

# AGENDA

**Thursday, May 9, 2019 - 10:00 AM**  
**BOARD OF COUNTY COMMISSIONERS**

Beginning Board Order No. 2019-47

**CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

**I. CITIZEN COMMUNICATION** *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Persons wishing to speak shall be allowed to do so after registering on the blue card provided on the table outside of the hearing room prior to the beginning of the meeting. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

**II. BOARD DISCUSSION ITEM** *(The following item will be individually discussed by the Board.)*

**County Counsel**

1. Briefing by the City of Happy Valley Related to the Happy Valley Urban Renewal Plan Proposal (Nate Boderman, County Counsel) *this item relates to the next item, Public Hearing 1.*

**III. PUBLIC HEARING** *(The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the department or organization they represent. In addition, a synopsis of each item, together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

1. First Reading of Ordinance No. \_\_\_\_\_ Amending the Clackamas Industrial Area Development Plan (Nate Boderman, County Counsel, Dave Queener, Development Agency) *Second Reading scheduled for 5-23-19*

**IV. CONSENT AGENDA** *(The following Items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Work Sessions. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

**A. Health, Housing & Human Services**

1. Approval of a Construction Contract with Clackamas Construction, Inc. for the E. Clarendon Street Project in Gladstone – *Community Development*
2. Approval for the Public Health Division to Apply for the US Department of Justice, Comprehensive Opioid Abuse Site-based Program Funding Opportunity - *Public Health*

**B. Department of Transportation & Development**

1. Execution of a Purchase and Sale Agreement to Acquire Property on Springwater Road

**C. Elected Officials**

1. Approval of Previous Business Meeting Minutes – BCC
2. Request by the Clackamas County Sheriff's Office to Enter into an Intergovernmental Agreement with North Clackamas School District for School Resource Officers in the 2018-19 School Year - CCSO

**D. Public & Government Affairs**

1. Approval of Agreement between Clackamas County and CTV Channel 5 (CTV5), a Public Access Center in Canby

**V. DEVELOPMENT AGENCY**

1. Approval of a Resolution Declaring the Public Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property for the SE Capps Road Terminus Project and Authorizing Negotiations and Eminent Domain Actions
2. Execution of an Assignment, Assumption, Consent and Amendment to Disposition Agreement, and Authorization to Execute a Post-Closing Escrow and Development Agreement and an Escrow Holdback Agreement for Property Located at 11627 SE Capps Road-Clackamas Industrial Area

**VI. WATER ENVIRONMENT SERVICES**

1. Approval of Amendment #1 to the Intergovernmental Agreement between Portland State University and Water Environment Services to Move Forward with Oregon Consensus

**VII. COUNTY ADMINISTRATOR UPDATE**

**VIII. COMMISSIONERS COMMUNICATION**

**NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. <https://www.clackamas.us/meetings/bcc/business>**

Mayor  
Honorable Tom Ellis



City Manager  
Jason A. Tuck, ICMA-CM

April 17, 2019

Clackamas County Board of Commissioners  
Gary Schmidt, County Administrator  
Laurel Butman, Deputy County Administrator  
2051 Kaen Road  
Oregon City, Oregon 97045

Re: Happy Valley Urban Renewal Plan

Dear Commissioners, Ms. Butman and Mr. Schmidt:

The City of Happy Valley (“City”) has experienced significant residential and employment growth over the course of the last several years. With undeveloped land inside the city limits, there is still strong demand for future growth which could put a strain on the City’s infrastructure. To meet the demands of growth, improvements to infrastructure are necessary. Identified future infrastructure investments for the City, including parks, transportation and public safety improvements, were estimated in 2018 to have a total price tag of \$138.8 million.

The community desires a safe and efficient transportation system, more parks to keep pace with residential development, and a future “downtown” center. The transportation needs have long been identified and designated projects exist formally in the City’s Transportation System Plan (“TSP”). The need for future parks is identified in the City’s Parks, Recreation & Open Space Plan (“Parks Master Plan”) completed in 2017. Parks are an important amenity not only for community livability, but for attracting high quality development for the City.

16000 SE Misty Drive, Happy Valley, Oregon 97086-4288  
Telephone: (503) 783-3800 Fax: (503) 658-5174  
[happyvalleyor.gov](http://happyvalleyor.gov)

*Preserving and enhancing the safety, livability and character of our community*

The planning process for the Pleasant Valley/North Carver Comprehensive Plan (“PV/NC Comp Plan”) has identified the desire for a traditional downtown to build a sense of place in Happy Valley.

The City has a low tax rate and infrastructure improvements must be paid by sources other than the general fund. In 2018, the City contracted with Tiberius Solutions, LLC to conduct a Happy Valley Systems Development Charges (“SDCs”) and Tax Increment Revenue (“TIF”) Study. The study indicated that on average over the course of the next 20 years, an estimated 250 new housing units per year will be constructed in Happy Valley. Over this same time period, it is estimated that 177 new employees will be working in Happy Valley each year. From 2019 to 2040, this development will amount to 6,250 new housing units and 4,430 new jobs. The summary implications developed by Tiberius Solutions stated:

*SDCs have the potential to generate significant revenue to fund future infrastructure investments, but these revenues also have significant statutory restrictions. Therefore, these revenues are insufficient to cover the full range of infrastructure investments needed.*

*Urban renewal, through the use of TIF, has even more revenue potential than SDCs.*

*Long-term funding capacity may not be sufficient to address short-term needs. Despite the substantial projections of long-term revenue, the City may still have challenges funding short-term infrastructure investments.*

As a result of this study, the City Council requested staff to prepare an urban renewal plan to help facilitate the construction of the infrastructure investments that are required to accommodate future growth while preserving the quality of life in Happy Valley.

The City convened a Work Group comprised of representatives from Clackamas Fire District No. 1 (“CFD#1”), Clackamas County, North Clackamas School District No. 12 (“NCSD#12”), Happy Valley Business Alliance, City Planning Commission, City Council, business owners, developers, and residents to review the proposed boundary, projects and financial projections for the urban renewal area.

An Open House was held on March 20, 2019 to review urban renewal as a tool, the projects and boundary. In addition, several newsletter articles, social media posts, and website updates were published providing details about the draft plan and contact information for residents to offer feedback. Future opportunities for public input will be at the Agency meeting, Planning Commission meeting and hearing conducted by the City Council.

The Happy Valley Urban Renewal Plan Area (“Plan Area”), shown in Figure 1, consists of approximately 1,631.4 total acres: 1,563.97 acres of land in tax lots and 67.43 acres of public rights-of-way. While 172<sup>nd</sup> Avenue is a Clackamas County owned and maintained facility, the City has included widening and improving the roadway with urban renewal funds as a project in the Happy Valley Urban Renewal Plan (“Plan”). Accordingly, the Plan Area takes in portions of 172<sup>nd</sup> Avenue which, at this time, is in the Clackamas Industrial Area Urban Renewal (“CIA”) boundary. The City’s urban renewal consultant received a legal opinion that property may not be in two urban renewal areas at the same time, even if the CIA is no longer taking division of tax revenues. To enable the Plan to proceed in its current form and fund improvements to 172<sup>nd</sup> Avenue, the right of way from Sunnyside Road north must be removed from the CIA. The Board of Commissioners is being asked to consider this action through an ordinance amending the CIA boundary. We have coordinated this request with Dan Johnson of your staff who participated as a member of our urban renewal Work Group, with David Queener and with your legal counsel, Nathan Boderman.

The projects in the Plan are mainly transportation infrastructure projects to facilitate increased growth to the east portion of Happy Valley. There is also an acquisition project that will allow for acquisition of properties to develop a future “downtown” for Happy Valley and to acquire property for a future community park in accordance with the Happy Valley Parks, Recreation & Open Space Plan. Properties acquired for a future downtown will eventually be re-sold to developers for the development of the downtown. The development of the park paid for from future SDCs.

It is anticipated that the Plan will take 25 years of tax increment collections to implement. The maximum amount of indebtedness (amount of TIF for projects and programs) that may be issued for the Plan is \$131,000,000 (One Hundred Thirty-One Million dollars).

The impact of creating a new urban renewal area on overlapping taxing districts consists primarily of the property tax revenues foregone on permanent rate levies as applied to the growth in assessed value in the Plan Area. The projections in Table 1 are for impacts to the general government permanent rate levies estimated through FYE 2045.

Table 2 shows the impact to the North Clackamas Parks and Recreation District (“NCPRD”). At the time of the writing of the Plan and Report, there is ongoing litigation regarding whether NCPRD is the service provider for Happy Valley. Should NCPRD’s boundary include Happy Valley for the expected life of the Urban Renewal District, the consultant team has also performed the financial analysis included in Table 2. If the NCPRD is deemed a taxing district, the overall impact to the other taxing districts will be reduced by the overall impact to the NCPRD.

Table 1 - Projected Impact on Taxing District Permanent Rate Levies - General Government

FYE	Clackamas County City	City of Happy Valley	County Extension & 4H	County Library	County Soil Conservation	County Fire District 1	Port of Portland	Service 2 Metro	Vector Control	Subtotal General Government
2021	115,308	32,182	2,398	19,060	2,398	115,164	3,362	4,633	312	294,817
2022	179,418	50,075	3,731	29,657	3,731	179,194	5,231	7,209	485	458,730
2023	246,024	68,664	5,117	40,666	5,117	245,717	7,173	9,885	665	629,028
2024	316,162	88,239	6,575	52,260	6,575	315,767	9,218	12,703	855	808,355
2025	389,964	108,837	8,110	64,459	8,110	389,477	11,370	15,669	1,054	997,051
2026	467,589	130,502	9,724	77,290	9,724	467,005	13,634	18,788	1,264	1,195,520
2027	549,198	153,279	11,422	90,779	11,422	548,513	16,013	22,067	1,485	1,404,177
2028	634,961	177,214	13,205	104,955	13,205	634,169	18,514	25,513	1,717	1,623,454
2029	725,053	202,359	15,079	119,847	15,079	724,148	21,141	29,132	1,960	1,853,798
2030	819,657	228,762	17,046	135,484	17,046	818,634	23,899	32,934	2,216	2,095,679
2031	918,964	256,478	19,112	151,899	19,112	917,818	26,795	36,924	2,485	2,349,586
2032	1,023,173	285,562	21,279	169,124	21,279	1,021,896	29,833	41,111	2,766	2,616,023
2033	1,132,487	316,071	23,552	187,193	23,552	1,131,074	33,020	45,503	3,062	2,895,516
2034	1,247,116	348,064	25,936	206,141	25,936	1,245,560	36,363	50,109	3,372	3,188,597
2035	1,367,281	381,601	28,435	226,003	28,435	1,365,575	39,866	54,937	3,697	3,495,831
2036	1,493,212	416,748	31,054	246,819	31,054	1,491,348	43,538	59,997	4,037	3,817,807
2037	1,625,148	453,571	33,798	268,627	33,798	1,623,121	47,385	65,298	4,394	4,155,140
2038	1,763,336	492,138	36,672	291,469	36,672	1,761,136	51,414	70,850	4,767	4,508,455
2039	1,908,032	532,522	39,681	315,386	39,681	1,905,651	55,633	76,664	5,159	4,878,409
2040	2,059,501	574,796	42,831	340,423	42,831	2,056,931	60,049	82,750	5,568	5,265,681
2041	2,218,020	619,038	46,128	366,626	46,128	2,215,252	64,671	89,119	5,997	5,670,979
2042	2,383,874	665,327	49,577	394,040	49,577	2,380,900	69,507	95,783	6,445	6,095,032
2043	2,467,409	688,641	51,315	407,848	51,315	2,464,331	71,943	99,140	6,671	6,308,612
2044	2,552,140	712,289	53,077	421,854	53,077	2,548,955	74,414	102,544	6,900	6,525,249
2045	2,320,106	647,530	48,251	383,500	48,251	2,317,211	67,648	93,221	6,273	5,931,991
TOTAL:	\$30,923,133	\$8,630,489	\$643,105	\$5,111,409	\$643,105	\$30,884,547	\$901,634	\$1,242,483	\$83,606	\$79,063,514

Source: Tiberius Solutions LLC

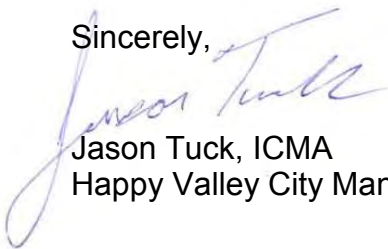
Table 2 - Projected Impact on Taxing District Permanent Rate Levies – NCPRD

<b>FYE</b>	<b>Total Increment</b>	<b>Parks Rate</b>	<b>Gross TIF</b>
2021	50,485,436	0.5382	27,171
2022	77,790,156	0.5382	41,867
2023	106,549,805	0.5382	57,345
2024	136,826,844	0.5382	73,640
2025	168,685,601	0.5382	90,787
2026	202,194,223	0.5382	108,821
2027	237,422,896	0.5382	127,781
2028	274,443,911	0.5382	147,706
2029	313,333,614	0.5382	168,636
2030	354,170,635	0.5382	190,615
2031	397,037,848	0.5382	213,686
2032	442,020,613	0.5382	237,895
2033	489,206,849	0.5382	263,291
2034	538,687,113	0.5382	289,921
2035	590,556,562	0.5382	317,838
2036	644,915,084	0.5382	347,093
2037	701,865,571	0.5382	377,744
2038	761,513,996	0.5382	409,847
2039	823,971,394	0.5382	443,461
2040	889,352,129	0.5382	478,649
2041	957,775,878	0.5382	515,475
2042	1,029,365,909	0.5382	554,005
2043	1,064,866,030	0.5382	573,111
2044	1,101,431,156	0.5382	592,790
2045	1,139,093,235	0.5382	613,060
<b>TOTAL:</b>			<b>\$7,262,235</b>

Source: Tiberius Solutions LLC

We will send the draft Plan and Report to you once they are completed. Please let us know if you have any questions on any of this information.

Sincerely,





Jason Tuck, ICMA  
Happy Valley City Manager

# City of Happy Valley Urban Renewal Boundary

April 2019

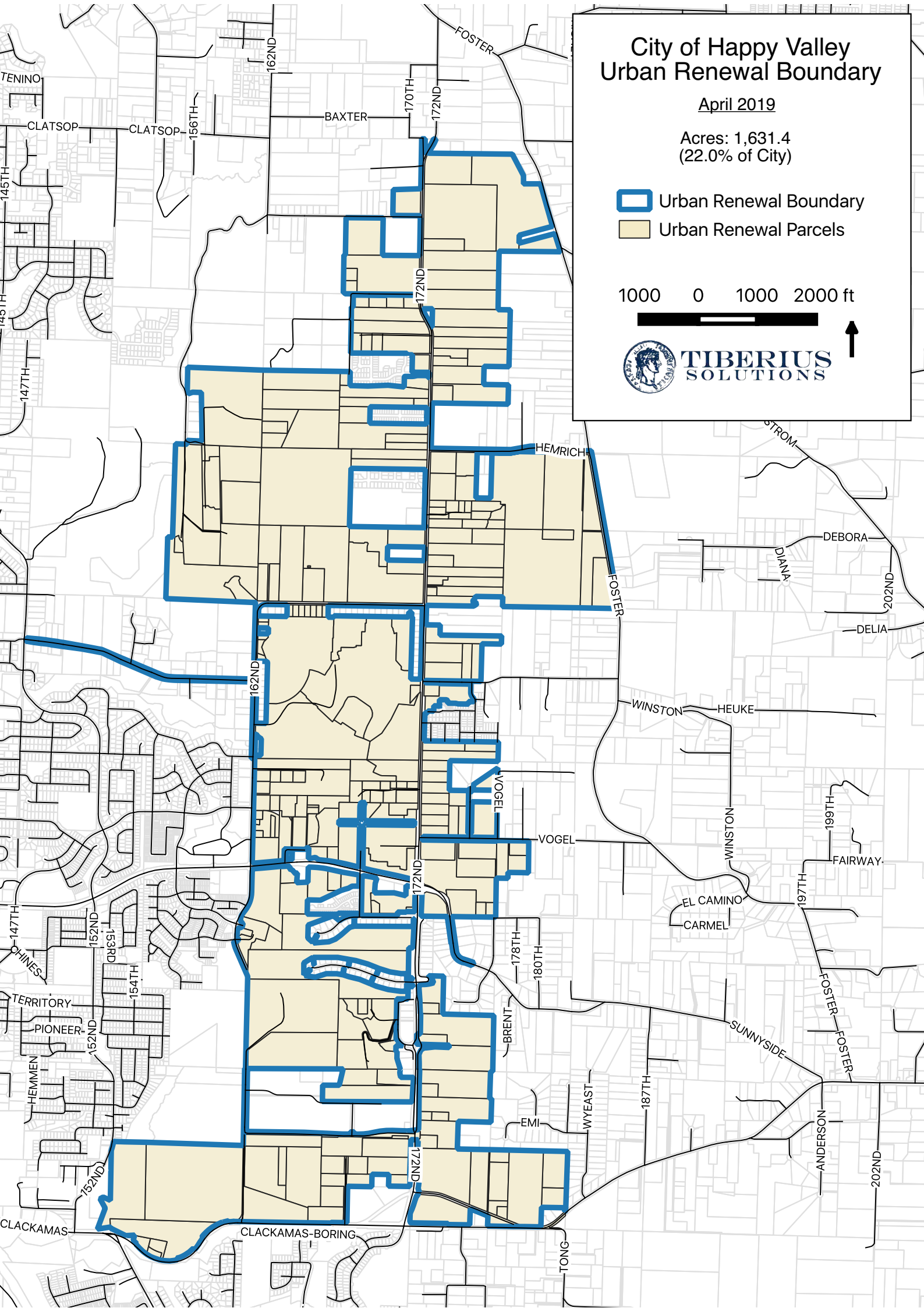
Acres: 1,631.4  
(22.0% of City)

-  Urban Renewal Boundary
-  Urban Renewal Parcels

1000 0 1000 2000 ft



**TIBERIUS**  
SOLUTIONS







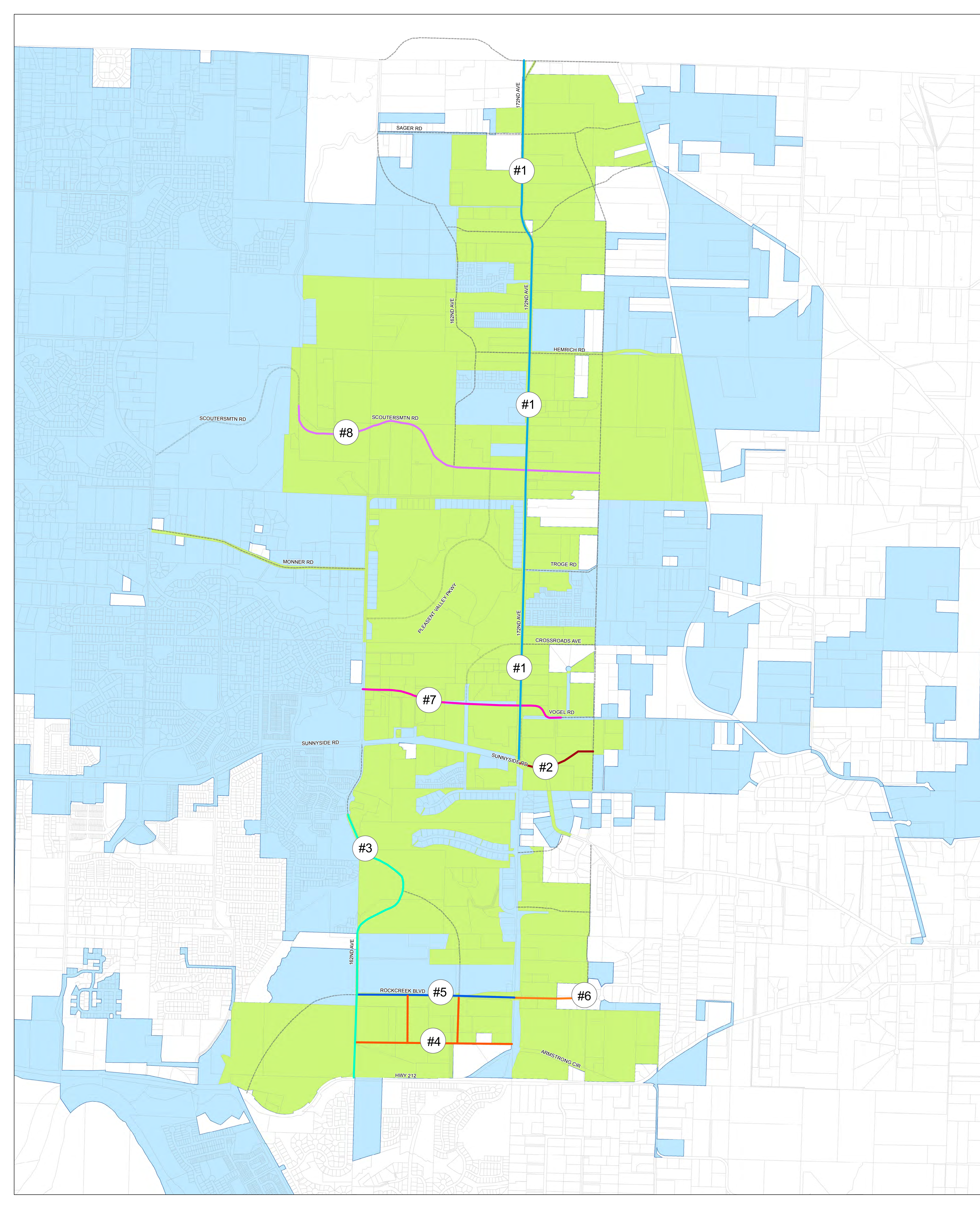
# DRAFT URBAN RENEWAL DISTRICT / PROJECTS LIST

- #1. Widening of 172nd Ave.
- #2. Sunnyside Road/ Damascus Blvd. East Extension
- #3. 162nd Ave South
- #4. RCEC Collectors
- #5. Rock Creek Blvd.
- #6. Rock Creek Blvd. East Extension
- #7. Misty Drive/ Vogel Road East Extension
- #8. Scouters Mountain Road
- #9. Strategic Land Acquisition (TBD)

Urban Renewal District  
1,631.4 Acres or 22%

Last Updated 2/26/19

Source: Original data from Clackamas County GIS and Metro (2018)  
This information is for informational purposes only and does not constitute a contract or any other legal document. The City of Happy Valley is not responsible for any errors or omissions in this information. Although information is provided for informational purposes only, it is not intended to be used as a basis for any legal action. The City of Happy Valley is not responsible for any damages, including consequential damages, arising from the use of this information. The City of Happy Valley is not responsible for any damages, including consequential damages, arising from the use of this information. The City of Happy Valley is not responsible for any damages, including consequential damages, arising from the use of this information.







**DAN JOHNSON**  
MANAGER

**DEVELOPMENT AGENCY**

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

May 9, 2019

Development Agency Board  
Board of County Commissioners  
Clackamas County

Members of the Board:

**First Reading of Ordinance No. \_\_\_\_\_ Amending the  
Clackamas Industrial Area Urban Renewal Plan**

<b>Purpose/Outcomes</b>	To remove property from the Clackamas Industrial Area Urban Renewal Boundary
<b>Dollar Amount and Fiscal Impact</b>	None
<b>Funding Source</b>	No impact
<b>Duration</b>	Indefinite
<b>Previous Board Action</b>	None on this issue
<b>Counsel Review</b>	Reviewed and Approved by County Counsel on April 16, 2019
<b>Strategic Plan Alignment</b>	Build a strong infrastructure. Build public trust through good government.
<b>Contact Person</b>	David Queener– 503-742-4322

**BACKGROUND:**

The Clackamas Industrial Area (CIA) Development Plan was adopted on July 26, 1984 and has been subsequently amended. One of the amendments was to add SE 172<sup>nd</sup> Avenue as a project and to add that area into the urban renewal district boundary. The construction of SE 172<sup>nd</sup> Avenue from Sunnyside Road south to Highway 212 has been completed by the County. The CIA is no longer taking division of taxes.

The City of Happy Valley is considering adopting an urban renewal plan focusing on transportation improvements. One of the proposed projects is the construction of SE 172<sup>nd</sup> Avenue north of Sunnyside Road. Legal counsel review has indicated that the SE 172<sup>nd</sup> Avenue right of way from Sunnyside Road north must first be removed from the CIA plan area before being included into the proposed Happy Valley Urban Renewal Area.

**The Proposed Ordinance**

The proposed ordinance removes the SE 172<sup>nd</sup> Avenue right of way from Highway 212 north to the county line from the boundary of the CIA urban renewal district.

**RECOMMENDATION:**

Staff respectfully requests that the Board complete the first reading of the ordinance and schedule a second reading of this ordinance on May 23, 2019.

Respectfully submitted,

David Queener  
Clackamas County Development Agency Program Supervisor

Attachments:

Ordinance

**ORDINANCE NO. \_\_\_\_\_**

**AMENDING THE CLACKAMAS INDUSTRIAL AREA DEVELOPMENT PLAN**

Section 1 Purpose

By enactment of this ordinance, the Board of Commissioners of Clackamas County approves the attached Clackamas Industrial Area Development Plan – Plan Amendment pursuant to ORS 457.095 and ORS 457.220.

Section 2 Findings

- a) The Clackamas Industrial Development Area Plan and Report on the Plan were duly adopted and approved July 26, 1984 and have been subsequently amended. The Clackamas County Development Agency (Development Agency) proposes further amendments to the Plan at this time to remove SE 172<sup>nd</sup> Avenue right of way and to decrease the size of the urban renewal area.
- b) The Development Agency pursued a project to improve 172<sup>nd</sup> Avenue from Sunnyside Road south to Highway 212. This project is complete.
- c) The City of Happy Valley is considering an urban renewal area to complete infrastructure projects including the improvement of 172<sup>nd</sup> Avenue north of Sunnyside Road to the northern city limits.
- d) ORS 457.420(3) states that “property may not be included in more than one urban renewal area”.
- e) This amendment to remove the SE 172<sup>nd</sup> Avenue area from the Clackamas Industrial Area Development Plan, would allow the City of Happy Valley to incorporate 172<sup>nd</sup> Avenue north of Sunnyside Road into a Happy Valley urban renewal area.
- f) The Clackamas County Board of Commissioners has considered the material presented by staff and find that these amendments are necessary to allow the City of Happy Valley to include a project for the construction of 172<sup>nd</sup> Avenue north of Sunnyside Road to their city limits in their proposed urban renewal plan.

