at the expense of the City.

8.1.3. *Notice.* Except in the event of a public Emergency, City shall provide a minimum of ninety (90) days written notice to remove/relocate Facilities. If Franchisee fails to remove or relocate any such Facilities within ninety (90) days after the date established by the City, the City may cause or effect such removal or relocation, performed by a qualified contractor, in accordance with applicable local, state and federal laws and regulations.

8.2. **Temporary Relocation at Request of City.** This subsection covers temporary relocation of overhead Facilities that will remain overhead, as well as underground Facilities that will remain underground. The City may require Franchisee to temporarily remove and relocate Facilities by giving a minimum of sixty (60) days written notice to Franchisee. Prior to such relocation, the City agrees to provide a suitable location in the Public ROW, as mutually agreed, or a temporary construction easement that allows the

Franchisee to place its Facilities on the easement in order to maintain sufficient service until such time as the Franchisee moves its Facilities to their permanent location. The cost of temporary removal or relocation of Facilities that is necessary or convenient for public projects, as well as cost of replacing Facilities in their permanent location, shall be paid by Franchisee. However, if the City requests a subsequent relocation of all or part of the same Facilities less than two years after the initial relocation, that is necessary or convenient for a public project, the subsequent relocation shall be at the expense of the City.

8.3. Permanent and Temporary Relocation at Request of Third Party.

In the event that any relocation of Franchisee Facilities is requested by or is to accommodate a third party, Franchisee shall seek reimbursement from the third party and not from the City. Such relocation shall be approved by the City. Third party shall provide a minimum of ninety (90) days written notice to relocate Facilities. If Franchisee fails to remove or relocate any such Facilities within ninety (90) days, the third party may cause or effect such removal or relocation, performed by a qualified contractor, in accordance with applicable local, state and federal laws and regulations.

9. EMERGENCY REPAIRS. Franchisee may conduct emergency work at any time; however, Franchisee must provide the City Engineer with written or oral notice of emergency work as soon as reasonably possible, and no later than five (5) business days, after the emergency work has commenced. If permits are required by City, Franchisee shall apply for appropriate permits the next business day or as soon as reasonably possible following discovery of the Emergency. In any event, within thirty (30) days of beginning emergency repairs or construction, Franchisee shall provide the City Engineer with a map in electronic, read-only format of the general location of excavations, repaving, and new facilities.

10. REMOVAL OF FACILITIES. If this Franchise is terminated or expires on its own terms and is not replaced by a new franchise agreement or similar authorization, the City may determine whether Facilities are to be removed from the Public ROW or remain in place. The City shall provide written notice of any requirement to remove Facilities and shall provide Franchisee sixty (60) days to comment on such requirement to remove Facilities. Following consideration of any such comments, the City Manager may issue an order requiring removal of Facilities within nine (9) months after such order is declared.

11. INSURANCE. Franchisee shall obtain and maintain in full force and effect, for the entire Term, the following insurance covering risks associated with Franchisee's ownership and use of Facilities and the Public ROW:

11.1. Commercial Liability. Commercial General Liability insurance covering all operations by or on behalf of Franchisee for Bodily Injury and Property Damage, including Completed Operations and Contractors Liability coverage, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate.

11.2. Automobile Liability. Business Automobile Liability insurance to cover any vehicles used in connection with its activities under this Franchise, with a combined single limit not less than Two Million Dollars (\$2,000,000.00) per accident.

11.3. Workers' Compensation Liability. Workers' Compensation coverage as required by law and Employer's Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00). With the exception of Workers' Compensation and Employers

Liability coverage, Franchisee shall name the City as an additional insured on all applicable policies. All insurance policies shall provide that they shall not be canceled or modified unless thirty (30) days prior written notice is provided to the City. Franchisee shall provide the City with a certificate of insurance evidencing such coverage as a condition of this Franchise and shall provide updated certificates upon request.

11.4. Index for Minimum Coverage. Franchisee is responsible for ensuring that its insurance coverage satisfies the increased minimums of this subsection. The minimum coverages required in subsections 11.1 through 11.3 shall be automatically adjusted to track percentages of statutory increases to the City's exposure under the Oregon Tort Claims act. On July 1, 2015, and every July 1 for each subsequent year this Franchise is in effect, Franchisee shall ensure it has insurance coverage in the amount stated in subsections 11.1 through 11.3, increased in accordance with State law by the lesser of:

11.4.1. Three percent (3%), or

11.4.2. The percentage increase, if any, in the cost of living for the previous calendar year, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor.

11.5. In Lieu of Insurance. Franchisee is responsible for ensuring that its insurance coverage satisfies subsections 11.1 through 11.3 and the increased minimums in subsection 11.4. In lieu of the insurance policies required by this Section, Franchisee shall have the right to self-insure any and all of the coverage in this Section. If Franchisee elects to self-insure, it shall do so in an amount at least equal to the coverage requirements of this Section and in a form acceptable to the City. Franchisee shall provide proof of self-insurance to the City before this Franchise takes effect and upon future request by the City.

12. TRANSFER OF FRANCHISE. Franchisee may not sell, assign, transfer, or convey this Franchise to a third party without the City Council giving its consent in a duly passed ordinance. Prior to any proposed transfer, Franchisee shall be in full compliance with this Franchise and the proposed transferee shall agree in writing to be bound by this Franchise. Upon obtaining consent of the City Council, this Franchise shall bind such third party. This Section does not prohibit:

12.1. the use of Franchisee's property as collateral for financing purposes in the ordinary conduct of Franchisee's, or an affiliate of Franchisee's, business;

12.2. the sale of tangible assets of the Franchisee in the ordinary conduct of Franchisee's business; or

12.3. a transfer to a transferee that is a parent of Franchisee, an affiliate of Franchisee, has a majority of its beneficial ownership held by Franchisee or a parent of Franchisee and whose primary business is .

13. INDEMNIFICATION. To the fullest extent permitted by law, Franchisee shall indemnify and hold harmless the City against any and all claims, damages, costs and expenses, including attorney's fees and costs, to which the City may be subjected as a direct and proximate result of any willful, intentionally tortious, negligent, or malicious acts and/or omissions of Franchisee, or its affiliates, officers, employees, agents, contractors or subcontractors,

arising out of the rights and privileges granted by this Franchise. Franchisee shall not indemnify the City for negligent acts of the City that are outside the scope of this Franchise. The obligations imposed by this Section shall survive termination of this Franchise.

14. COMPENSATION.

14.1. In consideration for permission to use the Public ROW of the, the Franchisee shall provide the City with one (1) connection to the Franchise Facilities for a cost of zero (\$0) per month upon request. City and Franchisee acknowledge that there may be years for which the City will request zero connections; however, such a waiver shall not preclude the City from requesting a connection in subsequent years. The compensation under this section shall not be in lieu of any general applicable ordinance or resolution imposing a fee or charge for use of the Public ROW.

14.2. If prior to expiration of this Franchise negotiations for a new franchise agreement are not completed, the compensation shall survive expiration of this Franchise until a new franchise agreement becomes effective and supersedes this Franchise.

15. ANNEXATION. Upon the annexation of any territory to the City, the rights granted in this Franchise shall extend to the annexed territory. All Facilities owned, maintained, or operated by Franchisee located within any Public ROW of the annexed territory shall be subject to all of the terms of this Franchise.

16. RIGHT TO INSPECT.

16.1. Records. Franchisee shall provide, upon request, maps of the Franchisee's Franchise Facilities, and any other related information required for the exercise of any other lawful right of Franchisee under this Franchise. The City agrees that such information is confidential and that the City will use such information only for the purpose of managing its Rights-of-Way and determining compliance with the terms of this Franchise. The City further agrees to protect such information from disclosure to third parties to the maximum extent allowed by Oregon law.

16.2. Construction. Any work completed by Franchisee within the Public ROW may be inspected by the City to determine whether it has been placed in its approved location and in accordance with City requirements and standards according to Franchisee's permit issued by the City. Non-conforming work will be corrected with work conforming to the applicable standards at no cost to the City. If Emergency work has been completed by Franchisee in the Public ROW, and the City determines such work was not completed in a City approved location or in accordance with City requirements and standards, the City shall notify Franchisee and provide Franchisee with sixty (60) days after the Emergency has passed to reperform the work in a City approved location.

17. TERMINATION.

17.1. In addition to any other rights provided for in this Franchise, the City reserves the right to terminate this Franchise in the event that Franchisee materially violates any material provision of this Franchise, including, but not limited to:

17.1.1. Failure to maintain the liability insurance or self-insurance required under Section 11;

17.1.2. Failure to provide copies of requested information or the right to inspect construction under Section 16; or

17.1.3. Failure to substantially comply with the construction requirements of Section 7.

17.2. Notice and Opportunity to Cure. The City shall provide Franchisee thirty (30) days prior written notice of its intent to exercise its rights under this Section, stating the reasons for such action. If Franchisee cures the basis for termination or if Franchisee initiates efforts satisfactory to the City to remedy the basis for termination and the efforts continue in good faith within the thirty (30) day notice period, the City shall not exercise its remedy rights. If Franchisee fails to cure the basis for termination or if Franchisee does not undertake and/or maintain efforts satisfactory to the City to remedy the basis for termination within the thirty (30) day notice period, then the City Council may impose any or all of the remedies available under this Section or Section 18.3.

18. MISCELLANEOUS PROVISIONS.

18.1. Acceptance. Within thirty (30) days after the ordinance adopting this Franchise is passed by the City Council, Franchisee shall file with the City Recorder its written unconditional acceptance or rejection of this Franchise. If Franchisee files a rejection, or fails to file a written unconditional acceptance within thirty (30) days, this Franchise shall be null and void.

18.2. Compliance with Applicable Laws. Franchisee shall comply with all applicable federal, state, and local laws, ordinances, and regulations, whether now in existence or enacted in the future. Nothing contained in this Franchise shall be construed as authorizing the Franchisee, its officers, employees or agents, to violate any federal, state or local law. Nothing contained in this Section shall be construed as requiring Franchisee to comply with any federal, state or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this Franchise.

18.3. Remedies and Penalties not Exclusive. All remedies and penalties under this Franchise, including termination, are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of a penalty is not a bar to recovery or enforcement by any other remedy or imposition of any other penalty. The City reserves the right to enforce the penal provisions of any City ordinance or resolution and to avail itself to any and all remedies available at law or in equity. Failure to enforce any term, condition or obligation of this Franchise shall not be construed as a waiver of a breach of any term, condition or obligation of this Franchise. A specific waiver of a particular breach of any term, condition or obligation of this Franchise shall not be a waiver of any other, subsequent or future breach of the same or any other term, condition or obligation of this Franchise.

18.4. Authority. The parties acknowledge that the persons executing this Franchise on behalf of each entity have the legal power, right, and actual authority to bind their respective entities to the terms and conditions of this Franchise.

18.5. Nonwaiver. Franchisee shall not be relieved of its obligations to comply with any provision of this Franchise by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

18.6. Attorney's Fees. In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the Court may

adjudge reasonable attorney's fees and court costs including attorney's fees and court costs on appeal.

- 18.7. Governing Law. The provisions of this Franchise shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any questions arising under this Franchise must be brought in the Circuit Court of Clackamas County or the U. S. District Court in Portland.
- 18.8. Notice. All notices shall be made in writing and may be given by personal delivery, by mail, or facsimile transmission. Notices sent by mail should be addressed as follows:

City of West Linn	
Attn: Finance Department	Copy to: Public Works Department
22500 Salamo Road	Address: 22500 Salamo Road
West Linn, OR 97068	West Linn, OR 97068
Phone: 503-657-0331	Phone: 503-722-5500
Fax: 503-650-9041	Fax: 503-656-4106
Clackamas County, Franchisee	
Manager, Clackamas Broadband Express Clackamas County Technology Services	Copy to: Chief Information Officer Clackamas County Technology Service
121 Library Court	121 Library Court
Oregon City, OR 97045	Oregon City, OR 97045
Phone: 503-722-6656	Phone: 503-655-8322
Fax: 503-655-8255	Fax: 503-655-8255

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, certified mail, return receipt requested. In all other instances, notice shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to receive notice by giving written notice pursuant to this paragraph.

- 18.9. Severability. In the event any provision or portion of this Franchise is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Franchise shall remain in full force and effect and shall in no way be affected or invalidated thereby.
- 18.10. Captions. The captions to sections of this Franchise are intended solely to facilitate reading and to reference the provisions of this Franchise. The captions shall not affect the meaning or interpretation of any section or provision of this Franchise.
- 18.11. Complete Agreement; Amendment. This Franchise and attached exhibits, if any, constitute the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Franchise shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no unspecified understandings, agreements, or representations, oral or

written, regarding this Franchise. Franchisee by the signature of its authorized representative, acknowledges that he has read this Franchise, understands it and agrees to be bound by its terms and conditions.

INTENDING TO BE BOUND, the parties executed this Franchise on the date(s) shown below.

CLACKAMAS COUNTY

Signature

Printed Name & Title

Date

CITY OF WEST LINN

Kirsten Wyatt

~~Chris Jordan, City Manager~~ *first*

Kirsten Wyatt, Asst. City Mgr.

Printed Name & Title

08/13/14

Date

INTERGOVERNMENTAL AGREEMENT ON
SHARING DATA NETWORK RESOURCES
BETWEEN THE CITY OF WILSONVILLE AND CLACKAMAS COUNTY

This Agreement is entered into by and between the City of Wilsonville, a municipal corporation of the State of Oregon (the "City"), and Clackamas County, a political subdivision of the State of Oregon (the "County") (collectively, the "Parties"), pursuant to ORS 190.003 to 190.110, which allows units of government to enter into agreements for the performance of any or all functions and activities which such units have authority to perform.

RECITALS

WHEREAS, the City of Wilsonville is a dark fiber provider to government agencies, nonprofits, businesses, and medical facilities within the City limits; and

WHEREAS, the City and Clackamas County have found many areas of mutual benefit in sharing data network resources; and

WHEREAS, continued intergovernmental cooperation between the City and County in data transport and the provision of access to fiber resources benefit the citizens and taxpayers of the City and County; and

WHEREAS, the Parties desire to formalize this practice of cooperation through an Intergovernmental Agreement;

NOW, THEREFORE, the City and County agree as follows:

AGREEMENT

I. Purpose

The Parties agree that they are mutually interested in and will work together to share resources in their respective data networks. This Agreement gives the City consideration for their investment in fiber infrastructure and it gives the County access to a variety of City facilities that support the County's fiber network. This Agreement is entered into in lieu of the City's regular form franchise agreement for use of City right-of-way, as allowed by W.C. 3.410 and W.C. 3.560.

