



DAN JOHNSON
DIRECTOR

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

April 22, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of First Amendment to an Intergovernmental Agreement between Clackamas County and the City of Beaverton for Provisions of Permit Processing and Building Inspection/Plan Review (BI/PR) Services

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| Purpose/Outcomes | To adopt the first Amendment to an existing intergovernmental agreement (IGA) with the City of Beaverton to provide staffing assistance to the Department of Transportation and Development's (DTD) Building Codes Division (BCD). |
| Dollar Amount and Fiscal Impact | Under this IGA Clackamas County's BCD coordinates with the City of Beaverton to utilize the services of a fully trained and certified City employee. The County's BCD pays a rate of \$44.82 per hour (\$49.73 per hour for overtime) for work performed by City of Beaverton staff. This arrangement is more economical than using BCD's existing third parties contracts, and the total dollar amount will be based upon the hours worked during the timeframe of the Agreement. |
| Funding Source | The Building Codes Division will support this IGA with funds that are the result of fees for service (permitting and plans review fees). No unrestricted (general funds) are used for this contract. These funds are accounted for in the approved FY20-21 budget and the proposed FY21-22 budget. |
| Duration | The Amendment to the existing IGA will be effective upon signature by the Board, and will extend the existing IGA an additional six months. |
| Previous Board Action | This item was presented to the Board at Issues on April 13, 2021. The original IGA was approved by the Board at the August 20, 2020 Business Meeting. |
| Strategic Plan Alignment | <p>1. <i>How does this item align with your Department's Strategic Business Plan goals?</i></p> <p>The Land Use and Permitting line of business' purpose is to provide the community with comprehensive plan review, permitting, and inspection services. With the continued impacts of COVID-19, including the requirement to perform all our</p> |

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| | <p>services online, we have seen increased complexity in our work coupled with continued high volume of construction activity. By using this IGA we will be able to continue to employ the assistance of fully trained and certified staff.</p> <p>2. <i>How does this item align with the County's Performance Clackamas goals?</i></p> <p>While not specifically outlined in the Board's Priorities, it is a Performance Clackamas goal to support growing a vibrant economy and build a strong infrastructure. Each year the Land Use and Permitting line of business adds 6.7 million square feet of constructed improvements to the community, which is valued at \$675,000,000. Adding staffing assistance to the Building Codes Division will help meet this goal.</p> |
| County Counsel Review | This IGA Amendment was reviewed and approved by County Counsel on April 6, 2021. NB |
| Procurement Review | <p>1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/></p> <p>2. If no, provide brief explanation: This item is an Intergovernmental Agreement.</p> |
| Contact Person | Elizabeth Bunga, Deputy Building Codes Administrator (503) 742-4744 |

BACKGROUND:

With the onset of COVID-19, and Governor Kate Brown issuing the *Stay Home Save Lives* order (with the Clackamas County Board of Commissioners also declaring an emergency), construction was deemed an essential service, which required the Department of Transportation and Development's (DTD) Development Services to remain open for business during the pandemic. In response to this requirement, in early April 2020, Clackamas County implemented new permitting protocols which allow customers to submit building permit applications digitally, and enables our plans examiners to review digital plans remotely. This new system has made it possible for the Building Codes Division to continue working throughout the pandemic, while keeping staff safe and the construction industry moving forward with their projects.

With the creation of this new electronic permitting and review system, and the high number of permit applications and reviews we are experiencing, we have seen a large increase in the workload for our permitting (permit technicians and specialists) and plans examiner teams. In August 2020 the County entered into an IGA with the City of Beaverton to provide these two work groups with additional staffing resources.

The IGA allows the City of Beaverton to assist the County by providing a fully trained and certified employee to perform permitting and plans review work assigned by the County's Building Codes Division. City staff remain an employee of the City of Beaverton, under their supervision and receiving all compensations from the City. The County assigns, directs, and reviews the work, with the City employee working either from home or in County offices.

Since creation of the IGA we have continued to see a large increase in work for our permitting (permit technicians and specialists) and plans examiner teams. Additionally, DTD and the Building

Codes Division are implementing new permitting and plans review software (Avolve products OAS and ProjectDox). In order to provide adequate resources for our teams to attend trainings, test the new products, and provide exceptional customer service to the public, we continue to need staffing assistance. We also have staff on approved medical leaves which requires additional coverage.

For all of these reasons we are seeking to amend the Intergovernmental Agreement (IGA) with the City of Beaverton to extend the existing IGA for an additional six months.

This Amendment does not adjust the original financial terms of the Agreement. The IGA established that the County pays \$44.82 per hour (\$49.73 per hour for overtime) for work performed by City of Beaverton staff. This arrangement is more economical than using BCD's existing third parties contracts, which use private contractors to perform similar tasks.

