



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

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

May 2, 2019

Development Agency Board
Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement Between Clackamas River Water and the
Clackamas County Development Agency Relating to the Clackamas Regional Center Mobility
Improvement Project**

Purpose/Outcomes	Approval of an Intergovernmental Agreement outlining terms related to design and construction of improvements to Clackamas River water facilities located within the Clackamas Regional Center Mobility Improvement Project area.
Dollar Amount and Fiscal Impact	Not to exceed \$19,335.00
Funding Source	Reimbursement from Clackamas River Water funds
Duration	Until all work is complete or December 31, 2021, whichever is sooner
Previous Board Action	The Board approved proceeding with design and construction of the project at a Study Session on April 11, 2017
Counsel Review	Reviewed and approved by Counsel on March 12, 2019
Strategic Plan Alignment	1. Build public trust through good government.
Contact Person	David Queener, 503-742-4322

BACKGROUND:

The Development Agency is near completion of the design of the Clackamas Regional Center (CRC) Mobility Improvement Project. The design consultant coordinated with affected utilities in order to minimize conflicts with their facilities. With a project of this scale, there are instances where conflicts cannot be avoided and utilities need to be relocated.

Clackamas River Water (CRW) has some water lines and related structures that need relocation. In the interest of efficiency, CRW requested that our consultant prepare design drawings to be used for construction. The Intergovernmental Agreement (IGA) commits CRW to reimburse the Agency for costs associated with design. The IGA may be amended in the future to include construction of their facilities as part of the overall project, with reimbursement of those costs by CRW.

RECOMMENDATION:

Staff recommends the Board approve the Intergovernmental Agreement with Clackamas River Water relating to the Clackamas Regional Center Mobility Improvement Project.

Respectfully submitted,

David Queener
Development Agency Program Supervisor

Attachments:

Intergovernmental Agreement

**INTERGOVERNMENTAL AGREEMENT BETWEEN
CLACKAMAS RIVER WATER AND THE CLACKAMAS COUNTY
DEVELOPMENT AGENCY RELATING TO THE CLACKAMAS
REGIONAL CENTER MOBILITY IMPROVEMENT PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into between Clackamas River Water, a domestic water district organized under ORS chapter 264 ("CRW"), and Clackamas County Development Agency, a corporate body politic ("Agency"), collectively referred to as the "Parties" and each a "Party."

RECITALS

- A. This Agreement is entered into pursuant to ORS 190.010, which confers authority on local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreements, its officers or agencies have authority to perform.
- B. As part of the Agency's Clackamas Regional Center Mobility Improvements Project, the Agency will undertake a CRC Transmission Line Project (the "Project") that will include the work identified in **Exhibit A** to this Agreement, and which lies within the Harmony, Sunnyside and SE 82nd roadways in an area identified in **Exhibit B** to this Agreement (the "Project Area"). CRW wishes to incorporate modifications to the existing water transmission lines within the Project Area as part of the Project.
- C. At the time this Agreement is executed, the Project will be limited to design and engineering work. The Parties may amend Exhibits A and C at a later date to include construction of the required water system upgrades as part of the Project.
- D. The Parties desire to provide the basis for a cooperative working relationship for the purpose of providing waterline design and construction services as part of the Project.
- E. CRW and Agency have determined it is in the public interest to cooperate in the planning and execution of the Project.