II. Shared Resources

A. The City will:

(1) Waive back fees for use of right-of-way.

(2) Waive regularly imposed franchise fees or right-of-way use fees for use of City right-of-way for County fiber cables and conduits. (County will still be required to obtain engineering and public works permits, which may or may not require payment of a fee.)

(3) Provide the County with three (3) pair of fiber on the City's fiber network, at no charge, for the following institutions: Providence, Clackamas Community College, and a third yet to be identified public entity. Clackamas County and not the City will then be entitled to charge these entities for services provided.

(4) Allow the County free use of up to 60 of space in the City's data room for its network equipment. The City will provide, at its expense, power for this equipment, including a backup generator with automatic transfer switch.

(5) Provide County easements, at no charge, for the County's fiber facilities on City property at locations approved by the City.

B. The County will:

(1) In consideration of the City's waiver of franchise fees and provision of resources, as set forth above, the County will provide the City with five (5) pair of fiber on the CBX fiber network, at no charge. The five public sites will be identified by the City as the need arises. Once identified, the City and not Clackamas County will then be entitled to charge these entities for services provided.

(2) (a) The County agrees that it will notify the City in advance of any infrastructure builds being done within the City limits and, where appropriate, will include the City at the planning and design phases and offer the City the opportunity to partner in the build so that the City can extend its network at the lowest possible cost.

(b) The City agrees that it will notify the County in advance of any infrastructure builds being done within the City limits and, where appropriate, will include the County at the planning and design phases and offer the County the opportunity to partner in the build so that the County can extend its network at the lowest possible cost.

III. Equipment Ownership and Maintenance

A. Each party will provide, own, and maintain its respective equipment for network switching and management. Specifically, the County will own and maintain its network equipment in the City data room, and the City will own and maintain equipment for lighting the fiber provided by the County. The County will own and maintain the fiber used in its network. The City will own and maintain the fiber in its network. Where the City or the County utilize fiber constructed by the other entity, the maintenance of the fiber and corresponding fiber infrastructure will fall to the owner of the fiber and infrastructure asset.

B. The City will make provisions for after-hours access to the City's data room by County staff or designated contractors for emergency maintenance of the County's equipment, and the County will make similar provisions for City access to City equipment on premises owned or managed by the County.

IV. OIT Connection

The City and County will work together in the build-out of the infrastructure run within the City to the OIT campus so that both the City and County have access thereto. The City will own two (2) inch-and-a-quarter conduits and will share ownership of two (2) vaults with the County and/or OIT. Although OIT may have an ownership interest in the vaults, an agreement with OIT

must be in place with OIT that provides OIT is strictly prohibited from accessing the vaults once placed in the City right-of-way, except through the County or the City, before the vaults can be placed within the right-of-way. The County and the City will proportionately share the cost, in an amount to be agreed upon before construction begins.

V. Amendments to this Agreement

This Agreement may be amended at any time by mutual agreement of the Parties.

VI. Effectiveness and Termination

This Agreement shall have a term of ten (10) years, beginning on the effective date of the implementing Ordinance. After the expiration of the initial ten (10) year term, the Agreement shall automatically renew for an additional ten (10) year term unless either party gives notice to the other party of its intent to terminate the Agreement three (3) years before the Agreement expires. Termination of this Agreement shall not terminate any easements granted either Party.

VII. Severability

If any section, clause, or phrase of this Agreement is invalidated by any court of competent jurisdiction, any and all remaining parts of the Agreement shall be severed from the invalid parts and shall remain in full force and effect.

VIII. Contingency

If the County elects to begin work in the right-of-way for the OIT run before the thirty (30) day period required by law for any challenge to the City Ordinance authorizing this IGA passes, and that Ordinance is later successfully challenged, then the County agrees that this Agreement will be null and void and the County's right to use the City's right-of-way for the OIT run, as described herein will be subject to the current Wilsonville City Code Ordinance No. 616.

<p>CITY OF WILSONVILLE</p> <p>By: Bryan Cosgrove As Its: City Manager</p> <p>ATTEST:</p> <p>By: _____ City Recorder</p>	<p>CLACKAMAS COUNTY</p> <p>By: _____ As Its: Chair, Board of Commissioners</p> <p>ATTEST:</p> <p>By: _____ Recording Secretary</p>
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7
DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

January 29, 2015

Development Agency Board
Clackamas County

Members of the Board:

Approval of a Disposition and Development Agreement with A4RK, LLC

Purpose/ Outcomes	Disposition and Development Agreement to convey real property from the Clackamas County Development Agency to A4RK, LLC
Dollar Amount and Fiscal Impact	The agreement stipulates sale of the property for \$1,300,000.00
Funding Source	Not Applicable. No funding considered as a part of this property transaction
Safety Impact	Not Applicable
Duration	Conveyance within approximately 180 days of execution of this agreement.
Previous Action	Executive Session on June 24, 2014
Contact Person	Dan Johnson, Manager – Development Agency 503-742-4325 or danjoh@co.clackamas.or.us
Contract No.	Not Applicable

BACKGROUND:

The Development Agency owns approximately 2.17 acres situated between the Clackamas Promenade and Sunnybrook Boulevard. The property is zoned Regional Center Office

A4RK, LLC presented a proposal to the Agency to acquire the property for redevelopment purposes, which was presented to the Board for consideration in an Executive Session on June 24, 2014. The Board directed staff to proceed with negotiations for disposition of the property to A4RK, LLC.

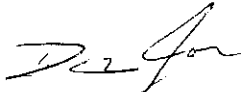
The Disposition Agreement, which the Board is being asked to approve today, is the result of preceding negotiations and is contingent on subsequent terms. Terms of the Disposition Agreement dictate purchase of the property for \$1,300,000 and consistency with the development proposal as presented at the Executive Session.

RECOMMENDATION:

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, move by consent to:

- Approve the Disposition Agreement with the A4RK, LLC.
- Delegate authority to the Chair to execute the Agreement and any other necessary documents on behalf of the Development Agency Board.
- Delegate staff authority to act on behalf of the Agency at closing.
- Record the Disposition Agreement in the Deed Records of Clackamas County at no cost to the Development Agency.

Respectfully submitted,



Dan Johnson
Development Agency Manager

For information on this issue or copies of attachments, please contact
Dan Johnson @ 503-742-4325

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2015 by and between the CLACKAMAS COUNTY DEVELOPMENT AGENCY, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "Agency"), and A4RK LLC, an Oregon limited liability company (the "Developer"). The Agency and the Developer hereby agree as follows:

ARTICLE 1: SUBJECT OF AGREEMENT

Section 1.1: Purpose of Agreement.

The purpose of this Agreement is to effectuate the Clackamas Town Center Urban Renewal Plan ("Plan") by providing for the disposition of certain real property and the development of the "Developer Improvements" on the "Property" (as such terms are hereinafter defined). The Agency has found that the development of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the County of Clackamas, Oregon (the "County") and the Plan and the health safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

Section 1.2: The Plan.

The Plan was approved and adopted on December 30, 1980 by Resolution and Order No. 80-2685 of the Clackamas County Commission, as amended from time to time, and the Plan, together with such amendments are incorporated herein by this reference. This Agreement is subject to the provisions of the Plan. Any further amendment to the Plan, which changes the uses or development permitted on the Property (as hereinafter defined), or otherwise changes the restrictions or controls that apply to the Property, or otherwise affects the Developer's obligations or rights with respect to the Property, shall require the written consent of Developer, which consent may be withheld at Developer's sole discretion. Agency represents and warrants that the Plan, as it presently exists, is in full force and effect and that this Agreement, and the obligations of Agency set forth in this Agreement, are all in accordance with the Plan. A copy of the Plan is on file in the Clackamas County Department of Transportation and Development.

Section 1.3: The Property.

The "Property" consists of certain real property owned by the Agency located in Clackamas County, shown on the map attached hereto as **Exhibit "A"** and more particularly described in the legal description attached hereto as **Exhibit "B"**.

Section 1.4: The Project or Developer Improvements.

The term “Project” or “Developer Improvements” shall mean the improvements required to be constructed by Developer on the Property pursuant to this Agreement. The Developer Improvements will be completed as further identified in **Exhibit “F,”** Scope of Development.

Section 1.5: The Agency.

The Agency is a corporate body politic of the State of Oregon, as the duly designated Urban Renewal Agency of Clackamas County, Oregon, exercising governmental functions and powers and organized and existing under Oregon Revised Statutes, Chapter 457. The term “Agency” as used in this Agreement includes the Urban Renewal Agency of Clackamas County, Oregon and any assignee of or successor to its rights, powers, duties and responsibilities. The principal offices and mailing address of the Agency for purposes of this Agreement is:

Clackamas County Development Agency
c/o Development Agency Manager
150 Beaver Creek Road Oregon City, OR 97045

Section 1.6: The Developer.

The Developer is A4RK LLC, an Oregon limited liability company. The term “Developer” as used in this Agreement is A4RK LLC, and any permitted assignee of Developer, as provided in Section 1.7 below, and any permitted assignee of or successor to its rights, powers, duties and responsibilities. Kirit Shah shall serve as Manager of Developer (the “Manager”) and Shirish Patel shall serve as Developer’s “Development Consultant.” The principal office and mailing address of the Developer for purposes of this Agreement is:

A4RK LLC
Attn: Kirit Shah, Manager
11042 SE 121st Court
Happy Valley, Oregon 97086

Section 1.7: Prohibition Against Change in Ownership, Management and Control of Developer.

The qualifications and identity of Developer and its Manager are of particular concern to Agency and were essential to the selection of Developer by Agency for development of the Property. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein (This provision does not prevent the change of membership interests in Developer). All assignments of this Agreement shall require written consent of Agency, which consent shall not be unreasonably withheld, conditioned or delayed. Subject to the notice and opportunity to cure provisions set forth in Section 6 below, this Agreement may be terminated by Agency at its option before Closing if there is any change (voluntary or involuntary) in the ownership, management or control of Developer or any successor-in-interest of Developer not consistent with this Agreement. The

restrictions contained in this section shall cease and terminate as follows: (a) as to Phase 1 of the Developer Improvements (as defined on Exhibit F), upon Phase 1's Substantial Completion (as defined in Section 4.10), and (b) as to Phase 2 of the Developer Improvements (as defined on Exhibit F), upon Phase 2's Substantial Completion (as defined in Section 4.10).

ARTICLE 2: ASSEMBLY OF THE SITE

The Agency owns fee title to the Property and shall convey the Property to Developer subject only to those title and survey exceptions agreed to by both parties pursuant to this Article 2 ("Permitted Exceptions").

Section 2.1 Title Commitment.

Within ten (10) days after the Effective Date, Agency, at Agency's cost and expense, will cause the Title Company, as defined below, to furnish to Developer its preliminary title report on the Property (the "Preliminary Commitment"), along with legible copies of all documents that give rise to exceptions listed in the report (the "Underlying Documents"). Within ten (10) days after receiving the Preliminary Commitment and the Underlying Documents, Developer will give Agency written notice setting forth the exceptions that are not acceptable to Developer (the "Unacceptable Exceptions"). All exceptions not approved by Developer will be deemed Unacceptable Exceptions. Agency will have ten (10) days after receiving Developer's notice within which to notify Developer in writing whether Agency is willing or able to eliminate the Unacceptable Exceptions. If Agency agrees to eliminate the Unacceptable Exceptions, Agency will be obligated to do so at its cost and at least ten (10) days' prior to the Closing Date. If Agency is unwilling or unable to eliminate the Unacceptable Exceptions, Developer may terminate this Agreement or elect to accept the Unacceptable Exceptions and proceed to close escrow by giving written notice to Agency within ten (10) days after receiving notice from Agency. If Agency does not timely provide notice to Developer of its determination whether it is willing and able to eliminate the Unacceptable Exceptions, it will be deemed to have elected to eliminate the Unacceptable Exceptions. If Developer does not provide timely written notice of its election to accept the Unacceptable Exceptions, it will be deemed to have terminated this Agreement.

Section 2.2 Survey.

Within five (5) days after the Effective Date, Agency shall deliver the most recent survey, if any, in its possession to Developer (the "Existing Survey"). At its expense, Developer may order an update to the Existing Survey (or if there is no Existing Survey, a new survey) (the Existing Survey, as updated, or a new survey, the "Survey"). If applicable, Developer shall deliver a copy of the Survey to Agency promptly upon receipt. Within ten (10) days after receipt of the Survey, Developer may deliver to Agency, in writing, its approval or objections to any matters shown on the Survey (the "Objections"). Developer's failure to timely approve the Survey shall be deemed to constitute Developer's rejection thereof. If Developer timely objects to any matters shown on the Survey, then Agency shall have the right, but not the obligation, to agree in writing to cure before Closing such Objections, or to decline to cure such Objections.

Agency will have ten (10) days after receiving Developer's Objections within which to notify Developer in writing whether Agency is willing or able to cure the Objections. If Agency agrees to cure the Objections, Agency will be obligated to do so at its cost and at least ten (10) days' prior to the Closing Date. If Agency is unwilling or unable to cure the Objections, Developer may terminate this Agreement or elect to accept the Objections and proceed to close escrow by giving written notice to Agency within ten (10) days after receiving notice from Agency. If Agency does not timely provide notice to Developer of its determination whether it is willing and able to cure the Objections, it will be deemed to have elected to cure the Objections. If Developer does not provide timely written notice of its election to accept the Objections, it will be deemed to have terminated this Agreement. Notwithstanding anything to the contrary above, although Developer may elect to obtain a Survey, Developer is not obligated to obtain a Survey.

ARTICLE 3: DISPOSITION OF PROPERTY

Section 3.1: Sale and Purchase.

In accordance with, and subject to all the terms, covenants, and conditions of this Agreement, the Agency agrees to sell to Developer, or Developer's permitted assignee of this Agreement, and Developer agrees to purchase from Agency, the Property, for the amount of ONE MILLION THREE HUNDRED THOUSAND and 00/100 DOLLARS (\$1,300,000.00) (the "Purchase Price") in the manner as hereinafter provided.

Section 3.2: Conveyance.

Conveyance of the Property shall be made on or before thirty (30) days from the expiration of the Due Diligence Period (defined below), including any extensions, in an escrow account at Lawyers Title Insurance Company (the "Title Company"), 12550 SE 93rd Avenue, Clackamas, Oregon established by the Agency. The Developer agrees, upon satisfaction of the conditions precedent for conveyance of the Property, to accept conveyance of the Property and pay to Agency at the close of escrow the Purchase Price for the Property in the amount set forth above in the form of cash or immediately available funds. The Agency and the Developer agree to perform all acts necessary for conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions and will execute escrow instructions consistent with this Agreement and close the transaction as provided herein. The escrow shall close and the conveyance of the Property ("Closing") shall be made as soon as is practical after satisfaction or written waiver of the conditions precedent to conveyance contained in this Agreement but in no case beyond thirty (30) days from the expiration of the Due Diligence Period, including any extensions.

Possession of the Property shall be delivered to the Developer concurrently with the conveyance of title. The Developer shall accept title and possession on or before the date referred to above, unless such date is extended as provided herein.

Section 3.3: Developer's Due Diligence

The Developer shall have a period (the "Due Diligence Period") of up to one hundred fifty (150) days after the execution of this Agreement (the "Effective Date") to complete its due diligence and approve of the Property. During this period, the Agency will deliver to Developer all information in Agency's possession regarding the Property and provide Developer access to the Property as is reasonably necessary to complete its due diligence. Within the Due Diligence Period, Developer shall use reasonable efforts to (a) obtain all required permits and approvals for Phase 1 of the Developer Improvements, (b) legally divide the portions of the Property applicable to Phase 1 and Phase 2, including rezoning the Property if desired by Developer, and (c) investigate financing for purchase of the Property and construction of Phase 1 of the Developer Improvements. Agency shall reasonably cooperate with such actions. The Developer hereby indemnifies and holds the Agency and the County, and their elected officials, officers, agents and employees harmless from any injury or damages arising out of any negligent activity of Developer, its agents, employees and contractors performed and conducted on the Property for the purposes of completing its due diligence, provided that such indemnification shall not apply to remediation of the Property (e.g. cleanup of previous environmental contamination) that may be triggered by Developer's investigations. Due diligence shall include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. Upon request, Developer agrees to provide the Agency with copies of all materials obtained or produced as a result of its due diligence investigation. If Developer provides notice of its election to terminate this Agreement within five (5) days after completing the Due Diligence Period, except as expressly provided, neither party shall have any further rights, duties or obligations hereunder. Developer may, in its sole discretion and at no additional cost, extend the Due Diligence Period by up to two (2) additional 30-day periods (each, an "Extension") by delivering written notice to Agency prior to the expiration of the then-current period.

Section 3.4: Conditions Precedent to Agency's Obligation to Convey.

Agency's obligation to convey the Property is subject to satisfaction or occurrence of the following conditions precedent to the satisfaction of the Agency before Closing. The Developer must satisfy all of the following conditions precedent listed below or obtain waiver of them within the time periods set below:

3.4.1 Design Drawings (as defined in Section 4.2) for Phase 1 of the Developer Improvements have been prepared and submitted by Developer in accordance with the terms of this Agreement and have been reviewed and approved by Agency, not to be unreasonably withheld and within twenty (20) days after receipt of such Design Drawings, as being in accordance with the Plan and this Agreement; and Developer shall have completed its design review process for Phase 1, as described in Exhibit F, and the Design Drawings shall have been approved by the County Design Review Board or any subsequent appellate body and such approval is not subject to further appeal under Oregon land use law. The Developer shall complete the process with the County Design Review Board, and any subsequent appeal ("Design Approval"), within

the Due Diligence Period, as it may be extended pursuant to Section 3.3. Design Drawings for the purpose of Agency's review shall mean architectural design development drawings of the site improvements.

3.4.2 The Developer has provided Agency evidence, satisfactory to Agency on a reasonable basis, that Developer has the financial capacity to cause Phase 2 of the Developer Improvements to be constructed. The Developer shall provide such evidence within thirty (30) days before Closing.

3.4.3 Design Approval has been completed for Phase 1, as described in Exhibit F, which shall include completion of all appeals under Oregon land use law.

3.4.4 The Purchase Price required for conveyance of the Property has been tendered to the Title Company at or before Closing.

3.4.5 The Developer and Agency must execute a separate agreement, acceptable to both parties, that outlines their respective responsibilities to construct and maintain the shared parking facilities as necessary.

3.4.6 The Developer must have performed all of its covenants and obligations contained in this Agreement, and all of the Developer's representations and warranties contained in Section 3.12 must be true and correct as of Closing.

Section 3.5: Conditions Precedent to Developer's Obligation to Purchase.

Developer's obligation to purchase the Property is subject to the satisfaction or occurrence of the following conditions precedent, before Closing, to the reasonable satisfaction of Developer:

3.5.1 Phase 1 of the Project, as described in Exhibit F, must successfully complete the Design Approval process, and not be subject to further appeal under Oregon law, required by the County. Additionally, Developer must (a) obtain all required permits and approvals for Phase 1 of the Developer Improvements, and (b) if elected by Developer, Developer must complete a partition of the portions of the Property applicable to Phase 1 and Phase 2, including rezoning the Property if desired by Developer.

3.5.2 The Agency must successfully secure rights to use or construct an additional 45 parking stalls, required for completion of the Project, from the adjacent property currently owned by Kimco, Inc. The Agency shall be solely responsible for the negotiations of the acquisition of the parking rights, and will not be required to pay any costs, or grant any concessions, to secure the parking rights described herein. The parking rights described herein may be in the form of a Shared Parking Agreement, or other form acceptable to the Agency and Developer, so long as the parking rights secured by the Agency are assignable to Developer.

3.5.3 There shall be no material breach of this Agreement by the Agency.

3.5.4 The Agency must have performed all of its covenants and obligations contained in this Agreement, and all of the Agency's representations and warranties contained in Section 3.11 must be true and correct as of Closing.

3.5.5 Developer must approve the latest amended Preliminary Commitment as set forth in Section 2.1.

3.5.6 Developer must approve the latest Survey as set forth in Section 2.2.

3.5.7 Developer must approve the environmental site assessment performed on the Property as set forth in Section 3.3.

3.5.8 The Title Company must be prepared to issue to Developer a title insurance policy for the Property acceptable to Developer.

3.5.9 All approvals required for completion of the Project under Section 9.1(b) of that certain Grant of Reciprocal Easements and Declaration of Covenants Running with the Land, and Development Agreement dated June 30, 1987, recorded as Document No. 87-029839, as amended (the "CC&Rs") shall have been obtained, or alternatively, the CC&Rs shall have been amended such that no approvals are required thereunder for completion of the Project.

3.5.10 Developer must be satisfied that there has not been any material adverse change in the condition of the Property, including, without limitation, the release, dumping or discovery of environmental contamination occurring after the expiration of the Due Diligence Period.

3.5.11 Developer is satisfied with the legal division of the Property for Phase 1 and Phase 2.

3.5.12 The Developer and Agency must execute a separate agreement, acceptable to both parties, that outlines their respective responsibilities to construct and maintain the shared parking facilities as necessary.

3.5.13 The Developer shall have obtained financing sufficient to purchase the Property and construct Phase 1 of the Developer Improvements, unless this condition is waived by the Developer.

Section 3.6: Deed Form.

The Agency shall convey to Developer fee simple title to the Property in the condition provided in Section 3.7 of this Agreement, and subject to the covenants described in Article 5,

by Bargain and Sale Deed, duly executed, acknowledged and delivered in the form of **Exhibit “E”** attached hereto (the “Deed”). Acceptance of title to the Property by Developer shall conclusively establish compliance by Agency with all conditions precedent to the conveyance of the Property as contained herein.

Section 3.7: Condition of Title.

The Agency shall convey to the Developer fee simple title to the Property free and clear of all liens and encumbrances except:

3.7.1 The Permitted Exceptions, as defined in Article 2 and listed in **Exhibit “C”**; and

3.7.2 Such regulations and controls, covenants and restrictions that may be imposed on the Property by the Developer and Agency consistent with this Agreement or land use approvals obtained by Developer for development of the Property and the Developer Improvements.

Section 3.8: Title Insurance, Property Taxes and Closing Costs.

3.8.1 The Developer shall be responsible for obtaining title insurance for the Property.

3.8.2 Recording costs will be paid by the Developer. Real property taxes for the current year (if any) shall be prorated as of the date of the delivery of the Deed to the Developer. All real property taxes subsequently assessed and levied against the Property shall be paid by Developer. Agency shall be responsible for any and all real property taxes for the period of time prior to the recording of the Deed and the Developer subsequent thereto. Escrow fees, and any excise or conveyance tax that may be imposed, shall be shared equally by Developer and the Agency.

Section 3.9: Condition of the Property.

The Developer acknowledges that it is purchasing the Property “As Is,” except as provided otherwise herein.

Section 3.10: Earnest Money and Security Deposit.

Developer shall, within ten (10) days after the date of this Agreement, deliver into escrow the sum of \$50,000.00 as earnest money in the form of cash, a certified check, or an irrevocable letter of credit reasonably satisfactory to the Agency (the “Earnest Money”). The Earnest Money shall be deposited by Title Company in an interest-bearing account in a bank or other financial institution selected by the Escrow Agent, and the term “Earnest Money” as used in this Agreement shall include any interest earned thereon. If Developer fails to timely deposit the Earnest Money as provided above, this Agreement shall terminate and neither Developer nor Agency shall have any further obligations to one another. Provided Developer is not in default under this Agreement, the Earnest Money and all interest thereon shall be fully

refundable to Developer (except as provided in Section 3.3) so long as Developer's election to terminate is received in writing by the Agency prior to the expiration of Developer's Due Diligence period, as it may be extended pursuant to Section 3.3 above. Upon expiration of Developer's Due Diligence period, the Earnest Money shall become nonrefundable. At closing, the Earnest Money and all interest thereon shall be credited toward payment of the Purchase Price.

Developer shall, within ten (10) days after closing, deliver into escrow a deposit (the "Security Deposit") in the form of cash, a certified check, or an irrevocable letter of credit reasonably satisfactory to the Agency in an amount equal to \$130,000.00 as security for the performance of the obligations of the Developer to be performed in accordance with this Agreement. The Security Deposit is separate from and in addition to the obligation of Developer to deliver the Purchase Price upon Closing. Any cash delivered as the Security Deposit shall be deposited in an insured, interest-bearing account in a bank or other financial institution selected by the Escrow Agent. Pursuant to the Scope of Development in **Exhibit "F,"** as defined below in Section 4.1, the Agency agrees to return \$100,000 of the Security Deposit to Developer upon Developer's substantial completion of Phase 1, as defined and describe in Section 4.10, if Developer's substantial completion of Phase 1 is achieved within twenty-four (24) months after the date of Closing. Pursuant to the Scope of Development in **Exhibit "F,"** as defined below in Section 4.1, the Agency agrees to return the remaining \$30,000 upon completion of Phase 2 if Phase 2 is completed within five (5) years of the date of Closing. Return of the Security Deposit is specifically subject to the provisions set forth below in Section 4.10. Any interest earned upon the Security Deposit will be paid to the Developer on return of the Security Deposit. If Developer fails to timely deposit the Security Deposit as provided above, this Agreement shall terminate and neither Developer nor Agency shall have any further obligations to one another.

Section 3.11: Agency's Representations and Covenants. Agency represents and covenants as follows:

3.11.1 Agency has been duly organized and is validly existing as a corporate body politic, in good standing in the State of Oregon. Agency has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate the transactions contemplated hereby.

3.11.2 To the best of Agency's knowledge (without any requirement of further investigation), the Property has been operated in full compliance with, and is not in violation of, any and all applicable federal, state and local laws and regulations, including those regarding zoning building codes, insurance, health, and the physical or environmental condition of the Property. Agency has received no notices from governmental authorities pertaining to violations of law or governmental regulations with respect to the Property with which Agency has not fully complied or corrected. Agency has no knowledge of any violation of Environmental Laws (defined below) related to the Property or the presence or release of Hazardous Materials (defined below) on or from the Property. To the best of Agency's knowledge (without any requirement of further investigation), neither Agency nor any prior occupant of the Property has manufactured,

introduced, released or discharged from or onto the Property any Hazardous Materials or any toxic wastes, substances or materials (including, without limitation, asbestos) in violation of any Environmental Laws, and neither Agency nor any prior occupant has used the Property or any part thereof for the generation, treatment, storage, handling or disposal of any Hazardous Materials in violation of any Environmental Laws. The term “**Environmental Laws**” includes without limitation the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act and other federal laws governing the environment as in effect on the date of this Agreement together with their implementing regulations and guidelines as of the date of this Agreement, and all state, regional, county, municipal and other local laws, regulations and ordinances that are equivalent or similar to the federal laws recited above or that purport to regulate Hazardous Materials. The term “**Hazardous Materials**” includes petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas or such synthetic gas), and any substance, material waste, pollutant or contaminant listed or defined as hazardous or toxic under any Environmental Law;

3.11.3 There are no actions, suits, claims, legal proceedings, condemnation or eminent domain proceedings, or any other proceedings affecting the Property, or any portion thereof, at law or in equity, before any court or governmental agency, domestic or foreign, nor is there any basis for any such proceeding which, if adversely determined, might affect the use or operation of the Property for Developer’s intended purpose, the value of the Property, or adversely affect the ability of Agency to perform its obligations under this Agreement;

3.11.4 To the best of Agency’s knowledge (without any requirement of further investigation), there are no liens, bonds, encumbrances, covenants, conditions, reservations, restrictions, easements or other matters affecting the Property except as disclosed in the Preliminary Commitment, and Agency has not received notice and has no knowledge of any pending liens or special assessments to be made against the Property;

3.11.5 From the date of this Agreement until Closing, Agency shall use commercially reasonable efforts to properly maintain the Property in its current condition as of the effective date of this Agreement, and shall promptly notify the Developer of any material changes in the condition of the Property;

3.11.6 To the best of Agency’s knowledge (without any requirement of further investigation), all Property information, documents and instruments delivered to Developer by Agency are complete and true copies of such documents or original counterparts thereof;

3.11.7 Other than this Agreement and the Permitted Exceptions, there are no contracts or agreements of any kind relating to the Property to which Agency or its agents is a party and which would be binding on Developer after Closing;

3.11.8 Agency has not obligated itself in any manner to sell the Property to any party other than Developer and promises not to enter into an agreement with any other party for the sale or lease of any portion of the Property while this Agreement is in effect;

3.11.9 Agency is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code;

3.11.10 To the best of Agency's knowledge (without any requirement of further investigation), Agency is not (and is not engaged in this transaction on behalf of) a person or entity with which Developer is prohibited from doing business pursuant to any law, regulation or executive order pertaining to national security including, but not limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and obstruct Terrorism Act of 2001; Executive Order 13224; the Bank Secrecy Act; the Trading with the Enemy Act; the International Emergency Economic Powers Act; sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control, as well as laws related to the prevention and detection of money laundering in 18 U.S.C Sections 1956 and 1957; and

3.11.11 To the best of Agency's knowledge (without any requirement of further investigation), Agency's sale of the Property is not subject to any federal, state or local withholding obligation of Developer under the tax laws applicable to Agency or the Property.