Using this IGA will not impact current staff's available work or overtime opportunities, and will support existing staff as they experience increased workloads and customer demands for service. In accordance with Article 23 of the current 2019-2020 DTD AFSCME bargaining agreement, a 20 calendar day notice of contracting work was provided to the Union on January 22, 2021.

RECOMMENDATION:

Staff respectfully recommends approval of the First Amendment to Intergovernmental Agreement for Provisions of Permit Processing and Building Inspection/Plan Review (BI/PR) Services with the City of Beaverton.

Respectfully submitted,

Elizabeth Bunga, Deputy Building Codes Administrator
Department of Transportation and Development

Attachments:

1. First Amendment to Intergovernmental Agreement for Provisions of Permit Processing and Building Inspection/Plan Review (BI/PR) Services.
2. Intergovernmental Agreement for Provisions of Permit Processing and Building Inspection/Plan Review (BI/PR) Services.

**FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
FOR PROVISIONS OF PERMIT PROCESSING AND
BUILDING INSPECTION/PLAN REVIEW (BI/PR) SERVICES**

THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR PROVISIONS OF PERMIT PROCESSING AND BUILDING INSPECTION/PLAN REVIEW (BI/PR) SERVICES (“Amendment”) is entered into effective as of _____, 2021, between **CLACKAMAS COUNTY**, a corporate body politic (“County”), and the **CITY OF BEAVERTON**, an Oregon municipal corporation (“City”).

RECITALS

A. County and City are parties to that certain Intergovernmental Agreement for provisions of permit processing and building inspection and plan review services dated effective as of August 20, 2020, (the “IGA”).

B. The parties desire to modify the IGA 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 2. Section 2 of the IGA which reads:**

The Originating Party shall make available its Shared Employee to the Borrowing Party for purposes of providing Permit Processing and/or BI/PR services. The Shared Employee shall be available to the Borrowing Party no later than September 8, 2020. The Parties agree that the Shared Employee shall be available to the Borrowing Party for a minimum of 40 hours per week, and for a term of 6 months (the “Employee Term”). The Parties agree that the Shared Employee possesses the ~~minimum~~ qualifications given the tasks described herein. During the Employee Term, the Shared Employee shall not perform any services on behalf of the Originating Party unless agreed to in writing in advance by the building official of the Borrowing Party.

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

The Originating Party shall make available its Shared Employee to the Borrowing Party for purposes of providing Permit Processing and/or BI/PR services. The Shared Employee shall be available to the Borrowing Party no later than September 8, 2020. The Parties agree that the Shared Employee shall be available to the Borrowing Party for a minimum of 40 hours per week, and for a term of one (1) year (the “Employee Term”). The Parties agree that the Shared Employee possesses the ~~minimum~~ qualifications given the tasks described herein. During the Employee Term, the Shared Employee shall not perform any services on behalf of the Originating Party unless agreed to in writing in advance by the building official of the Borrowing Party.

2. **Amendment to Section 3. Section 3 of the IGA which reads:**

The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Shared Employee's Term and final payment by the Borrowing Party, or one (1) year following the date all required signatures are obtained, whichever is sooner.

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

The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Employee Term and final payment by the Borrowing Party, or eighteen (18) months following the date all required signatures are obtained, whichever is sooner.

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

[Signatures on next page.]

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

CLACKAMAS COUNTY

By: _____

Name: _____

Its: Chair, Board of County Commissioners

CITY OF BEAVERTON

By: _____ *LACEY BEATY* _____

Name: _____ LACEY BEATY _____

Its: _____ Mayor _____

Intergovernmental Agreement for Provisions of
Permit Processing and Building Inspection/Plan Review (BI/PR) Services

This Intergovernmental Agreement (“Agreement”) is entered into by and between the City of Beaverton, an Oregon municipal corporation (the “City”), and Clackamas County, a political subdivision of the State of Oregon (the “County”), (each a “Party” or collectively the “Parties”).

RECITALS

- A. ORS 190.010 authorizes and allows the Parties to this Agreement to perform the functions and activities that another Party to this Agreement has authority to perform.
- B. Each of the Parties has staff that provides Permit Processing and BI/PR services, as defined below, for their respective jurisdictions.
- C. With the fluctuations in development and construction activity in Oregon, primarily due to the effects of the COVID-19 disease, the Parties have experienced variations in demand for Permit Processing and BI/PR services over the course of the last few months; and the Parties believe it will be more cost effective and will better serve the public to share experienced staff of another jurisdiction rather than independently hiring additional staff, or terminating existing staff in response to permit revenue shortfalls.

