



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

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

August 5, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

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

Purpose/Outcomes	Execution of the First Amendment to the IGA refines the Scope of Work undertaken by the Agency for CRW and specifies the dollar amount that is to be reimbursed to the Agency for that work.
Dollar Amount and Fiscal Impact	The Development Agency will be reimbursed \$203,477.23.
Funding Source	Funds for the reimbursement will come from Clackamas River Water
Duration	The IGA will expire upon completion of all obligations outlined in the agreement or on December 31, 2021, whichever is sooner.
Previous Board Action	5/2/2019: BCC Approval of the Intergovernmental Agreement
Strategic Plan Alignment	This project will build and provide strong Infrastructure
Procurement Review	1. Was this item processed through Procurement? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no 2. If no, provide a brief explanation: Not required
Counsel Review	Reviewed and Approved by Counsel on July 15, 2021 NB
Contact Person	David Queener, Development Agency Senior Project Planner 503.742.4322

Background:

The Development Agency entered into an Intergovernmental Agreement (IGA) with Clackamas River Water (CRW) on May 2, 2019. The IGA outlines the roles and responsibilities for each party as it relates to construction of water lines and appurtenances on the Clackamas Regional Center (CRC) Mobility Improvement Project. Per the IGA, the Agency will have its consultant complete the waterline design as part of the overall design of the project. The Agency will also have the contractor construct the improvements on CRW's behalf. In exchange, CRW will reimburse the Agency for all costs related to design and construction of the waterline improvements.

In order to accurately know what the cost for the waterline construction would be, a contractor needed to be selected with their bid costs known. The waterline portion of the project is now complete so all in-field design changes and final costs are known. This amendment to the IGA reflects what was actually constructed.

Upon execution of this amendment, CRW will reimburse the Agency \$203,477.23.

Recommendation:

Staff respectfully recommends that the Board approve and execute the First Amendment to the Intergovernmental Agreement between Clackamas River Water and the Development Agency relating to the Clackamas Regional Center Mobility Improvement Project.

Sincerely,

David Queener

David Queener,
Development Agency Program Supervisor

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

THIS FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT RELATING TO THE CLACKAMAS REGIONAL CENTER MOBILITY IMPROVEMENT PROJECT (“Amendment”) is entered into effective as of July 31, 2021, 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. CRW and the Agency are parties to that certain Intergovernmental Agreement dated effective as of May 2, 2019, (the “Agreement”), concerning the CRW Transmission Line Project which will incorporate modifications to the existing water transmission lines in the area and which is part of the larger Clackamas Regional Center Mobility Improvements Project being administered by the Agency. The CRW Transmission Line Project is more particularly described in the Agreement.
- B. The Agreement is limited by its terms to the design and engineering work associated with the CRW Transmission Line Project and contemplated that Parties could later amend the Agreement, and in particular Exhibit A – Scope of Work and Exhibit C – Project cost, to include construction of the required water system upgrades as part of the CRW Transmission Line Project.
- C. The Parties now wish to amend the Agreement to provide for the Agency’s construction of the required water system upgrades and CRW’s reimbursement of the costs associated with that work.

AGREEMENT

- 1. **Amendment to Section 2(a).** Section 2(a) of the Agreement which reads:
 - 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.

Shall be deleted in its entirety and replaced with the following:

- a. Scope of Work. CRW agrees to the scope of work set out in Exhibit A. CRW has reviewed the plans produced by Agency’s consultant in connection with the Project and the procurement materials and hereby approves of those plans and materials.
- 2. **Amendment to Section 3(a).** Section 3(a) of the Agreement, which reads:
 - 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.

Shall be deleted in its entirety and replaced with the following:

- a. Scope of Work. The Agency will contract for the scope of work set out in Exhibit A.

3. Exhibit A. The document attached to this Amendment identified as Exhibit A "Scope of Work" shall replace the "Scope of Work" attached to the Agreement as Exhibit A.

4. Exhibit C. The document attached to this Amendment, identified as Exhibit C "CRC Mobility Improvements Clackamas River Water Work Completed by the County" and dated June 6, 2021, shall supplement and be added to the document which is titled "Project Cost" and is attached to the Agreement as Exhibit C.

5. 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.

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

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: Tootie Smith
Its: Chair, Clackamas County Development Agency Board

CRW:

CLACKAMAS RIVER WATER,
a domestic water district organized under ORS chapter 264

By: Sherry French
Name: Sherry French
Its: CRW Board of Commissioners President

EXHIBIT A

SCOPE OF WORK

Design Phase 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.

Construction Phase Scope of Work:

CRW desires to have Kerr General Contractors, who is under contract with the Clackamas County Development Agency, to construct certain elements of the water supply system on behalf of CRW. The Contractor will complete the following, the cost of which is itemized in Exhibit C:

- Install Fire Hydrant Assembly with Wet Tap (WD-1/W)¹
- Abandon 2 Inch Water Service (WD3/W)
- Replace 8 Inch Waterline (WD-4/W-2)
- Install Fire Hydrant Assembly with Wet Tap (WD-4/W-2)
- Abandon Fire Hydrant and Pipe (WD-4/W-2)
- Pothole and Locate Valve (WD-4/W-2)
- Replace 6 Inch Waterline and Install Fire Hydrant Assembly (WD-5/W-2)
- Abandon 2 Inch Water Service (WD-5/W-2)
- Install Fire Hydrant Assembly (WD-6/W-2)
- Install Fire Hydrant Assembly (WD-7/W-3)
- Relocate 12 Inch DI Waterline at New Sign Bridge (WD-8/W-3)
- Relocate 8 Inch DI Waterline at New PGE Vault (WD-9/W-3)
- Install Insert Valve (WD-9/W-3)
- Remove Fire Hydrant and Abandon Valve (WD-9/W-3)
- Install 12 Inch DI Waterline, Complete (Sunnybrook Loop Plans)
- Replace Valve Box Top, Lid, and Bottom Section

¹ These are references to the waterline detail (WD) on the waterline plan sheets (W) prepared by Harper Houf Peterson Righellis, Inc., dated August 15, 2019.

