



Stephen L. Madkour
County Counsel

February 2, 2023

BCC Agenda Date/Item: _____

Kathleen Rastetter
Scott C. Ciecko
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Assistants

Board of County Commissioners
Clackamas County

Approval of a Settlement Agreement and Mutual Release (“Agreement”) with Terry W. Emmert (“Emmert”) and Emmert Development Company (“EDC”) for resolution to Clackamas County Circuit Court case 17CV23937. No General Fund.

Previous Board Action/Review	Executive Session		
Performance Clackamas	N/A		
Counsel Review	Yes	Procurement Review	NO
Contact Person	Sarah Foreman	Contact Phone	(503) 655-8363

EXECUTIVE SUMMARY: This Settlement Agreement and Mutual Release (“Agreement”) is the result of a lawsuit originally filed in federal court in 2013 by Terry W. Emmert and EDC. The case was adjudicated in federal court with one claim unresolved: a state inverse condemnation case which was filed in State Court in 2017. The allegations in the lawsuit arise from property disputes. The Agreement hereby concludes the lawsuit, with no party admitting liability.

If approved by the Board, the case will be dismissed, and the matter concluded.

RECOMMENDATION: The Office of County Counsel respectfully requests the Board authorize the Chair to sign the attached Settlement Agreement and Mutual Release and authorize the execution of all actions necessary to comply with the terms of the Agreement.

For Filing Use Only

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Respectfully submitted,

Sarah Foreman
Senior Assistant County Counsel

Attachments:

Settlement Agreement and Mutual Release with Terry Emmert and EDC.
Exhibit A – Property Description
Exhibit B – Property Depiction

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the “**Agreement**”), effective upon execution by all parties, is entered into by and between Terry W. Emmert (“**Emmert**”), Emmert Development Company (“**EDC**”) and Clackamas County (the “**County**”) shall and hereby does effectuate a settlement and release of all claims in the Clackamas County Circuit Court Case No. 17CV23937 between these parties in exchange for the mutual consideration described herein. Emmert, EDC and the County are collectively referred to as the “**Parties**” or individually as a “**Party**.”

MEANING OF TERMS

- (a) As used in this Agreement, “Terry W. Emmert” shall mean Emmert as an individual, his spouse, heirs, executors, administrators, agents, insurers, attorneys, assigns and anyone claiming through him.
- (b) As used in this Agreement, “EDC” shall mean Emmert Development Company, its heirs, executors, administrators, agents, insurers, attorneys, assigns, and anyone claiming through this entity.
- (c) As used in this Agreement, “County” shall mean Clackamas County and current and former commissioners, current and former managers, current and former County Counsel, current and former County Administrators, current and former employees (in their individual and represented capacities), attorneys, insurers, and current and former agents.

AGREEMENT

As consideration for the promises contained in this Agreement the parties agree as follows:

1. **Property Conveyance.** Upon execution of this agreement, within thirty (30) days Clackamas County will present a quitclaim deed to Terry W. Emmert conveying the property described in Exhibit A and depicted by Exhibit B.
2. **Acknowledgement.** Upon execution of this agreement, within thirty (30) days, Clackamas County Board of Commissioner Chair Tootie Smith will issue a statement acknowledging Emmert’s contributions to Clackamas County and apologizing for any perceived or actual slights or past indiscretions by the County or its staff.
3. **Good Faith.** The County will act in good faith toward Emmert and EDC in the future.
4. **Release.** Emmert and the County will release each other from all alleged claims or damages, known or unknown, arising out of or in any way related to or in connection with lawsuits United States District Court case 3:13-cv-01317-HU and Clackamas County Circuit Court case 17CV23937 (the “**Lawsuit**”).

5. No Admission of Liability. Nothing in this Agreement shall be construed to be or used as an admission of liability or fault by any party. No part of this Agreement shall be admissible in any court or alternative dispute resolution proceeding for the purpose of proving liability, causation, or fault.

6. Dismissal. Within thirty (30) days of the transfer of the Settlement Property to Emmert, Emmert shall dismiss all claims in the Lawsuit with prejudice and without costs or fees to either Party.

7. No Attorneys' Fees. Each Party shall be responsible for paying its own attorney fees related to prosecution or defense of claims presented in the Lawsuit.

8. Further Assurances. The Parties agree to take such action and execute such further documents, including modifications to this Agreement, as may be reasonably necessary to effectuate the intent of this Agreement.

9. Governing Law. This Agreement, and any disputes arising out of the language contained herein, shall be governed by the law of the State of Oregon with venue in Clackamas County.

10. Amendments. This Agreement may be amended or modified only by written agreement of the Settling Parties executed in the same manner as this Agreement.

11. Severability. If a court of competent jurisdiction holds any provision of this Agreement, or any portion thereof, to be invalid under any applicable statute or rule of law, such invalidity will not affect the validity of the other provisions of this Agreement. The Parties will substitute the invalid provision with a valid provision that most closely approximates the intent of the invalid provision.

12. Signatures of Counterparts. The Parties may execute this Agreement in multiple counterparts, each of which will comprise an original Agreement. Signatures on faxed or electronically scanned copies will be deemed the same as original signatures.