Section 3 Approval

The amendments to the Clackamas Industrial Area Plan attached as Exhibit 1, Revised Clackamas Industrial Area Urban Renewal Plan Boundary Map, and Exhibit 2, revised Clackamas Industrial Area Urban Renewal Plan legal description and incorporated herein, are hereby adopted and approved.

Section 4 Effective Date

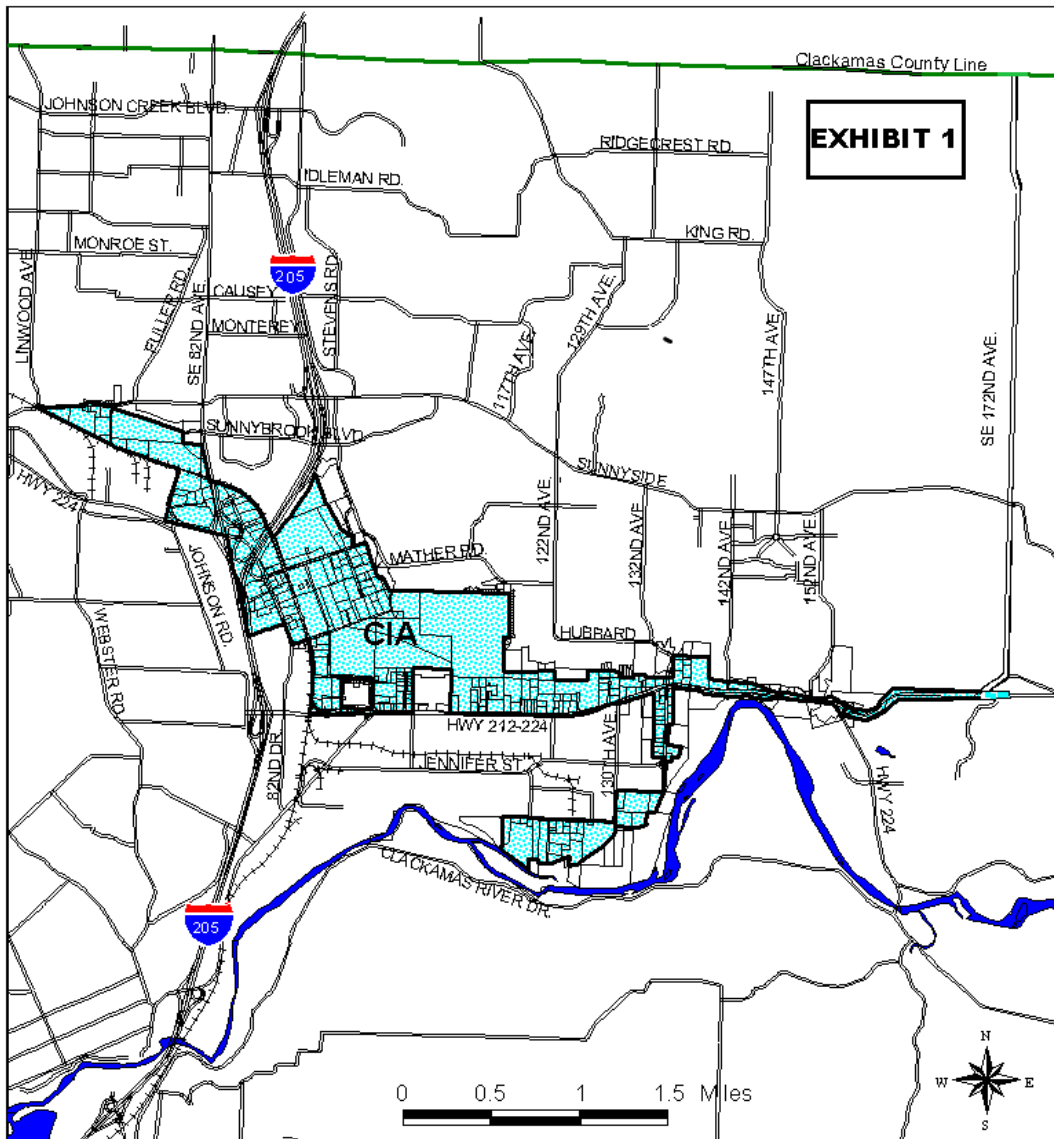
This ordinance shall take effect ninety (90) days after its adoption.

Adopted this \_\_\_\_\_ day of May, 2019.

\_\_\_\_\_  
Jim Bernard, Chair  
Board of County Commissioners

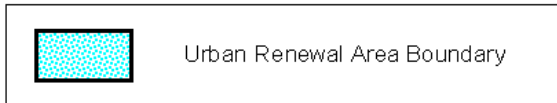
Attest:

\_\_\_\_\_  
Recording Secretary



**EXHIBIT 1**

**CLACKAMAS INDUSTRIAL AREA DEVELOPMENT PLAN  
BOUNDARY**



April 2019

EXHIBIT 2  
METES AND BOUNDS DESCRIPTION  
CLACKAMAS INDUSTRIAL AREA DEVELOPMENT DISTRICT

A tract of land located in Sections 3, 4, 5, 9, 10, 11, 12, 14, and 15, Township 2 South, Range 2 East of the Willamette Meridian, Clackamas County, Oregon, Sections 30 and 31, Township 1 South, Range 3 East of the Willamette Meridian, Clackamas County, Oregon, and Sections 6 and 7, Township 2 South, Range 3 East of the Willamette Meridian, Clackamas County, Oregon, being more particularly described as follows:

Beginning at a point at the intersection of the northerly right-of-way line of the Southern Pacific Railroad and the southerly right-of-way line of Harmony Road, (County Road No. 115);

- (1) thence north  $83^{\circ} 48' 30''$  east along the south right-of-way line of said Harmony Road, a distance of 1658.06 feet to an angle point in the south line of said road;
- (2) thence south  $88^{\circ} 48'$  east along the south right-of-way line of said Harmony Road, a distance of 365 feet to an angle point in the south line of said Harmony Road;
- (3) thence northeasterly to the intersection of the south right-of-way line of said Harmony Road with the east boundary of Strawberry Lane (SE Pheasant Court);
- (4) thence southeasterly 122 feet more or less along the east boundary of Strawberry Lane (SE Pheasant Court) to its intersection with a line which begins east 86.43 feet and north  $00^{\circ} 13'$  west 155 feet from the initial point of the plat of Morningside and runs south  $71^{\circ} 46' 15''$  east 731.96 feet;
- (5) thence south  $71^{\circ} 46' 15''$  east 635 feet to a point;
- (6) thence south  $77^{\circ} 56' 15''$  east 294.48 feet;
- (7) thence south  $70^{\circ} 09'$  east 500 feet;
- (8) thence south  $72^{\circ} 48' 12''$  east 486.49 feet;
- (9) thence south  $86^{\circ}$  east 178.78 feet;
- (10) thence south parallel to the east line of Lot 12 of the Plat of Morningside 375 feet more or less, to a point on the south line of Lot 11 of said Plat;
- (11) thence easterly along the south line of Lots 11 and 12 of said plat 560 feet, more or less, to its intersection with the west line of S.E. 82nd Avenue;
- (12) thence southeasterly along said west right-of-way line 1065 feet, more or less, to the south line of the Southern Pacific Railroad right-of-way;
- (13) thence southeasterly, along the southwesterly line of said Southern Pacific Railroad right-of-way, a distance of 2820 feet, more or less, to the southwesterly extension of the east line of Interstate Highway 205;

- (14) thence northeasterly along said extension and along the east line of said highway 2370 feet, more or less, to a 5/8 inch iron rod;
- (15) thence south 20° 44'15" east 991.06 feet to a 5/8 inch iron rod that is also south 21° 59'38" east 1668.81 feet and south 67° 15'45" west 730 feet from the N.E. corner of the William T. Matlock DLC No. 37 in Section 4 of T2S, R2E, W.M;
- (16) thence south 68° west 6.59 feet;
- (17) thence south 31° 20' east 922.91 feet to a 5/8 inch x 30 inch iron rod;
- (18) thence north 58° 40' east 70 feet to a 5/8 inch x 30 inch iron rod;
- (19) thence south 31° 20' east 180 feet to a 3/8 inch x 30 inch iron rod;
- (20) thence south 46° 16' east 31.05 feet to a 5/8 inch x 30 inch iron rod;
- (21) thence north 58° 40' east 138 feet to the centerline of County Road No. 1317 (Lawnfield Road);
- (22) thence following said centerline in a southeasterly and southwesterly direction 375 feet to a point, said point being 1320 feet north 22° west, 49.5 feet south 68° west, 1199.1 feet north 22° west and south 68° west 400.80 feet from the southeast corner of William T. Matlock DLC No. 37;
- (23) thence north 68° 17'37" east 400.80 feet to the east line of the William T. Matlock DLC No. 37;
- (24) thence tracing said DLC line south 21° 08'40" east 1165 feet more or less to a point;
- (25) thence north 68° east 130.95 feet to a point;
- (26) thence south 33° 19' east 475.88 feet, more or less to a point on the north line of Section 10, T2S, R2E, W.M;
- (27) thence easterly along the north line of said Section 10, T2S, R2E, 3490 feet, more or less, to the N.W. corner of the N.E. ¼ of the N.E. ¼ of said Section 10;
- (28) thence south 1325.75 feet;
- (29) thence north 89° 44'30" west 120.8 feet, more or less, to an iron pipe;
- (30) thence south 1155.2 feet
- (31) thence east 489.72 feet;
- (32) thence north 220 feet, more or less, to a point that is north 1732.5 feet, south 89° 38' west 936.88 feet, more or less, and north 1258.82 feet from the S.E. corner of Section 10, T2S, R2E;
- (33) thence east 489.72 feet;
- (34) thence north 80 feet, more or less, to a point that is south 889.34 feet and west 468.6 feet from the north 1/16 corner between Sections 10 and 11;
- (35) thence east 489.72 feet;



- (36) thence south 190 feet, more or less;
- (37) thence east 973.14 feet;
- (38) thence north 200 feet, more or less, to a point that is north 898.92 feet and west 979.44 feet from the center of the Oregon City and Phillip Foster Road (State Highway 212) on the east line of the Presley Welch DLC;
- (39) thence east 979.44 feet;
- (40) thence south 200 feet to a point;
- (41) thence east 420 feet to a point;
- (42) thence north 100 feet to a point;
- (43) thence east 361.64 feet to a point;
- (44) thence south 55 feet, more or less, to a point that is east 773.64 feet and north  $0^{\circ} 42'40''$  east 284 feet from the N.W. corner of the Isaac Capps DLC No. 52;
- (45) thence east, parallel to the north line of said DLC No. 52, 682 feet, more or less;
- (46) thence south 45 feet, more or less;
- (47) thence east 135 feet;
- (48) thence north 650 feet;
- (49) thence east 526.74 feet;
- (50) thence continuing east 541.30 feet to a point;
- (51) thence south  $1^{\circ} 16'30''$  east, a distance of 600 feet to a point;
- (52) thence south  $84^{\circ}$  east 1200 feet to a point,
- (53) thence south  $68^{\circ}$  east 1000 feet to a point;
- (54) thence south  $83^{\circ}$  east 800 feet to a point;
- (55) thence south  $88^{\circ}$  east 800 feet to a point;
- (56) thence south  $63^{\circ}$  east 500 feet to a point;
- (57) thence north  $77^{\circ}$  east 200 feet to a point henceforth to be referred to as "Point A";
- (58) thence south  $52^{\circ}$  west 600 feet to a point;
- (59) thence north  $15^{\circ}$  west 400 feet to a point;
- (60) thence north  $70^{\circ}$  west 250 feet to a point;

- (61) thence north 88° west 1200 feet to a point;
- (62) thence north 75° west 800 feet to a point;
- (63) thence north 88° west 900 feet to a point;
- (64) thence north 77° west 680 feet, more or less, to a point on the northerly right-of way of Oregon State Highway No. 212;
- (65) thence westerly along the north right-of-way line of said Oregon State Highway No. 212, a distance of 1050 feet, more or less, to its intersection with the northerly extension of a line that runs parallel to and 465.96 feet west of the east line of the Isaac Capps DLC #52;
- (66) thence south, along said line, a distance of 1230 feet to a point;
- (67) thence west 114.10 feet;
- (68) thence south 615 feet;
- (69) thence east 158 feet;
- (70) thence south 35 feet;
- (71) thence east 242 feet;
- (72) thence south 15° 30' west 305.10 feet, more or less;
- (73) thence west 194.40 feet, more or less;
- (74) thence south 131 feet;
- (75) thence west 194 feet to a point on the east line of S.E. 135th Avenue;
- (76) thence south along said right-of-way line 130 feet;
- (77) thence west 50 feet;
- (78) thence south 817.11 feet, more or less;
- (79) thence east 59.9 feet;
- (80) thence southwesterly 650 feet in a straight line to a point which is north 728.2 feet and east 1170 feet from the reentrant corner of Isaac Capps DLC No. 52 in Section 14, T2S, R2E, W.M;
- (81) thence west 205 feet to a point;
- (82) thence south 12° 0' west 250.92 feet;
- (83) thence south 9° 09'30" east 107.27 feet;
- (84) thence south 68° 20' west 268.92 feet;
- (85) thence west 687 feet to a point on the southerly extension of the centerline of County Road No. 310 (S.E. 130th Avenue);

- (86) thence south along said centerline extension to the westerly exterior angle corner of the Isaac Capps DLC No. 52, also being 421.70 feet south of the northeast corner of Government Lot No. 10;
- (87) thence south 44° 08' west 410.40 feet to a point;
- (88) thence south 56° 45' west 615 feet;
- (89) thence south 48° 43' west 407.70 feet;
- (90) thence south 65° 50' west 239.20 feet to a point, said point being on the west line of the Isaac Capps DLC No. 52;
- (91) thence north 0° 25' east on said DLC line 340 feet to a point on the northeasterly extension of the south line of Vernon Street, said point also being south 0° 25' west 699.04 feet from the westerly northwest corner of DLC No. 52;
- (92) thence south 65° 25' west 96.85 feet to a point of intersection with the most easterly corner of S.E. Vernon Street;
- (93) thence northerly at right angles to said south line 40 feet to the north line of said S.E. Vernon Street;
- (94) thence south 65° 25' west 441.14 feet to an angle point on the north line of said Vernon Street;
- (95) thence north 89° 36' west 458.69 feet to the centerline of a 40 foot strip of Land;
- (96) thence north 0° 24' east 115 feet to a point;
- (97) thence south 89° 09' west 299 feet to a point;
- (98) thence south 0° 24' west 296.50 feet, more or less, to a point on the right bank of the Clackamas River as it existed on May 14, 1979,
- (99) thence downstream, along said right bank of the Clackamas River, 1050 feet, more or less, to the most southerly southeast corner of that certain tract of real property (Assessor's Map 2 2E 15A, TL 1800) conveyed to Terry W. Emmert, by the deed recorded under Fee #96-52847, Deed records of Clackamas County;
- (100) thence north 50° 26' east, along the east line of said Emmert Property, 23.22 feet to a point;
- (101) thence continuing along the east line of said Emmert Property, north 00° 26' east, 863.69 feet, more or less, to a point in the south line of Capps Road;
- (102) thence west, along the south line of said Capps Road, 25 feet, more or less, to a point at the southerly extension of the west line of Parcel 1, Partition Plat No.1995-164, Clackamas County Survey Records;
- (103) thence north 60 feet, more or less, to the southwest corner of said Parcel 1, Partition Plat No.1995-164, Clackamas County Survey Records;
- (104) thence easterly, along the north right-of-way of said S.E. Capps Road, 3400 feet, more or less, to the west Right-of-Way line of S.E. 130th Ave.;

- (105) thence north, along the west right-of-way line of S.E. 130th Avenue, 850 feet, more or less, to a point at the westerly extension of the north line of Partition Plat No.1990-56, Clackamas County Survey Records and also the north line of that certain tract of real property (Assessor's Map 2 2E 14A, TL1080) conveyed to Mutual Materials Co. by the deed recorded under Fee #82-22065, Deed Records of Clackamas County;
- (106) thence east, along the north line of said Partition Plat No.1990-56, and the north line of said Mutual Materials Co. tract, 1425 feet, more or less, to the southeast corner of that certain tract of real property (Assessor's Map 2 2E 11D, TL1304) conveyed to Portland General Electric Company, as Parcel IV in the deed recorded under Fee #77-22190, Deed Records of Clackamas County;
- (107) thence north, 1052 feet, more or less, to the southeast corner of that certain tract of real property (Assessor's Map 2 2E 11D, TL 1400) conveyed to Ralph Mooers and Hazel Mooers, husband and wife, by the deed recorded in Deed Book 685, Page 325, Deed Records of Clackamas County;
- (108) thence west, along the south line of said Mooers tract, 335.28 feet, more or less, to the southwest corner thereof;
- (109) thence north 1668 feet, more or less, to the southwest corner of Parcel 1, Partition Plat No. 1995-160, Clackamas County Survey Records;
- (110) thence north  $89^{\circ} 57' 02''$  east, along the south line of said Parcel 1, 160.00 feet to the southeast corner thereof;
- (111) thence along the easterly line of said Parcel 1, north  $00^{\circ} 06' 03''$  west, 153.68 feet to an angle point in said east line;
- (112) thence continuing along the easterly line of said Parcel 1, south  $89^{\circ} 56' 17''$  west, 15.00 feet to an angle point in said east line;
- (113) thence continuing along the easterly line of said Parcel 1, north  $00^{\circ} 06' 03''$  west, 102.14 feet to a point of curvature;
- (114) thence northerly and northwesterly, along the easterly line of said Parcel 1, along the arc of a 33.00 foot radius curve to the left, through a central angle of  $87^{\circ} 03' 58''$ , for an arc distance of 50.15 feet (the long chord of which bears North  $43^{\circ} 38' 02''$  west, 45.46 feet) to a point at the most northerly northeast corner of Parcel 1, Partition Plat No.1995-160, Clackamas County Survey Records, said point also being on the southerly right-of-way line of Oregon State Highway No. 212;
- (115) thence westerly, along the southerly right-of-way line of said Oregon State Highway No. 212, 10,500 feet, more or less, to intersection of said southerly right-of-way line of Oregon State Highway No. 212 and a line that is parallel to and 30 feet east of, being measured at right angles to, the centerline of the Southern Pacific Railroad;
- (116) thence northerly, parallel to and 30 feet east of, being measured at right angles to, the centerline of the said Southern Pacific Railroad, a distance of 2247 feet, more or less, to the south line of Mather Road;
- (117) thence south  $68^{\circ} 39'$  west 60 feet to the intersection of the westerly boundary of said railroad Right-of-Way with the southerly boundary of Mather Road;

- (118) thence northerly along the railroad right-of-way 25 feet, more or less, to the most northerly corner of the Plat of Marshfield in Section 9, T2S, R2E, W. M;
- (119) thence south  $68^{\circ}11'$  west along the northwesterly line of said plat 495 feet to the westerly line of S.E. 82nd Drive;
- (120) thence northwesterly along said west line of 82nd Drive 650 feet to the southeasterly line of Jannsen Road;
- (121) thence south  $68^{\circ}56'$  west 1180 feet, more or less, along the southerly line of said Jannsen Road and its southwesterly extension to the centerline of Cascade Highway North as shown on State Highway Drawing 8B-715 at centerline Station 508 + 45;
- (122) thence north  $13^{\circ}57'30''$  west along said centerline 3145 feet, more or less, to Engineer Station 477 + 00; said point also being Engineer Station 20 + 00 on the centerline of Oregon State Highway No. 224 (relocated Lake Road, Pacific Highway east Cascade Highway section of the Clackamas Highway as shown on drawing 8B-3310);
- (123) thence northwesterly along the centerline of said Oregon State Highway No. 224 (relocated Lake Road, Pacific Highway east Cascade Highway section of the Clackamas Highway as shown on drawing 8B-3310), 1800 feet more or less to a point at the intersection of said centerline of Oregon State Highway 224 and the southerly projection of the westerly right-of-way line of Johnson road;
- (124) thence northerly, along the westerly right-of-way line of said Johnson, 1600 feet, more or less, to a point on the south line of the Southern Pacific Railroad right-of-way;
- (125) thence northwesterly, along said south line of the Southern Pacific Railroad right-of-way, 4400 feet, more or less, to a point that is 74 feet southwesterly from the Point of Beginning;
- (126) thence northeasterly 74 feet to the Point of Beginning;
- (127) Also including the following described tract of land;

Beginning at a point on the northerly right-of-way line of Oregon State Hwy. No. 212, said point of beginning being South  $52^{\circ}$  West, 250 feet, more or less, from the aforementioned Point "A" (Line No. 57 of the above description);

Thence Easterly, following said northerly right-of-way line of Oregon State Hwy No. 212, a distance of 4,898 feet, more or less, to the east line of the west 1/2 of Section 7, Township 2 South, Range 3 East, W.M.;

Thence Southerly, following the east line of the west 1/2 of said Section 7, a distance of 80 feet, more or less, to the southerly right-of-way line of said Oregon State Hwy No. 212;

Thence Westerly, following said southerly right-of-way line of Oregon State Hwy No. 212, a distance of 5,000 feet, more or less, to a point that is South  $52^{\circ}$  West from the aforementioned Point "A";

Thence North  $52^{\circ}$  East, a distance of 130 feet, more or less, to the point of beginning.

#### EXCEPTIONS

Excepting the following described parcel located in Section 9, T2S, R2E, W.M., located in Clackamas County in the State of Oregon:

Beginning at a point that is north 89° west 178 feet from the ¼ corner between Sections 9 and 10, T2S, R2E, W.M.;

- (1) thence north 89° west 786 feet along the south line of S.E. Clackamas Road to the intersection of said south line with the east line of 98th Avenue;
- (2) thence south 0° 02' west 879.60 feet along the east line of said 98<sup>th</sup> Street to the S.W. corner of Lot 1, Block 8 of the Plat of Hollywood Gardens;
- (3) thence south 89° east 905 feet to the S.E. corner of Lot 15, Block 7 of said plat, said point also being on the west line of S.E. 102<sup>nd</sup> Avenue;
- (4) thence north 00° 08' west 770 feet more or less to an iron pipe at a point of curve in the west line of 102<sup>nd</sup> Avenue, such point of curve also being in the east line of Lot 16, Block 2 of Hollywood Gardens, such point also being opposite Engineers Station "C" 282 + 97.11 P.T. shown on State Highway Map of Clackamas Overcrossing Section of Clackamas Highway, Drawing No. 1A421;
- (5) thence from said point of curve to the left northwesterly 186.46 feet to an iron bolt at a point of tangent on the north line of Lot 11, Block 2, of said Hollywood Gardens, such point also being opposite Engineers Station "C" 280 + 64.02 P.C. shown on aforesaid State Highway Map back to the point of beginning of the herein described parcel.

Excepting the following described parcel, part of the Samuel L. Campbell DLC No. 64 in Section 10, T2S, R2E, W.M., County of Clackamas and State of Oregon, described as:

Beginning at a point on the east line of said DLC, which point is 3016.86 feet north of the southeast corner of said claim;

- (1) thence west 1141.09 feet, more or less, to a point;
- (2) thence south 00° 31' 10" east 1274 feet more or less to a point on the relocated north line of State Highway 212;
- (3) thence south 89° 24' 50" east along the relocated north boundary of said highway 1126.23 feet to a point, said point being 20 feet west of the east line of Samuel L. Campbell DLC No. 64;
- (4) thence north 00° 43' 40" west 547 feet more or less to a point;
- (5) thence north 89° 24' 50" east 20 feet to a point on the east line of said DLC;
- (6) thence north 00° 43' 40" west along the east line of said DLC 716.31 feet to the point of beginning.

May 9, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Construction Contract with Clackamas Construction, Inc. for the  
E. Clarendon Street Project in Gladstone

<b>Purpose/ Outcome</b>	The Construction Contract will allow for construction of 2 blocks of new street, sidewalk, waterline, sewer and storm drain improvements along E. Clarendon Street in Gladstone including the transfer of water services and fire hydrants from a 6-inch main to a 24-inch main waterlines.
<b>Dollar Amount and Fiscal Impact</b>	The Clackamas Construction Contract will be in the amount of \$958,671.10.
<b>Funding Source</b>	Community Development Block Grant Funds - \$245,000 City of Gladstone Funds - \$713,671.10 No County General Funds are involved.
<b>Duration</b>	May 9 – August 30, 2019, Planned Construction Schedule.
<b>Previous Board Action/ Review</b>	The Board approved an Intergovernmental Agreement with the City of Gladstone for this project on September 27, 2018.
<b>Strategic Plan Alignment</b>	Ensure safe, healthy and sure communities.
<b>Counsel Review</b>	The Contract was approved by County Counsel on March 4, 2019
<b>Contact Person(s)</b>	Mark Sirois, Housing and Community Development - (503) 655-5664
<b>Contract No.</b>	H3S 9251

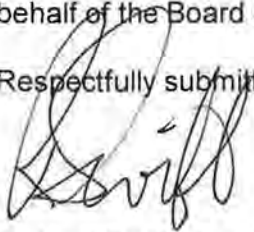
**BACKGROUND:**

The Housing and Community Development Division of the Health, Housing and Human Services Department requests the approval of this Construction Contract with Clackamas Construction, Inc. to allow for improvements along E. Clarendon Street in Gladstone. Clackamas Construction was the low bidder of the four bids submitted at the April 3 bid opening.

**RECOMMENDATION:**

We recommend the approval of this Contract and that Richard Swift H3S Director be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,



Richard Swift, Director  
Health, Housing Human Services





**AGREEMENT FOR PUBLIC WORKS CONSTRUCTION WORK  
BETWEEN COUNTY AND CONTRACTOR**

**COUNTY**

Clackamas County  
Community Development Division  
2051 Kaen Road, Suite 245  
Oregon City, OR 97045

**CONTRACTOR**

Clackamas Construction, Inc.  
PO Box 279  
Boring, Oregon 97009

THIS AGREEMENT (the Contract) is entered into by and between Clackamas County (hereinafter called the "COUNTY") and Clackamas Construction, Inc. (hereinafter called "CONTRACTOR") and is effective as of the date it is signed by the COUNTY.

This Contract for construction has been prepared for use with the ODOT Specifications for Construction of the Construction (2018) prepared by the Engineer's Joint Contract Documents Committee.

This Contract is the complete and exclusive statement of the agreement between the parties relevant to the purpose described herein, and supersedes all prior agreements or proposals, oral or written, and all other communications between the parties relating to the subject matter of this Contract. This Contract, or any modification of this Contract, will not be binding on either party except as signed by authorized agents of both parties.