Section 3.12: Developer's Representations and Covenants. Developer represents and covenants as follows:

3.12.1: Organization and Authority. Developer is a limited liability company, duly organized and validly existing as a limited liability company in good standing in the State of Oregon, and is qualified to do business in the state in which the Property is located. Developer has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate the transactions contemplated hereby.

3.12.2: Conflicts and Pending Action. There is no agreement to which Developer is a party or which, to Developer's knowledge, is binding on Developer which is in conflict with this Agreement. There is no action or proceeding pending or, to Developer's knowledge, threatened against Developer which challenges or impairs Developer's ability to execute or perform its obligations under this Agreement.

3.12.3: Authorization. Kirit Shah, in his capacity as Manager of Developer, is authorized to act on behalf of, and bind, the Developer.

Section 3.13: Survival of Representations and Covenants.

The representations and covenants set forth in Sections 3.11 and 3.12 are made as of the date of this Agreement and are remade as of the Closing Date and shall not be deemed to be merged into or waived by the instruments of Closing, but shall survive Closing for a period of one (1) year. Agency and Developer shall have the right to bring an action thereon only if Agency or

Developer, as the case may be, has given the other party written notice of the circumstances giving rise to the alleged breach within such one (1) year period.

ARTICLE 4: DEVELOPMENT OF THE PROPERTY

Section 4.1: Scope of Development.

The Property shall be developed by Developer in accordance with and within the limitations specified in **Exhibit “F,”** “Scope of Development,” attached hereto and made a part hereof, and plans approved by the Agency pursuant to this Agreement (“the Developer Improvements”). The Developer Improvements shall be constructed within the time limits set forth in the Schedule of Performance, attached hereto as **Exhibit “D.”** The Developer agrees, at its own cost and expense, to install or construct, or cause to be installed or constructed, the required Developer Improvements in accordance with the terms of this Agreement and with all applicable specifications, standards and codes and requirements, including those of the County and the State of Oregon.

Section 4.2: Design Drawings and Related Documents.

The Developer shall prepare and submit to the Agency architectural design development drawings of the Developer Improvements (“Design Drawings”), or any portion thereof, for Agency review and written approval prior to construction of the Developer Improvements involved. The Design Drawings shall be generally consistent with the Preliminary Plans submitted by the Developer, as described in the Scope of Development. The plans and documents as may be required shall also be submitted to the County for the purposes of compliance with all codes, regulations and other requirements in connection with the construction of the Developer Improvements. Agency shall diligently, in good faith, review the Design Drawings to determine whether they are in substantial conformance with the Scope of Development as proposed by the Developer and shall issue its decision within twenty (20) days after receipt of same. Failure of Agency to notify Developer within such period of time shall be deemed to be approval by Agency. If Agency does not approve the Design Drawings, Agency shall specify, in writing, its specific objections to same, and Developer shall have a reasonable opportunity to revise the Design Drawings. Agency approval shall not be deemed approval by the County Design Review Board or any other agency or department.

Section 4.3: Construction Schedule.

Developer shall use commercially reasonable efforts to begin and complete all construction and development of the Developer Improvements within the time specified in the Schedule of Performance, except as otherwise permitted herein.

Section 4.4: Governmental Permits.

Before commencement of construction or development of any buildings, structures or other works or improvements in connection with the Developer's Improvements upon the Property, the Developer shall, at its own expense, secure or cause to be secured, any and all land use, construction, and other permits which may be required by any governmental agency. The Agency shall cooperate with the Developer and permitting agencies in obtaining the necessary permits.

Section 4.5: Local, State and Federal Laws.

Developer shall carry out the construction of the Developer Improvements in conformity with all applicable local, state and federal laws.

Section 4.6: Taxes, Assessments, Encumbrances and Liens.

Prior to Closing, the Developer shall not place or allow to be placed on the Property or any part thereof any mortgage, trust deed, encumbrance or lien, unless specifically pre-approved in writing by the Agency. The Developer shall remove or have removed any levy, lien or attachment made on the Property, or any part thereof, or provide assurance of the satisfaction therein within a reasonable time, but in any case no later than thirty (30) days after such levy, lien or attachment coming into existence without permission. Developer may contest or challenge the validity or amount of any such lien or encumbrance provided such challenge or contest is taken in accordance with applicable law and within a reasonable time, so long as Developer provides security satisfactory to Agency protecting the Agency's interests, or (in the case of construction liens) bonds against the liens as permitted by statute.

Section 4.7: Prohibition Against Transfer of the Property and the Buildings or Structures Thereon.

Prior to the issuance by the Agency of a final Certificate of Completion with respect to Phase 2 Developer shall not, without the prior approval of the Agency, make any total or partial sale, transfer, conveyance, assignment or lease of the whole or any part of the Property or the buildings or structures on the Property as to which a Certificate of Completion has not been issued. At the time of any permitted or approved transfer, the transferee must have agreed, either in the instrument conveying title, or by separate recorded instrument to construct or to cause to be constructed the Developer Improvements upon the Property, as provided in the Scope of Development. Notwithstanding the foregoing, this prohibition shall not apply to:

4.7.1 The transfer of the Property subsequent to the issuance of a Certificate of Completion with respect to Phase 2;

4.7.2 The transfer of the portion of the Property containing Phase 1 after the issuance of a Certificate of Completion with respect thereto, provided that (a) the partitioning of the Property shall have received all requisite governmental approvals, and (b) the remainder of the Property shall continue to be subject to this Agreement;

4.7.3 The leasing of space in the Developer Improvements, provided that without prior written approval from the Agency, the tenant shall not be permitted to conduct business in the leased space prior to the issuance, of a Certificate of Completion with respect to the Developer Improvements involved, except the tenant shall be allowed access to the leased space for the purpose of performing work to the interior portions thereof;

4.7.4 The sale of the Property at foreclosure (or to conveyance thereof in lieu of foreclosure) pursuant to foreclosure thereof by a lender.

4.7.5 The permitted assignment of this Agreement, pursuant to Section 1.7 above, prior to Closing of the sale by the Agency.

In the event the Agency approves a transfer, the Agency shall be entitled to require such conditions to the transfer as it deems necessary or proper to ensure that the Property will be developed in accordance with the terms of this Agreement. In the absence of specific written agreement by the Agency, no such transfer, assignment or approval by the Agency shall be deemed to relieve the Developer or any other subsequent party from any obligations under this Agreement until completion of the Development Improvements as evidenced by a Certificate of Completion for Phase 1.

Section 4.8: Holder Not Obligated to Construct Improvements.

Notwithstanding Section 4.7, mortgages, deeds of trust, assignment of leases and rents for security purposes, or any other form of conveyance required for any reasonable method of financing (collectively "Mortgage(s)") are permitted before issuance of a Certificate of Completion for the construction of the Developer Improvements, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Property, for the construction of Developer Improvements thereon, and for any other expenditures necessary and appropriate to develop the Property under this Agreement. The holder of any Mortgage authorized by this Agreement, a purchaser at foreclosure, in bankruptcy, or by deed in lieu thereof, and their successors or assigns ("Holder"), shall not be obligated by the provisions of this Agreement to construct or complete the improvements or to guaranty such construction or completion, unless there is a subrogation. Nothing in this Agreement, however, shall be deemed to construe, permit or authorize any such Holder to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement and the holder shall hold such Property subject to any covenants, conditions and restrictions imposed upon and relating to the development, maintenance and use of the Property.

Section 4.9: Notice of Default to Holders, Right to Cure.

Unless otherwise provided herein, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the Holder of any such Mortgage or any owner of the Property or any part thereof, whose title thereto is acquired by foreclosure, trustee sale or otherwise.

Section 4.10: Certificate of Completion.

Promptly after an Agency determination of substantial completion of all material elements of construction of the Developer Improvements of Phase 1, as described in Exhibit F and as defined below, required by this Agreement to be completed by the Developer on the Property, the Agency shall furnish Developer with a Certificate of Completion upon written request therefore by the Developer. Such Certificate of Completion shall be a conclusive determination of satisfactory completion of the construction of Phase 1 as required by this Agreement and such Certificate shall so state. Under this Agreement, substantial completion of Phase 1 shall mean completion of all rough grading of Phase 1, all retaining walls and systems, all utility systems required for the development of vertical improvements in Phase 1, all parking lot and landscaping areas necessary, and completion of a three-story building on the Phase 1 portion of the Property, as identified in the Scope of Development (“Phase 1 Substantial Completion”).

Promptly after an Agency determination of substantial completion of all material elements of construction of the Developer Improvements of Phase 2, as described in Exhibit F and as defined below, required by this Agreement to be completed by the Developer on the Property, the Agency shall furnish Developer with a Certificate of Completion upon written request therefore by the Developer. Upon completion of all Developer Improvements on the Property required for Phase 2 and the issuance of the Certificate of Completion, Developer shall be fully relieved of all obligations under this Agreement, except as provided in Article 5. Such Certificate of Completion shall be a conclusive determination of satisfactory completion of the construction of Phase 2 as required by this Agreement and such Certificate shall so state. After recordation of the Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest therein shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability related to the phase completed under this Agreement with respect to the Property. After issuance of the Certificate of Completion for Phase 2, neither Agency nor any other person shall have the rights, remedies or controls with respect to the Property covered by the Certificate of Completion that it would otherwise have or be entitled to exercise under this Agreement and such control shall cease. Under this Agreement, substantial completion of Phase 2 shall mean completion of all rough grading of Phase 2, all retaining walls and systems, all utility systems required for the development of vertical improvements in Phase 2, all parking lot and landscaping areas necessary, and completion of a four-story building on the Phase 2 portion of the Property, as identified in the Scope of Development (“Phase 2 Substantial Completion”).

In the event the Developer achieves Phase 1 Substantial Completion within twenty-four (24) months after the date of Closing, the Agency shall refund to the Developer \$100,000 of the Security Deposit plus any accrued interest upon issuance of a Certificate of Completion for Phase 1. Substantial completion of Phase 1 will be deemed to occur on the date the Developer submits the application for a Certificate of Completion for Phase 1 to the Agency, to the extent the Agency thereafter approves such application and issues a Certificate of Completion with respect to such Phase 1. In the event the Developer achieves Phase 2 Substantial Completion and receives a Certificate of Completion for Phase 2 within five (5) years after the date of

Closing, the Agency shall refund to the Developer the remaining \$30,000 of the Security Deposit plus any accrued interest upon issuance of a Certificate of Completion for Phase 2. Substantial completion of Phase 2 will be deemed to occur on the date the Developer submits the application for a Certificate of Completion for Phase 2 to the Agency, to the extent the Agency thereafter approves such application and issues a Certificate of Completion with respect to such Phase 2.

The Certificate of Completion shall be in such form as to permit it to be recorded in the Offices of the County Clerk in Clackamas County, Oregon. The Agency shall provide such certificate within ten (10) days after Developer's request therefore, or if the Agency determines not to furnish such certificate after request therefore, the Agency shall, within such ten (10) day period, provide Developer with a written statement of the reasons the Agency refused or failed to furnish such Certificate of Completion. The statement shall also contain Agency's opinion of the actions the Developer must take to obtain such Certificate of Completion. No Certificate of Completion shall constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Holder of any mortgage, or any insurer of mortgage securing money loans to financing improvements or any part thereof, nor shall it constitute a certificate of occupancy or evidence thereof under the building permit or codes of Clackamas County, Oregon.

ARTICLE 5: USE OF THE PROPERTY

Section 5.1: Discrimination.

The Developer covenants for itself and its successors and assigns that it will not discriminate against any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry or disability, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property. The foregoing covenant shall run with the land.

Section 5.2: Effect of Covenants.

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on and for the benefit of the Agency, the County, Developer and Developer's successors and assigns, and further successors-in-interest to the Property or any part thereof. After issuance of the Certificate of Completion of Phase 2 pursuant to Section 4.10, all of the terms, covenants, agreements and conditions set forth in this Agreement shall cease and terminate with respect to such Property, except for Sections 5.1 and 5.2, which shall remain in effect unless and until the Agency or its successor and the then current owner of the applicable Phase agree otherwise.

Section 5.3: Breach of Covenants.

In the event the Developer or an Owner, or their lessee, licensee, agent or other occupant, uses the Property in a manner inconsistent with Article 5 of this agreement, the Agency may bring all appropriate legal and equitable actions.

ARTICLE 6: DEFAULTS AND REMEDIES

Section 6.1: Default/General.

Subject to the extensions of time set forth in Section 7.4, and subject to the notice and opportunity to cure provisions contained in this Agreement, the failure or delay by any party to perform any term or provision of this Agreement constitutes a default under this Agreement. The injured party shall give written notice of default to the party in default, specifying the default and giving the other party thirty (30) days to cure the default or, if the default is not reasonably capable of being cured within such 30 day period, the other party shall commence to cure the default within such 30 day period and shall pursue to completion with reasonable diligence. Any failure or delay by any party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies to enforce a term or provision of this Agreement.

Section 6.2: Specific Defaults.

In the event the Developer is in default of its obligations under this Agreement, and the transaction does not close, as provided herein, Developer shall forfeit the Earnest Money and the Security Deposit to Agency as liquidated damages and this Agreement shall be of no further effect and neither Developer nor Agency shall have any further obligation to the other. If the transaction closes and the Property is conveyed to Developer as provided herein, the Agency shall continue to hold the Security Deposit until completion of Phase 1 and Phase 2, as described in Section 3.10. In the event Developer fails to complete such improvements as provided herein, the Developer shall forfeit the applicable portion(s) of the Security Deposit to Agency as liquidated damages.

In the event that (a) the conditions described in Section 3.4 of this Agreement are not satisfied or waived after the Developer has made a reasonable effort to satisfy such conditions, or (b) the transaction does not close through no fault of Developer, the Earnest Money (or portion thereof) and Security Deposit (and any interest earned thereon) shall be refunded to Developer. The amount of Earnest Money subject to refund is specifically subject to Section 3.3.