CRC Mobility Improvements

Exhibit C

Clackamas River Water Work Completed by the County

June 6, 2021

Bid Item Prices

Bid Item Prices					Kerr	
ITEM	SPEC	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
Part 1100 - Water Supply Systems						
214	01140	Install Fire Hydrant Assembly with Wet Tap (WD-1/W)	LS	1	\$ 14,085.00	\$ 14,085.00
215	01140	Abandon 2 Inch Water Service (WD3/W)	LS	1	\$ 1,710.00	\$ 1,710.00
216	01140	Replace 8 Inch Waterline (WD-4/W-2)	LS	1	\$ 15,965.00	\$ 15,965.00
217	01140	Install Fire Hydrant Assembly with Wet Tap (WD-4/W-2)	LS	1	\$ 14,525.00	\$ 14,525.00
218	01140	Abandon Fire Hydrant and Pipe (WD-4/W-2)	LS	1	\$ 2,560.00	\$ 2,560.00
219	01140	Pothole and Locate Valve (WD-4/W-2)	LS	1	\$ 840.00	\$ 840.00
220	01140	Replace 6 Inch Waterline and Install Fire Hydrant Assembly (WD-5/W-2)	LS	1	\$ 13,235.00	\$ 13,235.00
221	01140	Abandon 2 Inch Water Service (WD-5/W-2)	LS	1	\$ 1,710.00	\$ 1,710.00
222	01140	Install Fire Hydrant Assembly (WD-6/W-2)	LS	1	\$ 14,180.00	\$ 14,180.00
223	01140	Install Fire Hydrant Assembly (WD-7/W-3)	LS	1	\$ 6,525.00	\$ 6,525.00
224	01140	Relocate 12 Inch DI Waterline at New Sign Bridge (WD-8/W-3)	LS	1	\$ 17,095.00	\$ 17,095.00
224.1	01140	Relocate 8 Inch DI Waterline at New PGE Vault (WD-9/W-3)	LS	1	\$ 13,060.00	\$ 13,060.00
225	01140	Install Insert Valve (WD-9/W-3)	LS	1	\$ 21,000.00	\$ 21,000.00
226	01140	Remove Fire Hydrant and Abandon Valve (WD-9/W-3)	LS	1	\$ 1,690.00	\$ 1,690.00
226.1	01140	Install 12 Inch DI Waterline, Complete (Sunnybrook Loop Plans)	LS	1	\$ 40,250.00	\$ 40,250.00
227	01140	Replace Valve Box Top, Lid, and Bottom Section	EACH	15	\$ 875.00	\$ 13,125.00
APPROVED CHANGE ORDERS						
CO 3		BI 224.1 Design Change Related to Water Detail Sheet 3, WD-9 and WD-	LS	1	\$ (1,258.10)	\$ (1,258.10)
CO 15		Relpacement of Existing Cracked and Leaking 6" Valve at WD-4	LS	1	\$ 10,588.90	\$ 10,588.90
CO 53		Abandon Previously Unkown 2" Line in the Median at 93rd ans Sunnyside	LS	1	\$ 2,591.43	\$ 2,591.43
CLACKAMAS RIVER WATER SYSTEM SUPPLY TOTAL					\$203,477.23	

August 5, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Release of a Security Deposit to Oregon Beverage Recycling Cooperative as Required in a
Post-Closing Escrow and Development Agreement

Purpose/Outcomes	Releases a security deposit that was held in escrow until Oregon Beverage Recycling Cooperative (OBRC) fulfilled obligations outlined in a Post-Closing Escrow and Development Agreement
Dollar Amount and Fiscal Impact	\$125,000 will be disbursed from the escrow account to OBRC
Funding Source	Not applicable
Duration	The release is permanent
Previous Board Action	The Post-Closing Escrow and Development Agreement was signed by the Board on April 18, 2019
Strategic Plan Alignment	Grow a vibrant economy
Procurement Review	1. Was this item processed through Procurement? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no 2. If no, provide a brief explanation: Not required
Counsel Review	Reviewed and Approved by Counsel on July 6, 2021 NB
Contact Person	David Queener, Development Agency Senior Project Planner 503.742.4322

Background:

Oregon Beverage Recycling Cooperative (OBRC) acquired 12.68 acres of industrial land owned by the Development Agency in April 2019. Upon closing on the sale, a Post-Closing Escrow and Development Agreement was executed that required OBRC to deposit \$125,000 into escrow.

Those funds would be held until OBRC met conditions set out in the Agreement. This included:

- Construction of a building with a floor area ratio of not less than .29
- Complete construction of the improvements within 24 months of executing the Agreement
- Provide workers at the new facility equal to or greater than one job per 1,100 square feet of building floor area
- Provide average annual wages for all employees equal to or greater than the National Average Mean Wage

OBRC has demonstrated that they have met each of the conditions and has submitted a request to release the security deposit. Upon disbursement of the funds, the Post-Closing Escrow and Development Agreement will no longer be in effect.

Recommendation:

Staff respectfully recommends that the Board approve and execute the documents necessary to release the funds held in escrow to Oregon Beverage Recycling Cooperative.

Sincerely,

David Queener

David Queener
Development Agency Program Supervisor

POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT

THIS POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT (this "Agreement") is entered into by and among **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "Agency") and **OREGON BEVERAGE RECYCLING COOPERATIVE**, an Oregon domestic cooperative ("Developer"), and Chicago Title Insurance Company of Oregon ("Escrow Holder"). The latest date on which this Agreement is signed by Agency, Developer and Escrow Holder (as indicated below by their signatures herein) is referred to in this Agreement as the "Effective Date."

RECITALS

A. Pursuant to that Disposition Agreement effective November 22, 2017 (the "DA"), Developer acquired from Agency that certain real property comprised of approximately 12.68 acres (and approximately 9.36 net developable acres) of land owned by the Agency located east of SE 120th Avenue and south of Capps Road in Clackamas County, Oregon, as more particularly described in Exhibit "B" of the DA (the "Property"). All capitalized terms used in this Agreement and not otherwise defined herein shall have their meaning as set forth in the DA.

B. In connection with the DA and in furtherance of the Plan, Agency desires that Developer construct the Building Improvements (defined below), and Developer wishes to do so, on and subject to the terms and conditions of this Agreement. As used herein, the "Building Improvements" means the industrial building and associated improvements on the Property as described in Exhibit "A," attached hereto.

C. In addition, the parties desire to establish at Closing an escrow account (the "Account") in the total amount of One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00) (the "Funds"), payable at Closing by the developer, to be held by the Escrow Holder as security for satisfaction of the obligation of the Developer to complete the Development Goals, as provided herein.

D. Escrow Holder has agreed to serve as the escrow agent for the Account and to disburse the amounts deposited with it in accordance with the terms of this Agreement.

AGREEMENT

1. DEVELOPMENT GOALS. Subject to the terms and conditions of this Agreement, Developer will pursue satisfaction of the following development goals relating to the development of the Property (collectively, the "Development Goals") within the specified time periods:

1.1 Building Improvements; Floor Area Ratio Goal. Subject to the terms and conditions of this Agreement, Developer will pursue Substantial Completion of the Building Improvements in accordance with and within the limitations specified in Exhibit "A," "Scope of Development," attached hereto and made a part hereof, within twenty-four (24) months after the Effective Date. As used in this Agreement, "Substantial Completion" of a work or improvement

shall mean that (i) the applicable work or improvement has been completed to the point that it can be used for its intended purpose and the only incomplete items are minor or insubstantial details typically found in a so-called "punch list" and (ii) the final governmental permit or approval (as applicable) has been received with respect to such work or improvement. The Developer agrees, at its own cost and expense, to install or construct, or cause to be installed or constructed, the required Building 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. The Building Improvements shall provide a floor area ratio (as defined in Clackamas County Code Section 11.03.020(V)) of not less than 0.29 or as agreed by Agency and Developer based on reasonable standards relating to the building size layout. The goal under this Section 1.1 shall be deemed met upon Substantial Completion of the Building Improvements providing the floor area ratio in accordance with the foregoing.