COUNTY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1: WORK**

CONTRACTOR shall complete all Work.

As used herein, "Work" shall mean the construction improvements tasks, as set forth in detail in the Contract Documents, and generally described as: Demolition and construction of streets, sidewalks, ramps and driveways; installation of a new sanitary sewer, storm drain and water system improvements, including the transfer of water services and fire hydrants from a 6-inch main to a 24-inch main along a 2-block long section of E. Clarendon Street in Gladstone, Oregon.

**ARTICLE 2: ENGINEER**

The Project has been designed by Patrick A. Sisul, P.E. of Sisul Engineering who is hereinafter called ENGINEER and who is to act as COUNTY's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

### **ARTICLE 3: CONTRACT TIME**

**3.1.** Time is of the essence in this Contract and the CONTRACTOR agrees that **all work shall be substantially completed by August 9, 2019 with a contract completion date of August 19, 2019.** The project is to commence per the date of the Notice To Proceed issued by the COUNTY. If the Notice To Proceed is delayed, the time schedule will be adjusted accordingly. The total timeframe for this work is **90 days** unless a time extension is approved by the ENGINEER and COUNTY, via Change Order.

**3.2.** Liquidated Damages. COUNTY and CONTRACTOR recognize that time is of the essence of this Agreement and that COUNTY will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Section 00180.85 of the ODOT Specifications for Construction. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by COUNTY if the Work is not completed on time. Accordingly, instead of requiring any such proof, COUNTY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay COUNTY **\$250** for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by COUNTY, CONTRACTOR shall pay COUNTY **\$250** for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

**3.3** The Contractor will be held to the timeline of the project, once the project begins. Unforeseen conditions that may cause a delay will be reviewed and determined by the COUNTY and the Engineer(s). Additional work days may be granted to the Contractor.

### **ARTICLE 4: CONTRACT PRICE**

**4.1.** COUNTY shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in current funds as follows:

**4.1.1** In consideration of the faithful performance of the Work, as set forth in these Contract Documents, and in accordance with the direction of the ENGINEER and to his satisfaction to the extent provided in the Contract Documents, the COUNTY agrees to pay to the CONTRACTOR the amount bid, as adjusted in accordance with the Contract Documents, and based on the proposal made by the CONTRACTOR, to make such payments in the manner and times provided in the Contract Documents.

**4.2** The Contract Price shall be the amount of Nine Hundred, Fifty Eight Thousand, Six Hundred and Seventy One Dollars and Ten Cents. (\$958,671.10) which are described in the Contract Documents as the Base Bid and Alternate "A" and are hereby accepted by the COUNTY.

**4.3** The CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the Work. In the performance of the Work to be done

under this Contract, the CONTRACTOR shall use every reasonable and practicable means to avoid damage to property and injury to persons. The CONTRACTOR shall use no means or methods which will endanger, unnecessarily, either persons or property. The responsibility of the CONTRACTOR stated herein shall cease upon the Work being accepted as complete by the COUNTY.

## **ARTICLE 5: PAYMENT PROCEDURES**

**5.1** CONTRACTOR shall submit Applications for Payment in accordance with Section 00195 of the ODOT Specifications for Construction. Applications for Payment will be processed by ENGINEER as provided in the ODOT Specifications for Construction.

**5.2. Progress Payments.** COUNTY shall make monthly progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in the ODOT Specifications for Construction (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

**5.2.1.** At least twenty-eight (28) days before each payment falls due (but not more than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the application and accompanied by such supporting documentation as is required by the Contract Documents and also as ENGINEER may reasonably require.

**5.2.2** ENGINEER will, within seven (7) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to COUNTY, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case CONTRACTOR may make the necessary corrections and resubmit the Application. Within twenty-one (21) days after presentation of the Application for payment with ENGINEER's recommendation of payment, the amount recommended will become due and when due, will be paid by COUNTY to CONTRACTOR.

**5.2.3.** Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or COUNTY may withhold, in accordance with Section 00195.50(b) of the ODOT Specifications for Construction.

95% of Work completed and approved by the ENGINEER.

95% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to COUNTY as provided in Section 00195.50 of the ODOT Specifications for Construction).

**5.2.4.** Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine, or COUNTY may withhold, in accordance with Section 00195.50(b) of the ODOT Specifications for Construction. The COUNTY reserves the right to withhold 5% of the total project payment until all work is completed and approved by the ENGINEER.

**5.3.** Final Payment. Upon final completion and acceptance of the Work in accordance with Section 00195.90 of the ODOT Specifications for Construction, COUNTY shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Section 00195.90.

**5.3.1** The Final Application for payment shall be accompanied by at least the following: (a) CONTRACTOR's Affidavit of Release of Liens; (b) CONTRACTOR's Affidavit of Payment of Debts and Claims; and (c) Consent of Surety to Final Payment. Once all three documents (a, b, and c) have been delivered to the COUNTY for review and approval, the remaining 5% of the Project Construction Contract will be released to the CONTRACTOR.

**5.4.** Payments, Contributions and Liens:

**5.4.1.** Under the provisions of ORS 279C.505 the CONTRACTOR shall:

**5.4.1.1.** Make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract.

**5.4.1.2.** Pay all contributions or amounts due the State Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.

**5.4.1.3.** Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

**5.4.1.4.** Pay to the Revenue Department all sums withheld from the employees pursuant to ORS 316.197.

**5.4.2.** If the contract is for a public improvement, the CONTRACTOR shall demonstrate that an employee drug testing program is in place.

**5.4.3.** Under the provisions of ORS 279C.515, if the CONTRACTOR fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the CONTRACTOR or a subcontractor by any person in connection with this Contract as the claim becomes due, the proper officer representing the COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against the funds due or to become due the CONTRACTOR by reason of the Contract. If a CONTRACTOR or a first-tier subcontractor fails, neglects or refuses to make prompt payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of



payment from the public contracting agency or a contractor, the CONTRACTOR or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (3) and(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the CONTRACTOR or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the public contracting agency or from the CONTRACTOR, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived.

**5.4.4.** If the CONTRACTOR or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

#### **ARTICLE 6: CONTRACTOR'S REPRESENTATIONS**

In order to induce COUNTY to enter into this Agreement CONTRACTOR makes the following representations:

**6.1.** CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 8) and the other related data identified in the Bidding Documents including "technical data."

**6.2.** CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

**6.3.** CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and regulations that may affect cost, progress, performance and furnishing of the Work.

**6.4.** CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site as provided in Section 00120.15 and 00120.25 of the ODOT Specifications for Construction. CONTRACTOR acknowledges that COUNTY and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations,

explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

6.5. CONTRACTOR is aware of the general nature of work to be performed by COUNTY and others at the site that relates to the Work as indicated in the Contract Documents.

6.6. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

6.7. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

6.8. CONTRACTOR is and will remain licensed by the State of Oregon Construction Contractors Board (CCB) or licensed by the State Landscaping Contractors Board (LCB) as required by ORS 671.530 as well as not limited to the same requirements of any and all subcontractors on this PROJECT. If the CONTRACTOR's CCB license is not current during any phase of construction, the COUNTY may immediately terminate this Contract.

6.9. Prior to completion and final acceptance of work, the CONTRACTOR shall be held responsible for any injury or damage to the work or to any part thereof by action of the elements, or from any cause whatsoever, and the CONTRACTOR shall make good all injuries or damages to any portion of the work.

6.10. Except as otherwise provided in the Special Provisions of this Contract, the ENGINEER shall make final inspection of work done by the CONTRACTOR within 10 days after written notification to the ENGINEER by the CONTRACTOR that the work is completed. If the work is not acceptable to the ENGINEER, the ENGINEER shall so advise the CONTRACTOR in writing as to the particular defects to be remedied before acceptance by the ENGINEER can be made.

## **ARTICLE 7: INDEMNITY – INSURANCE – BONDS**

7.1 Responsibility for Damages/Indemnity. The CONTRACTOR shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work, or from any act, omission, or neglect of Contractor, its subcontractors, employees, guests, visitors, invitees, and agents. The CONTRACTOR agrees to indemnify, save harmless and defend the COUNTY, its officers, commissioners and employees from and against all claims and action, and all expenses 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.

## **7.2 Insurance.**

**7.2.1.** As evidence of the insurance coverage required by this Contract, CONTRACTOR shall furnish a Certificate of Insurance to COUNTY. The Contract shall not be effective until the required certificates have been received, approved and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration. The CONTRACTOR agrees to furnish the COUNTY evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for personal injury and property damage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The general aggregate shall apply separately to this project/location. The COUNTY, at its option, may require a complete copy of the above policy.

**7.2.2.** If the CONTRACTOR has assistance of other persons in the performance of this Contract, the CONTRACTOR, if it is a subject employer, agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. CONTRACTORS shall maintain employer's liability insurance with limits of \$100,000 each accident, \$100,000 disease each employee, and \$500,000 each policy limit.

**7.2.3.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the CONTRACTOR'S insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the Contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

**7.2.4.** The CONTRACTOR agrees to furnish the COUNTY evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The COUNTY, at its option, may require a complete copy of the above policy.

**7.2.5.** The certificate of insurance, other than the pollution liability insurance shall include the COUNTY as an expressly scheduled additional insured using form CG 20-10, CG 20-37, CG 32-61 or their equivalent. A blanket endorsement or automatic endorsement is not sufficient to meet this requirement. Proof of insurance must include a copy of the endorsement showing the COUNTY as a scheduled insured. Such insurance shall provide sixty (60) days written notice to the COUNTY in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the COUNTY under this



insurance. This 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.

**7.2.6.** The CONTRACTOR shall obtain, at the CONTRACTOR'S expense and keep in effect during the term of the Contract, CONTRACTOR'S Pollution Liability insurance covering the CONTRACTOR'S liability for a third party bodily injury and property damage arising from pollution conditions caused by the CONTRACTOR while performing their operations under the Contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the COUNTY. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance. The policy's limits shall not be less than \$1,000,000 each loss / \$1,000,000 aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this Contract. Any self-insured retention / deductible amount shall be submitted to the COUNTY for review and approval.

**7.3 Bonds.** The CONTRACTOR agrees to furnish to the COUNTY bonds covering the performance of the Contract and the payment of obligations each in the amount equal to the full amount of the Contract as amended. Upon the request of any person or entity appearing to be a potential beneficiary of the bonds covering payment of obligations arising in the Contract, the CONTRACTOR shall promptly furnish a copy of the bonds or shall permit a copy to be made. The CONTRACTOR shall secure, include costs thereof in the bid, and pay for a performance bond and payments bond in compliance of ORS 279C.380 and other applicable revised statutes issued by a bonding company licensed to transact business in the State of Oregon in accordance with the bid and performance bonds forms provided or others acceptable to the COUNTY. The CONTRACTOR also agrees that the performance bond to be furnished as specified shall be such as to stay in force for a period of three hundred sixty-five days (365), after acceptance of the work by the COUNTY as a guarantee of repair or replacement of any item(s) of work found to be defective by reason of faulty workmanship or defective materials.

**7.3.1.** The CONTRACTOR shall have a public work bond filed with the Construction Contractors Board prior to starting work on the project, in accordance with ORS 279C.830. Additionally the CONTRACTOR shall include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work, in accordance with ORS 279C.830

## **ARTICLE 8: CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between COUNTY and CONTRACTOR concerning the Work consist of the following, each of which are incorporated by this reference herein:

**8.1.** This Agreement (pages 1 to 13, inclusive).



8.2. Exhibits (Reserved - Not used at this time).

8.3. Performance and Labor Material Payment Bonds, Public Works Bond consisting of 5 pages.

8.4. 2018 ODOT Standard Specifications for Construction.

8.5. Supplementary Conditions, including:

Special Conditions

HUD Labor Standards, HUD-4010

HUD Section 3 Guidelines

Federal Prevailing (Davis-Bacon) Wage Decision: OR190001, Dated 02/01/2019, Type:  
Highway

State of Oregon (BOLI) Wage Rates Decision: January 1, 2019

8.6. Specifications bearing the title "City of Gladstone Construction Specifications (pages 1 to 205 inclusive)

8.7. Drawings bearing the title "E. CLARENDON STREET – PHASE 1 (stamped by Patrick A. Sisul, Sisul Engineering,."

8.8. Addenda Number: 1 of 1.

8.9. CONTRACTOR's Bid Proposal:

8.10. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Section 00140.30 of the ODOT Specifications for Construction.

The documents listed in paragraphs 7.2 *et seq.* above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in Section 00140.30 of the ODOT Specifications for Construction.

#### **ARTICLE 9: FEDERAL (Davis-Bacon) AND STATE (BOLI) PREVAILING WAGE RATES**

Each worker in each trade or occupation employed in the performance of the contract either by the CONTRACTOR, subcontractor, or other person(s) doing or contracting for the whole or any part of the work on this Contract, shall be paid not less than the applicable prevailing wage rate,

and will pay the higher rate of pay on an individual job classification of which shall be in effect for this Contract pursuant to Davis-Bacon Act (40 U.S.C. 276a) and Bureau of Labor and Industries (a.k.a. BOLI) ORS 279C.800 through ORS 279C.870.

**ARTICLE 10: DESCRIPTION OF CONTRACTOR**

**10.1.** The CONTRACTOR is engaged hereby as an independent CONTRACTOR and will be so deemed for purposes of the following.

**10.1.1.** The CONTRACTOR will be solely responsible for payment of any Federal or State taxes required as a result of this agreement.

**10.1.2.** This Contract is not intended to entitle the CONTRACTOR to any benefits generally granted to COUNTY employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Contract to the CONTRACTOR are 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 (except insofar as benefits are otherwise required by law if the CONTRACTOR is presently a member of the Public Employees Retirement System).

**10.1.3.** The CONTRACTOR certifies that at present, he or she, if an individual, is not a program, County, or federal employee.

**ARTICLE 11: MISCELLANEOUS**

**11.1.** Terms used in this Agreement which are defined in Section 00130 - Award and Execution of Contract of the ODOT Specifications for Construction will have the meanings indicated in the ODOT Specifications for Construction.

**11.2** The COUNTY, through its AUTHORIZED REPRESENTATIVE or his designee shall at all times be allowed access to all parts of the operations and work locations of the CONTRACTOR, and shall be furnished such information and assistance by the CONTRACTOR, or the designated representative or representatives of the CONTRACTOR, as may be required to make a complete and detailed inspection.

**11.3.** No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

**11.4.** COUNTY and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal

representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

**11.5.** 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.

## **ARTICLE 12: TAX LAWS**

**12.1.** The CONTRACTOR shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work under this Contract. CONTRACTOR must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of CONTRACTOR'S warranty, in this Contract that CONTRACTOR has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation 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, at law, or in equity, including but not limited to:

- a. Termination of this Contract, in whole or in part;
- b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to CONTRACTOR, in an amount equal to COUNTY'S setoff right, without penalty; and
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. COUNTY shall be entitled to recover any and all damages suffered as the result of CONTRACTOR'S breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and COUNTY may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

**12.2.** The CONTRACTOR represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

- a. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

- b. Any tax provisions imposed by a political subdivision of this state that applied to CONTRACTOR, to CONTRACTOR'S property, operations, receipts, or income, or to CONTRACTOR'S performance of or compensation for any work performed by CONTRACTOR;
- c. Any tax provisions imposed by a political subdivision of this state that applied to CONTRACTOR, or to goods, services, or property, whether tangible or intangible, provided by CONTRACTOR; and
- d. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

### **ARTICLE 13: DEBT LIMITATION**

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.

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to COUNTY, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by COUNTY and CONTRACTOR or by ENGINEER on their behalf.

### **ARTICLE 14: SECTION 3 COVERED CONTRACT**

**14.1** The Work to be performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

**14.2** The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

**14.3** The CONTRACTOR agrees to send to each labor organization or representative of workers with which the CONTRACTOR has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the CONTRACTOR's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the



qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

**14.4** The CONTRACTOR agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The CONTRACTOR will not subcontract with any subcontractor where the CONTRACTOR has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

**14.5** The CONTRACTOR will certify that any vacant employment positions, including training positions, that are filled (1) after the CONTRACTOR is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the CONTRACTOR's obligations under 24 CFR part 135.

**14.6** Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

**14.7** With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

---

[Signature Page to Follow]



This Agreement will be effective upon the date on which it is signed by the COUNTY.

CONTRACTOR

Clackamas Construction, Inc.

PO Box 279  
Boring, Oregon 97009

By: Bobbie Mohler  
Nick Mueller, President  
Bobbie Mohler, Project Manager

April 29, 2019  
Date Signed

93-0984467  
Contractor's Federal Tax Identification No.  
or Social Security No. (if individual)

58599  
Oregon Commercial Contractor's Board No.

COUNTY

**Clackamas County, Oregon**

Chair: Jim Bernard  
Commissioner: Sonya Fischer  
Commissioner: Ken Humberston  
Commissioner: Paul Savas  
Commissioner: Martha Schrader

Signing on Behalf of the Board

By: \_\_\_\_\_  
Richard Swift, Director  
Health, Housing and Human Services  
Department

\_\_\_\_\_  
Date Signed

May 9, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval for the Public Health Division to apply for the US Department of Justice – Comprehensive Opioid Abuse Site-based Program funding opportunity.

<b>Purpose/Outcomes</b>	If awarded, funding will expand an existing pilot project (Project Hope) between Clackamas County Public Health (CCPH) and community paramedics from Clackamas Fire and American Medical Response (AMR). Project Hope provides care coordination and recovery supports for opioid overdose survivors and aims to do the following: (1) reduce the number of people who overdose on opioids; (2) reduce 911 calls and hospital readmission; (3) improve the quality of life for patients with substance use disorders; and (4) bridge gaps in care by connecting vulnerable patients to treatment and other social and health-related support services. If awarded, the second phase of Project Hope will expand the existing model so more patients are served and bring on a Peer Recovery Mentor to help with care coordination.
<b>Dollar Amount and Fiscal Impact</b>	Maximum grant award is \$900,000. No matching funds required. \$46,500 in County General Funds for unfunded program Admin costs calendar years 2020 – 2022.
<b>Funding Source</b>	US Department of Justice
<b>Duration</b>	January 2020 – December 2022
<b>Previous Board Action</b>	None
<b>Contact Person</b>	Sherry Olson, Business Services Manager, 503.742.5342 (Primary) Julie Aalbers, Public Health Division, Assistant Director 971.284.1976 (Secondary)
<b>Contract No.</b>	N/A

**Background:**

The Public Health Division of the Health, Housing & Human Services Department, requests the approval to apply for the US Department of Justice – Comprehensive Opioid Abuse Site-based Program funding opportunity. Funding will be used to expand the capacity of Project Hope, which will enable additional opioid overdose prevention and care coordination services in Clackamas County. This project will include collaborative efforts between divisions in Health,



Housing & Human Services (Public Health and Behavioral Health) and community paramedics from Clackamas Fire and AMR. Public Health will act as the project lead and fiscal agent.

**Project:**

When looking at overdose data in Clackamas County, it is clear that local Emergency Medical Service agencies play a critical role in our communities' response to the opioid epidemic. In Clackamas County, AMR and Clackamas Fire respond to the majority of the opioid overdose calls received by 911 dispatch, saving hundreds of lives each year. Additionally, these two agencies staff community paramedics who work in a specialized role to provide care coordination between patients and providers, as well as community resource navigation.

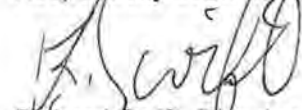
Over the last year, CCPH has partnered with AMR and Clackamas Fire to build a more comprehensive opioid response model in our county through the creation of Project Hope. Project Hope begins with follow-up by a community paramedic after the overdose occurs. After an assessment is completed, patients are navigated to treatment and recovery services in the community (inpatient, outpatient and community-based services) with a longer-term plan established to prevent future substance use and potential overdose. In an effort to work more upstream and further de-silo our approach to the opioid crisis, Project Hope has expanded to include law enforcement as a partner to help connect individuals to treatment and recovery supports. By adding another pathway to treatment, Project Hope is working in a preventive role to divert eligible individuals away from the criminal justice system, link to treatment before an overdose occurs, and improve law enforcement relations in the community.

At this time, Project Hope has limited capacity to respond and provide ongoing follow-up to the many individuals needing support. In 2018, Clackamas County first responders assisted over 80 people who survived an opioid overdose and nearly 300 individuals were discharged from an emergency department or urgent care setting due to an opioid overdose. The community paramedics are currently dedicating 10 hours a week to Project Hope; we cannot come close to meeting the demand with the current resources available. Additional funding will expand the project by adding more personnel time.

**Recommendation:**

Staff recommends the BCC approve CCPH's request to apply for the US Department of Justice – Comprehensive Opioid Abuse Site-based Program funding opportunity.

Respectfully submitted,



Richard Swift, Director  
Health, Housing and Human Services

# Grant Application Lifecycle Form

Use this form to track your potential grant from conception to submission.

Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

## \*\* CONCEPTION \*\*

Note: The processes outlined in this form are not applicable to disaster recovery grants.

### Section I: Funding Opportunity Information - To be completed by Requester

Lead Department: Health, Housing & Human Services Application for:  Subrecipient funds  Grant  
Grant Renewal?  Yes  No

Name of Funding Opportunity: Comprehensive Opioid Abuse Site-based Program  
Funding Source:  Federal  State  Other: \_\_\_\_\_  
Requestor Information (Name of staff person initiating form): Sherry Olson  
Requestor Contact Information: 503.742.5342  
Department Fiscal Representative: Sherry L Olson  
Program Name or Number (please specify): Opioid Misue Prevention/8387  
Brief Description of Project:

If awarded, the funding will be used to expand an existing pilot project (Project HOPE) between Clackamas County Public Health, American Medical Response (AMR), and Clackamas Fire. Community paramedics from AMR and Clackamas Fire provide care coordination and recovery supports for opioid overdose survivors. Project HOPE aims to (1) reduce the number of people who overdose on opioids, (2) reduce 911 calls and hospital readmission, (3) improve the quality of life for patients with substance use disorders, and (4) bridge gaps in care by connecting vulnerable patients to treatment and other social and health-related support services. The second phase of Project HOPE will expand the existing model so more patients are served and bring on a Peer Support Specialist to help with care coordination.

Name of Funding (Granting) Agency: US Department of Justice/Bureau of Justice Assistance

Agency's Web Address for Grant Guidelines and Contact Information:

[https://www.bja.gov/ProgramDetails.aspx?Program\\_ID=72](https://www.bja.gov/ProgramDetails.aspx?Program_ID=72)  
Tara Kunkel  
Senior Drug Policy Officer (IPA)  
202-616-0690  
E-mail: tara.kunkel@ojp.usdoj.gov

OR

Application Packet Attached:  Yes  No

Completed By: Sherry Olson Date \_\_\_\_\_

## \*\* NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE \*\*

### Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep

Competitive Grant  Non-Competing Grant/Renewal  Other Notification Date: 4/5/2019  
CFDA(s), if applicable: 16.838  
Announcement Date: 4/5/2019 Announcement/Opportunity #: BJA-2019-15111  
Grant Category/Title: the opioid epidemic Max Award Value: \$900,000  
Allows Indirect/Rate: Yes Match Requirement: No  
Application Deadline: 6/5/2019 Other Deadlines: No

Grant Start Date: 1/1/2020

Grant End Date: 12/31/2022

Completed By: Sherry Olson

Pre-Application Meeting Schedule: \_\_\_\_\_

Other Deadline Description:

---

**Section III: Funding Opportunity Information** - To be completed at Pre-Application Meeting by Dept Program and Fis

**Mission/Purpose:**

1. How does the grant support the Department's Mission/Purpose/Goals?

This grant will support H3S's mission to ensure healthy families and strong communities in Clackamas County. A necessary component of this mission is preventing opioid misuse and overdose deaths. The grant will enable H3S to support our mission.

2. How does the grant support the Division's Mission/Purpose/Goals? (If applicable)

This grant complements existing work opioid misuse/safety work in Public Health and supports Public Health's strategic goal of reducing the number of opioid overdose deaths in Clackamas County. This grant also supports Public Health Modernization efforts to integrate data systems and build public health-academic research partnerships.

3. What, if any, are the community partners who might be better suited to perform this work?

NA

4. What are the objectives of this grant? How will we meet these objectives?

The grant aims to reduce opioid abuse and the number of overdose fatalities, as well as to mitigate the impacts on crime victims by supporting comprehensive, collaborative initiatives. The program also supports the implementation, enhancement, and proactive use of PDMPs to support clinical decision making and prevent the abuse and diversion of controlled substances. Grantees are prohibited from using federal funds to support activities that violate the Controlled Substances Act. Project objectives and deliverables are below. Public Health will achieve these objectives through regular communication and technical assistance with the funder.

- Agree to work closely with BJA's designated training and technical assistance (TTA) provider(s) that may assist with planning, implementation, and assessment of the sites.
- Agree to work closely with a researcher selected by BJA who may conduct a sitespecific or cross-site evaluation in future years.
- Identify a project coordinator to manage the day-to-day operations of the initiative. The project coordinator should devote at least 50 percent of his or her time to the proposed project and may be funded as part of the proposed project.

5. Does the grant proposal fund an existing program? If yes, which program? If no, what should the program be called and what is its purpose?

Project HOPE

**Organizational Capacity:**

1. Does the organization have adequate and qualified staff? If yes, what types of staff are required?

If no, can staff be hired within the grant timeframe?

Yes. Project director, opioid project coordinator, 2 community paramedics, peer support specialist, data analyst, and epidemiologist.

2. Is there partnership efforts required? If yes, who are we partnering with, what are their roles and responsibilities, and are they committed to the same goals?

Yes. AMR and Clackamas Fire are providing two community paramedics and Clackamas County Behavioral Health is providing one Peer Support Specialist. All partners are committed to improving the quality of life for patients

with substance use disorders and reducing the harms associated with opioid use.

*3. If this is a pilot project, what is the plan for sunseting the program or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?*

NA

*4. If funding creates a new program, does the department intend that the program continue after initial funding is exhausted? If so, how will the department ensure funding (e.g. request new funding during the budget process, discontinue or supplant a different program, etc.)?*

This funding does not create a new program, it supplements current opioid work in Public Health's Population Health Strategies Org, Opioid Misuse Prevention Program. However, due to the "new" funding source, Public Health will be requesting a new program code to track revenue and expenditures associated to this specific CFDA # and project. Public Health will continue to look for additional funding to sustain ongoing opioid work that may, or may not, continue funding for the Project HOPE, specifically.