If Agency fails to deliver the Deed after all conditions precedent in favor of Agency have been met or if Agency otherwise fails to consummate the transaction, the Earnest Money and Security Deposit (and any interest earned thereon) shall be refunded to Developer and Developer shall have such additional remedies as are available in law and at equity, including specific performance.

Section 6.3: Applicable Law.

The law of the State of Oregon shall govern the interpretation and enforcement of this Agreement without giving effect to the conflicts of law provision thereof.

Section 6.4: Acceptance of Service of Process.

In the event that any legal or equitable action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service on the Manager of the Agency, or in such other manner as may be provided by law. In the event that any legal or equitable action is commenced by the Agency against the Developer, service of process on the Developer shall be made in such manner as may be provided by law.

Section 6.5: Rights and Remedies Are Cumulative.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same default or any other default by the other party.

Section 6.6: Termination by Agency Prior to Conveyance.

In the event that any of the following occur prior to the conveyance of title to the Property, then this Agreement, and any rights of the Developer, or any assignee or transferee, in this Agreement, or the Property, or any portion thereof, shall, at the option of the Agency, be terminated by the Agency, in which event the Earnest Money (and any interest earned thereon) shall be retained by the Agency as liquidated damages and as its property without any deduction, offset or recoupment whatsoever, and neither the Developer nor the Agency shall have further rights against or liability to the other under this Agreement:

6.6.1 Developer (or any successor in interest thereto) assigns or attempts to assign this Agreement or any rights therein, or to the Property, in violation of this Agreement;

6.6.2 There is a change in the ownership of the Developer contrary to the provisions of Section 1.7 hereof;

6.6.3 The Developer does not submit Design Drawings as required by this Agreement in the manner and by the dates respectively provided in this Agreement therefore; or

6.6.4 The Developer does not tender the Purchase Price or take title to the Property on tender of conveyance by the Agency pursuant to this Agreement after Developer has satisfied or obtained waiver of all conditions precedent set forth in Section 3.4.

ARTICLE 7: GENERAL PROVISIONS

Section 7.1: Attorneys' Fees.

The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

Section 7.2: Notice, Demands and Communications Between the Parties.

Formal notices, demands and communications between the Agency and the Developer shall be in writing to the addresses shown in Section 1.5 and Section 1.6 of this Agreement and to the attention of the person indicated.

Section 7.3: Nonliability of Officials and Employees.

No member, official or employee of any of the parties shall be personally liable to the other party or any successor-in-interest thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

Section 7.4: Unavoidable Delay: Extension of Time of Performance.

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to causes that are unforeseeable, beyond its control and without its fault or negligence, including, but not limited to, war, insurrection, strikes, lockouts, labor disputes, riots, volcanoes, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemic, acts of the state, federal government, or local jurisdictions, including administrative and/or judicial appeals by such agencies or third parties, litigation or arbitration involving a Party or others relating to zoning or other governmental action or inaction pertaining to the Project, and quarantine restrictions. In the event of such delay, the party delayed shall give written notice of the delay and the reason therefore to the other party within thirty (30) days after the delayed party learns of the delaying event. An extension of time for any such cause shall be for the period of duration of the cause.

Section 7.5: Merger.

None of the provisions of this Agreement are intended to or shall be merged by reason of any deed referred to herein and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

Section 7.6: Headings.

Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 7.7: Time of Essence.

Time is of the essence of this Agreement. All obligations of the Agency and the Developer to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing.

Section 7.8: Severability.

Except for the provisions of Article 5, if any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

Section 7.9: No Partnership.

Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or a any association between any of the parties to this Agreement.

Section 7.10: Nonwaiver of Government Rights.

Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, the County, or any other agency with respect to any discretionary action relating to the acquisition of the Property or development, operation and use of the improvements to be constructed on the Property, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals that are or may be required.

Section 7.11: Entire Agreement: Waivers.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Agency and the Developer, and all amendments thereto must be in writing by the appropriate authorities by the Agency and the Developer.

Section 7.12: Counterparts.

This Agreement may be executed in counterparts.

Section 7.13: Non-Foreign Persons.

The parties agree to comply with the terms of Internal Revenue Code Section 1445 and upon the conveyance of the Property, Agency shall execute and deliver to Developer a non-foreign person affidavit in form mutually acceptable to the Parties. Agency is not a "foreign person" as that term is used in Internal Revenue Code Section 1445 and Agency agrees to furnish Developer with any necessary documentation to that effect.

ARTICLE 8: SUCCESSOR INTEREST

This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

ARTICLE 9: STATUTORY DISCLAIMER

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 THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

“AGENCY”

CLACKAMAS COUNTY DEVELOPMENT AGENCY, a corporate body politic

By: _____, Chair

“DEVELOPER”

A4RK, an Oregon limited liability company

By: Kirit Shah
Kirit Shah, Manager

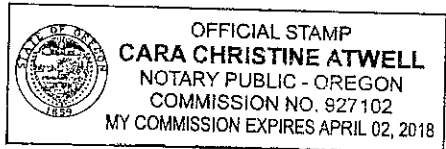
STATE OF OREGON)
) ss.
County of Clackamas)

On this ____ day of January, 2015, before me the undersigned, a notary public in and for such state, personally appeared _____, personally known to be (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the Chair of the Clackamas County Development Agency, a corporate body politic, and acknowledged to me that _____ said Agency executed the within instrument.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of Clackamas)

On this 12 day of January, 2015, before me the undersigned, a notary public in and for such state, personally appeared Kirit Shah, personally known to be (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the manager of A4RK LLC, and acknowledged to me that said company executed the within documents.



[Signature]

NOTARY PUBLIC FOR OREGON
My Commission Expires: April 2nd, 2018

LIST OF EXHIBITS

EXHIBIT A	Map
EXHIBIT B	Legal Description - Property
EXHIBIT C	Exceptions to Title as Contained in Preliminary Title Report
EXHIBIT D	Schedule of Performance
EXHIBIT E	Form of Special Warranty Deed
EXHIBIT F	Scope of Development

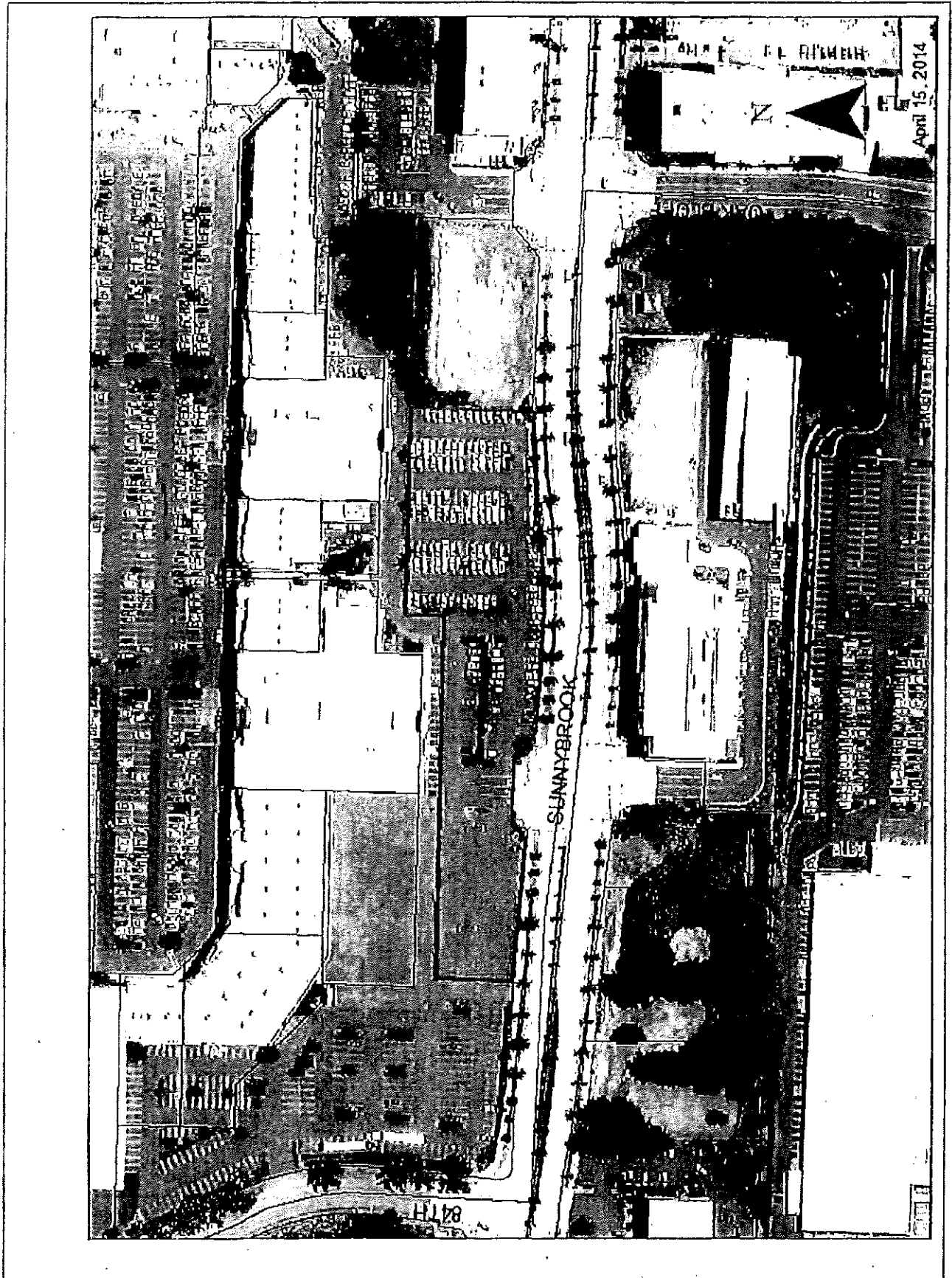


EXHIBIT B

LEGAL DESCRIPTION

Tax lot 5300 located in the Northeast $\frac{1}{4}$ of Section 4, Township 2 South, Range 2 East of the Willamette Meridian, Clackamas County, Oregon.

EXHIBIT C

STANDARD EXCEPTIONS:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public record; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easements, or encumbrances not shown by the public records, reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject land onto adjoining land or of existing improvements located on adjoining land onto the subject land), encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the subject land.
5. Any lien, or right to lien, for unemployment taxes, workmen's compensation, services, labor, equipment rental or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

SPECIAL EXCEPTIONS:

6. Property taxes in an undetermined amount, which are a lien but not yet payable, including any assessments collected with taxes to be levied for the fiscal year 2014-2015.
7. The subject property is under public, charitable, fraternal, or religious organization ownership and is exempt from ad valorem taxation. Any change in ownership prior to delivery of the assessment roll may result in tax liability.
Tax Account No. : 00430439; Levy Code: 012-051; Map 22E04B-05300

Prior to close of escrow, please contact the Tax Collector's Office to confirm all amounts owing, including current fiscal year taxes, supplemental taxes, escaped assessments and any delinquencies.

8. The Land is within Clackamas County Service District No. 1 and is subject to its levies and assessments. NOTE: We find no liens of record as of July 9, 2014.

9. Disposition and Development Agreement, including the terms and provisions thereof,
Recording Date : June 30, 1987
Recording No. : 87-029697
(Affects additional property)
10. Any easements or rights of way for existing utilities or other rights of way over those portions of said Land lying within the public right of way vacated by resolution or ordinance
Recording Date : June 30, 1987
Recording No. : 87-029825
Affects : S.E. 86th Avenue
11. Any easements or rights of way for existing utilities or other rights of way over those portions of said Land lying within the public right of way vacated by resolution or ordinance
Recording Date : June 30, 1987
Recording No. : 87-029826
Affects : S.E. 88th Avenue
12. Any easements or rights of way for existing utilities or other rights of way over those portions of said Land lying within the public right of way vacated by resolution or ordinance
Recording Date : June 30, 1987
Recording No. : 87-029827
Affects : S.E. 89th Avenue
13. Access Easement Maintenance Agreement, including the terms and provisions thereof:
Granted to : Clackamas Promenade, a California limited partnership
Purpose : Repair and maintenance of access area
Recording Date : June 30, 1987
Recording No. : 87-029832
(Affects additional property)
14. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to : Adjacent property owners
Purpose : Pedestrian and vehicular ingress and egress
Recording Date : June 30, 1987
Recording No. : 87-029833
(Affects additional property)
15. Grant of Reciprocal Easements and Declaration of Covenants Running With the Land, and Development Agreement, including the terms and provisions thereof:
Recording Date : June 30, 1987
Recording No. : 87-029839
(Affects additional property)

The terms and provisions of said document were modified by instrument:
Recording Date : September 4, 1987
Recording No. : 87-040799

The terms and provisions of said document were modified by First Amendment To Grant of Reciprocal Easements and Declaration of Covenants Running With the Land, and Development Agreement:

Recording Date : January 9, 1997
Recording No. : 97-043020

The terms and provisions of said document were modified by Assignment and Assumption of Reciprocal Easement Agreement;

Recording Date : March 31, 2006
Recording No. : 2006-029013

The terms and provisions of said document were modified by Second Amendment To Grant of Reciprocal Easements and Declaration of Covenants Running With the Land, and Development Agreement:

Recording Date : September 18, 2008
Recording No. : 2008-065509

16. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to : Clackamas County, Oregon
Purpose : Sewer and related facilities
Recording Date : August 23, 1988
Recording No. : 88-034308
(Also shown on Partition Plat No. 2006-020)
17. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to : Clackamas County Service District No. 1
Purpose : Sewer and related facilities
Recording Date : September 13, 1988
Recording No. : 88-037798
(Also shown on Partition Plat No. 2006-020)
18. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to : Clackamas Water District
Purpose : Water line facilities
Recording Date : September 19, 1988
Recording No. : 88-038739
(Also shown on Partition Plat No. 2006-020)
19. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to : Clackamas Water District
Purpose : Water line facilities
Recording Date : October 3, 1988
Recording No. : 88-041027
(Also shown on Partition Plat No. 2006-020)

20. Sewer Agreement, including the terms and provisions thereof;
Recording Date : October 12, 1988
Recording No. : 88-042468
(Affects additional property)
21. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to : Portland General Electric Company
Purpose : Utilities
Recording Date : May 25, 1989
Recording No. : 89-022160
Affects : As described in said document and delineated on sketch attached thereto
22. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to : Portland General Electric Company
Purpose : Underground distribution lines
Recording Date : May 25, 1989
Recording No. : 89-022163
(Also shown on Partition Plat No. 2006-020)
23. Disposition and Development Agreement, including the terms and provisions thereof,
Recording Date : March 31, 1999
Recording No. : 99-031785
(Affects additional property)
24. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document
Entitled : Memorandum of Lease
Landlord : BPP Retail, LLC, a Delaware limited liability company
Tenant : Cost Plus, Inc., a California corporation
Recording Date : April 13, 2000
Recording No. : 2000-023931
(Affects additional property)
- Any defect in or invalidity of, or other matters relating to the leasehold estate referred to herein, which would be disclosed by an examination of the unrecorded lease.
25. Restrictions, but omitting restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said restriction is permitted by applicable law, as shown on that certain plat of Partition Plat No. 2006-020,
Recording Date : February 7, 2006
Recording No. : 2006-011479

26. Terms, provisions and conditions, including, but not limited to, maintenance provisions, and a covenant to share the costs of maintenance, contained in Non-Exclusive Reciprocal Access Easement
Recording Date : December 28, 2011
Recording No. : 2011-075122
27. Existing leases and tenancies, if any, and any interests that may appear upon examination of such leases.