AGREEMENT

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

- 1. Definitions. As used herein, the following words and phrases mean:
 - 1.1. "Borrowing Party" is the County, which is requesting and obtaining staff assistance from the City pursuant to the terms of this Agreement.
 - 1.2. "Building Inspection/Plan Review Services" (BI/PR) are services related to the issuance of permits under the provisions of ORS Chapters 197. 215, 227 or 455.
 - 1.3. "Originating Party" is the City, which is loaning one of its employees to the County for staff assistance related to Permit Processing and BI/PR services.
 - 1.4. "Permit Processing" are services related to staff, who under general supervision, provide information to the public about State of Oregon adopted codes, rules and laws governing construction of buildings and facilities, site and septic systems, permit applications, inspection processes and procedures, siting of manufactured dwellings, and disposal, grading or erosion control regulations; and check submitted plan review packages for completeness and compliance.
 - 1.5. "Reimbursement Costs" are those charges related to a Shared Employee as set forth in Section 4 of this Agreement. The charges shall be set out as an hourly rate for Permit Processing and BI/PR services described herein. Reimbursement Costs include overtime costs identified in

Section 4 of this Agreement.

- 1.6. "Shared Employee" refers to an employee of the Originating Party whose services are being loaned to the Borrowing Party under this Agreement.
2. Shared Employee. The Originating Party shall make available its Shared Employee to the Borrowing Party for purposes of providing Permit Processing and/or BI/PR services. The Shared Employee shall be available to the Borrowing Party no later than September 8, 2020. The Parties agree that the Shared Employee shall be available to the Borrowing Party for a minimum of 40 hours per week, and for a term of 6 months (the "Employee Term"). The Parties agree that the Shared Employee possesses the minimum qualifications given the tasks described herein. During the Employee Term, the Shared Employee shall not perform any services on behalf of the Originating Party unless agreed to in writing in advance by the building official of the Borrowing Party.
3. Duration. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Shared Employee's Term and final payment by the Borrowing Party, or one (1) year following the date all required signatures are obtained, whichever is sooner.
4. Payment for Use of Shared Employee. Services performed on behalf of the Borrowing Party shall be calculated hourly for the Shared Employee. The hourly rate of the Shared Employee shall be \$44.82/hr. If the Shared Employee works overtime, the overtime rate of the Shared Employee shall be \$49.73/hr.
5. Accounting for Shared Employee. The Shared Employee shall provide to the Originating Party an accounting of hours spent performing Permit Processing and BI/PR services for the Borrowing Party. The Originating Party shall then send to the Borrowing Party an invoice of the Reimbursement Costs of the Shared Employee each month. This information shall be provided within 30-days of the end of each calendar month and may be provided via US mail, e-mail or fax. The Borrowing Party shall pay all Reimbursement Costs within 30-days of receipt of the accounting described in this paragraph. The Borrowing Party shall be responsible for all Reimbursement Costs, which includes overtime costs, if applicable, but shall not be responsible for payment related to leave hours that the Shared Employee has accrued under his employment agreement with the Originating Party, and which the Shared Employee uses during the Shared Employee's Term. Furthermore, the Borrowing Party shall not be responsible for payment related to any time by the Shared Employee spent performing services on behalf of the Originating Party.
6. Status of Shared Employee. A Shared Employee shall:
 - 6.1. Account for the actual number of hours in service to the Borrowing Party;
 - 6.2. Remain an employee of the Originating Party continuing to be paid and receiving employee benefits therefrom without entitlement or claim to any salary, compensation or other benefits from the Borrowing Party;
 - 6.3. Continue working the number of hours specified in his or her contract of employment with the Originating Party while loaned to a Borrowing Party, unless the Originating Party, Borrowing Party and the Shared Employee agree otherwise;
 - 6.4. Administer the building code and the adopted building policies of the Borrowing Party. The Borrowing Party may direct the activities of the Shared Employee when the Shared Employee is providing the services as agreed to by the Parties under the IGA, but the Borrowing Party

understands and agrees that the Shared Employee remains subject to the overall direction and control of the Originating Party.

7. Obligations of Borrowing Party. If the Shared Employee does not meet the needs or is otherwise not satisfactory to Borrowing Party, Borrowing Party's sole recourse shall be the return of Shared Employee to Originating Party. The Borrowing Party shall provide a written explanation to the Originating Party for the return of the Shared Employee. Borrowing Party shall provide the Shared Employee with all materials necessary to perform the Permit Processing and BI/PR services.

In addition to its other obligations set out elsewhere in this Agreement, the Borrowing Party shall be responsible for provision of hardware and other technology necessary for performance of the Permit Processing and BI/PR services by the Shared Employee. If the Shared Employee requires a vehicle to perform the work assigned by the Borrowing Party for the day, the Borrowing Party shall provide an official motor vehicle for that purpose.