**Collaboration**

1. List County departments that will collaborate on this award, if any.

Health, Housing & Human Services and Sheriff

**Reporting Requirements**

1. What are the program reporting requirements for this grant?

Recipients typically must submit quarterly financial reports, semi-annual progress reports, final financial and progress reports, and, if applicable, an annual audit report in accordance with the Part 200 Uniform Requirements or specific award conditions. Future awards and fund drawdowns may be withheld if reports are delinquent. (In appropriate cases, OJP may require additional reports.)

Awards that exceed \$500,000 will include an additional condition that, under specific circumstances, will require the recipient to report (to FAPIIS) information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either the OJP award or any other grant, cooperative agreement, or procurement contract from the federal government. Additional information on this reporting requirement appears in the text of the award condition posted on the OJP web site at <http://ojp.gov/funding/FAPIIS.htm>.

2. What is the plan to evaluate grant performance? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

The grantor maintains an online performance measurement tool where project metrics will be submitted.

3. What are the fiscal reporting requirements for this grant?

See above

**Fiscal**

1. Will we realize more benefit than this grant will cost to administer?

Yes

2. What other revenue sources are required? Have they already been secured?

CGF to cover indirect costs calendar years 2020 through 2022 (CY 2020 \$14,527, CY 2021 \$154781, & CY 2022 \$16,494)

3. Is there a match requirement? If yes, how much and what type of funding (CGF, Inkind, Local Grant, etc.)?

None

4. Is this continuous or one-time funding? If one-time funding, how will program funding be sustained?

Funding is continuous for three calendar years (CY2020-2022), but should be considered one-time funding. Public Health will continue to seek additional funding for oversight and coordination efforts, but will look to partner agencies to dedicate funding to their perspective agencies at the end of CY2022.

5. Does this grant cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

We are not charging this Federal Grant Indirects because we a) do not have a federally approved indirect cost rate or b) eligible to use the "de minimis" indirect costs rate; awarding agency requires one of the two previous types of indirect charges if they are reimbursing. If awarded in FY19-20 we will re allocate budgeted CGF to cover indirect costs (savings from this grant funded FTE initially budget with CGF offset). The indirect costs calendar years 2020 through 2022 (CY 2020 \$14,527, CY 2021 \$154781, & CY 2022 \$16,494).

Program Approval:

---

Name (Typed/Printed)	Date	Signature
<b>** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR **</b>		

---



**Section IV: Approvals**

DIVISION DIRECTOR OR ASSISTANT DIRECTOR (or designee, if applicable)		
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR		
<i>R. Swift</i>	5.1.19	<i>Richard Swift</i>
Name (Typed/Printed)	Date	Signature

IF APPLICATION IS FOR FEDERAL FUNDS, PLEASE SEND COPY OF THIS DOCUMENT BY EMAIL TO FINANCE (FinanceGrants@clackamas.us). ROUTE ORIGINAL OR SCANNED VERSION TO COUNTY ADMIN.

**Section V: Board of County Commissioners/County Administration**

*(Required for all grant applications. All grant awards must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)*

**For applications less than \$150,000:**

COUNTY ADMINISTRATOR	Approved: <input type="checkbox"/>	Denied: <input type="checkbox"/>
Name (Typed/Printed)	Date	Signature

**For applications greater than \$150,000 or which otherwise require BCC approval:**

BCC Agenda item #:  Date:

OR

Policy Session Date:

County Administration Attestation

County Administration: re-route to department contact when fully approved.  
Department: keep original with your grant file.





**RANDALL A. HARMON**  
MANAGER

**TRANSPORTATION MAINTENANCE DIVISION**

**McCoy Building**

902 ABERNETHY ROAD | OREGON CITY, OR 97045

May 9, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

Execution of a Purchase and Sale Agreement to  
Acquire Property on Springwater Road

<b>Purpose/Outcomes</b>	To Execute a Purchase and Sale Agreement to acquire property on Springwater Road (tax lot 44E0901500) owned by Estacada Rural Fire District. Transportation Maintenance has utilized this property since 1988 as a stockpile site.
<b>Dollar Amount and Fiscal Impact</b>	The listing price is \$70,000 and funds are available through the Transportation Maintenance budget.
<b>Funding Source</b>	Transportation Maintenance budget, 215-7433
<b>Duration</b>	This is a one-time property purchase.
<b>Previous Board Action/Review</b>	A Board Order approving the resumption of the lease agreement between Estacada Rural Fire District and Clackamas County for the Springwater Stockpile Site #3005 was submitted February 20, 1997.
<b>Strategic Plan Alignment</b>	This project will provide strong infrastructure and ensure safe communities by maintaining the County's existing road infrastructure.
<b>County Counsel Review</b>	Reviewed and approved by Counsel on 5-1-19.
<b>Contact Person</b>	Randall A. Harmon, 503-650-3246

**BACKGROUND:**

The property on Springwater Road (tax lot 44E0901500) has been utilized by Transportation Maintenance since 1988 for stockpiling of road maintenance materials. The site was given a conditional use of aggregate stockpiling in an EFU zone back in 1988. This property is up for sale by the Estacada Rural Fire District, with a listing price of \$70,000.

Transportation Maintenance has found the Springwater Stockpile site to be centrally located for the spring, summer and fall work program in the Estacada area. Maintaining a stockpile site in this area reduces the cost of hauling material to the work sites by approximately 30%.

When the land came up for sale, the County's right-of-way agent reviewed land value and market information and determined that the listing price was reasonable and then proceeded to work with County Counsel to have a purchase and sale agreement drafted for this property.

**RECOMMENDATION:**

Staff respectfully recommends the Board execute the attached Purchase and Sale Agreement.

Sincerely,

Randall A. Harmon  
Transportation Maintenance Division

## PURCHASE AND SALE AGREEMENT

Date: May 9, 2019

Seller: Estacada Rural Fire District No. 69  
445 SE Currin Street  
Estacada, OR 97023

Buyer: Clackamas County  
Attn: Department of Transportation and Development  
150 Beaver Creek Road  
Oregon City, OR 97045

In consideration of the mutual promises contained herein, the Seller and Buyer agree as follows:

### 1. Description of Property

Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the certain land and any improvements thereon, together with all water rights, if any, located near the city of Estacada, in Clackamas County, Oregon, which Property is commonly known as tax lot 1500 on Clackamas County Tax Assessor Map #44E09, and is more particularly described in **Exhibit "A"** and depicted in **Exhibit "B,"** both of which are attached hereto and incorporated by this reference herein (the "**Property**")

Any personal property left on the premises at the time of closing shall, including but not limited to aggregate materials, at the option of Buyer, become the Property of Buyer or Buyer may require Seller to remove it at Seller's expense.

### 2. Purchase Price

The purchase price which Buyer agrees to pay for the Property is the sum of Seventy Thousand Dollars (\$70,000).

### 3. Payment of the Purchase Price

Buyer shall pay the purchase price in cash or immediately available funds at closing.

### 4. Escrow Closing

The parties shall open an escrow at mutually agreed upon title company (the "**Title Company**") immediately upon signing this Agreement. Time is of the essence. Closing shall occur at such escrow on or before June 30, 2019. Seller and Buyer shall each pay one-half of the escrow fees. Those closing costs normally allocated to a party such as release or recording fees, and similar such costs shall be allocated to the parties accordingly.

### 5. Possession

Buyer shall be entitled to possession on the closing date.

## **6. Preliminary Title Report**

Buyer shall order, at Seller's expense, a preliminary title report through the Title Company showing the condition of title to the Property, and Seller shall furnish Buyer with a copy of the preliminary title report and copies of all exceptions.

Buyer shall have fifteen (15) days after receipt of the preliminary report within which to notify Seller and the Title Company in writing of Buyer's disapproval of any exceptions shown in the preliminary report. In the event of disapproval of any exceptions, Seller shall have ten (10) days to attempt to eliminate any disapproved exceptions, except standard exceptions encumbrances cleared by closing. If not eliminated by closing, the escrow and this Agreement shall be terminated unless Buyer then elects to waive Buyer's prior disapproval. Failure of Buyer to disapprove any exceptions within fifteen (15) days after Buyer's receipt of the preliminary report shall be deemed an approval of the preliminary report.

## **7. Title Insurance Policy**

Promptly after closing, Seller shall furnish to Buyer, at Seller's expense, a standard owner's policy of title insurance, together with all endorsements required by Buyer insuring condition of title to the Property, for the amount of the purchase price, free and clear of all encumbrances, except the exceptions contained in the preliminary report which have been accepted, deemed accepted, or waived by Buyer pursuant to Section 6 above. Buyer shall be responsible for any additional premiums for an extended coverage title insurance policy.

## **8. Prorates**

The real, and any personal, property taxes and assessments will be prorated as of closing. If the Closing occurs before the tax rate is fixed for the then current tax year, the apportionment of taxes shall be made on the basis of the tax rate for the preceding tax year applied to the latest assessed valuation of the Property, and when the tax rate is fixed for the tax year in which the Closing occurs, Seller and Buyer shall adjust the proration of taxes and, if necessary, shall refund or pay such sums to the other party as shall be necessary to effect such adjustment.

The Seller shall cause to be paid all utility charges through the closing date.

## **9. Deed**

Upon payment in full of the purchase price at closing, Seller shall deliver to Buyer at closing a Statutory Warranty Deed conveying the Property to Buyer free and clear of all encumbrances, except those referred to above. Buyer does not agree to assume any obligations or liens of Seller's.

## **10. Due Diligence**

Buyer shall have a period of forty five (45) days after the effective date of this Agreement (the "**Due Diligence Period**") to conduct its due diligence investigation of the Property and to satisfy itself concerning all aspects of the Property and the suitability of the Property for Buyer's intended uses, including without limitation the physical condition of the Property, the amount of land available to support Buyer's intended use, zoning, access, and utilities. During the period from the effective date of this Agreement until the earlier of closing or termination of this Agreement, Buyer and its employees, agents, consultants, contractors, prospective tenants or

purchasers, and lenders may enter the Property to perform such tests, inspections and studies as Buyer may deem necessary, including without limitation environmental assessments. Buyer hereby indemnifies and holds Seller, and their elected officials, officers, agents and employees harmless from any injury or damages arising out of any activity of Buyer, its agents, employees and contractors performed and conducted on the Property for the purposes of completing its due diligence. Due diligence may include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. Buyer shall restore the Property to its pre-examination state after conducting such due diligence at its own expense, except that the test pits need only be backfilled with clean available fill and compacted with the bucket of a backhoe. On or before expiration of the Due Diligence Period, Buyer at its option and in its sole and absolute discretion may provide Seller with a notice approving its due diligence investigation of the Property and electing to proceed with acquisition of the Property as provided herein (the "**Approval Notice**"). Alternatively, Buyer at its option and in its sole and absolute discretion may provide notice to Seller of its election to terminate this Agreement prior to the expiration of the Due Diligence Period. If Buyer fails to provide either the Approval Notice or a termination notice prior to expiration of the Due Diligence Period, Buyer shall be deemed to have elected to proceed with this Agreement as if an Approval Notice were given to Seller prior to expiration of the Due Diligence Period. Where Buyer elects to terminate this Agreement, except as otherwise expressly provided herein, neither party shall have any further rights, duties or obligations hereunder.

## **11. Conditions**

The following shall be conditions precedent to Buyer's obligation to perform hereunder and they may be waived in whole or in part only by Buyer.

### **11.1 Due Diligence**

Buyer providing the Approval Notice described in Section 10.

### **11.2 Agreements**

Buyer reviewing and approving all leases, management and service contracts, within 45 days after Seller has signed this Agreement.

### **11.3 Estoppel Certificates**

Buyer obtaining within 45 days after Seller signs this Agreement, estoppel certificates and subordination agreements from any tenants on the Property. Such certificates and agreements shall be prepared by Buyer, at Buyer's expense.

### **11.4 Records**

Buyer's review, to Buyer's satisfaction, within 45 days after Seller signs this Agreement the historical financial records of the Property, including, but not limited to, maintenance and repair records, property tax records, utility cost records, operating statements, profit and loss statements, projected budgets, and all other permits and licenses relating to the Property.

### **11.5 Seller Performance**

Performance by Seller, by the closing date unless an earlier time is stated herein, of all the agreements, terms and conditions of this Agreement to be performed by Seller.

### **11.6 Property Condition**

That there is no change in the condition or legal requirements of the Property, whether directly or indirectly, including any dumping of refuse or environmental contamination, after the effective date of this Agreement, and that no legal action or proceeding (including condemnation) affecting the Property or the Buyer's intended use thereof shall have been threatened or commenced.

### **11.7 Title Commitment**

That the Title Company shall be irrevocably committed to issue an owner's title insurance policy insuring that fee simple title is vested in Buyer as of the closing date, in the amount of the purchase price, subject only to the permitted exceptions.

### **11.8 Representations**

The representations made by Seller in this Agreement being true and correct as of the date of closing.

## **12. Required Statutory Notice**

The following is the notice as required by Oregon law: "THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. 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. 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 VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES 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."

## **13. Hazardous Waste**

Seller represents and warrants that the Property has never been used to generate, manufacture, transport, store or dispose of any hazardous substance; that no leak, spill or discharge of a hazardous substance has occurred on, in or under the Property or the ground



waters thereof and that the soil, ground water and soil vapor on, in or under the Property is free of hazardous substances; that there are no potentially hazardous environmental conditions on the Property; and that the Property has not been identified by any governmental agency as the site upon which or potentially upon which hazardous substances may have been located or deposited.

Seller indemnifies and holds Buyer harmless from any and all claims, penalties, fines, costs or liabilities, including, but not limited to, cleanup, remedial action or restoration work, including attorney and expert fees, related in any way to the presence or suspected presence of hazardous waste in the soil, ground water or soil vapor on, in or under the Property, except for any hazardous substance generated on the Property after the date hereof.

These representations and warranties shall survive the closing of this transaction and the delivery of the deed called for herein.

**“Hazardous substance”** is used in this Agreement in its broadest sense to include all hazardous, toxic or contaminating substances, including petroleum products, radon, asbestos, or similar materials which are now or in the future may be regulated by any environmental law.

**“Environmental law”** shall be interpreted broadly to include any present or future local, municipal, state or federal law, order, rule or regulation relating to environmental protection or pollution control.

#### **14. Representations**

Seller represents as follows:

##### **14.1 Property Condition**

The Property and the yard will be in substantially its present condition.

##### **14.2 Litigation**

As of the date of closing, there are no pending or threatened litigations, condemnation proceedings or annexation proceedings affecting the Property.

##### **14.3 Violations**

As of the date of closing, Seller has not received notice pertaining to the violation of any law, statute, ordinance, rule or regulation or deed restriction affecting the Property, and the Seller has no knowledge of any facts which might be a basis for any such notice.

##### **14.4 Liens**

As of the date of closing, Seller has no notice of any liens to be assessed against the Property.

##### **14.5 Defects**

The Property is free from material fault or defect.

#### **14.6 Leases**

Any leases affecting the Property are in full force and effect with no default or alleged default by either landlord or tenant.

#### **14.7 Records**

All books, records, documents and information to be provided by Seller to Buyer in connection with this transaction will be complete, true and accurate at the time they are delivered to the Buyer and as of the date of closing.

#### **14.8 Property Maintenance**

Seller represents that it will operate and maintain the Property in a good state of repair until this transaction is closed or escrow is terminated, whichever occurs earlier. Seller will not enter into additional leases, rental agreements, or other contracts or agreements affecting the Property without the Buyer's prior written consent.

#### **14.9 Encroachments**

There are no encroachments or any persons adversely possessing any portion of the Property or any rights-of-way thereover, and no licenses have been granted by Seller. Buyer has the right to rely on any boundaries or rights-of-way identified by Seller or Seller's agents.

#### **14.10 Authority**

Seller has been duly organized and is validly existing as a public entity, in good standing in the State of Oregon. Seller has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate the transactions contemplated hereby.

#### **14.11 Realtor**

Seller is represented by all real estate sales agents involved in this transaction and as such they are Seller's agents in fact. All representations and warranties of such agents are deemed to be those of Seller. The representations in this Section are intended to survive the closing of this transaction and the delivery of the deed called for herein.

### **15. Time of Essence**

Time is of the essence of the payment and performance of each of the obligations under this Agreement.

### **16. Remedies**

In the event the conditions precedent to Buyer's obligations have occurred, and Buyer fails to close the sale through no fault of Seller, then Seller as to its sole remedy may require Buyer to pay any escrow and title insurance charges.

If the transaction fails to close because the conditions precedent to Buyer's obligations have not occurred, or if Seller's title is not marketable, then Buyer may terminate this Agreement, which then shall be of no further force or effect.

In the event the conditions precedent to Seller's obligation to perform have occurred, and Seller, through no fault of Buyer, fails to close this transaction, then the Seller shall pay any escrow and title insurance charges. However, Seller's payment of any escrow and title insurance charges does not constitute a waiver of other remedies available in law or equity to Buyer.

#### **17. Foreign Investment in Real Property Tax Act**

The Foreign Investment in Real Property Tax Act (FIRPTA), IRC §1445, requires every person who purchases U.S. real property from a foreign person to deduct and withhold from the Seller's proceeds, ten percent (10%) of the gross sales price with certain exceptions. Seller and Buyer agree to execute and deliver as appropriate, any instrument, affidavit or statement, and to perform any acts reasonably necessary to carry out the provisions of FIRPTA.

#### **18. Damage or Destruction; Condemnation**

Until closing, the risk of loss shall be retained by Seller. Seller shall keep the Property fully insured until closing. In the event all or any material portion of the Property is damaged, destroyed, or condemned or threatened with condemnation prior to the close of escrow, Buyer may terminate this Agreement. In such event, escrow will be terminated, and this Agreement shall have no further force or effect whatsoever. If a nonmaterial portion of the Property is destroyed or condemned, Buyer may elect to terminate this Agreement or to close this transaction as provided for herein, including payment to the Seller of the purchase money required. In such event, the Buyer shall be credited with all insurance proceeds or condemnation proceeds payable to or for the account of Seller.

#### **19. Applicable Law**

The law of the State of Oregon shall govern the interpretation and enforcement of this Agreement without giving effect to the conflicts of law provision thereof.

#### **20. Nonliability of Officials and Employees**

No member, shareholder, director, officer, elected official, employee, affiliate, agent or representative 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.

## **21. Merger**

None of the provisions of this Agreement are intended to or shall be merged by reason of any deed referred to herein and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

## **22. 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.

## **23. 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.

## **24. No Partnership**

Neither anything in this Agreement or the documents delivered in connection herewith 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, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

## **25. Nonwaiver of Government Rights**

Subject to the terms and conditions of this Agreement, by making this Agreement, the Buyer is specifically not obligating itself, the County, or any other agency with respect to any discretionary governmental 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.

## **26. Entire Agreement; Waivers**

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all prior negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in a writing signed by the appropriate authorities of the Buyer and the Seller, and all amendments thereto must be in a writing signed by the appropriate authorities by the Buyer and the Seller.

## **27. Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

## **28. 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 a waiver of the provision itself or any other provision.

**29. Weekends and Holidays**

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

**30. Rule of Construction**

Any rule of construction interpreting this instrument against its drafter shall be inapplicable.

**31. Exhibits**

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

**32. Binding Effect/Assignment**

This Agreement is binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives and assigns.

**33. 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.

**34. Governing Law and Venue**

The parties hereby submit to jurisdiction in Clackamas County, Oregon and agree that any and all disputes arising out of or related to this Agreement shall be litigated exclusively in the Circuit Court for Clackamas County, Oregon and in no federal court or court of another county or state. Each party to this Agreement further agrees that pursuant to such litigation, the party and the party's officers, employees, and other agents shall appear, at that party's expense, for deposition in Clackamas County, Oregon.

/////

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

**"SELLER"**

Estacada Rural Fire District No. 69

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2019

**"BUYER"**

CLACKAMAS COUNTY, a corporate body politic

By: \_\_\_\_\_  
Chair

Date: \_\_\_\_\_, 2019

**LIST OF EXHIBITS**

EXHIBIT A	Legal Description - Property
EXHIBIT B	Property Map

## **Exhibit A**

A parcel of land lying in the NW  $\frac{1}{4}$  of Section 9, Township 4 South, Range 4 East, W.M., Clackamas County, Oregon, and being that property conveyed by that deed to the State of Oregon, by and through its State Highway Commission, recorded in book 269, page 142 of the Clackamas County Record of Deeds.

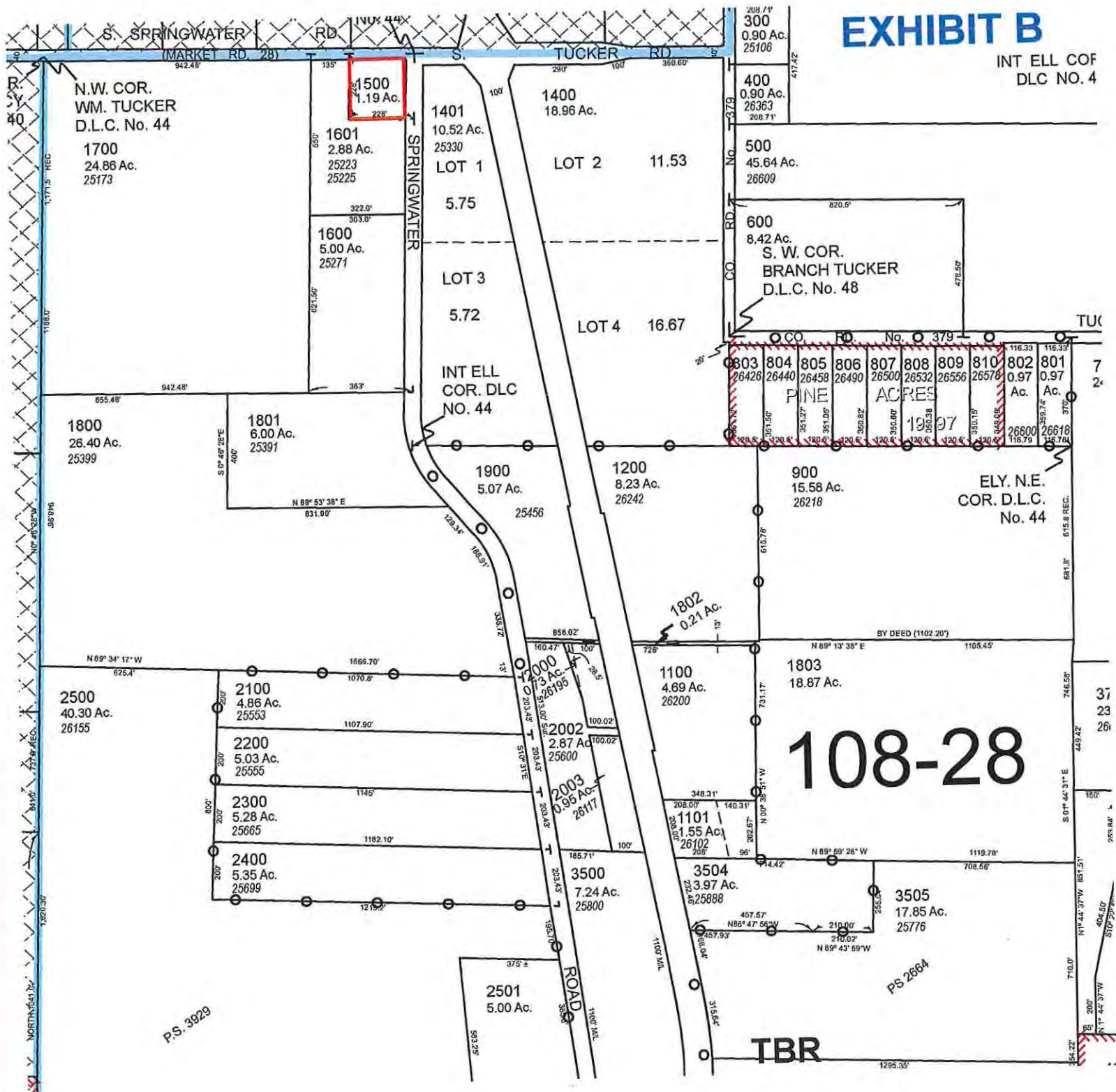
The parcel of land to which this description applies contains 1.0 acres, more or less, outside of the existing right of way.



**Exhibit B**

# EXHIBIT B

INT ELL COF  
DLC NO. 4



1500  
1.19 Ac.

1401  
10.52 Ac.  
25330

1400  
18.96 Ac.

300  
0.90 Ac.  
25106

400  
0.90 Ac.  
26363

500  
45.64 Ac.  
26609

600  
8.42 Ac.  
S. W. COR.  
BRANCH TUCKER  
D.L.C. No. 48

803 804 805 806 807 808 809 810  
26426 26440 26458 26490 26500 26532 26556 26578  
PINE ACRES  
1997

INT ELL  
COR. DLC  
NO. 44

1801  
6.00 Ac.  
25391

1900  
5.07 Ac.  
25456

1200  
8.23 Ac.  
26242

900  
15.58 Ac.  
26218

ELY. N.E.  
COR. D.L.C.  
No. 44

1802  
0.21 Ac.

1100  
4.69 Ac.  
26200

1803  
18.87 Ac.

2100  
4.86 Ac.  
25553

2200  
5.03 Ac.  
25555

2300  
5.28 Ac.  
25665

2400  
5.35 Ac.  
25699

2500  
40.30 Ac.  
26155

2002  
2.87 Ac.  
25800

2003  
0.95 Ac.  
26117

1101  
1.55 Ac.  
26102

3504  
3.97 Ac.  
25888

3505  
17.85 Ac.  
25776

2501  
5.00 Ac.

# 108-28

TBR

PS 2664

PS 3929

MORTGAGE REC. 12201.37'

MORTGAGE REC. 615.8 REC. 681.3'

DRAFT

Approval of Previous Business Meeting Minutes:

April 4, 2019

## **BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES**

*A complete video copy and packet including staff reports of this meeting can be viewed at*

<http://www.clackamas.us/bcc/business.html>

**Thursday, April 4, 2019 – 10:00 AM**

**Public Services Building**

**2051 Kaen Rd., Oregon City, OR 97045**

**PRESENT:** Commissioner Sonya Fischer, Serving as Chair  
Commissioner Ken Humberston  
Commissioner Martha Schrader  
Housing Authority Commissioner Paul Reynolds

**EXCUSED:** Commissioner Jim Bernard, Chair  
Commissioner Paul Savas

### **CALL TO ORDER**

■ Roll Call

Chair Bernard and Commissioner Savas are out of the office and will not be in attendance today, Commissioner Fischer will serve as Chair for this meeting.

■ Pledge of Allegiance

Chair Fischer announced the Board will recess as the Board of County Commissioners and convene as the Housing Authority Board for the next item, he introduced Housing Authority Commissioner Paul Reynolds.

### **I. HOUSING AUTHORITY CONSENT AGENDA**

Chair Fischer asked the Clerk to read the Housing Authority consent agenda by title, then asked for a motion.

1. Approval of Resolution No. 1937: Housing Authority Annual Plan 2019-2020

#### **MOTION:**

Commissioner Reynolds: I move we approve the Housing Authority consent agenda.

Commissioner Humberston: Second.

all those in favor/opposed:

Commissioner Reynolds: Aye.

Commissioner Humberston: Aye.

Commissioner Schrader: Aye.

Chair Fischer: Aye – the Ayes have it, the motion carries 4-0.

Chair Fischer announced the Board will Adjourn as the Housing Authority Board and Reconvene as the Board of County Commissioners for the remainder of the meeting.

### **II. PRESENTATION**

1. Proclaiming April as Child Abuse Prevention Month

Rod Cook, Children, Families & Community Connections presented the staff report. Rod introduced the following people who spoke in support of this proclamation.

- Beth Kersens, Healthy Families of Clackamas County
- Ian Friedrich, Family Stepping Stones Relief Nursery
- Tom Soma, Children's Center
- John Foote, Clackamas County District Attorney
- Lt. Mike Copenhaver, Family Justice Center

*~Board Discussion~*

Rod Cook announced there are several events during the month of April and directed folks to the County web page at [www.clackamas.us](http://www.clackamas.us) read the proclamation.

**MOTION:**

Commissioner Schrader: I move we proclaim April as Child Abuse Prevention Month in Clackamas County.

Commissioner Humberston: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.

Commissioner Schrader: Aye.

Chair Fischer: Aye – the Ayes have it, the motion carries 3-0.

2. Proclaiming April 2019 as Grange Month in Clackamas County

Commissioner Ken Humberston introduced Ed Luttrell, Pomona Grange President and Don Kingsborough, Oregon State Granges – they both spoke of the importance of granges in our communities and the history of granges. Mr. Kingsborough also spoke about legislative activities in Salem.

Commissioner Humberston read the proclamation.

**MOTION:**

Commissioner Humberston: I move we proclaim April as Grange Month in Clackamas County.

Commissioner Schrader: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.

Commissioner Schrader: Aye.

Chair Fischer: Aye – the Ayes have it, the motion carries 3-0.

**III. CITIZEN COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

1. Les Poole, Gladstone – evening meetings, budget, CRC, issues in Salem, transportation issue.
2. Brainard Brauer, Oregon City – traffic safety on Redland Road.
3. Katie Farrell, Wilsonville – restoring embankments on the Willamette River due to wave vehicles damage.

*~Board Discussion~*

**IV. PUBLIC HEARINGS**

1. **Board Order No. 2019-33** for Boundary Change Proposal CL 17-015 Annexation to Tri-City Service District

Ken Martin, Boundary Change Consultant, presented the staff report.

Chair Fischer opened the public hearing and asked if anyone wished to speak, seeing none she closed the public hearings and asked for a motion.

**MOTION:**

Commissioner Humberston: I move we approve the Board Order for Boundary Change Proposal CL 17-015 Annexation to Tri-City Service District.

Commissioner Schrader: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.

Commissioner Schrader: Aye.

Chair Fischer: Aye – the Ayes have it, the motion carries 3-0.

2. **Board Order No. 2019-34** for Boundary Change Proposal CL 17-018 Annexation to Sunrise Water Authority

Ken Martin, Boundary Change Consultant, presented the staff report.

Chair Fischer opened the public hearing and asked if anyone wished to speak, seeing none she closed the public hearings and asked for a motion.

**MOTION:**

Commissioner Humberston: I move we approve the Board Order for Boundary Change Proposal CL 17-018 Annexation to Sunrise Water Authority.

Commissioner Schrader: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 3-0.

3. **Board Order No. 2019-35** for Boundary Change Proposal CL 18-013 Annexation to Clackamas County Service District No. 1

Ken Martin, Boundary Change Consultant, presented the staff report.

Chair Fischer opened the public hearing and asked if anyone wished to speak, seeing none she closed the public hearings and asked for a motion.

**MOTION:**

Commissioner Humberston: I move we approve the Board Order for Boundary Change Proposal CL 18-013 Annexation to Clackamas County Service District No. 1.

Commissioner Schrader: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 3-0.

4. **Board Order No. 2019-36** for Boundary Change Proposal CL 18-014 Annexation to Clackamas River Water

Ken Martin, Boundary Change Consultant, presented the staff report.

Chair Fischer opened the public hearing and asked if anyone wished to speak, seeing none she closed the public hearings and asked for a motion.

**MOTION:**

Commissioner Humberston: I move we approve the Board Order for Boundary Change Proposal CL 18-014 Annexation to Clackamas River Water.

Commissioner Schrader: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 3-0

**V. BOARD DISCUSSION ITEMS**

**Disaster Management**

1. **Resolution No. 2019-37** Adopting the Updates to the 2019 Clackamas County Multi-Jurisdictional Natural Hazards Mitigation Plan

Nancy Bush, Disaster Management presented the staff report. She also read the resolution.

~Board Discussion~

**MOTION:**

Commissioner Humberston: I move we approve the Resolution Adopting the Updates to the 2019 Clackamas County Multi-Jurisdictional Natural Hazards Mitigation Plan.  
Commissioner Schrader: Second.

~Board Discussion~

all those in favor/opposed:  
Commissioner Humberston: Aye.  
Commissioner Savas: Aye.  
Commissioner Schrader: Aye.  
Chair Bernard: Aye – the Ayes have it, the motion carries 3-0

**VI. CONSENT AGENDA**

Chair Fischer asked the Clerk to read the consent agenda by title, then asked for a motion.

**MOTION:**

Commissioner Humberston: I move we approve the consent agenda.  
Commissioner Schrader: Second.  
all those in favor/opposed:  
Commissioner Humberston: Aye.  
Commissioner Schrader: Aye.  
Chair Fischer: Aye – the Ayes have it, the motion carries 3-0.

**A. Health, Housing & Human Services**

1. Authorization to Sign Grant Award Documents from the US Department of Housing & Urban Development for 2019-2020 Continuum of Care Program Funding – *Housing & Community Development*

**B. Department of Transportation & Development**

1. Approval of an Intergovernmental Agreement with the City of Tualatin regarding a transfer of a portion of Borland Road
2. Approval of a Contract with D&D Concrete and Utilities, Inc. for the Torbank (River Road-Trolley Trail) Sidewalks Project – *Procurement*

**C. Elected Officials**

1. Approval of Personal Services Contract Amendment No. 1 with U.S. Bank to Provide Banking Services – *County Treasurer via Procurement*
2. Request by the Clackamas County Sheriff's Office to enter into an Intergovernmental Agreement with Oregon Department of Human Services for Funding to Conduct a Child Abuse & Family Violence Training – *Sheriff's Office*

**D. Technology Services**

1. Approval for a Service Level Agreement with Oregon City School District for the lease of Dark Fiber

**VII. DEVELOPMENT AGENCY**

1. Approval of an Intergovernmental Agreement for Right-of-Way Services with the Oregon Department of Transportation for the CRC Mobility Improvement Project



2. Execution of a Property Line Adjustment Deed with Pat Murphy and Dyan Murphy to Adjust Approximately 0.145 Acres on Property Located on Capps Rd. West of SE 120<sup>th</sup> Ave.
3. Execution of a Property Line Adjustment Deed with Pat Murphy and Dyan Murphy to Adjust Approximately 0.014 Acres on Property Located on Capps Rd. West of SE 120<sup>th</sup> Ave.
4. Acceptance of a Quitclaim Deed from Pat Murphy and Dyan Murphy Related to Property Located on Capps Road West of SE 120th Ave.

**VIII. COUNTY ADMINISTRATOR UPDATE**

<http://www.clackamas.us/bcc/business.html>

**IX. COMMISSIONERS COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

**MEETING ADJOURNED 11:30 AM**



# Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

May 9, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

Request by the Clackamas County Sheriff's Office to enter into an Intergovernmental Agreement with North Clackamas School District for School Resource Officers in the 2018-19 School Year

<b>Purpose/Outcome</b>	The Sheriff's Office will provide two Sheriff's Deputies to serve as School Resource Officers during the 2018-19 school year.
<b>Dollar Amount and Fiscal Impact</b>	The total billable amount under this agreement is \$230,898. Law enforcement activities will be billed at an hourly rate.
<b>Funding Source</b>	The North Clackamas School District is the source of funds for this agreement as billed by the Clackamas County Sheriff's Office.
<b>Safety Impact</b>	This agreement provides for the presence of one School Resource Officer at both Clackamas and Rex Putnam High Schools.
<b>Duration</b>	The agreement encompasses the school year beginning September 4, 2018 through June 18, 2019.
<b>Previous Board Action/Review</b>	The Board has approved the same request for several fiscal years
<b>Contact Person</b>	Nancy Artmann, Finance Manager – Office (503) 785-5012
<b>Contract No.</b>	None


**BACKGROUND:**

The Sheriff's Office will provide two Sheriff's Deputies to serve as School Resource Officers during the 2018-19 school year. This is a continuation of an existing agreement between Clackamas County and the North Clackamas School District. Both Clackamas and Rex Putnam High Schools will be assigned one School Resource Officer. This agreement reimburses the Sheriff's Office for the cost of the Deputies. Language is included prior to the signature lines of the agreement that indicates both parties acknowledge school resource officer services were performed prior to the execution of the agreement. Both parties agree that all services provided from September 4, 2018 through the execution of this document are bound by the terms of the agreement. County Counsel has reviewed and approved this agreement.

**RECOMMENDATION:**

Staff recommends the Board approve and sign this cooperative intergovernmental agreement and authorizes Craig Roberts, Sheriff, or his designee, to sign on behalf of Clackamas County.

Respectfully submitted,

  
Craig Roberts  
Sheriff

*"Working Together to Make a Difference"*

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
CLACKAMAS COUNTY  
AND THE  
NORTH CLACKAMAS SCHOOL DISTRICT  
FOR  
SCHOOL RESOURCE OFFICERS**

**I. Purpose**

This agreement is entered into between Clackamas County (COUNTY) through the Clackamas County Sheriff's Office and the North Clackamas School District (NCSD) for the cooperation of units of local government under the authority of ORS 190.010. This agreement provides the basis for a cooperative relationship for the purpose of the COUNTY providing to NCSD, two Deputy Sheriffs to act as School Resource Officers as described in "Attachment A" to this agreement.

**II. Scope of Service**

- A. The COUNTY agrees to provide two Deputy Sheriffs beginning September 4, 2018 through June 14, 2019 to serve as School Resource Officers (SROs). The scope of service is detailed in "Attachment A" to this agreement. *18 pgm*
- B. NCSD agrees at their expense to provide the COUNTY office space and equipment at Rex Putnam and Clackamas High Schools where the SRO will be assigned.

**III. Personnel**

- A. The COUNTY agrees to provide two Deputy Sheriffs on a full-time basis. However, in the event of an emergency situation determined by the Sheriff, the Sheriff may rely upon the SROs as a resource to respond to an emergency; compensation under this agreement shall not be affected. In such an event the Liaison for NCSD will be notified and informed of the SRO leaving the school campus.
- B. Supervision and training of SRO personnel will be the responsibility of the COUNTY.

**IV. Compensation**

NCSD will pay the COUNTY compensation as described in "Attachment A" for the contract year. The COUNTY agrees to bill NCSD quarterly. NCSD agrees to pay within 30 days of the receipt of the COUNTY'S invoice.

**V. Liaison Responsibility**

A Clackamas County Patrol Division Lieutenant will act as liaison for the COUNTY on issues relating to supervision, scheduling, and SRO responsibilities; an Undersheriff will act as liaison on all other matters relating to this Agreement. The North Clackamas School District Superintendent or a designee will act as liaison for NCSD.

**VI. Liability**

- A. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, the COUNTY shall indemnify, defend and hold harmless NCSD, its officers, employees and agents from all claims, suits, actions or expenses of any nature resulting from or arising out of the acts, errors, omissions or negligence of COUNTY personnel acting pursuant to this agreement.
- B. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, NCSD shall indemnify, defend and hold harmless the COUNTY, its officers, employees and agents from all claims, suits, actions or expenses of any nature resulting from or arising out of the acts, errors, omissions or negligence of NCSD personnel acting pursuant to this agreement.

**VII. 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 conflict with law, are deemed inoperative to that extent.

**VIII. Termination - Amendment**

- A. This agreement may be terminated by either party upon thirty (30) days written notice to the other.
- B. This agreement and any amendments to it will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County.
- C. This agreement supersedes and cancels any prior agreements between the parties hereto for similar services.

**IX. Term of Agreement**

The parties acknowledge services were performed prior to execution of this Agreement. The parties hereby approve and ratify those services performed on or after September 4, 2018, and agree to perform and be bound by the terms, conditions, and scope of this Agreement as to all such work.

By their signatures below, the parties to this agreement agree to the terms, conditions, and content expressed herein.

**CLACKAMAS COUNTY**

\_\_\_\_\_  
Jim Bernard, Chair  
Board of County Commissioners

Date:

*Craig Roberts*

\_\_\_\_\_  
Sheriff Craig Roberts

Date: 5/1/2019

*Scott Cieccko via e-mail*

Approved as to form by County Counsel

Date: 3/7/19

**NORTH CLACKAMAS SCHOOL DISTRICT**

*KJM*

\_\_\_\_\_  
Kerensa Mauck

Director of Business Services

Date: 4/30/19



**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
CLACKAMAS COUNTY  
AND THE  
NORTH CLACKAMAS SCHOOL DISTRICT  
FOR  
SCHOOL RESOURCE OFFICERS**

**"ATTACHMENT A"**

**SCOPE OF WORK / SCHOOL RESOURCE OFFICERS**

The duty of a School Resource Officer may include the following:

The investigation and documentation of criminal activity at the schools; help provide a safe environment for students, staff, and parents on school property; work with administrators and staff on issues surrounding school safety and protection of the students and staff on campus; monitor and enforce traffic related matters in and around the school property; when authorized work with school staff in the enforcement of District and school policy; assist school staff in any emergency or disaster related events on school property; assist in reporting and investigating incidents that may have occurred off campus but are reported at the school; work with staff to provide information about law enforcement related topics and upon request act as a resource for teachers.

**Salary Formula per Deputy Sheriff:**

\$79.62 (hourly rate) X 10 hours per day X 145 school days= \$115,449  
(This is a 0.0% hourly rate increase over the 2017-2018 school year)

**Cost:**

1 Deputy Sheriff position at Clackamas High School / 145 days:	<b>\$115,449</b>
1 Deputy Sheriff position at Rex Putnam High School / 145 days:	<b><u>\$115,449</u></b>
<b>Total:</b>	<b>\$230,898</b>

*(Costs to be reconciled by actual hours worked)*

## Artmann, Nancy

---

**From:** Ciecko, Scott  
**Sent:** Thursday, March 07, 2019 10:24 AM  
**To:** Artmann, Nancy  
**Cc:** Smith, Jeff (CCSO Capt.); Kollias, Anthony; Naylor, Andrew  
**Subject:** RE: SRO Contract

Nancy – before we can send this to the BCC for signature we will want to change the last paragraph that talks about the term/effective date of the agreement. It is clear that the agreement contemplates served performed since last September, but then the language indicates that the agreement is effective upon signatures of both parties. That language needs to be changed to clarify that, once the agreement is signed by both parties, it becomes effective retroactively to September 4, 2018. Here is some suggested language:

“The parties acknowledge services were performed prior to execution of this Agreement. The parties hereby approve and ratify those services performed on or after September 4, 2018, and agree to perform and be bound by the terms, conditions, and scope of this Agreement as to all such work.”

One last note, I'm copying Andre Naylor on this email. He is another attorney in this office and he is really our contracting expert. We think it is going to make sense to involve him in SO contracts/agreements/IGAs going forward as he advises other County departments and we are trying to move towards uniform documentation of contracts County wide. I'm of course still happy to consult on contracts and can advise from a liability/risk perspective, but from a drafting and language standpoint, Andrew is the best resource.

Scott

**From:** Artmann, Nancy <nartmann@co.clackamas.or.us>  
**Sent:** Wednesday, March 6, 2019 4:33 PM  
**To:** Ciecko, Scott <SCiecko@co.clackamas.or.us>  
**Cc:** Smith, Jeff (CCSO Capt.) <jeffsmi@co.clackamas.or.us>; Kollias, Anthony <anthonykol@co.clackamas.or.us>  
**Subject:** FW: SRO Contract

Hi Scott,

I hope your week is going well. The School Resource Officer agreement has been bouncing around since the beginning of the school year. In order to get something in place sooner rather than later, both parties have agreed to stick with the current template. CCSO and NCSO will sit down this summer to look over revisions that will be acceptable to all involved. For the time being, will you please review the attached and sign-off as to the form? It is the same as the past several school years. Please either scan or interoffice a copy of the signature page to me so that I can prepare a memo and send things over to the BCC to get this on the Board's consent agenda.

Thanks much!  
Nancy

**Nancy Artmann | Finance Manager**  
**Clackamas County Sheriff's Office**  
Desk: (503) 785-5012 | Fax: (503) 785-5027  
Mail: 2223 Kaen Rd, Oregon City, OR 97045





Tim Heider  
Interim Director

Public and Government Affairs  
Public Services Building  
2051 Kaen Road, Oregon City, OR 97045

May 9, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Agreement between Clackamas County and CTV Channel 5 (CTV5), a Public Access Center in Canby**

<b>Purpose/Outcome</b>	Agreement to provide capital funding for CTV5 Public Access Center.
<b>Dollar Amount and Fiscal Impact</b>	There is no financial impact to the general fund. Annual funding is determined by the amount of Public, Educational, and Government (PEG) funds collected from cable franchises in the County.
<b>Funding Source</b>	PEG funds are negotiated with cable franchisees as a pass-through cost from cable television subscribers and are dedicated for use by PEG Access Centers for capital equipment and facilities for programming and broadcast of their access channel.
<b>Duration</b>	Effective the date signed by the Board of County Commissioners, and automatically renews yearly unless terminated by either party.
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	Build public trust through good government.
<b>Counsel Review</b>	Yes
<b>Contact Person</b>	Tim Heider, Interim Director, Public & Government Affairs, 503.742.5911

**BACKGROUND:**

CTV5, a non-profit corporation, was established in 1984. It is a community access channel in Canby that provides free access to production equipment for the community to create and share their own non-commercial video programming.

CTV5 provides production training to residents in the Canby-area and in unincorporated Clackamas County through a partnership with the Willamette Falls Media Center.

Clackamas County receives PEG access programming through many of the franchise agreements with cable providers in unincorporated Clackamas County. These funds are received from cable franchisees as a pass-through from cable television subscribers in an amount approved through the Clackamas County Public & Government Affairs annual budget process.

This Agreement will provide for the award of PEG funds from the county to CTV5. The funds are to be used for the purpose of procuring equipment and facilities for production and cablecasting of the CTV5 community access television channel. If County does not receive sufficient PEG funds to pay CTV5's annual budgeted request, CTV5 shall be promptly notified that the funds may be reduced or eliminated in accordance with available funding.

County will disburse the PEG funding upon submittal of appropriate documentation. CTV5 will obtain price quotes for capital equipment and facility purchase using purchasing methods in compliance with Oregon law. This Agreement will become effective when it is signed by both parties and may be amended at any time with the concurrence of both parties.

**RECOMMENDATION:**

Staff respectfully recommends that the Board approve and sign this agreement between Clackamas County and CTV5, a Public Access Center in Canby.

Respectfully submitted,

Tim Heider, Interim Director  
Public and Government Affairs

**AGREEMENT BETWEEN CLACKAMAS COUNTY  
AND  
CTV CHANNEL 5**

**I. Purpose**

- A. This Agreement is entered into between Clackamas County (County), a political subdivision of the State of Oregon, and CTV Channel 5 (CTV5), a non-profit entity.
  
- B. This Agreement provides the basis for citizens residing anywhere in Clackamas County to use the facilities of CTV5 for the purpose of production and cablecasting of public-access television programs. It also provides for reimbursement by County to CTV5 of CTV5's capital cost for construction of cable access facilities and to assist CTV5 with the production and cablecasting of public, educational and government access television channel(s).

**II. Responsibilities**

- A. Under this Agreement the responsibilities of CTV5 will be as follows:
  - 1. Residents of unincorporated Clackamas County will be allowed full access to the CTV5 studio, currently located at 351 NW 2<sup>nd</sup> Avenue, Canby, to produce and edit TV programs for showing on the public access channels, subject to the Operating Rules and Procedures of CTV5 governing board.
  - 2. Residents of Clackamas County will be allowed to cablecast programs on public access channels, using CTV5's facilities, subject to the Operating Rules and Procedures of CTV5.
  - 3. CTV5 will run reader board notices submitted by residents of Clackamas County on its regular reader board computer.
  - 4. CTV5 will use capital funds provided under paragraph 2 (B) only for reimbursement of CTV5's capital costs related to CTV5's production and cablecasting on public, educational and government access channel(s).
  - 5. CTV5 will maintain discrete accounting records of all expenditures for which reimbursement from capital funds is sought under this Agreement. CTV5 shall use and maintain accounting policies, practices, and procedures which are consistent with generally accepted accounting principles, and in accordance with applicable regulations. On request, CTV5 will permit the County to inspect its facilities.
  - 6. CTV5 warrants that the capital funds will not be used to retire any debt or reimburse any person, entity, or municipality for expenditures not related to capital costs.
  - 7. CTV5 will submit requests for capital funds to County, including receipts showing items purchased and prices paid by CTV5.

B. Under this Agreement the responsibilities of the County will be as follows:

Capital Funds: County will reimburse CTV5 each year for CTV5's capital costs for facilities and equipment for PEG (Public, Education and Government) access capital costs in an amount approved in the County annual budget process each fiscal year. The County will approve or disapprove requests for PEG funds submitted with receipts by CTV5. Requests for reimbursement shall identify the items for which reimbursement is requested. County will respond within 45 days from its receipt of requests for capital funds. County payments to CTV5 are subject to County's receipt of sufficient PEG access funds from cable franchise agreements, and subject to County's approval of each request for reimbursement by CTV5. If the County does not receive sufficient PEG access funds to reimburse CTV5's capital cost to the full extent approved in the annual budget, CTV5 will be notified by the County and the reimbursement may be reduced or eliminated in accordance with funds available.

**III. Liaison**

Kellie Lute will act as liaison from the County. Her address and phone number are:

Clackamas County Public and Government Affairs  
2051 Kaen Road, Suite 426  
Oregon City, OR 97045  
(503) 742-5902

CTV5's General Manager will act as liaison from WFMC. The address and phone number are:

CTV Channel 5  
351 NW 2<sup>nd</sup> Avenue  
Canby, OR 97013  
(503) 263-6287

**IV. Other Terms and Conditions**

- A. The County and CTV5 agree to comply with all applicable local, state and federal ordinances, statutes, laws and regulation, including those on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, sexual orientation, age or disability.
- B. To the extent applicable, the provisions of Oregon Public Contracting law are incorporated herein by this reference.
- C. Each party is an independent contractor with regard to the other party(s) and agrees that the nonperforming party has no control over the work and manner in which it is performed. No party is an agent or employee of any other.
- D. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, each of the parties agrees to hold harmless and indemnify the other, and their elected and appointed officials, agents and employees, from and against all claims, demands, and causes of action of any kind or character, excluding the cost of defense and

attorney's fees thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees. It is agreed between the parties that, as between them, CTV5 exercises control over the activities of its public access studio and cablecasting facilities, and will defend and indemnify County under this paragraph for claims arising therefrom.

- E. Each party agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.
- F. No party or its employees is entitled to participate in a pension plan, insurance, bonus or similar benefits provided by any other party.
- G. CTV5 agrees that all payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- H. The County and its duly authorized representatives shall have access to the books, documents, papers, and records of CTV5 which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- I. This Agreement is expressly subject to the debt limitation of Oregon counties, as set for the in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**V. Amendment**

This agreement may be amended at any time with the concurrence of both parties. Amendments become part of this Agreement only after the written amendment has been executed by both parties.

**VI. Term of Agreement**

- A. This Agreement becomes effective when it is signed by both parties.
- B. The initial term of this Agreement extends to June 30, 2020.
- C. This Agreement shall be automatically renewed for successive terms of one year on each July 1, unless terminated as provided in this agreement.

**VII. Termination of Agreement**

- A. Any previous Agreements between the parties regarding cable television access

funding is hereby rescinded.

- B. This Agreement may be terminated upon the expiration of its initial term by either party providing written notice at least 30 days prior to the expiration of the term.
- C. This Agreement may be suspended or terminated prior to the expiration of any term by:
  - 1. Written notice provided, with or without cause, by either party at least 30 days prior to the date of termination, or;
  - 2. Written notice in the case of a default under the terms of this agreement, giving at least 21 days' notice of the alleged default, with opportunity to cure within the 21 day period, or;
  - 3. Mutual agreement by the County and CTV5, or;
  - 4. Written notice provided by the County if insufficient PEG funds are unavailable, or if there has been a change in federal, state, or local laws or regulations so that the activity funded by this agreement is no longer eligible for funding. Termination under this paragraph is effective immediately.
- D. Termination of this agreement does not terminate obligations of CTV5 that accrued before termination, including but not limited to the obligation to allow audit or inspection.


---

All the aforesaid is hereby agreed upon by the parties and executed by their duly authorized signatures below.