AGREEMENT

Now, therefore, based on the foregoing, the Parties agree as follows:

- 1. Term.** This Agreement becomes effective as of the last date of signature by a Party indicated below. Unless terminated earlier pursuant to Section 5 of this Agreement, this Agreement will expire upon the completion of each and every obligation of the Parties set forth in this Agreement, or by December 31, 2021, whichever is sooner.
- 2. CRW's Obligations.**

- a. Scope of Work. CRW agrees to the scope of work set out in Exhibit A. Before the Agency solicits bids for construction of the improvements contemplated by the Project, CRW will review the plans produced by Agency's consultant in connection with the Project and the procurement materials, and will not withhold approval of those plans and materials unreasonably.
- b. Project Coordination. CRW's liaison, identified below in Section 7 of this Agreement, shall coordinate design requirements, assist in developing bid items and quantities, and assist the Agency when necessary to provide responses to requests for information from bidders and contractors. CRW will provide engineering review, comments, information or approval, as required to the Agency or to the Agency's consultant, currently Harper Houf Peterson Righellis, Inc. ("HHPR"), for purposes of fulfilling the purpose of this Agreement.
- c. Project Inspections and Testing. CRW is responsible for costs associated with design review, field inspection and material testing related to the Project.
- d. Payment Obligations. CRW will be responsible for all costs associated with the work identified in Exhibit A to this Agreement, not to exceed the amount specified in Exhibit C. CRW further agrees:
 - i. To reimburse the Agency for administrative costs the Agency incurs in the administration of the Project, not to exceed One Thousand Dollars (\$1,000.00).
 - ii. To pay Agency within 30 days of the receipt of the Agency's invoice to CRW.

3. Agency's Obligations.

- a. Scope of Work. The Agency will contract for the scope of work set out in Exhibit A. Before soliciting bids for construction of the improvements contemplated by the Project, Agency will obtain CRW's written approval of the plans produced by HHPR in connection with the Project and of the procurement materials, which approval shall not be withheld unreasonably.
- b. Management of the Project. The Agency will manage the Project, as set forth in Exhibit A of this Agreement, and administer the associated engineering, design and construction contracts.

- c. Project Professional and Project Cost. Agency agrees to hire HHPR to design the Project. CRW shall be responsible for those Project costs as set forth in **Exhibit C** to this Agreement.
 - d. Invoice Obligations. Agency will invoice CRW within the first week following the last working day of each calendar month in which work is performed on CRW's behalf. With the exception of the administrative costs described in Section 2(d)(i), Agency shall not invoice CRW, and CRW shall not be liable for, amounts in excess of that which is listed in Exhibit C, unless the Parties amend this Agreement by modifying the scope of work set out in Exhibit A.
4. **Attachments.** The Parties understand and agree that Exhibit A, Exhibit B, and Exhibit C are attached and incorporated into this Agreement as if fully set forth herein.
5. **Termination.**
- a. CRW and Agency, by mutual written agreement, may terminate this Agreement at any time.
 - b. Either CRW or Agency 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 thirty (30) 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. If the default is of such a nature that it cannot be completely remedied within such thirty (30) day period, this provision shall be complied with if the breaching Party brings correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
 - c. CRW or Agency 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 is of the same nature as that waived.
 - d. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project.

- e. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. Indemnification.

- a. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend CRW, its officers, elected officials, 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 person or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents or its subcontractors or anyone over which the Agency has a right to control.
- b. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, CRW agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, 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 CRW or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which CRW has a right to control.

7. Party Contacts.

- a. Joseph D. Eskew or his designee will act as liaison for CRW for the Project.

Contact Information:

Joseph D. Eskew
Clackamas River Water
16770 SE 82nd Drive
Clackamas OR 97015
(503)723-2565
jeskew@crwater.com

- b. David Queener or his designee will act as liaison for Agency for the Project.

Contact Information:

David Queener
Clackamas County Development Agency

150 Beavercreek Road
Oregon City OR 97045
(503) 742-4322
DavidQue@clackamas.us

- c. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

8. General Provisions.

- a. **Oregon Law and Forum.** This agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- b. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- c. **Non-Exclusive Rights and Remedies.** Except as otherwise provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- d. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement 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.
- e. **Access to Records.** The Parties acknowledge and agree that each Party shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.

- f. **Debt Limitation.** 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.
- g. **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.
- h. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- i. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- j. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- k. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the Agency or CRW.