Borrowing Party may provide periodic feedback to Originating Party about the performance of services that the Shared Employee provides. The Originating Party retains overall supervision and control over the Shared Employee, including all issues relating to personnel actions and discipline. Borrowing Party acknowledges and agrees that the Originating Party's employee handbook applies to the work performed for the Borrowing Party

8. Obligations of Originating Party. The Originating Party is responsible for determining the location of the Shared Employee's workspace during the Employee Term. Except in cases where the Shared Employee is ill and not able to perform the Permit Processing and BI/PR services, the Originating Party must give the Borrowing Party no less than 2 weeks' notice prior to any day that the Shared Employee has requested leave and will not be available to perform the Permit Processing and BI/PR services for the Borrowing Party.
9. Consent of Shared Employee. The Originating Party represents that the Shared Employee has reviewed the terms of this Agreement and acknowledges and agrees to perform the duties described herein, and agrees to administer the building code and the adopted policies of the Borrowing Party, and to defer to the direction of the building official of the Borrowing Party on matters relating to permitting, the BI/PR services and the issuance of permits.
10. Records. Borrowing Party is responsible for maintaining and retaining the records created by the Shared Employee consistent with its public records policy and retention schedule.
11. General Provisions.
- 11.1 Compliance with Laws. Every party shall comply with all applicable federal, state and local laws, including those related to discrimination in employment because of race, color, ancestry, national origin, religion, sex, sexual orientation, marital status, age, medical condition or disability and all applicable laws and regulations regarding the handling and expenditure of public funds.
- 11.2 Oregon Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon without giving effect to the conflicts of laws provisions thereof.
- 11.3 Time is of the Essence. Time is of the essence in the performance of this Agreement.
- ~~11.4 System Access. The Borrowing Party agrees to provide the Originating Party access to the~~

Borrowing Party's permitting system.

- 11.5 Default. A Party shall be deemed in default if it fails to comply with any provision of this Agreement. The non-defaulting party shall provide the defaulting party written notice of the default and an explanation thereof and allow the defaulting party thirty (30) days within which to cure.
- 11.6 Indemnification. Subject to the Oregon Tort Claims Act and Oregon Constitution, the Originating Party hereby agrees to indemnify, defend and hold harmless the Borrowing Party (including their elected officials, officers, employees and agents) from and against all claims, demands and causes of actions and suits of any kind or nature made by a third party for personal injury, death or damage to property arising out of the service(s) performed by the Originating Party, its elected officials, officers, employees (including the Shared Employee) and agents pursuant to the terms of this Agreement. Each Party shall give the other Party to this Agreement notice of any claim made or case filed that relates to this Agreement or services performed hereunder.
- Subject to the Oregon Tort Claims Act and Oregon Constitution, the Borrowing Party hereby agrees to indemnify, defend and hold harmless the Originating Party (including their elected officials, officers, employees and agents) from and against all claims, demands and causes of actions and suits of any kind or nature made by a third party for personal injury, death or damage to property arising out of the service(s) performed by the Borrowing Party its elected officials, officers, employees and agents pursuant to the terms of this Agreement. Each Party shall give the other Party to this Agreement notice of any claim made or case filed that relates to this Agreement or services performed hereunder.
- 11.7 Insurance. Each Party agrees to maintain liability and workers compensation insurance in accordance with statutory requirements at levels necessary to protect against liabilities allowed by law. Originating Party shall maintain workers compensation coverage for the Shared Employee loaned under this Agreement.
- 11.8 Modification. This Agreement may be amended in writing as may be mutually agreed to between the Parties.
- 11.9 Dispute Resolution. The Parties shall first attempt to informally resolve any dispute concerning this Agreement. A neutral party may be used to facilitate those negotiation in the event of an impasse.
- 11.10 Enforcement. Subject to the provisions in section 10.9, any Party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement.
- 11.11 Excused Performance. In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, pandemics, acts of God, governmental restrictions imposed or mandated by governmental entities other than the Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control of the Party to be excused. For purposes of this Agreement, the current COVID-19 pandemic does not qualify as a Force Majeure event subject to this subsection, except where pandemic conditions substantially worsen, or additional government regulations are imposed, that renders performance of this Agreement impossible, or materially

and demonstrably delays performance beyond that which was reasonably foreseeable by the nonperforming party in light of the COVID-19 pandemic existing as of the Effective Date of this Agreement.

11.12 Termination. A Party may terminate its participation in this Agreement, with or without cause and at any time, by providing thirty (30) days written notice to the other Party to this Agreement.

11.13 Severability. If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.

11.14 Entire Agreement. This Agreement is the entire agreement of the Parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

12. Contact Persons. Communications about this Agreement and any notice sent under its terms shall be sent by and to the following contact persons for the Parties:

| <u>Jurisdiction</u> | <u>Contact Person</u> | <u>Address</u> |
|---------------------|-----------------------|----------------------------------|
| City of Beaverton | Kimberlee McArthur | 12725 SW Millikan Way; 4th Floor |
| Clackamas County | Matt Rozzell | 150 Beaver creek Rd |

12. Appropriations Clause. The obligations of the Parties are subject to appropriations by their governing bodies. This Agreement is subject to the debt limitations in Oregon Constitution, Article XI, section 10 and any debt limitations contained in a city charter.

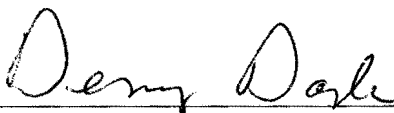
IN WITNESS WHEREOF, the Parties have caused to be signed in their behalf to make and enter into this Agreement this 20th day of August, 2020.

CLACKAMAS COUNTY

By 
Chair, Board of County Commissioners

Date August 20, 2020

CITY OF BEAVERTON

By 
Denny Doyle, Mayor

Date 8/7/2020

Approved as to Form:

By Grace Wong
City Attorney

Date 8/7/2020



DAN JOHNSON
DIRECTOR

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

April 22, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with
City of Happy Valley for the
Pleasant Valley Villages Phases 2-13 Planned Unit Development

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| Purpose/Outcomes | This agreement is intended to defend, indemnify and hold the County harmless for any liability arising from the City's actions or omissions in the course of fulfilling conditions #'s 65-80 in the attached Land Use Decision Final Conditions for Approval for the Pleasant Valley Villages Phases 2-13 Planned Unit Development. |
| Dollar Amount and Fiscal Impact | There is no financial impact associated with this agreement. |
| Funding Source | No funding source required. |
| Duration | Into perpetuity. |
| Previous Board Action | 4/13/21 Discussion item at issues |
| Strategic Plan Alignment | 1. This item supports the DTD Strategic Focus on Safe Roads and Strategic Result of "Travelers on Clackamas County roads will experience safe roads in good condition." 2. This item aligns with "Build a Strong Infrastructure" and "Ensure safe, healthy and secure communities" by constructing roadways, bicycle lanes, and sidewalks. |
| Procurement Review | 1. Was this item processed through Procurement? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no 2. If no, provide a brief explanation: The agreement is not related to Procurement of goods and services. |
| Counsel Review | Reviewed Date: 04/05/21; NB |
| Contact Person | Sharan LaDuca, Sr. Right of Way Agent 503-742-4675 |

Background:

The City of Happy Valley approved the 898-lot Pleasant Valley Villages PUD located west of SE 172nd Avenue, east of SE 162nd Avenue, north of Tristin Avenue and approximately 2,100 feet south of Hemrich Road. Conditions of approval issued by Clackamas County DTD include various improvements along the SE 172nd Ave frontage and construction of a two-lane roundabout at the intersection of SE 172nd Avenue and Scouters Mountain Road. The City has partnered with the developer, Pleasant Valley Development, LLC, to acquire the needed right of way and construct the Roundabout. The Roundabout right of way is being acquired in the name of the County from 7 property owners and requires acceptance from the County Road Official. The DTD Right of Way

staff has identified various outstanding mineral rights and gas pipeline encumbrances on the right of way to be granted to the County. County Counsel has drafted the attached Defense, Indemnity, and Hold Harmless Agreement to address these concerns and the City has signed the agreement.

In exchange for the County accepting the right of way acquired by the City related to the conditions 65-80 in the attached decision, the City agrees to defend, indemnify, and hold the County harmless for any liability arising from the City's actions or omissions in the course of fulfilling these conditions.

Recommendation:

Staff respectfully recommends that the Board of County Commissioners approve and sign the attached DEFENSE, INDEMNITY, AND HOLD HARMLESS AGREEMENT with the City of Happy Valley.

Sincerely,

Sharan LaDuca

Sharan LaDuca,
Sr. Right of Way Agent

DEFENSE, INDEMNITY, AND HOLD HARMLESS AGREEMENT

THIS DEFENSE, INDEMNITY, AND HOLD HARMLESS AGREEMENT (this “Agreement”) is entered into and between Clackamas County (“County”), a political subdivision of the State of Oregon, and the City of Happy Valley (“City”), an Oregon municipal corporation, collectively referred to as the “Parties” and each a “Party.”

RECITALS

Whereas, the City has approved multiple land use applications that will result in an 898-lot planned unit development commonly known as “Pleasant Valley Villages Phases 2-13”. The decision approving these applications is attached hereto as Exhibit “A”.

Whereas, conditions of approval #65-80 in the attached decision relate to improvements on roads under the jurisdiction of the County (the “County Conditions”).

Whereas, the County Conditions contemplate that the City will participate in the development of the right of way improvements in ways that include, but are not necessarily limited to, the acquisition of right of way.

Whereas, in exchange for the County accepting the right of way acquired by the City related to the projects set forth in the County Conditions, the Parties agree that the City should fully defend, indemnify, and hold harmless the County for any liability arising from the City’s actions or omissions in the course of fulfilling the County Conditions.

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

TERMS

1. **Term.** This Agreement shall be effective upon execution.
2. **Property Acceptance.** The County hereby agrees to accept right of way obtained by the City in the course of fulfilling the County Conditions within 45 days of the City’s request. The County reserves the right to object to the configuration of, or the condition of title of any property obtained by the City and to be transferred to the County. Any objection raised by the County must be reasonable under the circumstances. In the event the County raises an objection pursuant to this section, the City and the County shall attempt to resolve any potential dispute as quickly as possible. Unless specifically waived in writing, the County’s acceptance of any right of way does not waive any of the protections granted in favor of the County set forth in Section 3 of this Agreement.
3. **Hold Harmless.** Subject to the limitations under the Oregon Tort Claims Act and other applicable provisions of law, the City shall fully defend, indemnify, and hold harmless the County, its officers, commissioners, agents and employees from any and all claims, lawsuits, demands, causes of action, liability, loss, damage and/or injury, of any kind whatsoever (including without limitation all claims for monetary loss, damage, equitable relief, and all expenses incidental to the investigation and defense thereof), whether brought by an individual or other entity, or imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of, in any way whatsoever, the City’s actions or omissions in the course of fulfilling the County Conditions, except to the extent caused by the County’s negligence or intentional acts or omissions. The damage and injury contemplated by this section specifically include any action that impairs the ability of the public to travel on, or the

County to repair, maintain or replace, the as-constructed right of way improvements contemplated by the County Conditions. This indemnification applies to and includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and any reimbursements to Clackamas County for all legal fees, expenses, and costs incurred by it.

Notwithstanding the above, neither City nor any attorney engaged by City shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall City settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

4. **Representations.** City represents and warrants to County that City has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of City enforceable in accordance with its terms.

County represents and warrants to City that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.

5. **General Provisions.**

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. City, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.

- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not

preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** City shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. City shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, City shall permit the County’s authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- H. **No Third-Party Beneficiary.** City and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- I. **Subcontract and Assignment.** City shall not assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County’s sole discretion. County’s consent shall not relieve City of any of its duties or obligations under this Agreement.
- J. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- K. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

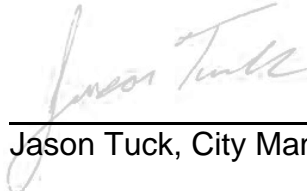
- L. **Time is of the Essence.** City agrees that time is of the essence in the performance this Agreement.
- M. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- N. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

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

Clackamas County

City of Happy Valley

Chair, Board of County Commissioners



Jason Tuck, City Manager

3/22/21

Date

Date

Exhibit A

(Entire copy of City Land Use Decision dated December 21, 2016)

Mayor
Honorable Lori DeRemer



City Manager
Jason A. Tuck, ICMA-CM

December 21, 2016

File No. MP-02-16/CPA-11-16/CPA-17-16/LDC-15-16/PUD-04-16/ERP-16-16/ERP-17-16/ERP-18-16
("Pleasant Valley Villages – Phases 2-13")

NOTICE OF DECISION

This is official notice of action taken by the City of Happy Valley City Council at a public hearing held on December 6, 2016, with regard to an application by Pleasant Valley Development, LLC for a Master Plan, Comprehensive Plan/Zoning Map Amendments, a Transportation System Plan Amendment, an 898-lot Planned Unit Development, and three Environmental Review Permits (File No. MP-02-16/CPA-11-16/CPA-17-16/LDC-15-16/PUD-04-16/ERP-16-16/ERP-17-16/ERP-18-16) on ten Lots of Record. The subject property is located west of 172nd Avenue, east of 162nd Avenue, north of Tristin Avenue and approximately 2,100 feet south of Hemrich Road, and can be further described as Clackamas County Assessor Map Nos. 13E31B: Tax Lots 1300 and 1700; 13E31C: Tax Lots 101, 2000, 5800, 6201 and 6202; 23E06BA: Tax Lot 100; and 23E06BB: Tax Lots 100 and 200.

At the public hearing, the City Council voted to approve "Pleasant Valley Villages Phases 2-13" and adopt the findings found within the December 6, 2016 staff report to the City Council. The Council's actions were based upon their review of submitted information, public testimony, and deliberations of the Council. Copies of the original Staff Report for File No. MP-02-16/CPA-11-16/CPA-17-16/LDC-15-16/PUD-04-16/ERP-16-16/ERP-17-16/ERP-18-16 are available upon request.