**CLACKAMAS COUNTY**

**CTV CHANNEL 5**

\_\_\_\_\_  
Jim Bernard, Chair  
Board of County Commissioners

 4-23-19  
\_\_\_\_\_  
CTV5 Board Signature      Date

\_\_\_\_\_  
Recording Secretary      Date

\_\_\_\_\_  
Approved as to Form, County Counsel



**DAN JOHNSON**  
MANAGER

**DEVELOPMENT AGENCY**

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

May 9, 2019

Development Agency Board  
Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Resolution Declaring the Public Necessity and Purpose  
for Acquisition of Rights of Way, Easements, and Fee Property  
for the SE Capps Road Terminus Project and  
Authorizing Negotiations and Eminent Domain Actions**

<b>Purpose/Outcome</b>	Under ORS 35.235 and the Federal Uniform Act, a local governmental agency is required to declare by resolution or ordinance the necessity and the purpose for which the project is required by enacting a Resolution of Public Necessity and Purpose prior to initiating acquisition of the easements or other property rights from abutters to the project.
<b>Dollar Amount and Fiscal Impact</b>	The Right of Way budget for the project is included within the \$2,000,000 approved project budget for 2018-2019 and within the \$1,080,000 project budget for 2019-2020.
<b>Funding Source</b>	Development Agency Funds.
<b>Duration</b>	The Resolution remains active throughout the project's duration and terminates upon completion of the project or when all litigation associated with the project is concluded.
<b>Previous Board Action/Review</b>	Approval of project funding in FY 2018-19 budget
<b>Counsel Review</b>	Reviewed and approved by Counsel on May 1, 2019
<b>Strategic Plan Alignment</b>	Build a strong infrastructure. Build public trust through good government.
<b>Contact Person</b>	Sharan Hams-LaDuca, DTD Sr. Right of Way Agent @ 503-742-4675

**BACKGROUND:**

The Board of County Commissioners approved funding for the SE Capps Road Terminus Project as part of the Development Agency's 2018-2019 budget. The project will construct a cul-de-sac at the western most terminus of SE Capps Road facilitating new development of two properties and supporting two existing businesses. The cul-de-sac will include four commercial driveway connections, street lighting, sidewalks and improved stormwater facilities.



The project has been planned and located in a manner which is most compatible with the greatest public good and which causes the least private injury. In order to construct the improvements as designed, additional rights of way and easements will be required. The Board has authority under ORS Chapter 35 to acquire rights of way, easements, and fee property by purchase or condemnation proceedings.

In accordance with the design of the project, the Development Agency (Agency) has developed the legal descriptions required for acquisition of the needed rights of way and easements. To fairly determine the amount of Just Compensation for the needed rights of way and easements, staff will utilize the expertise of a qualified real estate appraiser to make appraisals and/or staff will utilize their own expertise and reliable data sources to prepare Appraisal Waiver Valuations in accordance with applicable law and regulation. The Agency shall utilize qualified consultants to make offers and negotiate in good faith in an attempt to reach agreement as to the amount of Just Compensation owed each affected property owner.

The resolution directs the Department to negotiate in good faith and accordance with all applicable laws, rules, and regulations governing such acquisitions, in an attempt to reach agreement as to the amount of Just Compensation owed each affected property owner. The resolution further requires the Manager of the Development Agency to notify the Board if the exercise of the power of eminent domain becomes necessary. Only after this process is completed does it authorize the Office of County Counsel to file a condemnation action.

Staff respectfully requests that the Board approve a Resolution of Necessity and Purpose for the acquisition of necessary rights of way and easements to provide for construction of the SE Capps Road Terminus Project.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners approve the Resolution authorizing the acquisition of necessary rights of way and easements by negotiation if possible, or condemnation, if necessary.

Respectfully Submitted,

David Queener  
Clackamas County Development Agency Program Supervisor

Attachments:

Ordinance

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

A Resolution Related to the SE Capps Road Terminus  
Project Declaring the Necessity and Purpose  
for Acquisition of Rights of Way, Easements,  
and Fee Property and Authorizing Negotiations  
and Eminent Domain Actions

Resolution No. \_\_\_\_\_  
(Page 1 of 2)

**WHEREAS**, this matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board") at its regularly scheduled meeting on May 9, 2019 and,

**WHEREAS**, it appearing to the Board that funding for the SE Capps Road Terminus Project ("Project") was included within the Development Agency (Agency) approved 2018-2019 budget; that the Project will provide for the construction of a cul-de-sac at the western most terminus of SE Capps Road facilitating new development of two properties and supporting two existing business; that the Project includes construction of four commercial driveway connections, street lighting, sidewalks and improved stormwater facilities; and that the Project is consistent with the powers and purposes of County government..

**WHEREAS**, it further appearing to the Board that the Project has been developed from the approved engineering design plans and reviewed by County Staff; and

**WHEREAS**, it further appearing to the Board that the Project has been planned and located in a manner which is most compatible with the greatest public good and causes the least private injury; and,

**WHEREAS**, it further appearing to the Board that the acquisition of rights of way and easements described in Exhibit "A" is a necessary part of the Project; and,

**WHEREAS**, it further appearing that the Board has authority under ORS Chapter 35 to acquire rights of way and easements by purchase or eminent domain proceedings.

**NOW, THEREFORE, the Clackamas County Board of Commissioners hereby resolve:**

1) That this Board declares it necessary and in the public interest that the Development Agency, in connection with this Project, immediately begin the acquisition process, in accordance with all applicable laws, rules, and regulations governing such acquisition, for the necessary rights of way and easements, either through negotiation, agreement and purchase, or, if necessary, by commencement of eminent domain proceedings.

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

A Resolution Related to the SE Capps Road Terminus  
Project Declaring the Necessity and Purpose  
for Acquisition of Rights of Way, Easements,  
and Fee Property and Authorizing Negotiations  
and Eminent Domain Actions

Resolution No. \_\_\_\_\_  
(Page 2 of 2)

2) The Clackamas County Development Agency be authorized to, in good faith, attempt to negotiate agreements of just compensation with owners of affected property identified as necessary within the boundaries of Exhibit "A". In so doing, the department is authorized to retain real estate appraisers, negotiators, and other such experts deemed necessary to fairly determine the amount of just compensation owed; and,

3) It is the intention of the Board that the necessary required rights of way and easements be obtained through good faith negotiation. The Board acknowledges that the exercise of the power of eminent domain may be necessary. The Manager shall inform the Board when the Manager deems eminent domain necessary. Thereafter, the Office of County Counsel is authorized to file complaints in condemnation and take such other steps as it determines necessary for the immediate possession of required rights of way and easements and the successful litigation of the condemnation action, including the retention of real estate appraisers, experts and other consultants deemed necessary to the successful conclusion of that litigation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

CLACKAMAS County Board of Commissioners  
Acting as the Governing Body of the Clackamas County Development Agency

\_\_\_\_\_  
Jim Bernard, Chair

\_\_\_\_\_  
Mary Raethke, Recording Secretary



**DAN JOHNSON**  
MANAGER

**DEVELOPMENT AGENCY**

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

May 9, 2019

Development Agency Board  
Board of County Commissioners  
Clackamas County

Members of the Board:

Execution of an Assignment, Assumption, Consent and Amendment to Disposition Agreement, and Authorization to Execute a Post-Closing Escrow and Development Agreement and an Escrow Holdback Agreement for Property Located at  
11627 SE Capps Road – Clackamas Industrial Area

<b>Purpose/Outcomes</b>	Execute and approve agreements to facilitate the sale of a portion of the CIAO site
<b>Dollar Amount and Fiscal Impact</b>	Amended purchase price: \$3,396,802
<b>Funding Source</b>	N/A
<b>Duration</b>	Indefinitely
<b>Previous Board Action</b>	Approval of Disposition Agreement with Bottling Group, LLC on May 24, 2018, with amendments approved on November 20, 2018, January 24, 2019, March 28, 2019 and May 2, 2019.
<b>Counsel Review</b>	Reviewed and approved by Counsel on April 30, 2019
<b>Strategic Plan Alignment</b>	Build public trust through good government
<b>Contact Person</b>	David Queener, 503-742-4322

**BACKGROUND:**

The Agency has a Disposition Agreement with Bottling Group, LLC associated with the purchase of a portion of the Clackamas Industrial Area Opportunity (CIAO) site. The Agency and Bottling Group have been working to finalize the property transaction, which was first approved by the Board on May 24, 2018.

Since that time, the parties have solidified the final development plan consistent with the terms of the Disposition Agreement. The final configuration of the proposed development required the acquisition of additional land from adjacent property owners, one of which is Water

Environment Services. These acquisitions also helped to clear up certain encroachments affecting the sale parcel. The Board approved of these separate acquisitions on April 4, 2019 and April 25, 2019.

Additionally, as development plans evolved, it became clear that the buyer was better suited to complete certain improvements given the timelines associated with closing, and the efficiencies of having its contractor complete the necessary work in conjunction with the remainder of the development activities. In exchange for relieving the Development Agency of the obligation to complete improvements associated with the land swap and its Capps Road terminus project, staff is recommending a reduction in the purchase price in an amount that represents the anticipated costs of this work. Specifically, the Agency would provide credits for the following: \$3,896 for construction of a temporary access road, \$53,696 for construction of a gravel parking lot related to the land swap, \$69,606 for entry improvements related to the terminus project, and \$31,000 to reflect the reduction in the amount of square footage being acquired as a result of the terminus project. Staff also recommends that a separate escrow account be established to provide funds from which the buyer could draw from to pay costs incurred by the buyer in removing unsuitable soil from the sale parcel, which was discovered during the due diligence period. The proposed amount of the escrow account would be \$258,300, which is a conservative estimate that assumes the maximum amount of soil needing removal. The escrow agent would be authorized to release any portion of these funds only upon review and approval of invoices by the Development Agency. The proposals discussed in this paragraph would be captured in a separate agreement, which has been attached to this report.

In addition to the credit and escrow account mentioned above, the Assignment, Assumption, Consent and Amendment to Disposition Agreement would memorialize the Agency's consent to an assignment of the Disposition Agreement. Bottling Group, LLC was an entity formed for the purpose of acquiring the sale parcel. The Development Agency has known from the beginning that the planned use for this site is a future distribution facility for Pepsi products. To that end, Bottling Group, LLC is proposing to transfer its interest in the Disposition Agreement to SPDC Industrial Center I, LLC, which will be the final purchaser of the property. SPDC Industrial Center I, LLC will then lease the land back to Bottling Group, LLC, which will be the entity responsible for the operations on the site. Under the terms of the Disposition Agreement, the Development Agency is required to consent to the assignment of the Disposition Agreement, which will allow SPDC Industrial Center I, LLC, and Bottling Group, LLC to assume the responsibilities for the property acquisition and operations as described above.

Attached to this report are two additional agreements: a post-closing escrow and development agreement, and an escrow holdback agreement. A form of the post-closing escrow and development agreement was approved as part of the Disposition Agreement approval in 2018. Amendments to this agreement are necessary to acknowledge the arrangement discussed above between SPDC Industrial Center I, LLC, as the future property owner, and Bottling Group, LLC as the operating tenant entity. The escrow holdback agreement is necessary to be able to direct the escrow officer how to hold and distribute the \$258,300 that would be placed in an escrow account in connection with the removal and remediation of any contaminated soil on



the property. Since these agreements would not be signed until closing, staff is seeking the Board's approval for staff to execute these agreements in connection with closing.

**RECOMMENDATION:**

Staff recommends the Board do the following:

- 1) Execute the Assignment, Assumption, Consent and Amendment to Disposition Agreement with Bottling Group, LLC, SPDC Industrial Center I, LLC, and Pepsico Global Real Estate, Inc.;
- 2) Authorize staff to execute, at closing, the Post-Closing Escrow and Development Agreement with Bottling Group, LLC and SPDC Industrial Center I, LLC; and
- 3) Authorize staff to execute, at closing, the Escrow Holdback Agreement with SPDC Industrial Center I, LLC.

Respectfully submitted,

David Queener  
Development Agency Program Supervisor

Attachments;  
Assignment, Assumption, Consent and Amendment to Disposition Agreement  
Post-Closing Escrow and Development Agreement  
Escrow Holdback Agreement

## ASSIGNMENT, ASSUMPTION, CONSENT AND AMENDMENT TO DISPOSITION AGREEMENT

THIS ASSIGNMENT, ASSUMPTION, CONSENT AND AMENDMENT TO DISPOSITION AGREEMENT (this "**Agreement**") is made as of May \_\_, 2019 (the "**Effective Date**"), among CLACKAMAS COUNTY DEVELOPMENT AGENCY, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**"), BOTTLING GROUP, LLC, a Delaware limited liability company ("**Assignor**"), PEPSICO GLOBAL REAL ESTATE, INC., a Delaware corporation ("**Tenant**"), and SPDC INDUSTRIAL CENTER 1 LLC, an Oregon limited liability company ("**Assignee**").

### RECITALS

A. Agency and Assignor are parties to a certain Disposition Agreement dated as of May 24, 2018 and amended by amendments dated as of November 20, 2018, January 24, 2019, March 28, 2019, and May 2, 2019 (as so amended, the "**Disposition Agreement**"), which provides for, *inter alia*, Agency's conveyance of certain Property to Assignor, as Developer, and the development and use of such Property pursuant to the Disposition Agreement for the purposes and upon the terms and conditions set forth in the Disposition Agreement and in the Post-Closing Agreement annexed to and made a part of the Disposition Agreement (the "**Post-Closing Agreement**"). All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Disposition Agreement.

B. The Disposition Agreement provides Assignor the right to assign its duties and obligations, as Developer, under the Disposition Agreement to a third party upon the written consent of Agency.

C. Assignor desires to so assign the Disposition Agreement to Assignee and Assignee desires to assume the Disposition Agreement from Assignor, following which Assignee shall (i) become the Developer of the Property, (ii) construct certain improvements (the "**Improvements**") in accordance with the Disposition Agreement and the Post-Closing Agreement, and (iii) lease the Property and the completed Improvements to Tenant pursuant to a lease between Developer and Tenant (the "**Lease**") to be used in accordance with the Disposition Agreement and the Post-Closing Agreement. At or immediately after the Closing, Tenant will assign its rights and obligations as tenant under the Lease to Assignor and Assignor will assume such rights and obligations but Tenant will not be released from any of its obligations under the Lease.

D. The Disposition Agreement contemplated the Agency would complete a land swap (the "**Swap**") with one or more adjacent property owners in order to provide a parcel of property sufficient to accommodate Tenant's proposed use of the Property. The Swap is now complete and the parties are entering into this Agreement for the purposes set forth herein.

### AGREEMENT

In consideration of the mutual covenants in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Subject to all terms and conditions of this Agreement, Assignor assigns to Assignee, as of the Effective Date, all of Assignor's right, title and interest in, to and under the Disposition Agreement (the "**Assignment**"). Assignor represents and warrants to Assignee that Assignor is the current holder of all of the rights of the Developer under the Disposition Agreement and Assignor has not assigned any of its rights or obligations to any other person or entity.

2. Assumption. Subject to all terms and conditions of this Agreement, Assignee assumes, as of the Effective Date, and agrees to perform all of the obligations of Assignor under the Disposition Agreement and the agreements annexed to and made a part thereof (including, without limitation, the Post-Closing Agreement), and to hold Assignor harmless from any liability or claim arising from Assignee's breach of any obligation so assumed (the "**Assumption**").

3. Consent to Assignment and Assumption. Agency hereby approves and consents to the Assignment and the Assumption, subject to the execution of this Agreement. Accordingly, upon the full execution and delivery of this Agreement, Agency shall be authorized to treat Assignee as Developer under the Disposition Agreement, and shall be entitled to rely on this Agreement in closing with the Assignee pursuant to the Disposition Agreement.

4. Lease. Simultaneously with the execution of this Agreement, Assignee and Tenant have entered into the Lease. Pursuant to the Lease, Tenant is solely responsible for the performance of the obligations of the "Developer" under Section 1.2 and 1.3 of the Post-Closing Agreement.

5. Amendments to Disposition Agreement. The parties agree the Disposition Agreement is amended as follows:

(a) The Agency has provided Assignee and Assignor with a Preliminary Commitment for Title Insurance for the Property issued by Title Company dated \_\_\_\_\_, 2019, Order No. \_\_\_\_\_ (the "**Preliminary Commitment**") and a survey of the Property prepared by \_\_\_\_\_, dated \_\_\_\_\_ (the "**Initial Survey**"). Sections 2.1 and 2.2 of the Disposition Agreement are hereby amended to provide that Assignee shall have fourteen (14) days from the Effective Date to provide the Agency with written notice of the Unacceptable Exceptions and the Objections to the Survey. All other time periods in Sections 2.1 and 2.2 of the Disposition Agreement shall remain unchanged.

(b) Section 3.1 of the Disposition Agreement is hereby amended to provide that the purchase price for the Property shall be \$3,396,802. The purchase price reflects credits for the following: \$3,896 for construction of a temporary access road, \$53,696 for construction of a gravel parking lot related to the Swap, \$69,606 for entry improvements related to the land swap, and \$31,000 to reflect square footage needed for cul-de-sac improvements.

(c) Section 3.3 of the Disposition Agreement is hereby amended to provide that the closing date shall be fifteen (15) business days after any title or survey objections are resolved pursuant to the terms of Sections 2.1 and 2.2 of the Disposition Agreement, or such earlier date as may be agreed to by the parties.

(d) At the Closing, the sum of \$258,300 of the net sales proceeds payable to the Agency shall be held back and deposited into an escrow account established with Title Company (the "**Holdback**") pursuant to an escrow holdback agreement to be executed by Assignee, the Agency and Title Company at Closing in the form of Exhibit F attached (the "**Holdback Agreement**"). Subject to the terms of the Holdback Agreement, Assignee may receive disbursements from the Holdback to pay costs incurred by Assignee in removing unsuitable soil from the Property, including the removal and remediation of any contaminated soil on the Property.

(e) The Property Map attached to the Disposition Agreement as Exhibit A is hereby replaced by the Property Map attached to this Agreement as Exhibit A.

(f) The legal description of the Property attached to the Disposition Agreement as Exhibit B is hereby replaced by the legal description attached to this Agreement as Exhibit B.

(g) The Scope of Development attached to the Disposition Agreement as Exhibit E and to be attached to the Post-Closing Agreement as Exhibit A are hereby replaced by the Scope of Development attached to this Agreement as Exhibit C.

(h) The form of the Post-Closing Agreement attached to the Disposition Agreement as Exhibit C is hereby replaced by the form of the Post-Closing Agreement attached to this Agreement as Exhibit D.

6. Due Diligence Period. The Due Diligence Period has expired and Assignor and Assignee hereby confirm that the termination right in favor of Developer pursuant to Section 2.4 of the Disposition Agreement has been waived.

7. Earnest Money. Not more than two (2) business days after the full execution of this Agreement, Assignee will deposit the Earnest Money Funds in the amount of \$100,000 with Title Company as provided for in Section 3.2 of the Disposition Agreement. Upon the deposit of Earnest Money Funds, the Earnest Money Note shall be cancelled and returned to Assignor.

8. Assignment of Design Drawings and Contracts. On the date of the Closing, Assignor and Tenant will assign to Assignee all of their respective rights and interests in and to (a) the Design Drawings and any other plans related to the Improvements, and (b) all agreements and contracts with architects and engineers related to the design of the Improvements.

9. Agency Representations and Warranties. Agency hereby represents and warrants to Assignor, Assignee and Tenant as follows:

(a) The Disposition Agreement sets forth the entire agreement between Assignor and Agency, is in full force and effect in accordance with its terms, and has not, in any way, been assigned, supplemented, amended or modified except as described in this Agreement.

(b) There exists no default by either party to the Disposition Agreement, nor, to the knowledge of the Agency, any state of facts which, with the giving of notice, the passage of time, or both, would constitute a default on any such other grounds.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without giving effect to the conflicts of law provisions thereof, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. Notices. All notices given pursuant to this Agreement or the Disposition Agreement shall be in writing sent to the addresses set forth below and to the attention of the person indicated, and shall be either: (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, (ii) delivered in person or by local or national courier, or sent by electronic mail.

To Agency: Clackamas County Development Agency  
c/o Development Agency Program Supervisor  
150 Beavercreek Road  
Oregon City, Oregon 97045  
Attn: Dave Queener  
Email: DavidQue@co.clackamas.us

To Assignor or Tenant: Bottling Group, LLC  
c/o PepsiCo Global Real Estate  
1111 Westchester Avenue  
White Plains, New York 10604  
Attn: Director of Real Estate  
Email: martyn.wallace1@pepsico.com

With a copy to

Levine & Levine, PLLC  
2 Jefferson Plaza  
Poughkeepsie, New York 12601  
Attn: Dale J. Lois, Esq.  
Email: dale@levinelevinelaw.com

To Assignee: SPDC Industrial Center 1 LLC  
c/o Security Properties, Inc.  
701 Fifth Avenue, Suite 5700  
Seattle, Washington 98104  
Attention: John Marasco  
Email: johnm@secprop.com

With a copy to

Alston, Courtnage & Bassetti LLP  
1420 Fifth Avenue, Suite 3650  
Seattle, Washington 98101-4011  
Attention: Andrew B. Bassetti  
Email: abasse@alcourt.com

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

13. Amendments. This Agreement may not be modified, amended or otherwise changed except by written instrument signed by the parties sought to be bound.

14. Attorneys' Fees. The parties shall bear their own costs and attorneys' fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

15. Facsimile and Electronic Signatures. Each party (a) has agreed to permit the use, from time to time, of signatures sent via electronic mail in PDF format, in order to expedite the execution of this Agreement, (b) intends to be bound by its signature sent via electronic mail, (c) is aware that the other party will rely on its signature sent via electronic mail, and (d) acknowledges such reliance and waives any defenses to the enforcement of this Agreement based on the fact that a signature was sent via electronic mail.

16. Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, express or implied, and all negotiations or discussions of the parties, whether oral or written, and there are no warranties, representations or agreements among the parties in connection with the subject matter hereof except as set forth herein. Email

communications between the parties shall not be binding or deemed an offer, as no documents are binding unless and until executed. If any of the terms or provisions of this Agreement conflict with any of the terms or provisions of the Disposition Agreement or the Post-Closing Agreement, this Agreement shall control.

17. Exhibits. The following exhibits are attached to and a part of this Agreement:

- Exhibit A – Property Map
- Exhibit B – Legal Description
- Exhibit C – Scope of Development
- Exhibit D – Post-Closing Agreement
- Exhibit E – Form of Holdback Agreement

*[signatures appear on following page]*



**IN WITNESS WHEREOF**, Agency, Assignor, Tenant and Assignee have caused this Agreement to be executed as of the date first above written.

**AGENCY:**

**CLACKAMAS COUNTY DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chair

**ASSIGNOR:**

**BOTTLING GROUP, LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Director of Real Estate

**TENANT:**

**PEPSICO GLOBAL REAL ESTATE, INC.**,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Director of Real Estate

**ASSIGNEE:**

**SPDC INDUSTRIAL CENTER 1 LLC**, an Oregon limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A

PROPERTY MAP

# NEW WAREHOUSE AND OFFICE BUILDING

11650 SE CAPPS ROAD  
CLACKAMAS COUNTY, OREGON  
**TAX LOT 01700**



SITE VICINITY MAP

N.T.S.

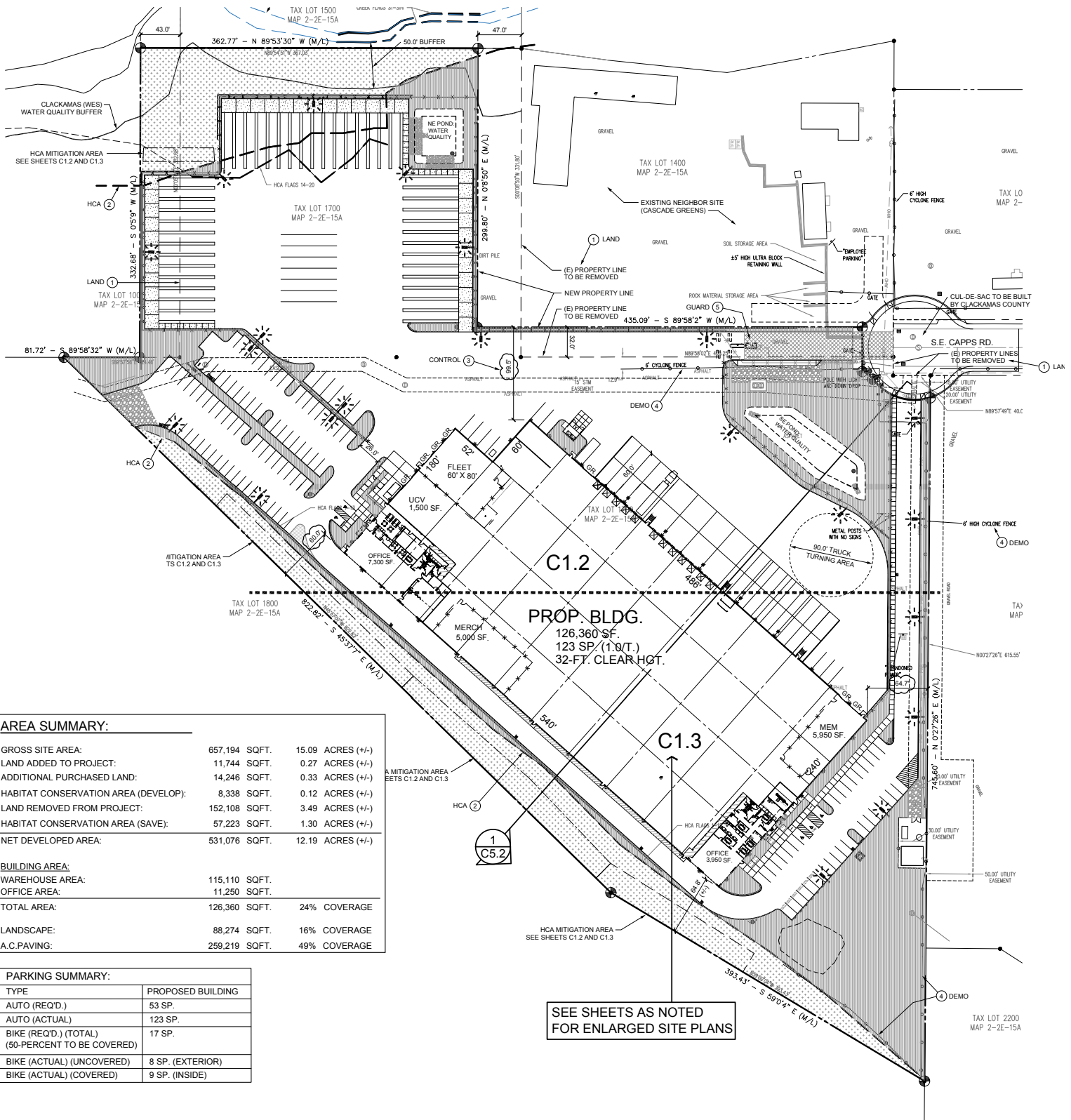
**Project Site**

**EXHIBIT B**

**Legal Description**

# EXHIBIT C

## SCOPE OF DEVELOPMENT



### AREA SUMMARY:

GROSS SITE AREA:	657,194 SQFT.	15.09 ACRES (+/-)
LAND ADDED TO PROJECT:	11,744 SQFT.	0.27 ACRES (+/-)
ADDITIONAL PURCHASED LAND:	14,246 SQFT.	0.33 ACRES (+/-)
HABITAT CONSERVATION AREA (DEVELOP):	8,338 SQFT.	0.12 ACRES (+/-)
LAND REMOVED FROM PROJECT:	152,108 SQFT.	3.49 ACRES (+/-)
HABITAT CONSERVATION AREA (SAVE):	57,223 SQFT.	1.30 ACRES (+/-)
NET DEVELOPED AREA:	531,076 SQFT.	12.19 ACRES (+/-)
<b>BUILDING AREA:</b>		
WAREHOUSE AREA:	115,110 SQFT.	
OFFICE AREA:	11,250 SQFT.	
TOTAL AREA:	126,360 SQFT.	24% COVERAGE
LANDSCAPE:	88,274 SQFT.	16% COVERAGE
A.C.PAVING:	259,219 SQFT.	49% COVERAGE

### PARKING SUMMARY:

TYPE	PROPOSED BUILDING
AUTO (REQ'D.)	53 SP.
AUTO (ACTUAL)	123 SP.
BIKE (REQ'D.) (TOTAL) (50-PERCENT TO BE COVERED)	17 SP.
BIKE (ACTUAL) (UNCOVERED)	8 SP. (EXTERIOR)
BIKE (ACTUAL) (COVERED)	9 SP. (INSIDE)

SEE SHEETS AS NOTED  
FOR ENLARGED SITE PLANS

## EXHIBIT D

### POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT

THIS POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT (this "**Agreement**") is entered into as of \_\_\_\_\_, 2019 (the "**Effective Date**"), by and among **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**"), **BOTTLING GROUP, LLC**, a Delaware limited liability company ("**Tenant**"), **SPDC INDUSTRIAL CENTER 1 LLC**, an Oregon limited liability company ("**Developer**"), and **CHICAGO TITLE INSURANCE COMPANY OF OREGON** ("**Escrow Holder**").