13. Authority to Execute. Each person who signs this Agreement represents and warrants that he or she has the right and authority to execute this Agreement on behalf of the Party for whom he or she signs. The Parties each represent and warrant that no consent of any person or entity who is not a party to this Agreement is necessary in order for this Agreement to be fully and completely binding on the Parties and their successors and assigns.

14. Review by Counsel. The parties have been given the opportunity to have this Agreement reviewed by counsel. By signing this Agreement, Terry W. Emmert, EDC and the County acknowledge that they have carefully read and fully understand all provisions and effects of this Agreement and that the County advised them in writing, by this paragraph, to consult with their own personal attorney before signing this Agreement; that they have had sufficient opportunity to consult with attorney(s) before signing this Agreement; that they are voluntarily entering into this Agreement free of coercion and duress; and that neither the County nor any of their agents or attorneys, has made any representations or promises concerning the terms or effects of this Agreement other than those expressly set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective the date executed by all parties.

TERRY W. EMMERT

CLACKAMAS COUNTY

Signature: 
Terry W. Emmert


Signature: _____
Tootie Smith, BOC Chair

Date: Jan 27, 2023

Date: _____


APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: 
Jeffrey M. Edelson
Attorney for Terry W. Emmert

By: _____
Sarah Foreman
Attorney for Clackamas County

EMMERT DEVELOPMENT COMPANY

Signature: 
Terry W. Emmert, Owner

Date: Jan 27, 2023

APPROVED AS TO FORM:


By: 
Jeffrey M. Edelson
Attorney for Terry W. Emmert

EXHIBIT "A"
REMAINING CLACKAMAS COUNTY TRACT

THIS LEGAL DESCRIPTION IS FOR THE REMAINING CLACKAMAS COUNTY PROPERTY LYING NORTHERLY OF THE OE 212/224 SUNRISE CORRIDOR HIGHWAY FROM SE 122ND AVE AND I-205. LYING IN THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN.

LYING IN THE NORTHEAST QUARTER OF SAID SECTION 10, CLACKAMAS COUNTY, And STATE OF OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 13 "EMMERT RIDGEVIEW ESTATES" PLAT NO. 3100 IN THE CLACKAMAS COUNTY PLAT RECORDS THENCE SOUTH 89°59'28" EAST, ALONG THE NORTHERLY SOUTH LINE OF SAID PLAT No. 3100 A DISTANCE 160.11 FEET TO AN ANGLE POINT; THENCE CONTINUING ALONG SAID SOUTH LINE NORTH 79°13'21" EAST, A DISTANCE OF 586.71 FEET TO A POINT ON THE SOUTH LINE OF LOT 22 OF SAID PLAT No. 3100; THENCE SOUTH 0°56'34" EAST ALONG THE WEST LINE OF LOTS 24 THROUGH 29 OF SAID PLAT No. 3100, A DISTANCE OF 449.00 FEET; THENCE SOUTH 89°58'44" EAST ALONG THE SOUTH LINE OF LOTS 29 AND 30 OF SAID PLAT No. 3100, A DISTANCE OF 280.00 FEET TO THE NORTHWEST CORNER OF TRACT "A" "VINEYARD RIDGE" PLAT NO. 3230 IN CLACKAMAS COUNTY PLAT RECORDS; THENCE SOUTH 0°55'08" EAST, ALONG THE WEST LINE OF SAID TRACT "A", A DISTANCE OF 119.95 FEET; THENCE SOUTH 89°58'33" WEST, ALONG THE NORTHERLY RIGHT OF WAY LINE OF THE AFOREMENTIONED 212/224 SUNRISE CORRIDOR HWY, A DISTANCE OF 463.54 FEET ALSO BEING A POINT 265.00 FEET LEFT OF CENTERLINE AT STATION "L-1" 605+34.00 FROM THE CENTERLINE OF SAID CORRIDOR HWY; THENCE NORTH 9°46'25" WEST ALONG SAID RIGHT OF WAY, A DISTANCE OF 150.14 FEET BEING 410.00 FEET LEFT OF CENTERLINE AT STATION "L1" 605+04.00; THENCE SOUTH 81°46'27" WEST, ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 542.22 FEET TO THE EAST LINE OF THAT PROPERTY DESCRIBED IN BOOK 521, PAGE 53 CLACKAMAS COUNTY DEED RECORDS; THENCE NORTH 0°00'56" WEST, ALONG SAID EAST LINE A DISTANCE OF 389.10 FEET TO THE POINT OF BEGINNING,

CONTAINING 7.94 ACRES MORE OR LESS.

TOGETHER WITH LOT 28 OF "EMMERT RIDGEVIEW ESTATES" PLAT NO. 3100

BASIS OF BEARINGS ARE FROM THE OREGON COORDINATE REFERENCE SYSTEM, PORTLAND ZONE NAD 83(CORS96) EPOCH 2002 AS SHOWN IN THE ODOT OR 212/224 SUNRISE CORRIDOR (I-205 TO SE 122ND AVE) CONSTRICTION PLANS.

EXHIBIT "B"
LYING IN THE NORTHEAST QUARTER (NE1/4)
OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 2 EAST WILLAMETTE MERIDIAN,
CLACKAMAS COUNTY OREGON