Persons with standing may appeal this decision to the Oregon Land Use Board of Appeals ("LUBA") not later than 21 days after the city mails this Notice of Decision. All appeals must comply with ORS 197.830 and LUBA's rules at OAR Chapter 660, division 10. An appeal filed later than 21 days within the mailing of this Notice of Decision is subject to dismissal.

A handwritten signature in black ink, appearing to read 'M. Cynkar', is written above a horizontal line.

Michael Cynkar
Associate Planner

cc: Monty Hurley, AKS Engineering
Chris Goodell, AKS Engineering
Michael Robinson, Perkins Coie, LLP
Pleasant Valley Development, LLC
Participants of Record

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

Final Conditions of Approval for the “Pleasant Valley Villages – Phases 2-13” PUD

File Number: MP-02-16/CPA-11-16/CPA-17-16/LDC-15-16/PUD-04-16/ERP-16-16/ERP-17-16/ERP-18-16

Administration

1. That the City shall amend the Comprehensive Plan Map/Zoning Map for the subject site to reflect a MUR-S and SFA comprehensive plan/zoning designation, as shown on Exhibit B-6.
2. That the City shall amend the EHVCP for a portion of the subject site to reflect an SFA comprehensive plan/zoning designation, as shown on Exhibit B-7.
3. That the City shall amend the TSP and EHVCP, as shown on Exhibit B-7 and B-8 to: add a Collector Facility south of Hagen Road; change the designation of 162nd Avenue (between Monner Road and Hagen Road) from a Collector Facility to a Neighborhood Facility; change the designation of Hagen Road (between 162nd Avenue and the aforementioned added Collector Facility south of Hagen Road) from a Local Facility to a Neighborhood Facility; add a planned Collector Facility (between Scouters Mountain Road and the Scouters Mountain Elementary School property); and remove a Collector Facility (between the intersection of 162nd Avenue and Hagen Road and the Scouters Mountain Elementary School property).
4. That all future development shall be consistent with the approved development Master Plan with preliminary plans dated September 15, 2016 and these Conditions of Approval. Any additional development or significant changes to the development identified in the Master Plan shall require supplemental long-range traffic analysis demonstrating compliance with the Transportation Planning Rule.
5. That per Section 16.65.070 of the City’s LDC, prior to final plat approval of any phase of the proposed development and within two years after the date of approval of the preliminary master plan approval, the applicant or the applicant’s successor shall prepare and file with the City a final master plan, in conformance with Section 16.65.080. The City may, upon written request by the applicant and payment of the required fee, grant a one-year written extension of the approval period subject to compliance with Section 16.65.070. C of the City’s LDC.
6. That the property owner shall file a final plat pursuant to ORS 92.050 and shall conform to all provisions contained therein. The recorded plat shall be in substantial conformance with the approved preliminary plat and bear the signature of the City’s Economic and Community Development Director. Two recorded copies of the Plat shall be submitted to the City as verification of recordation prior to the issuance of any building permit (with the exception of a building permit for model homes allowed under Section 16.44.030 of the City’s LDC).
7. That this approval will expire two years from the issuance of the Notice of Decision. The applicant may apply for a maximum of three, one-year time extensions, pursuant to Section 16.63.040.D of the most current revision of the City’s LDC. The actual construction time period (i.e., for required public improvements, utilities, streets) for any phase of the proposed development shall not be more than seven years (in regard to each phase) without reapplying for preliminary plat approval pursuant to Section 16.63.040.E of the most current revision of the City’s LDC.

8. That prior to final plat approval, area computations in square feet for all building lots must be prepared and submitted by an engineer or surveyor registered in the State of Oregon.

Happy Valley Engineering Division

General Items

9. That all submitted project construction plans shall conform to the City's "Engineering Design and Standard Details Manual" (Design Manual) for design and drafting requirements.
10. That the project shall be subject to the City's latest "Public Improvement Guarantee" form which requires a financial security based upon the engineer's estimate and a 25 percent two-year maintenance bond upon completion and acceptance of the improvements.
11. That construction plans shall show all adjacent subdivision names, lot lines and tax lot lines with the tax map and tax lot number noted on each.
12. That construction plan review shall be subject to these conditions of approval.
13. That prior to the scheduling of the Pre-Construction meeting, issuance of a Notice to Proceed, or beginning any site work, the applicant shall submit all applicable bonds, have paid all applicable fees, and have service provider letters for both Stormwater and Sanitary Sewer services from CCSD #1 and the SWA.
14. That full-time inspection by the developer's engineer shall be required for all street and storm drainage construction.
15. That a sign shall be posted conspicuously at the job site entrance prior to site construction, and shall be maintained throughout construction, using two-inch high black letters on an orange background. The sign shall read as follows:

"SITE CONSTRUCTION SHALL BE LIMITED TO 7:00 AM TO 6:00 PM ON WEEKDAYS, AND 8:00 AM TO 5:00 PM ON SATURDAYS AND SUNDAYS.