1.2 **Job Quantity Goal.** Within twelve (12) months after the Building Improvements are fully occupied by tenant(s) or owners, the ratio of total number of workers employed at the building to the total square feet of floor area in such building shall be equal to or greater than 1 worker per 1100 square feet of building floor area. For example, if the building is a total of 250,000 square feet of floor area, the minimum number of workers to satisfy this goal is 227. The foregoing ratio shall be deemed satisfied for the Building Improvements upon the first instance of such ratio being met at any time during the 12-month period after the Building Improvements are fully occupied by tenant(s) or owners. The goal under this Section 1.2 shall be deemed satisfied when all of Building Improvements have so satisfied the ratio within the applicable 12-month period.

1.3 **Wage Goal.** Within twelve (12) months after the Building Improvements are fully occupied by tenant(s) and/or owners, the average annual wages of all employees in such building, excluding senior executive positions (e.g., CEO, COO, CFO, etc.), shall be equal to or greater than the National Annual Mean Wage, as determined by the official publication of the Bureau of Labor Statistics available as of the Effective Date, as provided below. The goal under this Section 1.3 shall be deemed satisfied upon the first instance of the foregoing minimum average annual wages of the tenant(s) or owners being met at any time during the 12-month period. The applicable National Annual Mean Wage shall be based on the major occupational group used by the Bureau of Labor Statistics (Occupational Employment Statistics) for Developer: Code 423930. For purposes of this goal, "employer" shall refer to the initial tenant(s) and/or owner(s) of each building; and "employees" shall mean workers who are paid through the normal payroll system of the employer, for whom Federal Insurance Contribution Act ("FICA"), and federal and state income taxes are deducted from his or her gross wages and then forwarded to the appropriate agencies by employer on behalf of the worker, as to whom the employer pays federal and state unemployment insurance, and as to whom the employer contributes to FICA, and shall not include workers hired through an agency to provide temporary services to employer or workers acting as independent contractors. For purposes of audit, the Agency intends to seek relevant employee information from the Oregon Employment Department. If the Agency is not able to obtain information from the Oregon Employment Department to determine the relevant wages, the Agency may request that Developer seek such information from each employer as provided in Section 1.4 below.

1.4 **Supporting Information.** Developer will use commercially reasonable efforts to include the following provision (or substantially similar provision) in its lease or sale agreement with each occupant of the Building Improvements:

"Upon request of [Developer] or [Agency] from time to time during the first fifteen (15) months of full occupancy, [Tenant/Owner] agrees to certify in writing the total number of employees and average annual wages of employees working at the [Premises/Property] as of the date(s) requested, provided that the average annual wages shall exclude the wages of senior executive positions (e.g., CEO, COO, CFO, etc.)."

If any occupant is unwilling to agree to such provision, Developer will use commercially reasonable efforts to obtain such information from the occupant as it is willing to provide with respect to the above Development Goals. The parties may rely upon such information provided by the occupants of the Building Improvements, together with all other reasonably reliable data and estimates, for purposes of evidencing satisfaction with the Development Goals under Section 1.2 and Section 1.3 above.

2. **CONSTRUCTION SCHEDULE.** Developer shall use commercially reasonable efforts to begin and complete all construction and development of the Building Improvements within the time specified in the Schedule of Performance, specified in **Exhibit "B,"** attached hereto and made a part hereof, except as otherwise permitted herein.

3. **GOVERNMENTAL PERMITS.** Before commencement of construction or development of any buildings, structures or other works or improvements in connection with the Building 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.

4. **TERM.** The term of this Agreement shall commence on the Effective Date and, except as otherwise provided herein, end on the date that all funds in the Account have been disbursed in accordance with the terms of this Agreement.

5. **ACCOUNT.**

5.1 **Appointment.** Agency and Developer appoint Escrow Holder to receive and hold the Funds in the Account for the benefit of Agency and Developer and to disburse the funds in the Account in accordance with the terms of this Agreement. Escrow Holder accepts that appointment.

5.2 **Account Deposit.** On the date hereof, Developer shall deposit the Funds in the Account. Until disbursed as provided herein, all funds in the Account (as may vary from time to time, the "Account Funds" or the "Security Deposit") shall be held by the Escrow Holder in accordance with the terms of this Agreement.

5.3 **Investment of Funds.** Escrow Holder shall invest the Account Funds in an interest-bearing account fully insured by the Federal Deposit Insurance Corporation. All interest

earned on Account Funds shall automatically be added to and become part of the funds in the Account.

5.4 **Disbursement of Account Funds.** Except as otherwise expressly provided in this paragraph, upon Substantial Completion of the Building Improvements and satisfaction of all of the other Development Goals set forth above in Section 1, all Funds shall be disbursed to Developer following written request by Developer that is approved in writing by Agency, which approval will not be unreasonably withheld, conditioned or delayed. For purposes of this provision, the Agency's approval is not unreasonably withheld where a tenant or owner of property fails to confirm in writing the total number of employees and average annual wages of employees working at the Property and the Agency cannot otherwise obtain such employee information from the Oregon Employment Department or other reasonably reliable source, for purposes of determining if the Development Goals have been satisfied. The sole condition for disbursement of the Security Deposit to Developer is the Substantial Completion of the Building Improvements and satisfaction of all of the other Development Goals set forth above in Section 1. Notwithstanding the foregoing, if the Building Improvements are not substantially completed within twenty-four (24) months after the Effective Date, subject to delays due to force majeure or other causes beyond the reasonable control of Developer, or if the Developer fails to satisfy any of the remaining Development Goals by the deadlines set forth in Section 1.2 or Section 1.3, the entire Security Deposit shall be disbursed to Agency, subject to the written approval of Developer, which approval will not be unreasonably withheld, conditioned or delayed. The sole condition for disbursement of the Security Deposit to Agency is the failure to achieve any of the deadlines associated with the Development Goals set forth in Section 1 by the foregoing deadlines. The Security Deposit shall be disbursed by a single payment, and shall not be paid on a pro rata basis or otherwise disbursed in installments.

5.5 **Disbursements.** Escrow Holder shall disburse to the payee within three (3) business days after receipt of a written request of a party, approved in writing by the other party. With respect to any disbursement request of a party that is subject to the approval of the other party, such approval shall be deemed given if the other party fails to give notice of disapproval to the requesting party within twenty (20) business days of receipt of the request.

5.6 **Termination of Account.** The Account shall be terminated upon disbursement of all Account Funds as provided in this Agreement.