EXHIBIT D

SCHEDULE OF PERFORMANCE

Unless otherwise stated, the below periods of performance shall be measured from the date on which both parties have signed the Disposition and Development Agreement between Clackamas County Development Agency and A4RK, LLC. The below periods shall be subject to extensions as set for in the Agreement.

1. Due diligence – one hundred fifty (150) days, with two 30-day extension options (Section 3.3)
2. Design Review approval for Phase One – 20 days after receipt of Design Drawings (Section 3.4.1)
3. Approval or rejection of due diligence by Developer – at least five (5) days after expiration of due diligence period (Section 3.3)
4. Evidence of financial capacity to complete project to Agency – within thirty (30) days of closing (Section 3.4.2)
5. Conveyance of property – thirty (30) days after expiration of due diligence period (Section 3.2)
6. Substantial completion of Phase One – within twenty-four (24) months after Closing in order to receive a refund of \$100,000 of the Security Deposit (Section 4.10)
7. Substantial completion of Phase Two – within five (5) years after Closing in order to receive a refund of \$30,000 of the Security Deposit (Section 4.10)

MAIL TAX STATEMENTS TO:
A4RK LLC
11042 SE 121st Court
Happy Valley, Oregon 97086

EXHIBIT E

AFTER RECORDING RETURN TO:
A4RK LLC
11042 SE 121st Court
Happy Valley, Oregon 97086

GRANTOR'S ADDRESS:
Clackamas County Development Agency
c/o Development Agency Manager
150 Beavercreek Road
Oregon City, OR 97045

GRANTEE'S ADDRESS:
A4RK LLC
11042 SE 121st Court
Happy Valley, Oregon 97086

STATUTORY BARGAIN AND SALE DEED

Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County, a corporate body politic, "*Grantor*," conveys to A4RK, LLC, a limited liability company duly organized and existing under the laws of the state of Oregon, "*Grantee*," the real property described in *Exhibit "A"*, which is attached hereto and incorporated herein, free of encumbrances created or suffered by the Grantor except as specifically set forth in *Exhibit "B"*, which is attached hereto and incorporated herein.

The true and actual consideration paid for this conveyance is ONE MILLION THREE HUNDRED THOUSAND and 00/100 DOLLARS (\$1,300,000.00).

The following is the notice as required by Oregon law: "BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON

LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.”

Dated this ____ day of _____, 20__.

CLACKAMAS COUNTY
DEVELOPMENT AGENCY, a corporate
body politic

By _____
Chair

STATE OF OREGON)
) ss.
County of Clackamas)

On this ____ day of _____, 20__, before me the undersigned, a notary public in and for such state, personally appeared _____, personally known to be (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the Chair of the Clackamas County Development Agency, a corporate body politic, and acknowledged to me that said Agency executed the within instrument.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT F

SCOPE OF DEVELOPMENT

PHASE ONE

Elements for development of Phase One of the property include:

- Rough grading
- Retaining walls and systems required
- Utility systems required for the vertical improvements
- Parking lot, sidewalks, lighting and landscaping necessary
- Three-storey building

PHASE TWO

Elements for development of Phase Two of the property include:

- Rough grading
- Retaining walls and systems required
- Utility systems required for the vertical improvements
- Parking lot, sidewalks, lighting and landscaping necessary
- Four-storey building



8

DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

January 29, 2015

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Funding Agreement between the Clackamas County Development Agency and
the Clackamas County Rural Fire Protection District #1**

Purpose/Outcomes	This Agreement will allow the Agency to provide funding to the Fire District to be used for design and construction of needed facilities.
Dollar Amount and Fiscal Impact	\$2,500,000 will be transferred to the Fire District within 60 days of the effective date of this agreement.
Funding Source	Clackamas County Development Agency: Clackamas Town Center Urban Renewal District - no County General Funds are involved.
Safety Impact	Construction of new facilities will allow the District to more effectively and efficiently provide the necessary services to the Clackamas Regional Center area.
Duration	The Agreement will be in effect for 20 years or 15 years from substantial completion of the project, whichever is sooner.
Previous Board Action	The Board of County Commissioners directed staff to begin discussion with the overlapping taxing districts at a study session in April 2013. At a February 4, 2014 study session, the Board directed staff to proceed with a funding agreement with the Fire District.
Contact Person	Dan Johnson, Manager, Clackamas County Development Agency – (503) 742-4325

BACKGROUND

In April 2013, the Board directed staff to initiate discussions with Clackamas Fire District #1 to investigate partnership opportunities on mutually beneficial projects located within the Clackamas Town Center Urban Renewal District. During those discussions, the District identified various improvements that are needed, but lacked funding to complete them.

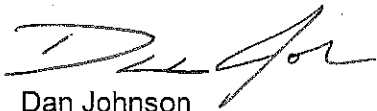
At a study session on February 4, 2014, staff presented partnership opportunities with the District where the Agency would provide funding for needed improvements. The Board approved the allocation of \$2,500,000 to the District to be used for upgrades to their facilities.

Per the Funding Agreement, the Agency will transfer \$2,500,000 to the Fire District. The District will use those funds for design and construction of a new or improved Administrative Services facility within five years. The agreement also stipulates that the District will operate and maintain the facility for a period of 15 years after completion.

RECOMMENDATION:

Staff recommends the Board approve and sign the Funding Agreement with Clackamas County Rural Fire Protection District #1 in order to provide the funding necessary for the District to construct a new or improved Administrative Services facility.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Johnson", written in a cursive style.

Dan Johnson
Development Agency Manager

DISTRICT FUNDING AGREEMENT

This Agreement is entered into and is effective as of this _____ day of _____, 2015 by and between Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County, Oregon (the "Agency"), and Clackamas County Rural Fire Protection District #1 (the "District"). The Agency and the District hereby agree as follows:

RECITALS:

- A. The Agency is undertaking to carry out the Clackamas Town Center Urban Renewal Plan (the "Plan") pursuant to ORS Chapter 457. The Plan was duly adopted and approved by the Board of County Commissioners on December 30, 1980, and most recently amended on June 16, 2005.
- B. The District is an entity organized for the purpose fire protection and suppression services within Clackamas County.
- C. A goal of the Plan is to provide adequate facilities to improve fire safety and protection capabilities to the area.
- D. In April 2013, the Clackamas County Board of Commissioners (the "Board") directed staff to identify partnership opportunities with the overlapping taxing districts affecting properties within the boundaries designated by the Plan.
- E. On February 4, 2014, the Board approved the allocation of \$2,500,000 to the District to use for certain projects, including the construction of a new facility to improve fire safety and protection capabilities (the "Project").
- F. The District has requested that the Agency provide funding for the Project. In exchange for such funding, the District is willing to develop, construct, maintain and operate the Project in accordance with the terms and conditions of this Agreement and to use the Project in conformity with the Plan and applicable law.
- F. The Agency is willing to allocate funds to the District for the purpose of assisting in the development and construction of the Project. The funding for such purposes by the Agency to District is subject to the conditions provided in this Agreement.

AGREEMENT:

Section 1: District Property Improvements

- A. Within three (3) years of the effective date of this Agreement, the District agrees to select and contract with a consultant to prepare design and construction related documents consistent with the Project Description, **Exhibit "A."** The plans, drawings, and other documents as may be required for the Project shall be submitted to the appropriate governmental bodies for

the purpose of compliance with all codes, regulations and other requirements for the construction of the Project.

B. Within five (5) years of the effective date of this Agreement, the District agrees to develop and construct the Project substantially as provided in the Project Description, **Exhibit "A"**. The Project shall be in full compliance with requirements of the Plan, the Land Development Code of Clackamas County and all other applicable laws.

C. During the term of this Agreement, the Agency will cooperate with the District in its efforts to develop the Site, including the review, approval, execution and/or delivery of documents in a timely manner to allow the District to submit documents to governmental bodies in accordance with this Section 1.

Section 2: Operation of Completed Facilities; Uses of Proceeds

Upon completion of the Project, the District or its successors agrees to maintain and operate the Project or cause it to be operated to provide or support year-round fire protection services for the District. The District shall maintain and operate the completed Project for the purpose stated herein for at least fifteen (15) years from the date of substantial completion of the Project.

At all times the District or its successors shall own, and have all ownership responsibility and duties regarding the Project. Such ownership is subject to the terms of this agreement.

Section 3: Funding

A. In consideration of the obligations undertaken by the District pursuant to this Agreement, the Agency agrees to allocate \$2,500,000 (the "Agency Funds") for the purposes and subject to the terms and conditions provided herein.

In the event the Agency Funds are not used for the purpose expressly provided in Sections 1 and 2 of this Agreement, or where the District has defaulted under this Agreement, the Agency may require the District to reimburse all or part of such, as provided below in Section 4C.

B. The District acknowledges that the Plan allows for Agency to fund up to 75% of the design and construction cost for a new fire district facility. The District anticipates that additional funds, if necessary to complete the Project, will be available from sources other than the Agency. The District represents and warrants that it will diligently pursue, and will continue to diligently pursue the funding sources required to be made available for the timely development of the Project.

Section 4: Disbursement of Funds; Security for Performance

A. The Plan specifically authorizes the Agency to make funds available to fund the development and construction of the Project, described herein. Pursuant to specific direction

from the Board, the Agency shall make the Agency Funds available to the District for development and construction of the Project from the allocated funds as more specifically described in Section 3A of this Agreement, and as authorized by ORS Chapter 457.

B. Within 60 days of the Effective Date of this Agreement, the Agency shall transfer the Agency Funds to the District.

C. In the event the District is determined by a court of competent jurisdiction or other mutually-agreed upon mediator to be in default of its obligations under either Section 1 or Section 2, of this Agreement, then the Agency shall be entitled to recover from the District or its successors or assigns the full amount of the funds directed to the District in connection with the Project. Amounts recoverable under this subsection shall be determined by evaluating the scope of the default and the default's effect on the Plan's goal. If the Agency intends to recover funds under this subsection, the Agency shall provide the District with reasonable written notice of the default as well as a reasonable opportunity for the District to cure and/or explain such default.

Section 5: Termination

So long as there is no outstanding event of default, this Agreement shall terminate twenty (20) years from the date of the execution of this Agreement, or fifteen (15) years from the date of substantial completion of the Project, whichever is sooner.

Section 6: Indemnification

- A. Subject to the tort limitations in the Oregon Tort Claims Act and Oregon Constitution, Agency agrees to indemnify, save harmless and defend the District, its officers, Board of Directors, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts, of Agency or Agency's officers, owners, employees, agents, or its subcontractors or anyone over which Agency has a right to control, related to this Agreement.
- B. Subject to the tort limitations in the Oregon Tort Claims Act and the Oregon Constitution, District agrees to indemnify, save harmless and defend Agency, its officers, commissioners, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts, of the District or the District's officers, owners, employees, agents, or its subcontractors or anyone over which the District has a right to control, related to this Agreement.

Section 7: Non-liability of Officials and Employees

No official or employee of the Agency shall be personally liable to the District for any obligation under the terms of this Agreement. No official or employee of the District shall be personally liable to the Agency for any obligation under the terms of this Agreement.

Section 8: Non-waiver of Government Rights

This Agreement is no way intended to limit, restrict or modify the rights of Clackamas County or any other governmental agency to exercise ordinary police powers over the Project.

Section 9: General Provisions

A. **Prior Agreements.** This instrument is the entire, final and complete Agreement of the parties pertaining to the rights and obligations of the parties with respect to the Project and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives in connection therewith. Neither party shall be bound by any promises, representations or agreements except as are herein expressly set forth.

B. **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be given and actually delivered in person or deemed delivered 48 hours after having been deposited in the United States Mail as certified mail addressed to the addresses set forth below:

to: Clackamas County Fire District #1
Attn: Fire Chief
11300 SE Fuller Road
Milwaukie, OR 97222

to: Clackamas County Development Agency
Attn: Agency Manager
150 Beavercreek Road
Oregon City, Oregon 97045

or as addressed in such other way in respect to either party, as that party may from time to time designate in writing dispatched as provided in this Section.

C. **Amendments.** This Agreement may be amended, modified or extended only by written instrument executed by both parties.

D. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon.

E. **Binding Effect.** Covenants, conditions and terms of this Agreement shall extend to and be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

F. **Execution and Counterparts.** This Agreement may be executed in any number of counterparts each of which counterparts, when so executed and delivered, shall be deemed to

be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

H: **Non-Assignment.** This Agreement may not be assigned in whole or in part without the prior written consent of Agency, which may withhold its consent in its sole discretion.

I: **Subleasing.** The Project may not be subleased without prior written consent of Agency, which may not be unreasonably withheld. Agency shall consent to a sublease of a portion of the Project where the proposed use subject to the sublease is accessory to, or otherwise customarily provided in connection with, similar fire district facilities, and a sublease of a portion of the Project would not otherwise violate the Plan.

I: **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the parties.

J: **Waiver.** The Agency and District shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

IN WITNESS WHEREOF, the Agency and the District have executed this Agreement as of the date first above written.

“AGENCY”

BOARD OF COUNTY COMMISSIONERS acting as the governing body of the Clackamas County Development Agency

By: _____
John Ludlow
Chair

By: _____
Mary Raethke
Recording Secretary

“DISTRICT”

Clackamas County Fire District #1


By: , Fire Chief

EXHIBIT A

PROJECT DESCRIPTION

OVERVIEW:

Clackamas Fire District #1 (CFD1) is the local emergency service provider to northwest Clackamas County, providing fire protection services to unincorporated Clackamas County, Milwaukie, Oregon City, Happy Valley, Damascus, Johnson City, and Boring. As CFD 1 continues to expand operations as the fire district grows, the demands for usable office space has forced administrative staff to work from seven different locations across the district.