#### RECITALS

A. Pursuant to that Disposition Agreement dated as of May 24, 2018, as amended by amendments dated as of November 20, 2018, January 24, 2019, March 28, 2019, and May 2, 2019, and by an Assignment, Assumption, Consent and Amendment to Disposition Agreement dated as of May 9, 2019 (as amended, the "**DA**"), Developer acquired from Agency that certain real property located on Capps Road west of SE 120th Avenue in Clackamas County, Oregon, as more particularly described in Exhibit A attached (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 B, 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 B, "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, codes and requirements, including those of the County and the State of Oregon. The Building Improvements shall provide a floor area ratio of not less than .23 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.** Within twelve (12) months after the Building Improvements are complete and the building is available to be used for its intended purposes, Tenant shall meet its employment goal of 135 "Full-time" employees (the "**Job Quantity**"). A Full-time employee is defined as one whose position is permanent and who works a minimum of 35 hours per week, or a combination of permanent employees who together work a minimum of 35 hours per week. To be counted as a Full-time employee, the employee must be: employed by Tenant, active and 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 Tenant seek such information as provided in Section 1.4 below. The Job Quantity shall be deemed satisfied for the Building Improvements upon the first instance of such employment goal being met at any time during the 12-month period after the Building Improvements are complete and the building is ready to be utilized by the employees of Tenant.

1.3 **Average Annual Wage.** Within twelve (12) months after the Building Improvements are complete and the building is available to be used for its intended purposes, Tenant's average annual wages for "Full-time" employees shall be a minimum of \$23.00 per hour (the "**Average Annual Wages**"). Average Annual Wages excludes senior executive positions (e.g., CEO, COO, CFO, etc.) and shall be exclusive of benefits. The Average Annual Wage goal shall be deemed satisfied for the Building Improvements upon the first instance of such goal being met at any time during the 12-month period after the Building Improvements are complete and the building is ready to be utilized by the employees of Tenant.

1.4 **Supporting Information.** In the event that Tenant is not the sole occupant of the Building, Developer will use commercially reasonable efforts to include the following provision (or substantially similar provision) in its lease or sale agreement with each tenant of the Building Improvements:

Upon request of [Developer] or [Agency] from time to time during the first twelve (12) months of full occupancy, [Developer and/or tenant of Developer] agrees to certify in writing the total number of Full-time employees and Average Annual Wages of such employees working at the [Premise/Property] as of the date(s) requested.

If any tenant is unwilling to agree to such provision, Developer will use commercially reasonable efforts to obtain such information from the Developer and/or tenant of Developer 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 C 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 Tenant 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. If the sole reason for the disbursement of the Security Deposit to the Agency is Tenant's failure to comply with Section 1.2 or Section 1.3, Tenant will reimburse Developer for the Security Deposit within ten (10) business days after the Security Deposit is disbursed to the Agency pursuant to this Section 5.4.

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.** 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 the Portland, Oregon metropolitan area, 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.

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, and 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, Tenant and Developer and the Agency agree as follows:

8.1 Tenant and Developer agree the Property shall be used for the purposes designated in the Plan.

8.2 Developer agrees to 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 Developer agrees 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 D attached.

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

8.6 Developer and Tenant each 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 agrees to maintain the Property in a clean, neat and safe condition.

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 Tenant or any of their respective 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.** 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.

Any notice (1) sent by mail in the manner specified in subsection (i) of this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, (2) 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 day), and (3) 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 a 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.

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 Beaver Creek Road  
Oregon City, Oregon 97045  
Attn: Dave Queener  
Email: davidque@co.elackamas.us

Tenant: Bottling Group, LLC  
c/o PepsiCo Global Real Estate  
1111 Westchester Avenue  
White Plains, New York 10604  
Attn: Director of Real Estate  
Email: martyn.wallace1@pepsico.com

Levine & Levine, PLLC  
2 Jefferson Plaza  
Poughkeepsie, New York 12601  
Attn: Dale J. Lois, Esq.  
Email: dale@levinelevinelaw.com

Developer: SPDC Industrial Center 1 LLC  
c/o Security Properties, Inc.  
701 Fifth Avenue, Suite 5700  
Seattle, Washington 98104  
Attention: John Marasco  
Email: johnm@secprop.com

With a copy to

Alston, Courtnage & Bassetti LLP  
1420 Fifth Avenue, Suite 3650  
Seattle, Washington 98101-4011  
Attention: Andrew B. Bassetti  
Email: abasse@alcourt.com

Escrow Holder: Chicago Title Insurance Company of Oregon  
1211 SW Fifth Ave., Suite 2130  
Portland, Oregon 97204  
Attn: Patricia Parsons  
Email: Patricia.Parsons@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 this 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, 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 of 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.**

9.13.1 **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 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**").

9.13.2 **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.

9.13.3 **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:**

**SPDC INDUSTRIAL CENTER 1 LLC**, an Oregon limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**AGENCY:**

**CLACKAMAS COUNTY DEVELOPMENT AGENCY**, a corporate body politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ESCROW HOLDER:**

**CHICAGO TITLE INSURANCE COMPANY OF OREGON**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

**BOTTLING GROUP, LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

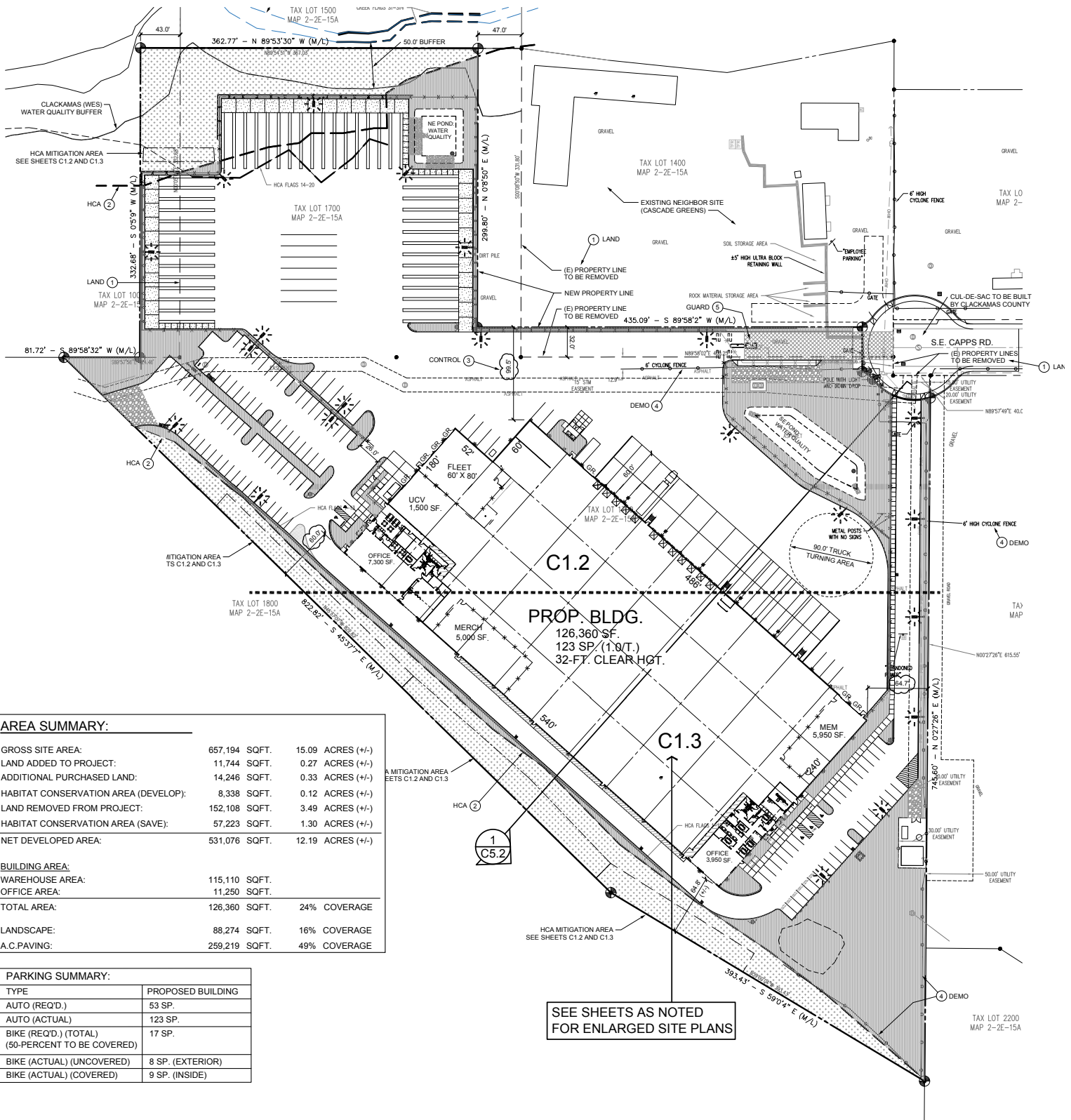
List of Exhibits

- Exhibit A Legal Description of Property
- Exhibit B Scope of Development
- Exhibit C Schedule of Performance
- Exhibit D List of Plans and Specifications for Construction of the Building Improvements

**EXHIBIT A TO POST-**  
**CLOSING ESCROW AND**  
**DEVELOPMENT**  
**AGREEMENT**

**Legal Description of Property**

# EXHIBIT B TO POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT SCOPE OF DEVELOPMENT



**AREA SUMMARY:**

GROSS SITE AREA:	657,194 SQFT.	15.09 ACRES (+/-)
LAND ADDED TO PROJECT:	11,744 SQFT.	0.27 ACRES (+/-)
ADDITIONAL PURCHASED LAND:	14,246 SQFT.	0.33 ACRES (+/-)
HABITAT CONSERVATION AREA (DEVELOP):	8,338 SQFT.	0.12 ACRES (+/-)
LAND REMOVED FROM PROJECT:	152,108 SQFT.	3.49 ACRES (+/-)
HABITAT CONSERVATION AREA (SAVE):	57,223 SQFT.	1.30 ACRES (+/-)
NET DEVELOPED AREA:	531,076 SQFT.	12.19 ACRES (+/-)
<b>BUILDING AREA:</b>		
WAREHOUSE AREA:	115,110 SQFT.	
OFFICE AREA:	11,250 SQFT.	
TOTAL AREA:	126,360 SQFT.	24% COVERAGE
LANDSCAPE:	88,274 SQFT.	16% COVERAGE
A.C.PAVING:	259,219 SQFT.	49% COVERAGE

**PARKING SUMMARY:**

TYPE	PROPOSED BUILDING
AUTO (REQ'D.)	53 SP.
AUTO (ACTUAL)	123 SP.
BIKE (REQ'D.) (TOTAL) (50-PERCENT TO BE COVERED)	17 SP.
BIKE (ACTUAL) (UNCOVERED)	8 SP. (EXTERIOR)
BIKE (ACTUAL) (COVERED)	9 SP. (INSIDE)

EXHIBIT C TO POST-CLOSING ESCROW AND  
DEVELOPMENT AGREEMENT

**SCHEDULE OF PERFORMANCE**

Preliminary Design	25 weeks	May 2018 – October 2018
Design Review Approval Process	12 weeks	August 2018 – November 2018
Design Review Appeal Process	9 weeks	December 2018 – February 2019
Final Design	13 weeks	November 2018 – February 2019
Permitting and Bidding	14 weeks	February 2019 – May 2019
Construction	46 weeks	May 2019 – March 2020

# EXHIBIT D TO POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT

## LIST OF PLANS AND SPECIFICATIONS

CVR1.0	Cover Sheet	1/30/19
C1.0	Overall Area Site Plan	1/30/19
C1.1	Master Site Plan	1/30/19
C1.2	Site Plan North	1/30/19
C1.3	Site Plan South	1/30/19
C2.0	Overall Site Grading Plan	1/30/19
C2.1	Site Grading Plan North	1/30/19
C2.2	Site Grading Plan South	1/30/19
C2.3	Grading Details	1/30/19
C3.0	Overall Site Utility Plan	1/30/19
C3.1	Site Utility Plan North	1/30/19
C3.2	Site Utility Plan South	1/30/19
C3.3	Utility Details	1/30/19
C3.4	Utility Details	1/30/19
C3.5	Utility Details	1/30/19
C3.6	Utility Details	1/30/19
C4.0	Erosion and Sediment Control Cover	1/30/19
C4.1	ESC Existing Conditions & Demo Plan	1/30/19
C4.2	Erosion & Sediment Control Plan	1/30/19
C4.3	Erosion & Sediment Control Details	1/30/19
C5.0	Site Details	1/30/19
C5.1	Site Details	1/30/19
C5.2	Site Details	1/30/19
C6.0	Fire Plan	1/30/19
C6.1	Fire Plan Details	1/30/19
1	Topographic Survey	1/30/19
2	Topographic Survey	1/30/19
L1.0	Overall Landscape Plan	1/30/19
L1.1	Landscape Plan North	1/30/19
L1.2	Landscape Plan South	1/30/19
L2.0	Plant Lists	1/30/19
L3.0	Spec and Notes	1/30/19
LT1.0	Site Lighting Plan	1/30/19
A1.0	Overall Floor Plan	1/30/19
A1.1	Partial Floor Plan West	1/30/19
A1.2	Partial Floor Plan East	1/30/19
A1.3	Enlarged Office Floor Plans	1/30/19
A1.4	Door Schedules	1/30/19
A1.5	Door Details/Finish Schedule	1/30/19
A1.6	Wall Types Plan and Details	1/30/19
A2.0	Exterior Elevations	1/30/19
A3.0	Building Sections	1/30/19
A4.0	Wall Sections	1/30/19
A4.1	Wall Sections	1/30/19
A5.0	Roof Plan and Details	1/30/19
A5.1	Roof Details	1/30/19
A6.0	Storefront Plans and Elevations	1/30/19
A7.0	Enlarged Floor Plans	1/30/19
A7.1	Interior Elevations and Details	1/30/19

A7.2	Interior Elevations	1/30/19
A8.0	Architectural Details	1/30/19
A8.1	Architectural Details	1/30/19
A9.0	Reflected Ceiling Plans	1/30/19
A9.1	Reflected Ceiling Details	1/30/19
A10.0	Specifications	1/30/19
A10.1	Specifications	1/30/19
A10.2	Specifications	1/30/19
A10.3	Specifications	1/30/19
A10.4	Specifications	1/30/19
A10.5	Special Inspection Notes	1/30/19
S1.0	Foundation Plan	1/30/19
S2.0	Foundation Details	1/30/19
S2.1	Foundation Details	1/30/19
S3.0	Roof Framing Plan	1/30/19
S4.0	Roof Framing Details	1/30/19
S5.0	Wall Panel Details	1/30/19
S6.0	Wall Panel Elevations	1/30/19
S6.1	Wall Panel Types	1/30/19
S7.0	Canopy Framing Plan and Details	1/30/19



# EXHIBIT E

## ESCROW HOLDBACK AGREEMENT

THIS ESCROW HOLDBACK AGREEMENT (this "**Agreement**") is entered into as of \_\_\_\_\_, 2019 (the "**Effective Date**"), by and among **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**"), **SPDC INDUSTRIAL CENTER 1 LLC**, an Oregon limited liability company ("**Developer**"), and **CHICAGO TITLE INSURANCE COMPANY OF OREGON** ("**Escrow Holder**").

### RECITALS

A. Pursuant to that Disposition Agreement dated as of May 24, 2018, as amended by amendments dated as of November 20, 2018, January 24, 2019, March 28, 2019, and May 2, 2019, and by an Assignment, Assumption, Consent and Amendment to Disposition Agreement dated as of May \_\_, 2019 (as amended, the "**DA**"), Developer acquired from Agency that certain real property located on Capps Road west of SE 120th Avenue in Clackamas County, Oregon, as more particularly described in Exhibit A attached (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. Pursuant to the DA, at the Closing, the sum of \$258,300 (the "**Funds**") of the net sales proceeds payable to the Agency shall be held back and deposited into an escrow account established with Escrow Holder (the "**Account**") to pay costs incurred by Developer in removing unsuitable soil from the Property, including the removal and remediation of any contaminated soil on the Property.

C. 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. **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.

2. **Account.**

2.1 **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.

2.2 **Account Deposit.** On the Effective Date, Agency shall authorize deposit of the Funds in the Account by directing the Escrow Holder to establish the Account with the sum of \$258,300 of the net sales proceeds payable to the Agency. Until disbursed as provided herein, all funds in the Account (as may vary from time to time, the "**Account Funds**") shall be held by the Escrow Holder in accordance with the terms of this Agreement.

2.3 **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.

2.4 **Developer Disbursements.** Developer may request up to two (2) disbursements of the Account Funds, but no more than one (1) disbursement will be permitted in any calendar month. Developer may request disbursements to reimburse Developer for any costs incurred by Developer in removing unsuitable soil from the Property, including the removal and remediation of any contaminated soil on the

Property, and the fees of any geotechnical or environmental consultants supervising the work or consulting with Developer with respect to the work. To request a disbursement of the Account Funds, Developer will send a written notice (a "**Disbursement Request**") to the Agency and Escrow Agent which (i) describes the type and dollar cost of the work that has been undertaken or performed and (ii) is accompanied by invoices evidencing Developer's payment for the work for which Developer is seeking reimbursement. Any invoice to be included as part of a Disbursement Request shall, at a minimum, include unit prices and sufficient specificity to allow the Agency to determine how much material has been treated in connection with the work performed. In no event shall Escrow Agent be required to make any determination as to the accuracy of statements in any Disbursement Request delivered pursuant to this Section 2.4. Escrow Agent shall release the Account Funds in the amount, and as directed by Developer in a Disbursement Request, on the tenth (10<sup>th</sup>) business day following the receipt by Escrow Agent of the Disbursement Request unless prior to the end of such ten (10) business day period the Agency provides Developer and Escrow Holder with written notice that the Agency does not approve the disbursement requested by Developer (an "**Objection Notice**"). Any Objection Notice must state with specificity the reason for the Agency's objection to the requested disbursement of the Account Funds. The Agency agrees not to unreasonably withhold its consent to any disbursement of the Account Funds requested by Developer. If the Agency timely provides Developer and Escrow Agent with an Objection Notice, Escrow Agent shall not release the requested Account Funds until such time as (x) Developer or the Agency has obtained a final, nonappealable determination or judgment from a court of competent jurisdiction specifying whether the Account Funds are to be released, or (y) Escrow Agent has received written directions, jointly signed by Developer and the Agency, specifying the amount and manner in which the Account Funds are to be released. If the Agency issues an Objection Notice, the Agency and Developer will promptly meet and attempt to amicably resolve any dispute regarding the Account Funds.

2.5 **Agency Disbursements.** The Escrow Agent shall release to the Agency any Account Funds that are remaining in the Account on December 31, 2019. The distribution under this section shall be automatic, and shall not require the affirmative request of the Agency, or the consent of the Developer.

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

3. **Limitation of Liability.** In no event shall the Agency be liable for any costs associated with removing unsuitable soil from the Property, including the removal and remediation of any contaminated soil on the Property, above and beyond the Funds that are deposited into the Account. 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 3 shall survive the expiration or termination of this Agreement.

#### 4. **Escrow Holder.**

4.1 **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.

4.2 **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.

4.3 **Resignation of Escrow Holder.** 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 the Portland, Oregon metropolitan area, 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.

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.

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

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

#### 5. **General Provisions.**

5.1 **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.

5.2 **Notice.** 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. Any notice (1) sent by mail in the manner specified in subsection (i) of this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, (2) 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 day), and (3) 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 a 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.

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.us

Developer: SPDC Industrial Center 1 LLC  
c/o Security Properties, Inc.  
701 Fifth Avenue, Suite 5700  
Seattle, Washington 98104  
Attention: John Marasco  
Email: johnm@secprop.com

With a copy to

Alston, Courtlage & Bassetti LLP  
1420 Fifth Avenue, Suite 3650  
Seattle, Washington 98101-4011  
Attention: Andrew B. Bassetti  
Email: abasse@alcourt.com

Escrow Holder: Chicago Title Insurance Company of Oregon  
1211 SW Fifth Ave., Suite 2130  
Portland, Oregon 97204  
Attn: Patricia Parsons  
Email: Patricia.Parsons@ctt.com

5.3 **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.

5.4 **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.

5.5 **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 this Agreement, or as the same may be extended by mutual agreement of the parties in writing.

5.6 **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.

5.7 **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, 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.

5.8 **Non-Integration.** 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 of the Agency and the Developer.

5.9 **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.

5.10 **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.

5.11 **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 5.11, this Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors and assigns.

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

5.13 **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.

5.14 **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.

5.15 **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.

5.16 **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.

*[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:**

**SPDC INDUSTRIAL CENTER 1 LLC**, an Oregon limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AGENCY:**

**CLACKAMAS COUNTY DEVELOPMENT AGENCY**, a corporate body politic

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ESCROW HOLDER:**

**CHICAGO TITLE INSURANCE COMPANY OF OREGON**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

List of Exhibits  
Exhibit A      Legal Description of Property

**EXHIBIT A TO ESCROW**  
**HOLDBACK AGREEMENT**  
**Legal Description of Property**



## POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT

THIS POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT (this "**Agreement**") is entered into as of \_\_\_\_\_, 2019 (the "**Effective Date**"), by and among **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**"), **BOTTLING GROUP, LLC**, a Delaware limited liability company ("**Tenant**"), **SPDC INDUSTRIAL CENTER 1 LLC**, an Oregon limited liability company ("**Developer**"), and **CHICAGO TITLE INSURANCE COMPANY OF OREGON** ("**Escrow Holder**").

### RECITALS

A. Pursuant to that Disposition Agreement dated as of May 24, 2018, as amended by amendments dated as of November 20, 2018, January 24, 2019, March 28, 2019, and May 2, 2019, and by an Assignment, Assumption, Consent and Amendment to Disposition Agreement dated as of May 9, 2019 (as amended, the "**DA**"), Developer acquired from Agency that certain real property located on Capps Road west of SE 120th Avenue in Clackamas County, Oregon, as more particularly described in Exhibit A attached (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 B, 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 B, "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, codes and requirements, including those of the County and the State of Oregon. The Building Improvements shall provide a floor area ratio of not less than .23 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.** Within twelve (12) months after the Building Improvements are complete and the building is available to be used for its intended purposes, Tenant shall meet its employment goal of 135 "Full-time" employees (the "**Job Quantity**"). A Full-time employee is defined as one whose position is permanent and who works a minimum of 35 hours per week, or a combination of permanent employees who together work a minimum of 35 hours per week. To be counted as a Full-time employee, the employee must be: employed by Tenant, active and 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 Tenant seek such information as provided in Section 1.4 below. The Job Quantity shall be deemed satisfied for the Building Improvements upon the first instance of such employment goal being met at any time during the 12-month period after the Building Improvements are complete and the building is ready to be utilized by the employees of Tenant.

1.3 **Average Annual Wage.** Within twelve (12) months after the Building Improvements are complete and the building is available to be used for its intended purposes, Tenant's average annual wages for "Full-time" employees shall be a minimum of \$23.00 per hour (the "**Average Annual Wages**"). Average Annual Wages excludes senior executive positions (e.g., CEO, COO, CFO, etc.) and shall be exclusive of benefits. The Average Annual Wage goal shall be deemed satisfied for the Building Improvements upon the first instance of such goal being met at any time during the 12-month period after the Building Improvements are complete and the building is ready to be utilized by the employees of Tenant.

1.4 **Supporting Information.** In the event that Tenant is not the sole occupant of the Building, Developer will use commercially reasonable efforts to include the following provision (or substantially similar provision) in its lease or sale agreement with each tenant of the Building Improvements:

Upon request of [Developer] or [Agency] from time to time during the first twelve (12) months of full occupancy, [Developer and/or tenant of Developer] agrees to certify in writing the total number of Full-time employees and Average Annual Wages of such employees working at the [Premise/Property] as of the date(s) requested.

If any tenant is unwilling to agree to such provision, Developer will use commercially reasonable efforts to obtain such information from the Developer and/or tenant of Developer 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 C 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 Tenant 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. If the sole reason for the disbursement of the Security Deposit to the Agency is Tenant's failure to comply with Section 1.2 or Section 1.3, Tenant will reimburse Developer for the Security Deposit within ten (10) business days after the Security Deposit is disbursed to the Agency pursuant to this Section 5.4.

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.** 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 the Portland, Oregon metropolitan area, 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.

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, and 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, Tenant and Developer and the Agency agree as follows:

8.1 Tenant and Developer agree the Property shall be used for the purposes designated in the Plan.

8.2 Developer agrees to 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 Developer agrees 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 D attached.

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

8.6 Developer and Tenant each 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 agrees to maintain the Property in a clean, neat and safe condition.

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 Tenant or any of their respective 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.** 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.

