



DAN JOHNSON  
DIRECTOR

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

February 2, 2023

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
Clackamas County

**Approval of Amendment #2 to a Disposition Agreement with The Blue at Abernethy Creek, LLC Pertaining to Property Located at 902 Abernethy Road. Agreement value is \$3,344,251. Funding is through buyer. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	March 28 <sup>th</sup> , 2019 – Disposition Agreement Executed July 30 <sup>th</sup> , 2020 – 1 <sup>st</sup> Amendment Executed		
<b>Performance Clackamas</b>	1. Building trust with good government		
<b>Counsel Review</b>	Yes	<b>Procurement Review</b>	No
<b>Contact Person</b>	Dan Johnson, Director	<b>Contact Phone</b>	(503) 742-4325

**EXECUTIVE SUMMARY:** Under Board direction, staff negotiated and the Board approved partnering disposition agreements to acquire a constructed facility and liquidate the 902 Abernethy Road facility to make possible the relocation of the Transportation Maintenance and Fleet programs. Advancing a desire to create a safe place out of the floodplain for these vital programs since the devastating flood in 1996.

Staff is proposing a 2<sup>nd</sup> amendment to this agreement to ensure closing dates align with the partnering agreement with Beaver Creek Structures, LLC.

The value of this facility was established by independent appraisal. The revenue from this disposition will be allocated to the acquisition of a future site to house Transportation Maintenance and Fleet Services.

**RECOMMENDATION:** Staff respectfully recommends the Board of County Commissioners authorize the Chair to execute the attachment amendment.

Respectfully submitted,

*Dan Johnson*

Dan Johnson- Director  
Transportation & Development

For Filing Use Only

## SECOND AMENDMENT TO DISPOSITION AGREEMENT

**THIS SECOND AMENDMENT TO DISPOSTION AGREEMENT (“Amendment”)** is entered into effective as of \_\_\_\_\_, 2023, between **CLACKAMAS COUNTY**, a corporate body politic (“**County**”), and The Blue at Abernethy Creek, LLC, an Oregon limited liability company or assigns (“**Developer**”).

### RECITALS

A. County and Developer are parties to that certain Disposition Agreement dated effective as of April 8, 2019, and the First Amendment to Disposition Agreement dated effective as of July 30, 2020 (collectively, the “**Disposition Agreement**”), concerning approximately 22.75 acres of land located at 902 Abernethy Road, Oregon City, Oregon, as more particularly described in the Disposition Agreement (the “**Property**”).

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

### AGREEMENT

1. **Amendment to Section 3.3. Section 3.3 of the Disposition Agreement which, after the First Amendment to Disposition Agreement, reads:**

This transaction shall close (the “**Closing**”) concurrent with the close of the Maintenance Facility Sale Agreement (the “**Closing Date**”). The Closing Date of this Agreement shall be dictated by the closing of the Maintenance Facility Agreement. The County and Developer shall be prepared to close on or before the earlier occurrence of the following: 1) May 20, 2022; or 2) fifteen (15) days after issuance of temporary occupancy for the Maintenance Facility by the City of Oregon City. If temporary occupancy for the Maintenance Facility has not been obtained from the City of Oregon City by the Developer on or before May 20, 2022, Developer may extend Closing until temporary occupancy for the Maintenance Facility is obtained pursuant to Section 3.3 of the Maintenance Facility Sales Agreement. Developer’s right to extend the Closing is limited to an additional one hundred eighty (180) days, as set forth in the Maintenance Facility Sales Agreement.

Closing shall occur in escrow on or before the Closing Date by and through a mutually acceptable escrow officer (the “**Escrow Officer**”) of First American Title, 9200 SE Sunnyside Road, Suite 400, Clackamas, OR 97015 (the “**Title Company**”), in accordance with the terms and conditions of this Agreement. Developer agrees, subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Subject Property and pay to the County at Closing the Purchase Price for the Subject Property by wire transfer of immediately available funds, subject to the credits, debits, prorations and adjustments provided for in this Agreement, including a credit for the Earnest Money. The County and the Developer agree to perform all acts necessary to close this transaction in accordance with the terms of this Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Agreement. Once submitted, instructions may not be withdrawn or altered without the consent of both the County and the Developer.

**Is hereby deleted in its entirety and is replaced with the following:**

This transaction shall close (the “**Closing**”) concurrent with the close of the Maintenance Facility Sale Agreement (the “**Closing Date**”). The Closing Date of this Agreement shall be dictated by the closing of the Maintenance Facility Agreement. The County and Developer shall be prepared to close after issuance of temporary occupancy by the City of Oregon City, on a date that occurs on or before the earlier occurrence of the following: 1) August 20, 2022, or any extension thereto as set forth below; or 2) 30 days after written notification by the Seller of the intent to proceed to close pursuant to the terms of the Maintenance Facility Agreement. If temporary occupancy for the Maintenance Facility has not been obtained from the City of Oregon City by the Developer on or before August 20, 2022, Developer may extend Closing until temporary occupancy for the Maintenance Facility is obtained pursuant to Section 3.3 of the Maintenance Facility Sales Agreement. Developer’s right to extend the Closing is limited to an additional three hundred ninety-four (394) days, as set forth in the Maintenance Facility Sales Agreement.

Closing shall occur in escrow on or before the Closing Date by and through a mutually acceptable escrow officer (the “**Escrow Officer**”) of First American Title, 9200 SE Sunnyside Road, Suite 400, Clackamas, OR 97015 (the “**Title Company**”), in accordance with the terms and conditions of this Agreement. Developer agrees, subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Subject Property and pay to the County at Closing the Purchase Price for the Subject Property by wire transfer of immediately available funds, subject to the credits, debits, prorations and adjustments provided for in this Agreement, including a credit for the Earnest Money. The County and the Developer agree to perform all acts necessary to close this transaction in accordance with the terms of this Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Agreement. Once submitted, instructions may not be withdrawn or altered without the consent of both the County and the Developer.

**2. Addition of Section 4.1.4. The following section is added to the Disposition Agreement as Section 4.1.4:**

The execution by Developer of a lease to the County to allow the County to vacate the Subject Property and relocate its vehicles, equipment, and other personal property to the Maintenance Facility. The lease shall be at no cost to the County, shall cover only that portion of the Subject Property necessary to allow the County access to its vehicles, equipment, and other personal property that remain on the Subject Property after the Closing Date, and shall be for a term not to exceed \_\_\_\_\_ days.

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

4. **Confirmation.** The Disposition Agreement is hereby amended and modified in accordance with the terms of this Amendment. Except as expressly modified by this Amendment, the

Disposition Agreement and all its terms and provisions are hereby acknowledged, approved, ratified and confirmed and shall be and remain in full force and effect.

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

**COUNTY:**

**CLACKAMAS COUNTY** a corporate body politic

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

Name: Tootie Smith

Its: Chair – Clackamas County Board of County Commissioners

**DEVELOPER:**

**THE BLUE AT ABERNETHY CREEK, LLC,**  
An Oregon limited liability company

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

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

Its: \_\_\_\_\_