- l. **No Assignment.** No party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- m. **Nonwaiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, Clackamas County, or any other governmental entity with respect to any discretionary governmental action relating to the Project or any associated development, operation and use of the improvements to be constructed on the Project Area, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental County approvals that are or may be required.
- n. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile, or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute and original.
- o. **Authority.** Each Party represents that is has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
- p. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County Development Agency

Clackamas River Water

Chair: Jim Bernard

Name: Hugh Kalani
Title: CRW Board of Commissioners President

Date

Date

EXHIBIT A

SCOPE OF WORK

Design Scope of Work:

Clackamas River Water District (CRW) desires to have HHPR, who is under contract with the Clackamas County Development Agency, provide Engineering Services as required to incorporate various CRW elements of work into the overall CRC Mobility Plans. Specific elements of CRW design work to be incorporated are detailed in Exhibit 1 (attached). The Scope of Services is as follows:

Task 1: Base Map Preparation

Prepare base map and drawing sheet set up for review and approval by Clackamas River Water District. The following sheets are anticipated:

- Up to four (4) plan sheets, which may include enlarged plan views at 1"=5' scale and/or section views to illustrate construction requirements.
- Up to two (2) detail sheets

Task 2: Design and Review Comments

Preliminary design has been completed by CRW and provided to HHPR. HHPR will incorporate CRW's design into the existing project drawings and the new CRW sheets and provide a copy of modified sheets to CRW for review. CRW's review will be independent of any % complete review set, as we are currently approaching 100% completion. Upon receipt, CRW will provide review comments within 1 week to allow any required revisions to be incorporated into the final plans.

Task 3: 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 (issue changes as addenda if required).

Task 4: Prepare Project Specifications and Engineer's Estimates

Prepare special provisions for the installation of the water improvements, 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 2018 APWA/ODOT format for bidding with Clackamas County.

Task 5: Bidding Assistance

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

Task 6: Inspection Services

Provide general inspection services during installation of the waterline, concurrent with other inspection tasks. Track quantities for payment. Provide daily inspection notes (provide copies to CRW on a weekly basis). It is assumed that the water improvements will require 4 weeks to complete, and that the inspector will be present 10% of this time. CRW will provide primary inspection of CRW work and will participate in final walkthrough and generation of punch list items. CRW will provide review of submittals and RFI's.

Task 7: As-Built Drawings

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

Clackamas Regional Center Mobility Improvements

Proposed Work Split CRW vs. County Contract

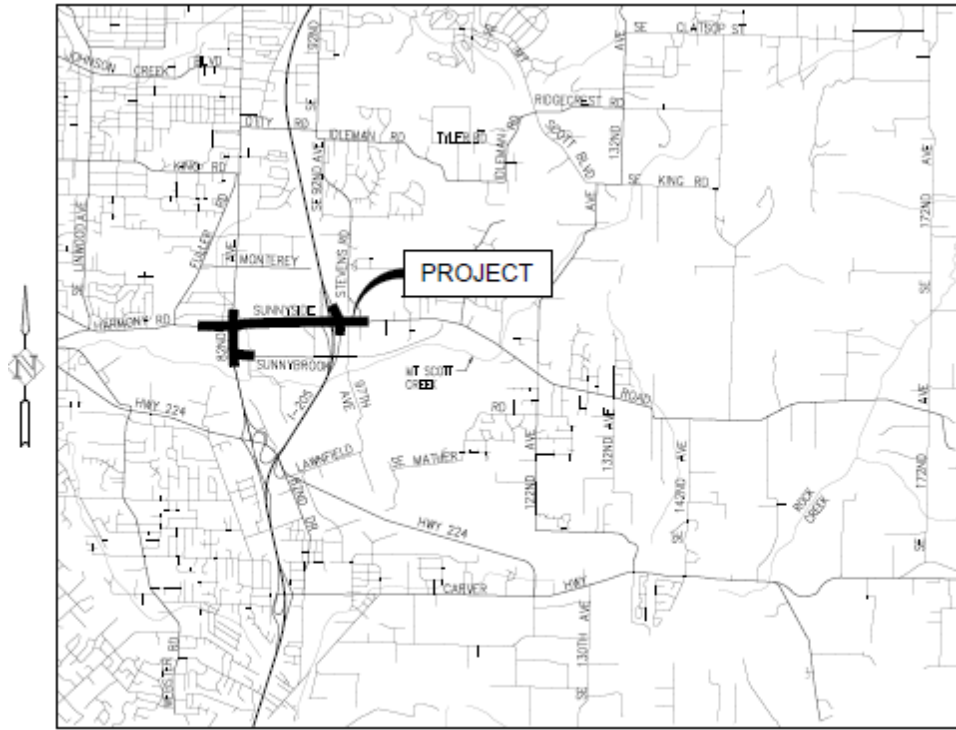
12/26/2018

Sheet	Work by	Description *
3A	CRW Contract Contract	1) Adjust and/or relocate water meters on Harmony @ 7823, 7831, 7903 2) Replace valve box in sidewalk @ STA 151+25 RT 3) Minor adjust valve box - 1 each
4A	CRW Contract	1) Adjust and/or relocate water meters on Harmony @ 7911, 8033 2) Install new FH with wet tap on 80th
5A	Contract CRW CRW CRW	1) Abandon Fire Hydrant @ SW corner 82nd/Harmony 2) Relocate or replace water meter @ 12479 82nd Ave 3) Replace and adjust FH to Toys-R-Us 4) Adjust 2" meter to Toys-R-Us
7A	Contract	1) Abandon 2" water service, North
8A	Contract Contract Contract Contract Contract Contract	1) Replace and regrade 8" WL south into Promenade Mall @ STA 11+20 2) Install new FH with wet tap @ STA 11+50 3) Abandon 6" FH and pipe 4) Replace valve box - 3 each 5) Pothole to locate valve and replace valve box, STA 11+20 RT 6) Minor adjust valve box - 3 each
9A	Contract Contract Contract Contract Contract	1) Install new FH with regrade @ STA 14+60 RT 2) Install new FH @ STA 17+90 RT 3) Abandon 2" water service, North 4) Replace valve box - 5 each 5) minor adjust valve boxes - 5 each
10A	Contract Contract Contract Contract	1) Install new FH @ STA 20+75 RT 2) Replace valve box - 5 each 3) Minor adjust 2" meter box @ STA 22+60 RT 4) Minor adjust valve boxes - 5 each
11A	Contract	1) Minor adjust 2" meter box @ 23+25 RT
12A	Contract Contract Contract	1) Install insert valve @ STA 28+40 RT 2) Relocate 8" DI WL at new sign bridge 3) Remove FH and abandon valve @ STA 28+40
20A	Contract	1) Cut and Cap at 4" Valve in 82nd Ave
21A	Contract Contract CRW	1) Remove and replace FH @ STA 440+80 LT 2) Minor adjust valve boxes - 4 each 3) Relocate 3/4 water meter @ Furniture Gallery

* Stations shown are approximate

EXHIBIT B

PROJECT AREA



VICINITY MAP
NTS

EXHIBIT C

PROJECT COST

CRC Mobility Improvements

CRW Design and Inspection Services

Engineering Fee Proposal

Submitted By: Harper Houf Peterson Righellis Inc.

January 14, 2019

Task	Description	Project Manager	Project Engineer/ Construction Manager	Senior Civil Designer	Inspector	Expenses	Total
1	Base Map Preparation			16			\$2,400.00
2	Design and Review Comments	4	4	24		\$25.00	\$5,086.25
3	Final Plan Submittal - Bid Documents Preparation	4		8		\$25.00	\$1,986.25
4	Prepare Project Specifications and Preliminary Cost Estimates	1	4	8			\$2,090.00
5	Bidding Assistance	2		2			\$680.00
6	Inspection Services	4	16		16		\$5,320.00
7	As-Built Drawings	1	2	2	8	\$50.00	\$1,772.50
	<i>Hourly Rate</i>	\$190	\$175	\$150	\$110		\$19,335.00



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

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

May 2, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of the Fourth Amendment to the Disposition Agreement with Bottling Group, LLC

Purpose/Outcome	To amend the existing Disposition Agreement with Bottling Group, LLC
Dollar Amount and Fiscal Impact	No change
Funding Source	N/A.
Duration	The amendment will extend the due diligence period by 30 days
Previous Board Action/Review	Approval of a third amendment on March 28, 2019
Counsel Review	Reviewed and approved by Counsel on April 23, 2019
Strategic Plan Alignment	Build public trust through good government
Contact Person	Dave Queener, Development Agency Program Supervisor, 503-742-4322

The Agency has a Disposition Agreement with Bottling Group, LLC associated with the purchase of a portion of the Clackamas Industrial Area Opportunity (CIAO) site. Their current due diligence period expired on April 19, 2019. The Agency and Bottling Group have been working to finalize property line adjustments with adjacent property owners, which are necessary to maximize development of the site and for planned road improvements. While two of these property line adjustments were finalized on April 18, 2019, one other remains to be completed. It is anticipated that this final one will be done within two weeks.

Bottling Group has requested the due diligence period be extended in order to finalize the property line adjustments prior to closing.

This fourth amendment will extend the due diligence period by 30 days.

RECOMMENDATION

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, execute this Fourth Amendment to the Disposition Agreement with Bottling Group, LLC

Respectfully submitted,

David Queener, Program Supervisor
Development Agency

FORTH AMENDMENT TO DISPOSITION AGREEMENT

THIS FORTH AMENDMENT TO DISPOSITION AGREEMENT (“Amendment”) is entered into effective as of April _____, 2019, between **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (“**Agency**”), and **BOTTLING GROUP, LLC**, a Delaware limited liability company (“**Developer**”).

RECITALS

A. Agency and Developer are parties to that certain Disposition Agreement dated effective as of May 24, 2018, the First Amendment to Disposition Agreement dated effective November 20, 2018, the Second Amendment to Disposition Agreement dated effective January 24, 2019, and the Third Amendment to the Disposition Agreement dated effective March 28, 2019 (collectively the “**Disposition Agreement**”), concerning approximately 12 acres of land located on Capps Road west of SE 120th Avenue, Clackamas County, Oregon, as more particularly described in the Disposition Agreement (the “**Property**”).

B. The parties desire to modify the Disposition Agreement on the terms and conditions set forth herein. All capitalized terms used in this Amendment and not otherwise defined herein shall have their meanings as set forth in the Disposition Agreement.

AGREEMENT

1. **Due Diligence Period.** Section 2.4 of the Disposition Agreement is hereby amended such that the Developer’s Initial Due Diligence Period, as defined in the Disposition Agreement, shall be for a period of three hundred and sixty (360) days after the Effective Date, and shall expire on May 19, 2019.

2. **Counterpart; Email.** This Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Amendment. Facsimile or email transmission of any signed original of this Amendment, and retransmission of any signed facsimile or email transmission, shall be the same as delivery of an original. At the request of either party, the parties shall confirm transmitted signatures by signing an original document.

3. **Confirmation.** The Disposition Agreement is hereby amended and modified in accordance with the terms of this Amendment. Except as expressly modified by this Amendment, the Disposition Agreement and all its terms and provisions are hereby acknowledged, approved, ratified and confirmed and shall be and remain in full force and effect.

[Signatures on next page.]

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

AGENCY:

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
a corporate body politic

By: _____
Name: _____
Its: _____

DEVELOPER:

BOTTLING GROUP, LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____