Any notice (1) sent by mail in the manner specified in subsection (i) of this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, (2) 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 day), and (3) 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 a 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.

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 Beaver Creek Road  
Oregon City, Oregon 97045  
Attn: Dave Queener  
Email: davidque@co.elackamas.us

Tenant: Bottling Group, LLC  
c/o PepsiCo Global Real Estate  
1111 Westchester Avenue  
White Plains, New York 10604  
Attn: Director of Real Estate  
Email: martyn.wallace1@pepsico.com

Levine & Levine, PLLC  
2 Jefferson Plaza  
Poughkeepsie, New York 12601  
Attn: Dale J. Lois, Esq.  
Email: dale@levinelevinelaw.com

Developer: SPDC Industrial Center 1 LLC  
c/o Security Properties, Inc.  
701 Fifth Avenue, Suite 5700  
Seattle, Washington 98104  
Attention: John Marasco  
Email: johnm@secprop.com

With a copy to

Alston, Courtnage & Bassetti LLP  
1420 Fifth Avenue, Suite 3650  
Seattle, Washington 98101-4011  
Attention: Andrew B. Bassetti  
Email: abasse@alcourt.com

Escrow Holder: Chicago Title Insurance Company of Oregon  
1211 SW Fifth Ave., Suite 2130  
Portland, Oregon 97204  
Attn: Patricia Parsons  
Email: Patricia.Parsons@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 this 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, 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 of 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.**



9.13.1 **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 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**").

9.13.2 **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.

9.13.3 **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:**

**SPDC INDUSTRIAL CENTER 1 LLC**, an Oregon limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**AGENCY:**

**CLACKAMAS COUNTY DEVELOPMENT AGENCY**, a corporate body politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ESCROW HOLDER:**

**CHICAGO TITLE INSURANCE COMPANY OF OREGON**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

**BOTTLING GROUP, LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

List of Exhibits

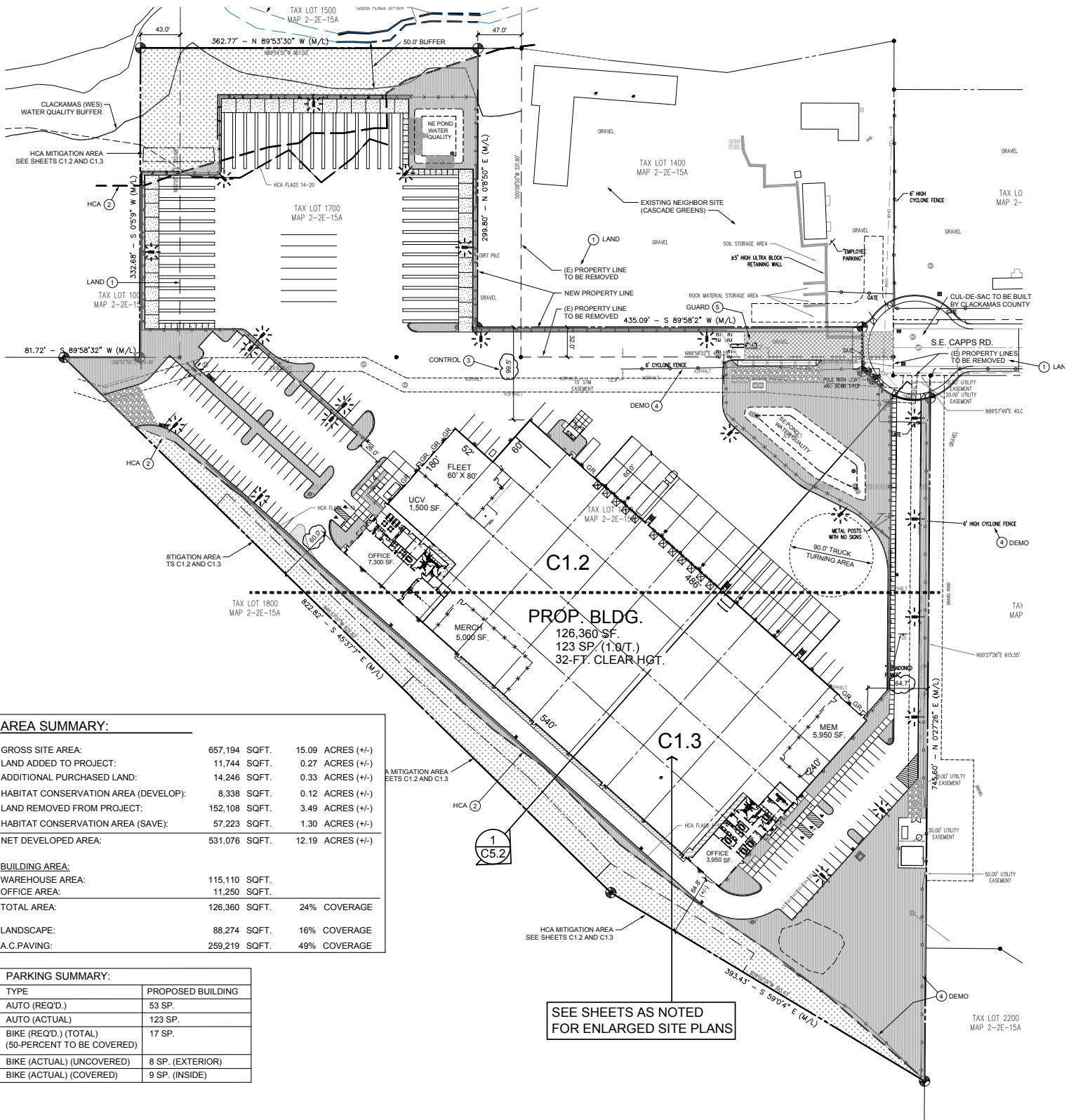
- Exhibit A Legal Description of Property
- Exhibit B Scope of Development
- Exhibit C Schedule of Performance
- Exhibit D List of Plans and Specifications for Construction of the Building Improvements

**EXHIBIT A**

**Legal Description of Property**

# EXHIBIT B

## SCOPE OF DEVELOPMENT



### AREA SUMMARY:

GROSS SITE AREA:	657,194 SQFT.	15.09 ACRES (+/-)
LAND ADDED TO PROJECT:	11,744 SQFT.	0.27 ACRES (+/-)
ADDITIONAL PURCHASED LAND:	14,246 SQFT.	0.33 ACRES (+/-)
HABITAT CONSERVATION AREA (DEVELOP):	8,338 SQFT.	0.12 ACRES (+/-)
LAND REMOVED FROM PROJECT:	152,108 SQFT.	3.49 ACRES (+/-)
HABITAT CONSERVATION AREA (SAVE):	57,223 SQFT.	1.30 ACRES (+/-)
NET DEVELOPED AREA:	531,076 SQFT.	12.19 ACRES (+/-)
<b>BUILDING AREA:</b>		
WAREHOUSE AREA:	115,110 SQFT.	
OFFICE AREA:	11,250 SQFT.	
TOTAL AREA:	126,360 SQFT.	24% COVERAGE
LANDSCAPE:	88,274 SQFT.	16% COVERAGE
A.C.PAVING:	259,219 SQFT.	49% COVERAGE

### PARKING SUMMARY:

TYPE	PROPOSED BUILDING
AUTO (REQ'D.)	53 SP.
AUTO (ACTUAL)	123 SP.
BIKE (REQ'D.) (TOTAL) (50-PERCENT TO BE COVERED)	17 SP.
BIKE (ACTUAL) (UNCOVERED)	8 SP. (EXTERIOR)
BIKE (ACTUAL) (COVERED)	9 SP. (INSIDE)

SEE SHEETS AS NOTED  
FOR ENLARGED SITE PLANS

## EXHIBIT C

### **SCHEDULE OF PERFORMANCE**

Preliminary Design	25 weeks	May 2018 – October 2018
Design Review Approval Process	12 weeks	August 2018 – November 2018
Design Review Appeal Process	9 weeks	December 2018 – February 2019
Final Design	13 weeks	November 2018 – February 2019
Permitting and Bidding	14 weeks	February 2019 – May 2019
Construction	46 weeks	May 2019 – March 2020

## EXHIBIT D

### LIST OF PLANS AND SPECIFICATIONS

CVR1.0	Cover Sheet	1/30/19
C1.0	Overall Area Site Plan	1/30/19
C1.1	Master Site Plan	1/30/19
C1.2	Site Plan North	1/30/19
C1.3	Site Plan South	1/30/19
C2.0	Overall Site Grading Plan	1/30/19
C2.1	Site Grading Plan North	1/30/19
C2.2	Site Grading Plan South	1/30/19
C2.3	Grading Details	1/30/19
C3.0	Overall Site Utility Plan	1/30/19
C3.1	Site Utility Plan North	1/30/19
C3.2	Site Utility Plan South	1/30/19
C3.3	Utility Details	1/30/19
C3.4	Utility Details	1/30/19
C3.5	Utility Details	1/30/19
C3.6	Utility Details	1/30/19
C4.0	Erosion and Sediment Control Cover	1/30/19
C4.1	ESC Existing Conditions & Demo Plan	1/30/19
C4.2	Erosion & Sediment Control Plan	1/30/19
C4.3	Erosion & Sediment Control Details	1/30/19
C5.0	Site Details	1/30/19
C5.1	Site Details	1/30/19
C5.2	Site Details	1/30/19
C6.0	Fire Plan	1/30/19
C6.1	Fire Plan Details	1/30/19
1	Topographic Survey	1/30/19
2	Topographic Survey	1/30/19
L1.0	Overall Landscape Plan	1/30/19
L1.1	Landscape Plan North	1/30/19
L1.2	Landscape Plan South	1/30/19
L2.0	Plant Lists	1/30/19
L3.0	Spec and Notes	1/30/19
LT1.0	Site Lighting Plan	1/30/19
A1.0	Overall Floor Plan	1/30/19
A1.1	Partial Floor Plan West	1/30/19
A1.2	Partial Floor Plan East	1/30/19
A1.3	Enlarged Office Floor Plans	1/30/19
A1.4	Door Schedules	1/30/19
A1.5	Door Details/Finish Schedule	1/30/19
A1.6	Wall Types Plan and Details	1/30/19
A2.0	Exterior Elevations	1/30/19
A3.0	Building Sections	1/30/19
A4.0	Wall Sections	1/30/19
A4.1	Wall Sections	1/30/19
A5.0	Roof Plan and Details	1/30/19
A5.1	Roof Details	1/30/19
A6.0	Storefront Plans and Elevations	1/30/19
A7.0	Enlarged Floor Plans	1/30/19
A7.1	Interior Elevations and Details	1/30/19

A7.2	Interior Elevations	1/30/19
A8.0	Architectural Details	1/30/19
A8.1	Architectural Details	1/30/19
A9.0	Reflected Ceiling Plans	1/30/19
A9.1	Reflected Ceiling Details	1/30/19
A10.0	Specifications	1/30/19
A10.1	Specifications	1/30/19
A10.2	Specifications	1/30/19
A10.3	Specifications	1/30/19
A10.4	Specifications	1/30/19
A10.5	Special Inspection Notes	1/30/19
S1.0	Foundation Plan	1/30/19
S2.0	Foundation Details	1/30/19
S2.1	Foundation Details	1/30/19
S3.0	Roof Framing Plan	1/30/19
S4.0	Roof Framing Details	1/30/19
S5.0	Wall Panel Details	1/30/19
S6.0	Wall Panel Elevations	1/30/19
S6.1	Wall Panel Types	1/30/19
S7.0	Canopy Framing Plan and Details	1/30/19



## ESCROW HOLDBACK AGREEMENT

THIS ESCROW HOLDBACK AGREEMENT (this "**Agreement**") is entered into as of \_\_\_\_\_, 2019 (the "**Effective Date**"), by and among **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**"), **SPDC INDUSTRIAL CENTER 1 LLC**, an Oregon limited liability company ("**Developer**"), and **CHICAGO TITLE INSURANCE COMPANY OF OREGON** ("**Escrow Holder**").

### RECITALS

A. Pursuant to that Disposition Agreement dated as of May 24, 2018, as amended by amendments dated as of November 20, 2018, January 24, 2019, March 28, 2019, and May 2, 2019, and by an Assignment, Assumption, Consent and Amendment to Disposition Agreement dated as of May \_\_, 2019 (as amended, the "**DA**"), Developer acquired from Agency that certain real property located on Capps Road west of SE 120th Avenue in Clackamas County, Oregon, as more particularly described in Exhibit A attached (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. Pursuant to the DA, at the Closing, the sum of \$258,300 (the "**Funds**") of the net sales proceeds payable to the Agency shall be held back and deposited into an escrow account established with Escrow Holder (the "**Account**") to pay costs incurred by Developer in removing unsuitable soil from the Property, including the removal and remediation of any contaminated soil on the Property.

C. 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. **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.

2. **Account.**

2.1 **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.

2.2 **Account Deposit.** On the Effective Date, Agency shall authorize deposit of the Funds in the Account by directing the Escrow Holder to establish the Account with the sum of \$258,300 of the net sales proceeds payable to the Agency. Until disbursed as provided herein, all funds in the Account (as may vary from time to time, the "**Account Funds**") shall be held by the Escrow Holder in accordance with the terms of this Agreement.

2.3 **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.

2.4 **Developer Disbursements.** Developer may request up to two (2) disbursements of the Account Funds, but no more than one (1) disbursement will be permitted in any calendar month. Developer may request disbursements to reimburse Developer for any costs incurred by Developer in removing unsuitable soil from the Property, including the removal and remediation of any contaminated soil on the

Property, and the fees of any geotechnical or environmental consultants supervising the work or consulting with Developer with respect to the work. To request a disbursement of the Account Funds, Developer will send a written notice (a "**Disbursement Request**") to the Agency and Escrow Agent which (i) describes the type and dollar cost of the work that has been undertaken or performed and (ii) is accompanied by invoices evidencing Developer's payment for the work for which Developer is seeking reimbursement. Any invoice to be included as part of a Disbursement Request shall, at a minimum, include unit prices and sufficient specificity to allow the Agency to determine how much material has been treated in connection with the work performed. In no event shall Escrow Agent be required to make any determination as to the accuracy of statements in any Disbursement Request delivered pursuant to this Section 2.4. Escrow Agent shall release the Account Funds in the amount, and as directed by Developer in a Disbursement Request, on the tenth (10<sup>th</sup>) business day following the receipt by Escrow Agent of the Disbursement Request unless prior to the end of such ten (10) business day period the Agency provides Developer and Escrow Holder with written notice that the Agency does not approve the disbursement requested by Developer (an "**Objection Notice**"). Any Objection Notice must state with specificity the reason for the Agency's objection to the requested disbursement of the Account Funds. The Agency agrees not to unreasonably withhold its consent to any disbursement of the Account Funds requested by Developer. If the Agency timely provides Developer and Escrow Agent with an Objection Notice, Escrow Agent shall not release the requested Account Funds until such time as (x) Developer or the Agency has obtained a final, nonappealable determination or judgment from a court of competent jurisdiction specifying whether the Account Funds are to be released, or (y) Escrow Agent has received written directions, jointly signed by Developer and the Agency, specifying the amount and manner in which the Account Funds are to be released. If the Agency issues an Objection Notice, the Agency and Developer will promptly meet and attempt to amicably resolve any dispute regarding the Account Funds.

2.5 **Agency Disbursements.** The Escrow Agent shall release to the Agency any Account Funds that are remaining in the Account on December 31, 2019. The distribution under this section shall be automatic, and shall not require the affirmative request of the Agency, or the consent of the Developer.

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

3. **Limitation of Liability.** In no event shall the Agency be liable for any costs associated with removing unsuitable soil from the Property, including the removal and remediation of any contaminated soil on the Property, above and beyond the Funds that are deposited into the Account. 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 3 shall survive the expiration or termination of this Agreement.

#### 4. **Escrow Holder.**

4.1 **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.

4.2 **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.

4.3 **Resignation of Escrow Holder.** 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 the Portland, Oregon metropolitan area, 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.

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.

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

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

#### 5. **General Provisions.**

5.1 **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.

5.2 **Notice.** 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. Any notice (1) sent by mail in the manner specified in subsection (i) of this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, (2) 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 day), and (3) 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 a 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.

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.us

Developer: SPDC Industrial Center 1 LLC  
c/o Security Properties, Inc.  
701 Fifth Avenue, Suite 5700  
Seattle, Washington 98104  
Attention: John Marasco  
Email: johnm@secprop.com

With a copy to

Alston, Courtnage & Bassetti LLP  
1420 Fifth Avenue, Suite 3650  
Seattle, Washington 98101-4011  
Attention: Andrew B. Bassetti  
Email: abasse@alcourt.com

Escrow Holder: Chicago Title Insurance Company of Oregon  
1211 SW Fifth Ave., Suite 2130  
Portland, Oregon 97204  
Attn: Patricia Parsons  
Email: Patricia.Parsons@ctt.com

5.3 **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.

5.4 **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.

5.5 **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 this Agreement, or as the same may be extended by mutual agreement of the parties in writing.

5.6 **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.

5.7 **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, 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.

5.8 **Non-Integration.** 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 of the Agency and the Developer.

5.9 **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.

5.10 **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.

5.11 **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 5.11, this Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors and assigns.

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

5.13 **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.

5.14 **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.

5.15 **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.

5.16 **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.

*[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:**

**SPDC INDUSTRIAL CENTER 1 LLC**, an Oregon limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AGENCY:**

**CLACKAMAS COUNTY DEVELOPMENT AGENCY**, a corporate body politic

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ESCROW HOLDER:**

**CHICAGO TITLE INSURANCE COMPANY OF OREGON**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

List of Exhibits  
Exhibit A      Legal Description of Property

**EXHIBIT A**

**Legal Description of Property**





Gregory L. Geist  
Director

May 9, 2019

Water Environment Services Board  
Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Amendment #1 to the Intergovernmental Agreement  
Between Portland State University and Water Environment Services  
PSU Contract #550066

<b>Purpose/Outcomes</b>	Approval of Amendment #1 to the Intergovernmental Agreement between Portland State University (“PSU”) and WES to move forward with Oregon Consensus.
<b>Dollar Amount and Fiscal Impact</b>	The amendment will increase the consideration by \$25,000.00, for a total consideration not to exceed \$45,000.00. The cost to WES will be determined by the total amount of contributions of cost share by the participants.
<b>Funding Source</b>	FY18-19 and/or FY19-20 WES Budgets – ratepayer supported. No general fund dollars will be used for WES efforts.
<b>Duration</b>	Amendment expiration of December 31, 2019.
<b>Previous Board Action</b>	Original Intergovernmental Agreement with the Development Agency of Clackamas County and WES approved on July 27, 2017, and amended by the Board on July 12, 2018.  On January 22, 2019, the Board authorized WES staff to proceed and negotiate an IGA with PSU to be brought back to the Board for approval.
<b>Strategic Plan Alignment</b>	Addressing governance issues can help facilitate needed conversations regarding investment, coordinated action, and regional solutions to watershed issues. This aligns with the County’s Strategic Goals in that it helps 1) build a strong infrastructure and 2) build trust through good government.
<b>Contact Person</b>	Greg Geist, 503-742-4560
<b>Contract No.</b>	None

**BACKGROUND:**

In 2015-16, Clackamas County Service District No. 1 (“CCSD#1”) and Tri-City Service District (“TCSD”) engaged in conversations about joint investment in solids handling at the Regional Advisory Committee, which consisted mainly of elected officials from both districts, plus one unincorporated resident. The Regional Committee’s purpose was to discuss joint investments between the then-separate districts. At those meetings, some elected officials, most strongly the Mayor of Oregon City, pushed for a change in governance of the service districts – putting city councils, or representatives from them, in charge of regional wastewater service instead of the Board of County Commissioners.

The Board of County Commissioners responded that they were open to having a conversation, and proposed utilizing Oregon Consensus, a facilitation process supported by the Governor's office and housed at Portland State University, to facilitate the discussion.

The formation of WES answered definitively at least part of the governance conversation that was raised in 2015. The Board concluded that all ratepayers would benefit from a regional approach to an economies of scale business such as wastewater and surface water, and directed the formation of WES and the combination of all three service districts' business dealing with those issues into the single entity of WES.

The representatives from various cities have continued to advocate for some degree of city control of the regional system. Oregon Consensus was engaged and conducted an initial "survey" phase of work to see if there was sufficient mutuality to support a larger discussion. The survey results were based on interviews of WES stakeholders, including County Commissioners, city councilors, and several members of the WES Advisory Committee.

After deliberation on the survey report, the members of the Elected Officials Forum requested a continued conversation about governance and continued engagement with Oregon Consensus. Similarly, after deliberation on the report, the members of the WES Advisory Committee recommend a continued conversation about the matter.

WES presented the Oregon Consensus report of survey results to the Board during the policy session on January 22, 2019. The Board authorized staff to negotiate an IGA to be brought back to the Board regarding the scope and scale of the Oregon Consensus process consistent with Board direction as discussed arising from the Oregon Consensus survey results, and the recommendations from the WES Advisory Committee, the Elected Officials Forum, and WES staff.

WES and Portland State University desire to amend the Agreement pursuant to the proposed Amendment #1, herein attached, to allow for the next phase of work to take place at the request of WES, the WES Advisory Committee, and the Cities of Gladstone, Happy Valley, Johnson City, Milwaukie, Oregon City, and West Linn.

**RECOMMENDATION:**

WES staff recommends the Board, acting as the governing body of Water Environment Services, approve Amendment #1 to the Intergovernmental Agreement between Portland State University and Water Environment Services PSU Contract #550066, as described above.

Respectfully submitted,



Greg Geist  
Director, Water Environment Services

Attachments:

- Amendment #1 to the Intergovernmental Agreement between PSU and WES
- Attached Amendment 1 - Exhibit A, Scope of Work

**AMENDMENT #1 TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN  
PORTLAND STATE UNIVERSITY AND  
WATER ENVIRONMENT SERVICES  
PSU Contract #550066**

This Amendment #1, when signed by Portland State University (“PSU”) and Water Environment Services (“WES”) will become part of the intergovernmental agreement documents, superseding the original to the applicable extent indicated, and effective March 28, 2019.

WHEREAS, PSU and WES entered into that certain intergovernmental agreement relating to the engagement of Oregon Consensus effective May 1, 2018 (“Agreement”) to provide Phase I interviews and report regarding the possibility of facilitating a conversation regarding regional wastewater governance and service; and

WHEREAS, PSU and WES desire to amend the Agreement pursuant to this Amendment to allow for the next phase of work to take place at the request of WES, the WES Advisory Committee, and the Cities of Gladstone, Happy Valley, Johnson City, Milwaukie, Oregon City, and West Linn (the “Interested Cities” and, together with WES and the WES Advisory Committee, the “Participants”); and

WHEREAS, the Participants desire a collaborative process led by Oregon Consensus as outlined in the draft report provided by Oregon Consensus, and are willing to contribute towards the cost of the same, with WES serving as the contract coordinator and point of contact to provide ease of management and support of the work;

NOW, THEREFORE, PSU and WES hereby agree that the Agreement is amended as follows:

**SECTION I: Term is amended to extend the expiration date to December 31, 2019.**

**SECTION II: Statement of Work is amended to add the scope set forth on the attached Amendment 1 - Exhibit A.**

**SECTION III: Consideration is amended to increase the consideration by Twenty-Five Thousand and no/100 Dollars (\$25,000.00), for a total consideration not to exceed Forty-Five and no/100 Dollars (\$45,000.00).**

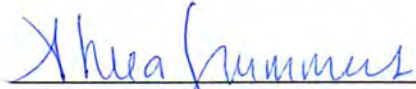
The parties recognize and acknowledge that the scope anticipates receiving feedback from participants and that some degree of change in scope is possible as part of the process, and therefore maximum authorized consideration reflects an amount to pay for any increase in workload arising from such shift.

WES agrees to pay the full consideration required under the Agreement as amended and will solicit contributions from the Interested Cities for their share in supporting the work of Oregon Consensus on behalf of the Participants.

*[Signature Page Follows]*

Except as set forth herein, PSU and WES ratify the remainder of the Agreement and affirm that no other changes are made hereby.

**PORTLAND STATE UNIVERSITY:**



Authorized Signor

Ahrea Summers, Contract Officer

04/25/2019

**WATER ENVIRONMENT SERVICES:**

\_\_\_\_\_  
Authorized Signor

AMENDMENT 1 - EXHIBIT A  
SCOPE OF WORK

In response to a request from the Water Environment Services (WES), Oregon Consensus (OC) is providing this scope of work for designing, initiating and facilitating a collaborative process to address issues related to governance of wastewater infrastructure in Clackamas County. This process would follow up on the recommendations provided in the Oregon Consensus report entitled Clackamas County Wastewater Governance Situation Assessment (December 13, 2018 draft) regarding the potential opportunity for a collaborative agreement-seeking process to address these issues. The proposed process outlined below includes an opportunity for a joint collaborative learning component as well as for a problem-solving component.

Scope of Work – Collaborative Process

NPCC will design, initiate and facilitate a collaborative process as outlined below. The intended purpose of the process would be to identify agreed-upon actions or changes in governance approaches that would meet the needs and interests of all the process participants. Process participants would include WES, county commissioner(s), city elected officials, and representatives of other interests who might be directly affected by the outcomes of the process.

1. OC would (working with WES, the county commissioners, and other stakeholders) develop and articulate a proposed process design/scope and proposed operating principles. The range of interests would be represented initially by participation from two county commissioners, one representative from each city served by WES, the WES Director, and several members of the WES Advisory Committee (collectively, the “Participants”). OC would also work with WES and the Participants to identify a small planning team to assist in meeting planning, initially proposed to be a county commissioner, a city representative, the Chair of the WES Advisory Committee, and the WES Director. Ultimately, all process participants must agree to the design/scope and operating principles for the process.
2. OC would plan and facilitate three meetings (of approximately 3 hours each) designed to provide an opportunity for joint learning among the process participants including a focus on (i) understanding the infrastructure and nature of the business, the fiscal structure of WES, and an environmental scan of current issues impacting each stakeholder (including WES and City systems), (ii) future challenges to the system, with infiltration/inflow (“I/I”) as a case study, and (iii) sharing of information about underlying interests of participants (as identified in the assessment report).
3. OC would plan and facilitate up to three meetings (up to approximately 3 hours each) designed to provide an opportunity for problem solving – which may include identifying criteria for a solution that would meet the interests of the participants and evaluating different options for a solution against those criteria.

Cost

The cost for conducting this assessment process as described above shall not exceed \$25,000.00 (Twenty-Five Thousand Dollars and no/cents) including labor, travel expense, and other direct and indirect costs.