6. **LIMITATION OF LIABILITY.** Notwithstanding any other provision herein, the liability of either party under this Agreement shall be strictly limited solely to a sum equal to the Account Funds as provided by this Agreement. In no event shall either party have any obligations or liability whatsoever with respect to this Agreement in excess of the Account Funds or with respect to any assets of either party (other than the Account Funds). Except solely for either party's right to disbursement of the Account Funds as provided in this Agreement, both parties hereby waive, release, covenant not to sue and forever discharge the other party and its elected officials, officers, directors, shareholders, employees, affiliates, agents, successors and assigns of, for, from and against any and all Claims (defined below) arising from or related to this Agreement, whether such Claims relate to the period before, on or after the Closing Date. As used herein, "**Claims**" shall mean any and all actual or threatened claims, detriments, rights, remediation, counterclaims, liens, controversies, obligations, agreements, executions, debts,



covenants, promises, suits, causes of action, actions, demands, liabilities, losses, damages, assessments, judgments, fines, penalties, threats, sums of money, accounts, costs, expenses, known or unknown, direct or indirect, at law or in equity (including, without limitation, reasonable attorneys' fees and other professional fees of attorneys and professionals selected by Developer), whether incurred in connection with any investigation, non-judicial, quasi-judicial, judicial, mediative, arbitative, or administrative actions or proceedings or otherwise (including pretrial, trial, appellate, administrative, bankruptcy or insolvency proceedings) or in settlement or in any other proceeding and whether or not suit was filed thereon. The provisions of this Section 6 shall survive the expiration or termination of this Agreement.

7. **ESCROW HOLDER.**

7.1 **Duties of Escrow Holder.** Escrow Holder shall act with reasonable diligence in performing its duties hereunder. Agency or Developer may at any time, from time to time, require an accounting of all monies deposited into and remitted from the Account. Within ten (10) days after the end of each calendar quarter, Escrow Holder shall send to Agency and Developer a statement showing all deposits, withdrawals, and interest credits of the Account for the previous calendar quarter, as well as the current balance of the Account.

7.2 **Claims of Escrow Holder.** Escrow Holder shall have no claim against the Account or Account Funds and relinquishes any right or claim it may have against the Account and such Account Funds.

7.3 **Resignation of Escrow Holder.**

(a) Escrow Holder may resign as escrow agent hereunder at any time by giving sixty (60) days prior written notice to Agency and Developer. In such event Agency shall select a new escrow agent doing business in Portland, Oregon, whose selection shall be subject to the reasonable approval of Developer. Promptly after selection of the new escrow agent, Escrow Holder shall transfer over to the new escrow agent all of the funds in the Account and shall be relieved of any duties hereunder arising thereafter except for the obligation to give the reports required hereunder with respect to any prior or current periods. Contemporaneously with such transfer, Escrow Holder shall deliver to Agency and Developer a report showing the amount transferred. The new escrow agent shall execute and deliver an instrument accepting its appointment and the new escrow agent shall be vested with all of the estates, properties, rights, powers and duties of the predecessor escrow agent as if originally named as Escrow Holder.

(b) If Escrow Holder resigns upon written notice as provided for hereinabove and successor escrow agent is not appointed within thirty (30) days after such notice, then Escrow Holder may petition to an Oregon court of competent jurisdiction to name a successor and agrees to perform its duties hereunder until its successor is named.

7.4 **Instructions to Escrow Holder.** All instructions to Escrow Holder shall be submitted in writing, signed by an authorized representative of the submitting party, with a simultaneous copy to the other party.

7.5 **Escrow Fees.** Escrow fees shall be shared equally by Developer and the Agency.

8. **DEVELOPER OBLIGATIONS UNDER THE PLAN.** Pursuant to Section 715 and 745 of the Plan, Developer agrees as follows:

8.1 The Property shall be used for the purposes designated in the Plan.

8.2 Developer shall obtain necessary approvals for the Building Improvements from all federal, state and/or local agencies that may have jurisdiction on the Property and the Building Improvements to be developed thereon.

8.3 The development of the Property shall be in accord with the regulations prescribed in the County's Comprehensive Plan, Zoning and Development Ordinance, and any other applicable local, state or federal laws regulating the development of property.

8.4 Agency acknowledges receipt of a copy of the plans and specifications for construction of the Building Improvements referenced on Exhibit A attached.

8.5 Developer shall commence and complete the Building Improvements within the period of time as provided in this Agreement.

8.6 Developer covenants that it will not discriminate against any person or group of persons on account of age, 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.

8.7 Developer shall maintain the Property in a clean, neat and safe condition.

8.8 The foregoing covenants shall be binding upon and run for the benefit of the parties hereto and their respective assigns and successors in interest, subject to Section 9.12. In the event the Developer or any of its lessees, licensees, agents or other occupants, uses the Property in a manner inconsistent with Section 8 of this Agreement, the Agency may bring all appropriate legal and equitable actions.

9. **GENERAL PROVISIONS.**

9.1 **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.

9.2 **Notice.**

(a) All notices given pursuant to this Agreement shall be in writing and shall either be (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by nationally recognized overnight courier, or (iii) sent by email.

(b) Any notice (i) sent by mail in the manner specified in subsection (a) of this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, (ii) delivered by nationally recognized overnight courier shall be deemed served or given on the date delivered or refused (or the next business day if not delivered on a business

1B

day), and (iii) given by email shall be deemed given on the date sent if sent during business hours of a business day in Portland, Oregon (or the next business day if not so sent). Notice given to party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender.

(c) The address of each party to this Agreement for purposes of notice shall be as follows:

AGENCY: Clackamas County Development Agency
c/o Development Agency Manager
150 Beavercreek Road
Oregon City, Oregon 97045
Attn: Dave Queener
Email: davidque@co.clackamas.or.us

DEVELOPER: Oregon Beverage Recycling Cooperative
P.O. Box 4468
Portland, OR 97208
Attn: John Andersen
Email: jandersen@obrc.com

ESCROW HOLDER: Chicago Title Insurance Company of Oregon
1211 SW Fifth Avenue, Suite 2130
Portland, Oregon 97204
Attn: Wendy Geurin
Email: wendy.geurin@ctt.com

9.3 **Nonliability of Officials and Employees.** No member, elected official, 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.

9.4 **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.

9.5 **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.

9.6 **Severability.** 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.

9.7 **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,

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to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the parties to this Agreement.

9.8 **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.

9.9 **Non-Integration.** This Agreement supplements the obligations of the parties under the DA, all of which shall be construed to be consistent with one another to the maximum extent possible. The terms and provisions of this Agreement do not modify or otherwise affect the terms and provisions of any other agreement between some or all of the parties hereto. 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.

9.10 **Further Assurances.** The parties to this Agreement agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.

9.11 **Counterparts; Facsimile and Electronic Signatures.** This Agreement may be executed in counterparts. Facsimile and electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original. At the request of either party, or an escrow officer, the parties shall confirm facsimile transmitted signatures by signing an original document.

