



May 9, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of a Settlement Agreement with Clackamas Progress Partners, LLC for Relief Event Notice and Written Report No. 003. Agreement value is \$144,092.03 plus any additional costs imposed by Oregon City. Funding is through budgeted County General Funds.

| | | | |
|-------------------------------------|--|---------------------------|-------|
| Previous Board Action/Review | Discussed at Executive Sessions on April 9 and 18. | | |
| Performance Clackamas | 1. Ensure Safe, Healthy and Secure Communities | | |
| Counsel Review | Yes | Procurement Review | No |
| Contact Person | Nancy Bush | Contact Phone | X8665 |

EXECUTIVE SUMMARY: On December 14, 2023, Clackamas County and Clackamas Progress Partners, LLC (CCP) entered into a change order to approve Project Company performing improvements to Hiefield Court to satisfy the terms and conditions of the Oregon City Type II Land Use Permit for the replacement courthouse.

The Change Order 13 was executed to avoid any delays to the courthouse project, and the County and CCP reserved all claims and defenses they may have over who is ultimately responsible for the costs associated with the City-imposed Hiefield Court improvements. Through negotiations with CCP a settlement was agreed upon for half of the contracted costs for the improvements to Hiefield Court. Total contract costs are \$288,000. County to pay \$144,000.

Any additional costs associated with additional design changes imposed by

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Oregon City would be the County's obligation.

RECOMMENDATION: Staff recommends the Board approve the proposed settlement agreement and delegate authority to the County Administrator to sign the Change Order when available.

Respectfully submitted,

A handwritten signature in black ink that reads 'Nancy Bush'.

Nancy Bush
County Operating Officer

SETTLEMENT AGREEMENT

RECITALS

- A. WHEREAS on April 27, 2023, Clackamas Progress Partners, LLC (“Project Company”) submitted Relief Event Notice and Written Report No. 003 regarding the above-referenced matter pursuant to Section 13.2 (A) of the Project Agreement pertaining to additional work located on Hiefield Court imposed by the City of Oregon in the “Terms and Conditions” of the Type II Staff Report and Notice of Decision with Conditions of Approval dated March 2, 2023 (“NOD”), which work was authorized to be performed by Project Company by execution of Change Order 013 (“the Dispute”).

- B. WHEREAS pursuant to Section 18.2 (Informal Negotiations to Resolve Contract Services Disputes) of the Project Agreement, Project Company and the County have attended informal meetings regarding the above-referenced Relief Event between September 2023 and most recently on April 2, 2024.

- C. WHEREAS pursuant to such negotiations the Parties have reached terms of settlement for the matters set forth in this Settlement Agreement and in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations stated herein, the Parties agree the Settlement Agreement is as follows:

AGREEMENT

- 1. The Parties agree that this Settlement Agreement reflects a compromise and settlement of claims, disputes, and differences between them which are denied and contested. The Parties agree that neither this Settlement Agreement nor the payment of any monetary consideration, or other relief granted, as provided herein, shall be construed as an actual representation as to what has been, or will be, actually incurred by Project Company or an admission by any Party of liability or kind to the other.

- 2. The Parties agree: (1) that this Settlement Agreement is lawful, enforceable, and binding; (2) to waive any challenges to the enforceability of this Settlement Agreement; and (3) not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Settlement Agreement in any judicial action or proceeding.

Design and Construction Requirement Change Order

3. The amount payable to the Project Company under this Project Agreement is hereby increased by \$144,092.03, which amount will be included in its entirety in a pass-through Design and Construction Requirement Change Order increasing the Design-Build Contract Price by such lump sum amount payable by the Project Company to the Design-Builder under the Design-Build Contract.
4. The Release for Construction Documents (RFCDs) for the Hiefield Court Improvement Plans (Permit PI-23-00021/ PR-000205-2022) permitted by the required departments and agencies of the City of Oregon City on March 21, 2024 (“Design Documents”), and as such, any change, modification or alteration to the Design Documents whether at the request or direction of any Governmental Body or by the County shall be deemed by the Parties as a Design and Construction Requirement Change for which the County bears sole cost responsibility.

Waiver and Release

5. Except as otherwise specified in this Settlement Agreement, by signing this Settlement Agreement, each Party hereby releases the other, their agents, and assigns, from any claims, liens, allegations of wrongdoing, liabilities, set offs, losses, damages, fees, expenses, defenses, obligations or demands for any further extension of time, compensation, or other relief of any type, nature, or description, known or unknown, regardless of whether specifically allowed under the Project Agreement or specifically disallowed, including but not limited to, any further extension of time, adjustment to any contract deadline, entitlement to any additional costs, impacts, known or unknown, solely arising from or related to the Dispute particularized in and for which Project Company was compensated for hereunder.

Agreement Contingent On Approval By the Court and the Board Of Supervisors

6. This Settlement Agreement and the obligations of the Parties hereunder are contingent upon the final approval by the Board of County Commissioners (“Board”), as set forth below.
7. The County agrees to include this Settlement Agreement on the Board agenda to be heard at the Board meeting scheduled on May 9, 2024. The County agrees to act in good faith in recommending the Settlement Agreement for Board approval without modification.
8. In the event that this Settlement Agreement does not receive approval by the Board, then this

Agreement shall be of no force or effect and shall not be admissible in any court for any reason. If the Settlement Agreement is not approved by the Board by May 9, 2024, the Parties reserve to themselves all rights with respect to the Dispute and all other matters addressed by the Settlement Agreement and shall retain all rights afforded to them under the Project Agreement and at law with respect to the Dispute and all other matters addressed by the Settlement Agreement. All notices, responses or other deadlines required under the Project Agreement relating to the Dispute shall be tolled for a period of thirty (30) days following the Board meeting on May 9, 2024 (the "Tolling Period"). The Parties agree that the deadline to demand mediation of the Dispute shall be tolled until the end of such Tolling Period.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the date written above.

COUNTY

By _____

Name:

Title:

CLACKAMAS PROGRESS PARTNERS, LLC

By _____

Name:

Title: