



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

October 29, 2020

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between Clackamas County and the City of Wilsonville to Transfer Permitting Authority and Maintenance Responsibility for Portions Frog Pond Lane (County Road #2362, DTD #30031) and Stafford Road (Market Road #12, DTD #30054) to the City

Purpose/Outcomes	Transfers permitting authority and maintenance responsibility for construction on portions of Frog Pond Lane and Stafford Road to the City of Wilsonville.
Dollar Amount and Fiscal Impact	Cost savings in the form of staff time and materials related to the permitting, maintenance and oversight of this roadway.
Funding Source	Road Fund
Duration	Upon execution; permanent
Previous Board Action	N/A
Strategic Plan Alignment	This transfer will build trust through good government by being efficient with County resources.
Counsel Review	Reviewed and approved by County Counsel on October 14, 2020
Procurement Review	Was this item processed through Procurement? No This item is an IGA related to a transfer of Jurisdiction
Contact Person	Michael Bays, Survey Cadd Supervisor; 503-742-46667

Clackamas County currently has jurisdiction, including permitting authority, enforcement of road standards and maintenance responsibility of Frog Pond Lane and Stafford Road. This intergovernmental agreement addresses transferring rights and duties as “road authority,” including permitting authority, development of road standards, and maintenance responsibility to the City for portions of Frog Pond Lane and Stafford Road.

Transferring the rights and duties as road authority for these portions of Frog Pond Lane and Stafford Road to the City of Wilsonville will eliminate confusion and improve efficiencies of maintenance and public service. The City will perform all construction and reconstruction; improvement or repair and maintenance; review and issuance of access permits; establishment of roadway standards; acquisition of right of way; storm water and drainage facility repair and maintenance; and review and issuance of street opening permits. The County will retain official

jurisdiction of this portion of the roadway until such time as the City of Wilsonville requests jurisdictional transfer as outlined in the previous agreement with the County.

RECOMMENDATION:

Staff respectfully recommends that the Board approve this Intergovernmental Agreement with the City of Wilsonville to transfer rights and duties as road authority for portions of Frog Pond Lane and Stafford Road to the City.

Respectfully submitted,

Michael Bays

Michael Bays, Survey Cadd Supervisor
Attachments: IGA, Exhibit

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WILSONVILLE
AND CLACKAMAS COUNTY RELATED TO ROAD MAINTENANCE AND
PERMITTING AUTHORITY ON PORTIONS OF STAFFORD ROAD AND FROG
POND LANE**

This agreement (the “Agreement”) is made on the date all required signatures have been obtained, between the City of Wilsonville (“CITY”), a municipal corporation, and Clackamas County (“COUNTY”), a political subdivision of the State of Oregon, pursuant to ORS Chapter 190 (Intergovernmental Cooperation), collectively referred to as the “PARITES” and each a “PARTY.”

RECITALS

WHEREAS, ORS Chapter 190 authorizes local governments to enter into intergovernmental agreements for the performance of any or all functions and activities that a local government, its officers or agencies, have the authority to perform, including the authority to perform as the “Road Authority” related to maintenance and permitting responsibilities for roads;

WHEREAS, portions of Frog Pond Lane and Stafford Road are County Roads, as defined in ORS 368.001, lying outside, but adjacent to the boundaries of the City.

WHEREAS, the Parties agree that the City is best suited to assume primary responsibility for maintenance and permitting of portions of Frog Pond Lane and Stafford Road, measuring approximately 1,775 feet and 71,060 square feet in area collectively, as more particularly depicted on Exhibits “B-1” and “B-2” which are attached hereto and incorporated herein (collectively “Stafford Road and Frog Pond Lane”).

WHEREAS, transfer of responsibility with regards to Stafford Road and Frog Pond Lane will lead to efficient and consistent road maintenance activities and reduce any confusion on the part of the public as to which Party is responsible for the condition and maintenance of Stafford Road and Frog Pond Lane, which primarily serves the residents of the City;

WHEREAS, the Parties acknowledge that each will consider the full transfer of jurisdiction of Stafford Road and Frog Pond Lane to the City once Stafford Road and Frog Pond Lane are annexed into the City’s boundary, and that this Agreement will no longer be necessary if Stafford Road and Frog Pond Lane are annexed into the City; and

WHEREAS, it is the intent of the Parties that the County transfer as much of its responsibility under ORS 368 with regards to Stafford Road and Frog Pond Lane as may be allowed under state law in order to grant the City control of Stafford Road and Frog Pond Lane prior to the annexation and potential jurisdictional transfer of Stafford Road and Frog Pond Lane.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** This Agreement shall be effective upon execution. This Agreement shall expire automatically at the time Stafford Road and Frog Pond Lane are annexed into the City and the City assumes jurisdiction of Stafford Road and Frog Pond Lane pursuant to ORS 368 and ORS 373.
2. **Transfer of Authority.**
 - A. Responsibility for Road Authority activities (as outlined in Section 3) for Stafford Road and Frog Pond Lane shall be surrendered to the City pursuant to the terms and conditions of this Agreement. The only portions of Stafford Road and Frog Pond Lane subject to this Agreement measure approximately 1,775 feet and 71,060 square feet in area, as more particularly depicted on Exhibits “B-1” and “B-2” and more specifically described on Exhibits “A-1” and “A-2”
 - B. To facilitate the performance of responsibilities under this Agreement, the City hereby accepts responsibility for Road Authority activities (as outlined in Section 3) for Stafford Road and Frog Pond Lane, as described herein.
 - C. The City shall be solely responsible for all costs associated with the Road Authority activities assumed by the City as set forth in this Agreement.
3. **Road Authority Obligations.** For purposes of this Agreement, the Road Authority activities include those activities the City deems necessary in accordance with City standards, including but not necessarily limited to, the following:
 - A. Construction and reconstruction (including capital improvements);
 - B. Improvement or repair, and maintenance;
 - C. Maintenance and repair of related facilities within the roadway, including but not limited to storm water drainage facilities, traffic control devices, street lights and roadside barriers;
 - D. Timely repair or mitigation of known hazards to the road users;
 - E. Issuance of permits for work or the establishment of roadway standards on Stafford Road and Frog Pond Lane; and
 - F. All other responsibilities the County may have under ORS 368 with regards to Stafford Road and Frog Pond Lane which may be assumed by the City under state law.
4. **Restrictions on Truck Traffic and Timing of Transfer Request.** On the portions of Stafford Road and Frog Pond Lane subject to this Agreement, the City agrees that it will not restrict truck movements without first consulting with the County with regard to the reasons for such limitation. The City will initiate the transfer of these portions of Stafford Road and

Frog Pond Lane within ninety (90) days of the annexation of any portion of the Frog Pond Ridge Development

5. **Maintenance Standard.** Any maintenance on Stafford Road and Frog Pond Lane required by this Agreement shall be carried out in a manner that is similar to other roads with similar features, function, and characteristics under the City's jurisdiction.

6. **Termination.**

A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.

B. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.

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

7. **Indemnification.**

A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, 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 the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, 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 the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

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 expressly 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. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives 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 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.
- E. **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.
- F. **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.
- G. **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.
- H. **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.
- I. **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.

- J. **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 County or the City.
- K. **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.
- L. **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 an original.
- M. **Authority.** Each Party represents that it 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.
- N. **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.

CLACKAMAS COUNTY

CITY OF WILSONVILLE

Chair

City Manager

Date

Date

Recording Secretary

Recording Secretary

SW Frog Pond Lane Transfer of Jurisdiction
Clackamas County to the City of Wilsonville

Description

A portion of SW Frog Pond Lane (C.R. No. 2362), lying in the Southeast $\frac{1}{4}$ of Section 12, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County Oregon, and more particularly described as follows:

All of that portion of SW Frog Pond Lane (C.R. No. 2362) lying west of the westerly right of way of SW Stafford Road (Market Road No. 12) and East of the northerly extension of the easterly boundary line of that property described in Document No. 99-022102 of the Clackamas County Deed Records.

SW Stafford Road Transfer of Jurisdiction
Clackamas County to the City of Wilsonville

Description

A portion of SW Stafford Road (Market Road No. 12) lying in the Southeast $\frac{1}{4}$ of Section 12, Township 3 South, Range 1 West & in the Southwest $\frac{1}{4}$ of Section 7, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

All of that portion of SW Stafford Road (Market Road No. 12) lying South of an easterly extension of the Northerly right of way of Frog Pond Lane (C.R. No. 2362), and North of an easterly extension of the northerly boundary line of that property described in Document No. 2019-049723 of the Clackamas County Deed Records. Said line also being the northerly end of that portion of SW Stafford Road previously annexed and transferred by Board Order 2019-053.

EXHIBIT "B-1"

S 01°40'13" W
33.00'

SW STAFFORD RD. (MARKET RD. NO. 12 COUNTY RD. NO. 1208)

31W12D 00200

31W12D 01700

31W12D 01800

BEGIN TRANSFER
M.P. 0.00

31W12D 00401

1313.54'

1313.53'

31W12D 00402

S 88°35'30" E

N 88°35'30" W

CITY OF
WILSONVILLE

SW FROG POND LANE (C.R. 2362)

31W12D 00500

EAST LINE OF DOC. NO.
99-022102

END TRANSFER
M.P. 0.25

31W12D 00800

31W12D 01500

N 01°39'15" E
33.00'

LOCATED IN THE SE 1/4 OF SECTION
12, T.3S., R.1W. W.M.,
CLACKAMAS COUNTY, OREGON

PLAN
1"=150'



TRANSFERRED ROAD
AREA=43,346 Sq.Ft.

DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT

150 BEAVERCREEK ROAD
OREGON CITY, OR 97045



BY: BWP

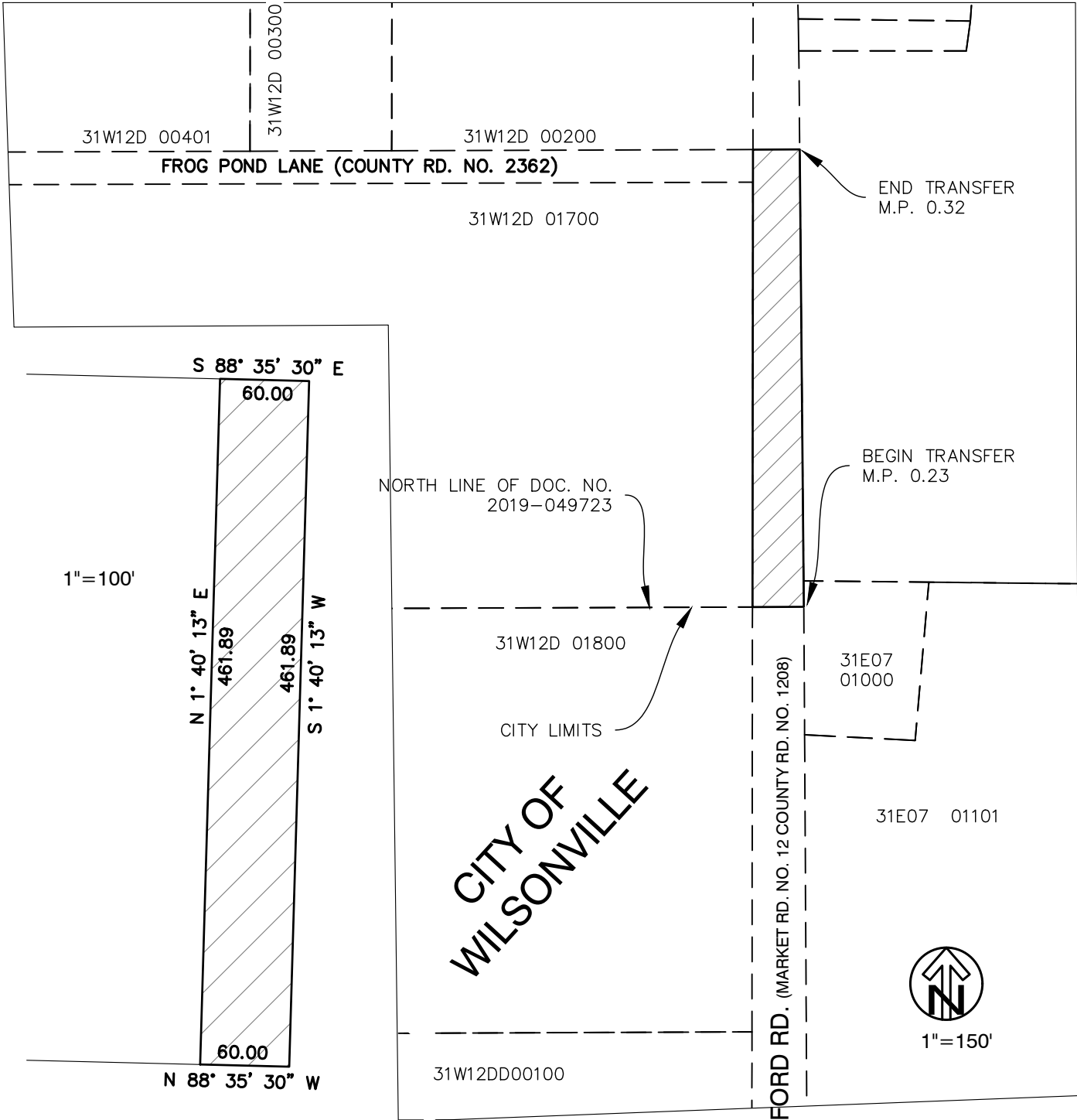
DATE: 08/18/2020


JURISDICTIONAL TRANSFER OF A
PORTION OF SW FROG POND
LANE

SHEET

1 OF 1

EXHIBIT "B-2"



 TRANSFERRED ROAD
AREA=27713 SQ. FT.

LOCATED IN THE SE 1/4 OF SECTION 12, T.3S., R.1W. W.M., AND THE SW 1/4 OF SECTION 7, T.3S., R.1E. W.M., CLACKAMAS COUNTY, OREGON



OFFICE OF COUNTY COUNSEL

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

Stephen L. Madkour
 County Counsel

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

October 29, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

BOARD ORDER AUTHORIZING VERTICAL CONSTRUCTION ACTIVITIES FOR HEIRLOOM APARTMENTS

Purpose/Outcomes	If approved, this Board Order would authorize vertical construction activities at Heirloom Apartments
Dollar Amount and Fiscal Impact	No cost to the County; economic benefits include permit fees, property taxes, construction wages, construction materials.
Funding Source	N/A
Duration	Until final land use approval is obtained in December 2020 or shortly thereafter
Previous Board Action	The Board was briefed on this matter at the executive session on October 20, 2020.
Strategic Plan Alignment	1. How does this item align with your department’s Strategic Business Plan goals? Timely and responsive legal support to County Departments and elected officials 2. How does this item align with the County’s Performance Clackamas goals? <ul style="list-style-type: none"> • Build public trust through good government • Grow a vibrant economy • Build a strong infrastructure • Ensure safe, healthy and secure communities
Counsel Review	If item is a contract, including IGAs, leases, or other binding agreements, please put in the date of County Counsel Review and the initials of the attorney performing the review 1. Date of Counsel review: October 22, 2020 Initials of County Counsel performing review. SLM

Procurement Review	1. Was the item processed through Procurement? Yes ___ No <u>X</u> 2. If no, provide brief explanation. No services or materials subject to procurement
Contact Person	Stephen L. Madkour, County Counsel at 503/655-8362

Background:

County staff has received a request from the owners of the Heirloom Apartments development, which is located in the vicinity of Fred Meyer around 79th and Johnson Creek Blvd., to expedite the release of building permits to allow them to proceed with construction prior to receiving final land use approval. Ground level construction activities such as grading, footings and foundation have already taken place.

The development was previously approved by the County hearings officer, subject to various conditions of approval. That approval was appealed to LUBA, which dismissed the opponent's substantive objections to the development. LUBA's decision was then appealed to the Court of Appeals, which affirmed LUBA's decision without opinion. The decision has now been sent back to the County to address the few remaining issues related to traffic and to finalize the decision. The scope of the review on remand is relatively narrow, and approval of the development is very likely given LUBA's decision and the Court of Appeal's affirmance.

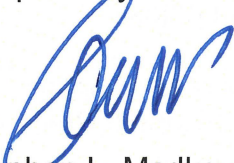
As noted above, the developer has not yet obtained final valid land use permit approval. That approval will likely occur in December. In an effort to maintain construction schedules and construction contracts and pricing, this Order authorizing vertical construction would allow the developer to continue with construction related activities on the site without further costs and delay.

The attached Order for the Board's consideration sets forth a number of considerations that rise to the level of compelling public interest and justify in this fact specific situation relief from the technical rigors of the County Code.

Recommendation:

Staff respectfully requests that the Board of County Commissioners approve the Board Order that authorizes the commencement of vertical construction activities at the Heirloom Apartments.

Respectfully submitted,



Stephen L. Madkour
County Counsel

Attachment: Board Order

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

In the Matter of Authorization to
Commence Vertical Construction
Activities for Heirloom Apartments



Order No. 2020 - ____
Page 1 of 2

Whereas, the Board of County Commissioners has identified a need for all types of additional affordable housing to serve all income levels by adopting Board Resolution (the “Resolution”) 2019-80 on August 1, 2019 declaring emergency measures to address the housing and homelessness crisis and the Board renewed the Resolution on August 4, 2020; and

Whereas, while the Resolution is primarily concerned with homelessness, it is also concerned with providing more housing and provides that the County may waive various County regulations and rules to address the housing crisis; and

Whereas, the Board acknowledges that it desires housing to be affordable to all County population groups and provided at various locations throughout the County; and

Whereas, the Board has before it a proposal to allow the start of vertical construction on a 286 multi-family dwelling unit rental project known as the Heirloom Apartments (the “Project”) located north of SE Johnson Creek Boulevard on SE 79th/80th Avenue; and

Whereas, the Project has been recommended for approval by the Department of Land Use Transportation and Development (the “DTD”) and approved by the Clackamas County Land Use Hearings Office (the “Hearings Officer”); and

Whereas, the Project has been remanded to the Hearings Officer to consider issues unrelated to the Project’s design, location or number of dwelling units and DTD expects the Hearings Officer to issue a decision on remand for the Project before the end of 2020; and

Whereas, allowing vertical construction to proceed before the decision on remand does not present a threat to the public health, safety and welfare because the DTD has reviewed and approved the building plans; and

Whereas, allowing vertical construction to begin before the Hearings Officer’s decision on remand is a compelling public interest for the following reasons; and

Whereas, the Applicant represents to the County that the Project will have 286 dwelling units to serve a variety of households with 158 one-bedroom dwelling units, 101 two-bedroom dwelling units and 27 three-bedroom dwelling units; and

Whereas, the market rents for the 286 dwelling units will be at rent levels to support Workforce Housing; and

Whereas, providing Workforce Housing in this location furthers the Board's policy of providing more affordable housing; and

Whereas, allowing vertical construction of the Project to begin now means that the dwelling units will become available sooner to County residents in need of Workforce Housing; and

Whereas, the Project will also benefit the public interest by generating \$5.23 million in County permit fees, approximately \$18.7 million in construction costs and construction-related wages for the 200 temporary construction jobs through the end of the construction period and, upon end of construction, will generate approximately \$600,000 in annual property taxes for the County and other units of government, including the North Clackamas School District; and

Whereas, the Project will result in the construction of SE 79th/80th Street segment shown on the County's Transportation System Plan and intersection of SE 80th and SE Johnson Creek Boulevard at a cost to the Applicant of approximately \$2.175 million; and

Whereas, the Project also achieves environmental benefits because it is designed in collaboration with the Energy Trust of Oregon "Sustainable Best Practices," including water saving fixtures, LED lighting, Energy Star appliances and other means to reduce energy consumption and the Project is designed to achieve LEED Gold Certification. Including solar and electric vehicle charging stations; and

NOW THEREFORE, IT IS HEREBY ORDERED That the Clackamas County Board of County Commissioners Orders as follows:

1. The Board finds that a compelling public interest exists based on the facts recited herein to allow the start of vertical construction immediately.

DATED this 29th day of October 22, 2020.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with IMG Rebel, Inc.
to serve as a P3 Financial and Transactional Advisor**

Purpose/Outcome	Contract will provide P3 Financial and Transactional advisory services as part of a sub-team within the Technical Advisory Team ("TAT") implementing the county strategic goal of building a new Clackamas County courthouse.
Dollar Amount and Fiscal Impact	Contract total \$300,000 which is in the 2020/2021 FY adopted budget.
Funding Source	County General Fund for 50% of the contract amount with 50% match from the State General Fund through the Oregon Judicial Department
Duration	June 30, 2021
Previous Board Action/Review	July 7, 2020 Board Policy Session where Board directed staff to proceed with the P3 Procurement Preparation effort
Strategic Plan Alignment	The building of a new county courthouse is one of 12 Strategic Priorities of the county and is listed under the category Build Public Trust through Good Government. The project will take advantage of the State Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF) legislation and ensure that essential court services are safe and accessible to all residents.
Counsel Review	1. 10/20/20 2. Counsel Initials: AN
Procurement Review	Was the item processed through Procurement? Yes
Contact Person	Gary Barth, Project Manager, 503-754-2050
Contract No.	3378

Background:

The Clackamas County Courthouse is home to the Fifth Circuit Court of the Oregon Judicial Department. The current courthouse was built in 1937 to house county offices and a single courtroom. The courthouse has been retrofitted over the years to its current configuration of eleven courtrooms and cannot be expanded any further to accommodate the current demand for three additional courtrooms. Due to the insufficient amount of space available in the building, services in support of the courthouse are located off-site, creating numerous operational inefficiencies. The courthouse is greater than 90 years old, requires significant seismic upgrades and is functionally obsolete for the administration and delivery of justice services.

Recognizing the need for new county courthouses, the Oregon State Legislature created the Oregon Courthouse Capital Construction and Improvement Fund (“OCCCIF”) in 2013 administered through the Oregon Judicial Department (the “OJD”). Counties that meet OCCCIF requirements and are approved will receive OCCCIF funding for 50% of the cost of a new county courthouse. Clackamas County (the “County”) applied to the OCCIF for its courthouse replacement project (the “Project”) and was approved by the state in 2017.

The County and the OJD have decided to utilize a Public-Private Partnership (“P3”) delivery approach to design, build, partially finance, operate and maintain (“DBfOM”) the Project. This determination was driven by a recently completed Value-for-Money (VFM) analysis that compared five project delivery approaches and showed the P3 Availability Model approach as providing the greatest Value-for-Money to the county and the state.

To execute the P3 procurement effort, Clackamas County is forming a Project Technical Advisory Team (“TAT”) to include representatives of the County, the OJD and external consultants with experience in the procurement and structuring of P3’s for similar social infrastructure projects.

The Financial and Transactional Advisor will assemble, lead, manage, and coordinate a sub-team within the TAT focused on the Technical tasks required in procuring a private-sector developer for the P3 Courthouse Project. The Technical Advisor will be TAT lead in refining the project scope and cost estimates that meet the affordability targets established by the Financial and Transactional subgroup of the TAT.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on August 17, 2020. Proposals were opened on September 15, 2020. The County received four (4) Proposals: Compelling Reason Consultants, LLC.; Ernst & Young Infrastructure Advisors, LLC.; IMG Rebel, Inc.; and Jones Lang LaSalle Americas, Inc. An evaluation committee comprised of three County personnel scored IMG Rebel, Inc. the highest.

Recommendation:

Staff respectfully recommends that the Board approve and execute the Contract with IMG Rebel, Inc. for the P3 Financial and Transactional Advisor contract.

Sincerely,

Gary Barth
Project Manager

Placed on the BCC Agenda _____ by Procurement and Contract Services



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #3378**

This Personal Services Contract (this “Contract”) is entered into between **IMG Rebel Advisory, Inc.** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of Clackamas County Administration.

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on June 30, 2021.
- 2. Scope of Work.** Contractor shall provide the following personal services: **RFP #2020-62 P3 Financial and Transactional Advisor** (“Work”), further described in **Exhibit A**.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **three hundred thousand dollars (\$300,000.00)**, for accomplishing the Work required under Phase 1. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit B, Section 3. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit B.
- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: Gary Barth.

- 5. Travel and Other Expense.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, Exhibit B, and Exhibit C. Unless explicitly agreed to by the parties in this Contract, any additional terms and conditions that may be contained in Exhibit A are void.

7. Contractor and County Contacts.

Contractor	County
Administrator: Marcel Ham Phone: 240-204-2682 Email: marcel.ham@imgrebel.com	Administrator: Gary Barth Phone: 503-754-2050 Email: gbarth@clackamas.us

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.
- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all

claims and actions, up to the maximum limits of the Contractor's insurance incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

The policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** This Contract 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. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this

Contact in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16, 21, and 27 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may

require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

24. FORCE MAJEURE. Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

25. WAIVER. The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

26. PUBLIC CONTRACTING REQUIREMENTS. Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:

- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
- c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

27. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

28. KEY PERSONS. Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the County provides prior written consent to such reassignment or transfer.

29. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR,

**EXHIBIT A
SCOPE OF WORK
RFP #2020-62 P3 Financial Advisor
Issued September 8, 2020**

EXHIBIT B
VENDORS PROPOSAL