9.12 **Binding Effect.** Except as otherwise provided herein, no party hereunder shall assign its rights and/or obligations under this Agreement without the consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement is made for the sole benefit of the parties hereto and their permitted successors and assigns, and no other person or party shall have any right of action under this Agreement or any right to the funds in the Account. Subject to the terms of this Section 9.12, this Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors and assigns

9.13 **Force Majeure.**

(a) **Event of Force Majeure.** The time for performing obligations under this Agreement shall be extended, on a day-for-day basis, due to, and a party shall not be liable for, or deemed in breach of this Agreement because of, any failure or omission to timely carry out or observe its obligations under this Agreement, to the extent that such performance is rendered impossible or is materially and demonstrably delayed by any event where the failure to perform or the delay is beyond the reasonable control of, and could not have been reasonably foreseen by, the nonperforming party; provided that such event is not caused by or attributable to the

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negligence or fault of, or breach of its obligations hereunder by, such party, and could not have been avoided by prudent commercial practices (any such event, a "Force Majeure Event").

(b) Notice of Force Majeure Events. As a condition to claiming a Force Majeure Event, the claiming party shall promptly give the other party a written notice describing the particulars of the Force Majeure Event of the occurrence of any such Force Majeure Event, including an estimate of the expected duration and the probable impact of the Force Majeure Event on the performance of such party's obligations hereunder. The parties hereto agree to use reasonable efforts to notify each other of potential Force Majeure Events and update each other on developments regarding potential Force Majeure Events.

(c) Mitigation. Suspension or extension of a party's obligations or performance under this Agreement due to a Force Majeure Event shall be of no greater scope and no longer duration than is reasonably required by such Force Majeure Event. The party claiming a Force Majeure Event shall have a duty to alleviate and mitigate the cause and effect arising from such Force Majeure Event, and to resume performance of its affected obligations under this Agreement promptly after being able to do so. The burden of proof with respect to a Force Majeure Event shall be on the party claiming the same.

9.14 Exhibits. All exhibits listed on the signature page below and attached hereto are incorporated into and constitute a part of this Agreement.

9.15 Saturday, Sunday and Legal Holidays. If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

9.16 Neutral Construction. This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party.

9.17 Applicable Law. This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon without giving effect to the conflicts of law provision thereof.

9.18 Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.

9.19 Memorandum of Agreement. On or about the Effective Date, the parties will execute and deliver a memorandum of this Agreement in mutually acceptable form, which shall be recorded in the official records of Clackamas County, Oregon. This Agreement shall not be recorded. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective assigns and successors in interest. Upon termination of this Agreement, the parties shall execute and record at Developer's expense an instrument in mutually acceptable form evidencing such termination.

[SIGNATURES START ON NEXT PAGE]

IN WITNESS WHEREOF the parties have executed this Agreement to be effective as of the day and year first above written.

DEVELOPER:

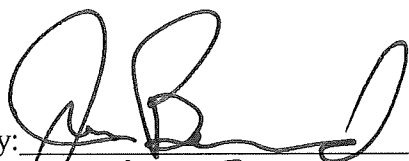
Oregon Beverage Recycling Cooperative
an Oregon domestic cooperative

By: 107 H. R
Name: 107 H. Baller CEO and Secretary
Date of Execution: 4/12/19

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IN WITNESS WHEREOF the parties have executed this Agreement to be effective as of the day and year first above written.

AGENCY:
Clackamas County Development Agency
a corporate body politic

By: 
Name: JIM BERNARD
Title: Chair
Date of Execution: 4/18/19

IN WITNESS WHEREOF the parties have executed this Agreement to be effective as of the day and year first above written.

ESCROW HOLDER:

By: Wendy
Name: Wendy Geurin
Title: SR. Loan Escrow Officer
Date of Execution: 4-19-19

List of Exhibits

Exhibit A Scope of Development
Exhibit B Schedule of Performance

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EXHIBIT A to Post-Closing and Escrow Agreement

Scope of Development

The approximate 12.68 gross acres (0.36 net buildable acres) will be developed with:

1. Processing area of approximately 61,000 SF of warehouse
2. Bottle wash area of approximately 21,000 SF of warehouse
3. PET processing area of approximately 12,000 SF of warehouse
4. Corporate office of approximately 21,000 SF
5. Approximately 194 employee parking stalls
6. Approximately 72 truck/trailer parking stalls
7. On-site storm drainage pond
8. On-site landscaping

The processing and corporate office buildings will most likely be concrete tilt up construction, however OBRC reserves the right to select the final building materials based upon costs.

Exhibit B

Oregon Beverage Recycling Cooperative
Preliminary Bid Schedule
April 8, 2019

ID	Task Name	Duration	Start	Finish
0	OBRC New Warehouse and Office Building	272 days	Fri 3/1/19	Mon 3/30/20
1	Preconstruction	15 days	Fri 3/1/19	Thu 3/21/19
7	Construction	202 days	Mon 6/3/19	Mon 3/23/20
8	Mobilization	2 days	Mon 6/3/19	Tue 6/4/19
9	Surveying & Layout	3 days	Tue 6/4/19	Thu 6/6/19
10	Sitework	108 days	Fri 6/7/19	Thu 11/7/19
11	Strip Site / Cut & Fill	5 days	Fri 6/7/19	Thu 6/13/19
12	Retaining Walls	20 days	Fri 6/7/19	Fri 7/15/19
13	Utilities	30 days	Fri 6/14/19	Fri 7/26/19
14	Curbs & Sidewalks	10 days	Fri 10/4/19	Thu 10/17/19
15	Paving & Decks	5 days	Fri 10/18/19	Thu 10/24/19
16	Striping	2 days	Fri 10/25/19	Mon 10/28/19
17	Landscaping	15 days	Fri 10/18/19	Thu 11/7/19
18	Foundations	43 days	Fri 6/14/19	Wed 8/14/19
19	Structural Excavation	5 days	Fri 6/14/19	Thu 6/20/19
20	Building Pad	5 days	Fri 6/21/19	Thu 6/27/19
21	Footings	15 days	Fri 6/28/19	Fri 7/19/19
22	Vapor Barrier	3 days	Mon 7/22/19	Wed 7/24/19
23	Slab Rebar	10 days	Thu 7/25/19	Wed 8/7/19
24	Pour Slab	5 days	Thu 8/8/19	Wed 8/14/19
25	Superstructure	90 days	Thu 8/15/19	Fri 12/27/19
26	Form & Pour Tilt Panels	30 days	Thu 8/15/19	Thu 9/26/19
27	Erect & Brace Panels	5 days	Fri 9/27/19	Thu 10/9/19
28	Patch Panels	30 days	Fri 10/4/19	Fri 11/15/19
29	Erect Structural Steel	30 days	Fri 10/4/19	Thu 10/17/19
30	Roof Structure	20 days	Fri 10/18/19	Fri 11/15/19
31	Roofing & Sheet Metal	25 days	Mon 11/18/19	Fri 12/27/19
32	Mezzanine Structure	20 days	Fri 10/18/19	Fri 11/15/19
33	Shell MEP	15 days	Mon 11/18/19	Tue 12/10/19
34	Rough-in	15 days	Mon 11/18/19	Tue 12/10/19
35	Exterior Walls	30 days	Mon 11/18/19	Mon 1/6/20
36	Doors & Glazing	30 days	Mon 11/18/19	Tue 12/17/19
37	Painting	30 days	Mon 11/18/19	Mon 1/6/20
38	Dock Equipment	5 days	Mon 11/18/19	Fri 11/22/19
39	Install Equipment	5 days	Mon 11/18/19	Fri 11/22/19
40	Tenant Improvement	70 days	Wed 12/11/19	Mon 3/23/20
41	Wall Framing, Insulation, & Gyp	30 days	Wed 12/11/19	Mon 1/27/20
42	MEP	35 days	Tue 1/14/20	Mon 2/17/20
43	Ceilings	15 days	Tue 2/25/20	Mon 3/9/20
44	Painting	15 days	Tue 2/25/20	Mon 3/9/20
45	Flooring	15 days	Tue 2/25/20	Mon 3/9/20
46	Casework, Doors & Frames, Misc. Install	10 days	Tue 3/10/20	Mon 3/23/20
47	Project Closeout	5 days	Mon 3/23/20	Mon 3/30/20
48	Substantial Completion	0 days	Mon 3/23/20	Mon 3/23/20
49	Punch List	15 days	Tue 3/24/20	Mon 3/30/20
50	Project Complete	0 days	Mon 3/30/20	Mon 3/30/20

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SERVING INDUSTRY
AND THE ENVIRONMENT

June 11, 2021

David Queener
Program Supervisor
Clackamas County Development Agency
150 Beaver Creek Road | Suite 325
Oregon City, OR 97045

RE: OBRC Post-Closing Escrow and Development Agreement

Dear David:

Pursuant to the Post-Closing Escrow and Development Agreement dated April 19, 2019, Oregon Beverage Recycling (OBRC) is pleased to provide the following data to support our request to close out the escrow and terminate this agreement.

Development Goals Reached

Section 1.1 - Building Improvements; Floor Area Ratio Goal

The building's gross site area is 12.65 acres with a building floor area ratio of .3358. Our Certificate of Occupancy is attached.

Section 1.2 – Job Quantity Goal

Based on our building size of 142,053 SF, a minimum number of workers should be 129 workers. As of June 1, 2021 OBRC employs 185 workers at this facility. OBRC supporting document available upon request.

Section 1.3 – Wage Goal

Based on the wage goal of this agreement, using BLS code 423930, average hourly employee earnings should be \$20.54. As of June 1, 2021, OBRC employees earn on average \$24.27. The BLS industry code reference is attached. OBRC supporting document available upon request.

Oregon Beverage Recycling Cooperation requests that Clackamas County Development Agency sign the attached Chicago Title "Release of Funds Held" document to close out the escrow in the amount of \$125,000.00 and release the funds to OBRC.

Sincerely,



Troy Ballew
Chief Financial Officer
Oregon Beverage Recycling Cooperative
17300 SE 120th Ave,
Clackamas, OR 97015

Attachments:
Certificate of Occupancy
BLS Industry Code
Chicago Title Release of Funds Held

Sent via email and mail: Queener, David <DavidQue@clackamas.us>

https://www.bls.gov/web/empisit/cesbmart-tables.htm#PE_HE

CES Industry Code	CES Industry Title	Average Weekly Hours			Average Hourly Earnings (\$)			Note
		Estimated	Revised	Difference	Estimated	Revised	Difference	
41-423910	Sporting goods	37.8	37.8	0.0	23.10	23.10	0.00	
41-423930	Recyclable materials	41.7	41.7	0.0	20.54	20.54	0.00	
41-424000	Nondurable goods	37.7	37.7	0.0	24.51	24.50	-0.01	
41-424100	Paper and paper products	37.5	37.5	0.0	25.55	25.55	0.00	
41-424200	Druggists' goods	33.9	33.9	0.0	32.76	32.76	0.00	
41-424300	Apparel and piece goods	37.2	37.2	0.0	24.34	24.34	0.00	
41-424400	Grocery and related products	38.7	38.7	0.0	21.95	21.95	0.00	
41-424410	General line grocery	37.8	37.8	0.0	23.18	23.18	0.00	
41-424480	Fruits and vegetables	40.9	40.9	0.0	19.57	19.57	0.00	
41-424500	Farm product raw materials	37.6	37.6	0.0	21.75	21.75	0.00	
41-424600	Chemicals	40.8	40.8	0.0	30.73	30.73	0.00	
41-424700	Petroleum	39.4	39.4	0.0	24.04	24.04	0.00	
41-424800	Alcoholic beverages	37.0	37.0	0.0	25.50	25.50	0.00	
41-424900	Misc. nondurable goods	37.1	37.1	0.0	22.30	22.30	0.00	
41-424910	Farm supplies	39.0	39.0	0.0	23.71	23.71	0.00	

https://www.bls.gov/web/empsit/cesbmart-tables.htm#PE_HE

CES Industry Code	CES Industry Title	Average Weekly Hours			Average Hourly Earnings (\$)			Note
		Estimated	Revised	Difference	Estimated	Revised	Difference	
41-425000	Electronic markets and agents and brokers	38.0	38.0	0.0	32.12	32.12	0.00	
42-000000	Retail trade	30.5	30.5	0.0	17.04	17.04	0.00	
42-441000	Motor vehicle and parts dealers	37.1	37.1	0.0	21.36	21.40	0.04	
42-441100	Automobile dealers	37.3	37.3	0.0	23.09	23.08	-0.01	
42-441110	New car dealers	37.6	37.6	0.0	23.36	23.36	0.00	
42-441120	Used car dealers	35.4	35.4	0.0	21.01	21.01	0.00	
42-441200	Other motor vehicle dealers	34.8	34.8	0.0	20.65	20.65	0.00	
42-441300	Auto parts, accessories, and tire stores	37.3	37.3	0.0	17.51	17.51	0.00	
42-441310	Automotive parts and accessories stores	37.0	37.0	0.0	17.33	17.33	0.00	
42-441320	Tire dealers	38.0	38.0	0.0	17.85	17.85	0.00	

Showing 176 to 200 of 514 entries

Last Modified Date: February 5, 2021

Certificate of Occupancy

Clackamas County

Building Codes Division

This certificate is issued pursuant to the requirements of the State of Oregon Structural Specialty Code certifying that at the time of issuance, this structure was inspected and was in compliance with the ordinances and codes regulating building construction and use.