District Administrative Offices are currently co-located within a 1984 constructed community fire station and do not have the ability to house current administrative staff and provides limited opportunity for expansion, community meeting room space, command and control oversight during significant emergency incidents, adequate meeting space for staff and alignment of work groups within one building.

With a desire to centralize services and find efficiencies in staff utilization, communication, and customer service, the district is need of an improved Administrative Services facility.

In 2011, CFD1 conducted a space needs analysis through a contracted consultant and determined the needs of staff in 2011, 2020, and 2030. The results of this analysis determined a larger administrative facility was required. The current facility is approximately 10,000 sq. feet in size. According to the space needs analysis, the Administrative space needs of the district would need to double to a projected facility of approximately 22,000 +/- sq. ft. to meet the needs of the district.

CFD1 has identified the following four options to address this need:

- Option 1) Remodel existing administrative facilities, located at 11300 SE Fuller Rd,
- Option 2) Design and build new Administrative office building on existing CFD1 owned property within the Clackamas Town Center Urban Renewal Plan Area,
- Option 3) Purchase, Design and build new Administrative office building on non-CFD1 owned property within the Clackamas Town Center Urban Renewal plan area, site to be determined, or
- Option 4) Purchase, Remodel existing structure within the Clackamas Town Center Urban Renewal plan area to provide new Administrative Office facility, site to be determined.

DESCRIPTION:

General project scope consists of the following:

- Project: District Administration Facility
- Location: Property within the Clackamas Town Center Urban Renewal Plan area
- Size: Approximately 12,000 to 20,000 sq. ft.
- Facilities: Administrative Office Space, Community Meeting Area, Conference Room/Emergency Response Facilities

January 29, 2015

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of an Agreement between the Clackamas County Development Agency and
Hoodland Fire District #74**

Purpose/Outcomes	This Agreement will allow the Agency to provide funding to the Fire District to be used for design and construction of a fire station remodel.
Dollar Amount and Fiscal Impact	\$570,000 will be transferred to the Fire District within 120 days of the effective date of this agreement.
Funding Source	Clackamas County Development Agency: Government Camp Urban Renewal District - no County General Funds are involved.
Safety Impact	A remodeled fire station in Government Camp will allow the District to more effectively and efficiently provide the necessary services to the community.
Duration	The Agreement will be in effect for 15 years after completion of the project.
Previous Board Action	The Board of County Commissioners approved funding for this project through the FY 2014-2015 budget process.
Contact Person	Dan Johnson, Manager, Clackamas County Development Agency – (503) 742-4325

BACKGROUND

The Agency has been working closely with Hoodland Fire District #74 for many years to improve fire fighting capabilities within the community of Government Camp. This includes waterline extensions, hydrant installations and partnering with new developments to include fire sprinklers in their buildings.

One remaining issue for the District is the condition and functionality of their station in Government Camp, which was built in 1980. In its current state, it can only house some of their needed equipment and has minimal facilities for the crew. This has made it difficult to staff the station and, in an emergency, often requires equipment and personnel to come from Zigzag, approximately 12 miles away.

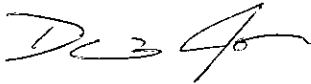
The district has completed a preliminary design of a station remodel that will include increased apparatus space and upgraded living quarters for the crew. With the upgraded facilities the District will be able to more effectively recruit volunteers to operate the station on a full-time basis, which will greatly improve services for the community.

Per the Funding Agreement, the Agency will transfer \$570,000 to the Fire District. The District will use those funds for design and construction of a station remodel within four years. It also requires the District to operate and maintain the station on a year-round basis for a period of 15 years from the date of completion. Any additional funds required for the project will be provided by the District.

RECOMMENDATION:

Staff recommends the Board approve and sign the Funding Agreement with Hoodland Fire District #74 in order to provide the funding necessary for the District to remodel the fire station in Government Camp.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Johnson', written in a cursive style.

Dan Johnson
Development Agency Manager

OWNER PARTICIPANT AND DEVELOPMENT AGREEMENT

This Agreement is entered into and is effective as of this _____ day of _____, 20__ by and between Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County, Oregon (the "Agency"), and Hoodland Fire District No. 74 (the "Owner Participant"). The Agency and the Owner Participant hereby agree as follows:

RECITALS:

- A. The Agency is undertaking to carry out the Government Camp Village Revitalization Plan & Report (the "Plan") pursuant to ORS Chapter 457. The Plan was duly adopted and approved by the Board of County Commissioners by Board Order No. 89-1143 on November 14, 1989.
- B. A goal of the Plan is to improve fire safety and protection capabilities of the Government Camp community.
- C. The Owner Participant is an entity organized for the purpose of providing fire protection and suppression services for Government Camp and the surrounding area.
- D. The US Forest Service owns the land on which the Project, defined below, is to be constructed (legally described in **Exhibit "A"** which is attached hereto). The Owner Participant is in possession of the land on which the Project is to be constructed pursuant to a valid Special Use Permit granted by the US Forest Service. The land is located within the redevelopment area identified in the Plan as shown on the map attached as **Exhibit "B"** (the "Site").
- E. The Owner Participant has requested that the Agency provide funding for the Project. In exchange for such funding, the Owner Participant is willing to develop, construct, maintain and operate the Project in accordance with the terms and conditions of this Agreement and to use the Project in conformity with the Plan and applicable law.
- F. The Agency is willing to provide funds to the Owner Participant for the purpose of assisting in the development and construction of the Project. The funding for such purposes by the Agency to Owner Participant is subject to the conditions provided in this Agreement.

AGREEMENT:

Section 1: Owner Participant Property Improvements

- A. Within two (2) years, the Owner Participant agrees to select and contract with a consultant to prepare design and construction related documents consistent with the Project Description, attached hereto as **Exhibit "C"** and incorporated herein (the "Project"). The Owner Participant agrees to provide the necessary personnel for periodic review and approval of the building design. The plans, drawings, and other documents as may be required for the Project

shall be submitted to the appropriate governmental bodies for the purpose of compliance with all codes, regulations and other requirements for the construction of the Project.

B. Within four (4) years, the Owner Participant agrees to develop, construct, maintain and operate the Project substantially as provided in the Project Description, **Exhibit "C."** . The Project is and will be in full compliance with requirements of the Plan, the Land Development Code of Clackamas County and all applicable laws, and any reasonable requirements of the US Forest Service.

C. During the term of this Agreement, the Agency will cooperate with the Owner Participant in its efforts to develop the Site, including the review, approval, execution and/or delivery of documents in a timely manner to allow the Owner Participant to submit documents to governmental bodies in accordance with this Section 1.

D. The Owner Participant will use its best efforts to complete the Project prior to any transfer of title to the Site to another party, including but not limited to, Mt. Hood Meadows Oreg., LLC.

Section 2: Operation of Completed Facilities; Uses of Proceeds

Upon completion of the Project, the Owner Participant or its successors agrees to operate the Project or cause it to be operated to provide, year-round fire protection in accordance with the Plan, this Agreement, or any other agreement entered into with respect to the Project, and all applicable legal requirements and standards for not less than fifteen (15) years from the date of substantial completion of the Project.

Section 3: Funding

A. In consideration of the obligations undertaken by the Owner Participant pursuant to this Agreement, the Agency agrees to provide funds to the Owner Participant in an amount anticipated to total, and not to exceed, \$570,000 (the "Agency Funds") for the purposes and subject to the terms and conditions provided herein. The amount of the Agency Funds may be adjusted by agreement of the Agency and the Owner Participant, based upon the availability of funds and the Project needs.

B. The Owner Participant anticipates that additional funds, if necessary to complete the Project, will be available from other than the Agency. The Owner Participant represents and warrants that it will diligently pursue, and will continue to diligently pursue the funding sources required to be made available for the timely development of the Project.

Section 4: Disbursement of Funds; Security for Performance

A. The Plan specifically authorizes the Agency to make funds available to fund the development and construction of the Project located in Government Camp Village. The Agency proposes to make the Agency Funds available to the Owner Participant for development and construction of the Project from available funds as authorized by ORS Chapter 457.

B. Within 120 days of the Effective Date of this Agreement, the Agency shall transfer the Agency Funds to the Owner Participant.

C. The Owner Participant shall submit monthly accounting summaries of those costs incurred and payments made that are directly associated with the Project described herein. The Owner Participant shall use funds advanced by the Agency only for those tasks and improvements listed in **Exhibit "D"**, Approved Uses of Agency Funds.

D. In no event shall the Agency be obligated to disburse any funds pursuant to this Agreement if, at the time of such requested disbursement, the Owner Participant is then in default under this Agreement (including, without limitation, compliance with the timetables set forth in the Schedule of Performance), or any other material agreement entered into with respect to the Project. Agency agrees to give Owner Participant written notice of default and thirty (30) days to cure the default prior to Agency's termination of this Agreement; provided, however, Agency will not be obligated to disburse any funds so long as the Owner Participant is in default.

E. In the event the Owner Participant is in default of its obligations under either Section 1 or Section 2, then the Agency shall be entitled to recover from the Owner Participant or its successors or assigns the full amount of the funds directed to the Owner Participant in connection with the Project.

Section 5: Termination

So long as there is no outstanding event of default and except for the provisions of section 2, this Agreement shall terminate fifteen (15) years from the date of this Agreement. At the end of such period, any assets or funds then owned or held by Owner Participant as a result of the Project and as security for performance of its obligations, shall be released from the obligations of this Agreement.

Section 6: Indemnification; Bodily Injury and Property Damage Insurance

A. Agency agrees to indemnify, save harmless and defend the Owner Participant, its officers, commissioners, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts, of Agency or Agency's officers, owners, employees, agents, or its subcontractors or anyone over which Agency has a right to control.

B. Owner Participant agrees to indemnify, save harmless and defend Agency, its officers, commissioners, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts, of the Owner Participant or the Owner Participant's officers, owners, employees, agents, or its subcontractors or anyone over which the Owner Participant has a right to control.

Section 7: Nonliability of Officials and Employees

No official or employee of the Agency shall be personally liable to the Owner Participant for any obligation under the terms of this Agreement.

Section 8: Nonwaiver of Government Rights

This Agreement is no way intended to limit, restrict or modify the rights of Clackamas County or any other governmental agency to exercise ordinary police powers over the Project, including requiring higher or different standards other than those provided for in the Plan or this Agreement, or to limit, restrict or modify powers granted to Clackamas County or any other governmental agency under applicable law.

Section 9: General Provisions

A. **Prior Agreements.** This instrument is the entire, final and complete Agreement of the parties pertaining to the rights and obligations of the parties with respect to the Project and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives in connection therewith. Neither party shall be bound by any promises, representations or agreements except as are herein expressly set forth.

B. **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be given and actually delivered in person or deemed delivered 48 hours after having been deposited in the United States Mail as certified mail addressed to the addresses set forth below:

to: Hoodland Fire District No. 74
Attn: Chief Mic Eby
69634 E. Highway 26
Welches, OR 97067

to: Clackamas County Development Agency
Attn: Dan Johnson
150 Beaver Creek Road
Oregon City, Oregon 97045

or as addressed in such other way in respect to either party, as that party may from time to time designate in writing dispatched as provided in this Section.

C. **Amendments.** This Agreement may be amended, modified or extended only by written instrument executed by both parties.

D. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon.

E: **Binding Effect.** Covenants, conditions and terms of this Agreement shall extend to and be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

F: **Execution and Counterparts.** This Agreement may be executed in any number of counterparts each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

G: **Sign.** At the discretion and upon the direction of the Agency, the Owner Participant shall construct and maintain a permanent sign at a visible point on the front of the building or Site which identifies the Agency as providing Project funding. Location, content and format of the sign shall be approved by the Agency prior to its display.

H: **Assignment and Subleasing.** This Agreement may not be assigned in whole or in part and the Project may not be subleased without the prior written consent of Agency, which may withhold consent in its sole discretion.

I: **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the parties.

J: **Waiver.** The Agency and Owner Participant shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

IN WITNESS WHEREOF, the Agency and the Owner Participant have executed this Agreement as of the date first above written.

"AGENCY"

BOARD OF COUNTY COMMISSIONERS acting as the governing body of the Clackamas County Development Agency

By: _____
John Ludlow
Chair

_____, 2014

By: _____
Mary Raethke
Recording Secretary

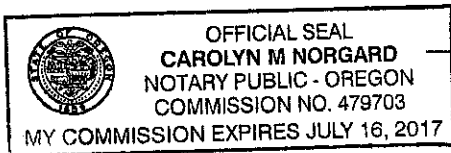
"OWNER PARTICIPANT"

Hoodland Fire District No. 74

By: *Mic Eby*
Mic Eby
Fire Chief

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on 15th October 2014, 2014 by Mic Eby as Fire Chief of Hoodland Fire District No. 74



[Signature]
Notary Public for Oregon

My Commission expires July 16, 2017

EXHIBIT LIST

Exhibit A..... Legal Description of Site
Exhibit B Site Map
Exhibit CProject Description
Exhibit DApproved Uses of Agency Funds

EXHIBIT A

LEGAL DESCRIPTION OF SITE

A tract of land located in Section 13, Township 3 South, Range 8 East, of the Willamette Meridian, Clackamas County, Oregon, being more particularly described as follows:

Beginning at the southeast corner of said Section 13; thence West, along the south line of said Section 13, a distance of 629 feet to the true point of beginning of the tract herein described; thence North, perpendicular to the south line of said section 13, a distance of 160 feet to a point; thence West, parallel to the south line of said Section 13, a distance of 100 feet to a point; thence South, perpendicular to the south line of said Section 13, a distance of 160 feet to a point on the south line of Section 13; thence East, along the south line of said Section 13, a distance of 100 feet to the true point of beginning; EXCEPTING there from that portion lying with the right-of-way of the Old Mt. Hood Loop Highway.

Said tract containing 0.27 acres, more or less.