Building Address: 17300 SE 120TH AVE CLACKAMAS, OR 97015 **Permit No:** C0003820

Township: 2S **Range:** 2E **Section:** 15A **Taxlot:** 02100 **Zone:** R20

Owner: OREGON BEVERAGE RECYCLING COOP **Construction Type:** III-B

Owners Address: PO BOX 4468, PORTLAND, OR 97208

Use of Building: OREGON BEVERAGE RECYCLING. - NEW BLDG AND FIRE LINE **Occupancy Group:** B/S-1

Total Occupancy Load: 586 **Code Edition:** 2014 OSSC **Sprinklers Required:** Yes

Special Conditions: MAIN PERMIT B0153319

Matt Rozzell

Digitally signed by Matt Rozzell
Date: 2021.02.05 08:51:17 -08'00'

Matt Rozzell

Issue Date 02/05/2021

Building Official

THIS CERTIFICATE MUST BE CONSPICUOUSLY AND PERMANENTLY POSTED



INSTRUCTIONS FOR RELEASE OF FUNDS HELD

Regarding: Supplemental Escrow Instructions Funds Held dated April 17, 2019
Escrow No.: HB7007059-WG
Buyer(s): Oregon Beverage Recycling Cooperative
Seller(s): Clackamas County Development Agency
Lender:
Property: 11950 S.E. Capps Road, Clackamas, OR

The Buyer have deposited One Hundred Twenty-Five Thousand And No/100 Dollars (\$125,000.00) as Funds Held under the above referenced Supplemental Escrow Instructions Funds Held dated April 17, 2019. Both parties agree to the disbursement of held funds as follows:

Funds to: ACH ABA Routing # 323070380
Wire Routing # 026009593
Account # 48500576156

We also release Chicago Title Company of Oregon from all liability or responsibility in connection with this agreement.

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

BUYER(S):

Oregon Beverage Recycling Cooperative

BY: [Signature]
Troy H. Ballew, Secretary

[Signature]
Date

SELLER(S):

Clackamas County Development Agency

BY:
Jim Bernard, Board Chair

Date



August 5, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Execution of a Quitclaim Deed Related to an Owner Participation Development Agreement
Between Kohnstamm Pacific Corp and the Clackamas County Development Agency

Purpose/Outcomes	Execution of the quitclaim deed releases and quitclaims any title and interest in the property owned by Kohnstamm Pacific Corp
Dollar Amount and Fiscal Impact	No fiscal impact
Funding Source	Not applicable
Duration	The release is permanent
Previous Board Action	The Owner Participation Development Agreement (OPDA) was executed on June 2, 2005 and a first amendment to the OPDA was executed on June 27, 2006.
Strategic Plan Alignment	Grow a vibrant economy and build a strong infrastructure.
Procurement Review	1. Was this item processed through Procurement? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no 2. If no, provide a brief explanation: Not required
Counsel Review	Reviewed and Approved by Counsel on June 16, 2021 NB
Contact Person	David Queener, Development Agency Senior Project Planner 503.742.4322

Background:

An Owner Participation Development Agreement (OPDA) was executed between the Development Agency and Kohnstamm Pacific Corp in June 2005. The OPDA was amended in June 2006. The agreement outlined commitments from both parties with respect to a new building being constructed by Kohnstamm Pacific. The Agency would provide \$763,000 toward the project. In exchange, Kohnstamm Pacific would provide fire sprinklers and other upgrades to the development that would otherwise not be required. They also included additional amenities such as public sidewalks and parking.

Kohnstamm Pacific was required to operate and maintain the building and property for a minimum of 15 years. They have satisfied this requirement. Therefore, the OPDA is no longer in effect and per the agreement, a quitclaim deed must be executed releasing any interest in the property the Agency may have.

Recommendation:

Staff respectfully recommends that the Board approve and execute a Quitclaim Deed to Kohnstamm Pacific Corp releasing any title and interest in their property.

Sincerely,

David Queener

David Queener
Development Agency Program Supervisor

After recording, return to: I
 Clackamas County Development Agency I
 150 S. Beavercreek Road I
 Oregon City, OR 97045 I
 I
 Send Tax Statements to: I
 No Change I
 I
Accepted By Clackamas County I
Development Agency I
 I
Agenda Date & Number: _____ I
OR I
Board Order Number: _____ I

STATUTORY QUITCLAIM DEED

Clackamas County Development Agency, the urban renewal agency of Clackamas County (“Grantor”), releases and quitclaims to the Kohnstamm Pacific Corp., an Oregon corporation (“Grantee”), all its right, title, and interest in and to the following described real property resulting from that Owner Participation and Development Agreement between Grantor and Grantee dated June 2, 2005, and as amended by instrument on June 27, 2006. The Owner Participation and Development Agreement and the Amendment are recorded in the Clackamas County real property records as Document No. 2005-057958 and Document No. 2006-073844 respectively.

The real property subject to this deed is situated in Clackamas County, and is legally described as follows:

Lots 3, 4, and 5, Block 2, GOVERNMENT CAMP PARK

The true consideration for this conveyance is the sum of \$0 dollars and other such good and valuable consideration. This quitclaim is required to fulfill the obligation of the Grantor set forth in Section 6 of the Owner Participation and Development Agreement.

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 _____, 2021.

Clackamas County Development Agency

BY: _____
Chair, Development Agency Board

NAME: _____

STATE OF OREGON)
)
County of Clackamas)

This instrument was acknowledged before me on _____, 2021 by _____, authorized to act on behalf of the Clackamas County Development Agency, Grantor.

Notary for Oregon
My Commission expires: _____



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

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

August 5, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Execution of a Bill of Sale to the Government Camp Water Company for a New Waterline
Constructed in Government Camp

Purpose/Outcomes	Conveys all interest in the waterline to the Government Camp Water Company. The Water Company will be required to operate and maintain the waterline
Dollar Amount and Fiscal Impact	No fiscal impact
Funding Source	Not applicable
Duration	The Bill of Sale is permanent
Previous Board Action	The Board signed the contract to construct the waterline in July 2015.
Strategic Plan Alignment	Build a strong infrastructure
Procurement Review	1. Was this item processed through Procurement? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no 2. If no, provide a brief explanation: Not required
Counsel Review	Reviewed and Approved by Counsel on July 22, 2021 AK
Contact Person	David Queener, Development Agency Senior Project Planner 503.742.4322

Background:

In 2015, the Development Agency completed a project that extended a water main through Forest Service land in order to provide necessary supply and fire protection to Skibowl. Upon completion, interest in the waterline is to be conveyed to Government Camp Water Company. In exchange for receiving the new asset, the Water Company agrees to operate and maintain the line.

Recommendation:

Staff respectfully recommends the Board sign and execute the Bill of Sale conveying interest in a new waterline to the Government Camp Water Company.

Sincerely,

David Queener

David Queener
Development Agency Program Supervisor

BILL OF SALE

CLACKAMAS COUNTY DEVELOPMENT AGENCY, the urban renewal agency of the County of Clackamas, (“Agency”) hereby grants, bargains, sells, transfers, conveys and delivers to Government Camp Water Company, an Oregon corporation (“GCWC”), all right, title and interest to the Skibowl Waterline Extension, as that term is defined in the Third Agreement to Pay Maintenance Expenses, together with related personal property of every kind and nature used by Agency in connection with the Skibowl Waterline Extension (“Waterline”). This Bill of Sale is effective upon execution by all parties, and is executed and delivered in connection with the Second Agreement to Pay Maintenance Expenses by and between Agency and GCWC.

The consideration for the transfer of the Waterline is GCWC’s commitment to maintain the facility, as outlined in the Third Agreement to Pay Maintenance Expenses, consistent with the requirements of the Government Camp Village Revitalization Plan, which was originally adopted by Clackamas County Board Order No. 89-1143 in December 1989.

Except as otherwise expressly stated above, the Agency makes no warranties or representations with respect to the Waterline, GCWC accepts the Waterline AS IS, WHERE IS, in its present condition, including all defects and with all faults, and there are no warranties of merchantability or of fitness for a particular purpose with respect to the Waterline.

GCWC agrees to indemnify, save harmless and defend the 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 GCWC or GCWC’s officers, owners, employees, agents, or its subcontractors or anyone over which the GCWC has a right to control.

Dated: _____, 2021

Agency:

CLACKAMAS COUNTY DEVELOPMENT
AGENCY, the urban renewal agency of the County
of Clackamas,

By: _____
Chair



August 5, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Revocation of a Special Use Permit from the United States Forest Service to Clackamas County
to Allow Construction of a Waterline in Government Camp

Purpose/Outcomes	Revocation of a Special Use Permit that allowed construction of a new waterline on Forest Service land.
Dollar Amount and Fiscal Impact	No fiscal impact
Funding Source	Not applicable
Duration	The revocation will be permanent
Previous Board Action	The Board signed the contract to construct the waterline in July 2015.
Strategic Plan Alignment	Build a strong infrastructure
Procurement Review	1. Was this item processed through Procurement? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no 2. If no, provide a brief explanation: Not required
Counsel Review	Reviewed and Approved by Counsel on July 21, 2021 AN
Contact Person	David Queener, Development Agency Senior Project Planner 503.742.4322

Background:

In 2015, the Development Agency completed a project that extended a water main through Forest Service land in order to provide necessary supply and fire protection to Skibowl. A temporary Special Use Permit was issued by the Forest Service that allowed construction of the line. Upon completion, interest in the waterline was to be conveyed to Government Camp Water Company, who operates and maintains the line.

A Special Use Permit will be issued to the Water Company to allow continuing operation of the line, but the existing permit must be terminated first. The attached document revokes the permit issued to the Development Agency and requests issuance of a new permit to the Water Company.

Recommendation:

Staff respectfully recommends the Board sign and execute the Request for Revocation of the Special Use Permit issued by the USDA Forest Service.

Sincerely,

David Queener

David Queener
Development Agency Program Supervisor

**USDA FOREST SERVICE
HOLDER INITIATED REVOCATION OF EXISTING AUTHORIZATION
REQUEST FOR A
SPECIAL-USE PERMIT OR TERM SPECIAL-USE PERMIT**

PART I - REQUEST FOR REVOCATION (Completed by current permit holder)

I (We), the undersigned holder(s) of a special-use authorization, dated 03/18/2015 authorizing me (us) to occupy and use National Forest System lands for a buried 12" diameter water transmission pipeline, have

(Mark one box with "X")

- conveyed all my (our) right, title, and interest in and to the improvements located on the parcel covered by said permit to:
- entered into a contract for the sale of the improvements located on the parcel covered by said permit but have retained title to said improvements until completion of payment under said contract with:

New Owner (1): Government Camp Water Co.
(Please Print)

Address: 30294 E. Blossom Trail, Governement Camp

New Owner (2): _____
(Please Print)

Address: _____

Phone: (503) 260-1342

Accordingly, I (we) request that the special-use authorization identified above be revoked. I (we) have informed the new owner(s) that (1) the current authorization is not transferable; (2) they must apply for and obtain a new authorization; (3) there are terms and conditions for the use of National Forest System lands; (4) and they must contact the Forest Service prior to acquisition of improvements. The remaining balance of any fees previously paid should be credited to the new owner(s) named above, if an authorization is issued.

Holder (1): Clackamas County
(Please Print)

Holder (2): _____
(Please Print)

Signature: _____
(Please Print)

Signature: _____

Date: ____ (mm/dd/yyyy)

PART II - REQUEST FOR A NEW PERMIT OR TERM PERMIT (Completed by new owner - Requester)

Request is made for a special use authorization to cover the same parcel of land or use covered by the authorization referred to above, and for the same purpose, subject, however, to such new conditions and stipulations as the circumstances may warrant. I (We) acknowledge that this is a request only, and that the use and occupancy of National Forest System lands is not authorized until an authorization is signed and issued by an authorized officer. I (We) also understand that an administrative fee may be charged by the Forest Service to process this request for a new authorization to use or occupy National Forest System lands.

Requester(1): _____
(Please Print)

Phone: () -

Signature: _____

E - Mail: _____

FAX: () -

Requester(2): _____
(Please Print)

Signature: _____

Date: _____ (mm/dd/yyyy)

18 U.S.C. § 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction. Anyone who knowingly or willfully makes or uses any false writing shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

PLEASE ATTACH BILL OF SALE, DEED, OR OTHER DOCUMENTATION VERIFYING PURCHASE OF IMPROVEMENTS

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

PART III - REQUEST CHECKLIST (Completed by Administrator/Case Manager)

1. Does the current use and occupancy of National Forest System lands and facilities comply with all federal, state, and local laws, regulations, orders, and policies? If not, what must be done to make the use and occupancy
 Yes comply? _____

No

2. Is the current use and occupancy of National Forest System lands and facilities being conducted in a manner that is consistent with established standards and guidelines in the Forest Land and Resource Management Plan? If

Yes not, can it be made to be consistent? How? _____

No

3. What was the date of last inspection? What is the condition of the authorized area and facilities? (Describe
 Yes undesirable or unacceptable conditions that need to be corrected.) _____

No

4. Does the requester(s) owe any fees to the Forest Service from a prior or existing special-use authorization? If
 Yes yes, identify fees owed. _____

No

5. Is the requester(s) qualified to hold an authorization for the subject use and occupancy? If not, why?

Yes _____

No

6. Can the requester(s) demonstrate technical and financial capability to undertake the proposed use and
 Yes occupancy, and fully comply with all the terms and conditions of the authorization? _____

No

7. Is there someone authorized by the requester(s) to sign an authorization, and there is someone willing to accept
 Yes the responsibility of the terms and conditions of the authorization? _____

No

Remarks:

Signature of Administrator /Case Manager:

Date: (mm/dd/yyyy)

PART IV - AUTHORIZED OFFICER

The request and/or requester do not meet the criteria identified in Part III of this form. Therefore, I will not approve this request to issue an authorization to use or occupy National Forest System lands for the use(s) described in Part I of this form.

The request and the requester meet the criteria identified in Part III of this form. Therefore, I approve this request to issue an authorization to use or occupy National Forest System lands for the use(s) described in Part I of this form.

Signature: _____

Title:

Date: (mm/dd/yyyy)