EXHIBIT B

SITE MAP

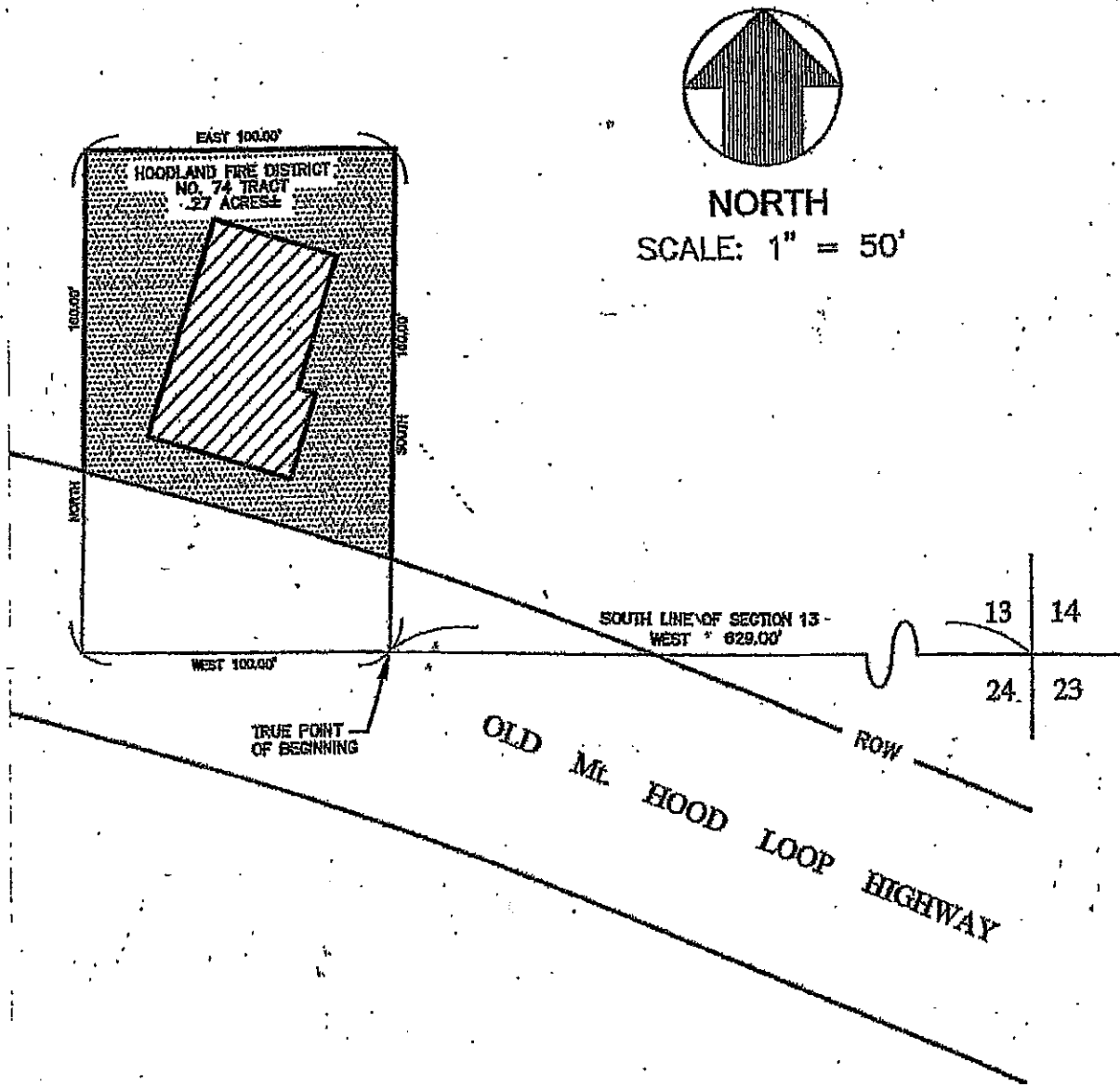


EXHIBIT C

PROJECT DESCRIPTION

Hoodland Fire District will engage the services of an architect and, as necessary, other professional services to design a remodel of the existing fire station in Government Camp. Improvements are intended to serve the long-term needs of the district and may include expanded vehicle bays, turn-out space, storage, office space, meeting rooms, and improved living quarters.

EXHIBIT D

APPROVED USES OF AGENCY FUNDS

Funds provided to Hoodland Fire District by the Agency shall only be use for the following elements related to the remodel of the Government Camp Fire Station:

- Preliminary and final design
 - Site investigation
 - Architectural services
 - Engineering services
 - Plan preparation
- Site preparation
 - Grading
 - Excavation
 - Drainage improvements
- Building improvements
 - General construction
 - Electrical, plumbing and HVAC
 - Windows
 - Paint
 - Siding
 - Roofing
 - Finish work
 - Light fixtures
 - Plumbing fixtures
 - Cabinetry
- Landscaping
- Signage

Elements that cannot be paid for with Agency funds:

- Interior furnishings
- Emergency vehicles and apparatus
- Tools
- Office equipment and supplies



10
DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

January 29, 2015

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Memorandum of Understanding with Clackamas River Water for Design of a Waterline in Conjunction with the Monterey Avenue Extension Design

Purpose/Outcomes	This MOU outlines roles and responsibilities for design of a new waterline that CRW wishes to be installed during construction of the Monterey Avenue road extension
Dollar Amount and Fiscal Impact	CRW will reimburse the Agency fully for all design costs including staff administration expenses. The estimate for design is \$27,145.00.
Funding Source	Clackamas River Water
Safety Impact	A new waterline will allow fire hydrants to be included in the overall design.
Duration	The MOU will be in effect until December 31, 2015
Previous Board Action	The Board of County Commissioners previously approved a contract with Harper Houf Peterson Righellis to design the Monterey Avenue extension. HHPR will complete the waterline design under their existing contract.
Contact Person	David Queener, Senior Project Planner, Clackamas County Development Agency – (503) 742-4322

BACKGROUND

The Development Agency is currently under contract with Harper Houf Peterson Righellis (HHPR) to design an extension of Monterey Avenue from 82nd Avenue to Fuller Road. As part of the design process, all utility service providers are contacted to address any potential conflicts with their infrastructure and to coordinate any new services that may be needed.

Clackamas River Water (CRW) indicated their desire to extend a new waterline within the Monterey Avenue extension in order to provide better service to adjacent properties. CRW requested that our consultant, HHPR, complete the waterline design and incorporate it into the overall project plans.

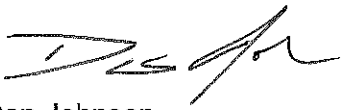
A Memorandum of Understanding (MOU) was developed that outlines the roles and responsibilities of the Agency and CRW. The Agency will oversee the design by HHPR and CRW will reimburse fully all costs associated with the design, which is estimated at \$27,145.00.

Installation of the waterline will be included in the roadway bid package. CRW will pay for all costs. A separate MOU will be developed with CRW and presented to the Board for consideration once bids are received and the cost is known.

RECOMMENDATION

Staff recommends the Board approve and sign the Memorandum of Understanding with Clackamas River Water for design of a waterline in conjunction with the Monterey Avenue extension design.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dan Johnson', written in a cursive style.

Dan Johnson
Development Agency Manager

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CLACKAMAS COUNTY DEVELOPMENT AGENCY
AND
CLACKAMAS RIVER WATER**

Contract # 00200-11-2014

I. Purpose

This Memorandum of Understanding (the "Agreement") is entered into between Clackamas County Development Agency, (AGENCY) and Clackamas River Water (CRW). This Agreement provides the basis for a cooperative working relationship for the purpose of providing waterline design and construction services under the Monterey Avenue Extension Project.

II. Cooperation:

The AGENCY agrees, as consideration for the work listed in Attachment A of this Agreement to administer the work listed therein. The AGENCY;

1. On behalf of CRW agrees to manage the design and installation of approximately 1300 feet of 12" diameter ductile iron waterline in S.E. Monterey Avenue.
2. Agrees to hire Harper Houf Peterson Righellis Inc. (HHPR) for design for the amount listed on Attachment B of this document
3. Will bill CRW within the first week following the last working day of each calendar month in which work is performed.
4. Agrees not charge CRW in excess of the amount listed in Attachment B unless an increase in Scope of work is approved in writing by CRW.

CRW agrees as consideration for the work listed in Attachment A to pay the AGENCY for those design, construction phase services, and its administrative costs incurred in performing the above services as described in Attachment A through completion. CRW agrees;

1. To reimburse the AGENCY for administrative costs the AGENCY incurs in the administration of this project. The parties hereto agree that these administrative costs shall not exceed One Thousand Dollars (\$1,000.00).
2. Agrees to pay AGENCY within 30 days of the receipt of the AGENCY'S invoice.
3. To respond in a timely manner to AGENCY'S requests to provide information or approval to the AGENCY or HHPR for purposes of fulfilling the purpose of this Agreement.

III. Attachments

Both parties understand and agree that Attachments A & B are incorporated and made a part of this Agreement.

IV. Liaison Responsibility

Adam Bjornstedt, Principal Engineer, 503-729-1600, or his designee will act as liaison for Clackamas River Water for this project.

V. Special Requirements

- A. The AGENCY and Clackamas River Water agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. Subject to the limits of the Oregon Tort Claims Act, Article 11 Section 10 of the Oregon Constitution, Clackamas County shall indemnify, defend and hold harmless Clackamas River Water, its officers, employees, and agents from all claims, suits, actions or expenses of any nature resulting from or arising out of the acts, errors or omissions of AGENCY personnel (including AGENCY's contractor's acting pursuant to the terms of this Agreement.

Subject to the limits of the Oregon Tort Claims Act, Article 11 Section 7 of the Oregon Constitution, Clackamas River Water shall indemnify, defend and hold harmless AGENCY, its officers, commissioners, employees, and agents from all claims, suits, actions or expenses of any nature resulting from or arising out of the acts, errors or omissions of Clackamas River Water personnel acting pursuant to the terms of this Agreement.

- C. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this contract shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- D. Access to Records. The AGENCY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Clackamas River Water which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- E. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

VI. Amendment

This Agreement may be amended at any time with the concurrence of both parties. Amendments become a part of this Agreement only after the written amendment has been signed by both parties.

VII. Integration

This Agreement contains the entire agreement between the AGENCY and CRW and supersedes all prior written or oral discussions or agreements.

VIII. Waiver

The AGENCY and CRW shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

IX. Term of Agreement


This Agreement becomes effective the date that it is fully executed and the work agreed to in this Agreement will be completed by December 31, 2015.

Either party may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give the other party written notice of the breach and of the party's intent to terminate. If the breaching party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination.

CLACKAMAS COUNTY
DEVELOPMENT AGENCY,
A corporate body politic

CLACKAMAS RIVER WATER

Chair: John Ludlow



Name: Lee E. Moore Sr.
Title: General Manager

Address: 2051 Kaen Rd
Oregon City, OR 97045

Address: 16670 SE 82nd Drive
Clackamas, OR 97015

Date


_____ Date

ATTACHMENT A

Project Summary:

Clackamas River Water District desires to have HHPR, who is under contract with the Clackamas County Development Agency, design approximately 1,300 feet of 12-inch diameter ductile iron water pipeline including connections and related piping and appurtenances within the Monterey Avenue Extension Project being constructed by the Agency in 2015. Specific elements of the project will include:

- Connection to existing line in SE 82nd Avenue
- Approximately 1,300 l.f. of 12" diameter ductile iron waterline
- Connection to existing line in SE Fuller Road
- New Fire Hydrants
- Service connections for existing or future development that may take service from Monterey Avenue
- Details for waterline crossing on Phillips Creek Bridge

The project plans will be incorporated into the overall Monterey Avenue Extension bid package that is being produced by the Clackamas County Development Agency and constructed in conjunction with the overall project.

Scope of Design Services:

Task 1: Base Map Preparation

Prepare base map and drawing sheet set up for review and approval by Clackamas River Water District. Plans will be prepared to 1"=20' scale with plan and profile views for each sheet. It is anticipated that there will be the following sheets:

- Cover sheet
- Three (3) plan and profile sheets
- Bridge Crossing Detail Sheets
- Standard Detail Sheets

Task 2: Preliminary Design – 60% Plan Submittal

Complete preliminary design of the improvements and submit to Clackamas River Water District for review.

Task 3: Review Meeting with District on 60% Review Comments

Meet with Clackamas River Water District to review comments on the water line review comments.

Task 4: Final Plan Submittal – Bid Document Preparation

Prepare final construction drawings for bidding and construction. Submit final drawings to Clackamas River Water District for final review and approval. Make minor corrections as needed.

Task 5: Prepare Project Specifications and Engineer's Estimates

Prepare special provisions for the installation of the new water line, and other construction elements of the project. Provide a bid schedule for the project, along with an engineer's estimate. Incorporate project specifications in the 2008 APWA/ODOT format for bidding with Clackamas County.

Scope of Construction Related Services

Task 1: Bid Solicitation

Include the waterline construction drawings into the overall Monterey Avenue extension project bid package.

Task 2: Bidding Assistance

Answer questions from the District Staff during the bidding process. Provide written or verbal clarification of bid items and/or plans as requested.

Task 3: Inspection Services

Provide inspection services for the installation of the waterline. Provide daily inspection notes (provide copies to the district on a weekly basis). It is assumed that the contractor will take 4 weeks to complete the work schedule, and that the inspector will be present 75% of this time.

Task 4: As-Built Drawings

Complete as-built drawings of the project to reflect changes made during construction. The as-built drawings will be generated from the inspector notes (new survey will not be completed). Provide one set of mylar as-built drawings and digital Autocad and PDF Files to the Clackamas River Water District.

ATTACHMENT B

Monterey Avenue Waterline Design - SE Fuller Road to SE 82nd Avenue

Engineering Fee Proposal

Submitted by Harper Houf Peterson Righellis Inc. 

October 16, 20014

Task	Project Manager/ Engineer	Senior Civil Designer	Cadd Tech/ Inspector	Expenses	TY Linn	Total
Scope of Services						
Task 1: Base Map Preparation		8	4			\$1,340.00
Task 2: Preliminary Design - 60% Plan Submittal	4	16	24	\$25.00		\$4,725.00
Task 3: Review Meeting with District on 60% Review Comments	2	2		\$25.00	\$800.00	\$1,405.00
Task 4: Final Plan Submittal and Bid Document Preparation	2	16	24		\$400.00	\$4,770.00
Task 5: Prepare Project Specifications and Preliminary Cost Estimates	8	8				\$2,320.00
Task 6: Bidding Assistance	2	2				\$580.00
Task 7: Inspection Services	4		120			\$10,860.00
Task 8: As-Built Drawings	1	2	8	\$50.00		\$1,145.00
<i>Hourly Rate</i>	\$165.00	\$125.00	\$85.00			\$27,145.00

***Note: Expenses includes \$1,200 for TY Linn to include water line hanger details within their bridge design package.**