HOWEVER, SITE CLEARING, EARTH MOVING, INSTALLATION OR CONSTRUCTION OF UNDERGROUND UTILITIES, PAVING OF STREETS AND SIDEWALKS, FOUNDATION FRAMING AND POURING, AND STRUCTURAL FRAMING SHALL BE ENTIRELY PROHIBITED ON SUNDAYS.

TO REPORT VIOLATIONS CALL 503-783-3800."

The City Manager or Director of Community Services may allow longer, or require shorter, work hours depending on site-specific conditions. Holidays will be considered as Sundays.

Grading and Erosion Sediment Control

16. That the developer's engineer shall provide a site-specific drainage plan to temporarily collect, route, and treat surface water and ground water during each construction phase. The construction plans shall specifically identify how the storm drainage system and erosion sediment control (ESC) measures will be phased during construction, such that at any time during construction the approved plans shall be capable of providing full erosion and sediment control collection, routing, and treatment of storm water runoff and ground water.

No site construction will be allowed to take place if the storm drainage system and ESC measures are not installed per plan and functioning properly.

17. That the developer's engineer shall provide plans and documentation, including specific design and construction recommendations from the geotechnical engineer, for the review and approval of the City Engineer demonstrating compliance with the Geotechnical Report dated July 8, 2016, from GeoPacific Engineering, Inc.
18. That the total disturbed area for this project exceeds one acre, therefore an NPDES 1200-C permit from DEQ will be required. The applicant shall follow the latest requirements from DEQ for NPDES 1200-C permit submittals. A copy of the approved and signed permit shall be provided to the City prior to holding a pre-construction meeting or commencing any construction activity.
19. That vegetative cover shall be maintained on slopes or established through new plantings for stability and erosion control purposes. Vegetation shall not be stripped from any steeply sloped area that are not manmade except for construction of utilities, streets, pedestrian facilities, and retaining walls.
20. That the Erosion Sediment Control Plan shall include a plan to implement and maintain wet weather measures within 14 days of the final grading and between the dates of October 1st and April 30th. If the site is to be treated with cement or lime during the wet weather season, a pH monitoring plan shall be submitted to the City for approval prior to beginning this work.
21. That all grading activity shall be per the current City of Happy Valley Municipal Code. The developer shall submit a completed Site Development Permit and Engineering Erosion Control Permit to the City prior to beginning any grading work on site.
22. That lot grading, tree preservation and tree removal in open space tracts shall be in accordance with Section 16.42.050.E.2 of the City's LDC.
23. That due to the anticipated Very Highly Expansive soils and areas of undocumented fill, geotechnical inspection will be required throughout the lot grading and construction of the public improvements. The construction plans shall show the areas where the Very Highly Expansive soils and undocumented fill are located and shall provide the geotechnical engineer's recommendations for removal and/or remediation within the public right-of-way and in building foundation areas. The construction plans shall be reviewed and approved by the geotechnical engineer prior to construction plan approval.
24. That the grading limits around protected trees shall be fenced using the standard four-foot tall orange plastic construction fencing in addition to the required erosion sediment control fences. All fencing, ESC measures and construction gravel entrances shall be installed and maintained by the developer and inspected by the City of Happy Valley prior to beginning work on the site.
25. That for retaining walls greater than four feet in height, a professional engineer or geotechnical engineer registered in the State of Oregon shall provide stamped design calculations and detail drawings required for the retaining wall construction. The retaining wall detail drawings shall include at a minimum; wall profile, wall cross section at highest point of wall, wall reinforcing geotextile requirements, wall drainage system, and wall backfill requirements. Retaining walls shall be compliant in all respects with Section 16.42.060.D and Section 16.50.100 of the City's LDC.

26. That fencing shall be placed along any retaining wall that is taller than 30 inches in height.
27. That all construction trucks shall perform transfer of trailers on-site. Public streets shall not be used as a staging area for dump trucks with transfer trailers.

Street/Pedestrian System

28. That street design plans shall conform to the requirements delineated in the City's Design Manual, current revision, and the City's TSP, current revision. Specific street design elements shall be in accordance with Chapter Three of the Design Manual. The referenced documents are available on the City's website.
29. That all required public improvements shall be constructed, inspected, and accepted in accordance with Section 16.63.080.B.2 of the City's LDC prior to final plat approval.
30. That no building permits shall be submitted to the City for review until the plat has been recorded, the City, County, and Water District have accepted all improvements, individual 8 ½ x 11-inch "as-built" record drawings for each lot showing storm and sanitary lateral locations with two distance ties to their ends for future locations are received and approved by all applicable agencies, and the performance/maintenance bonds for each jurisdiction is in place, the City has accepted the project as complete and a Building Permit Release Letter has been issued.
31. That all current ADA requirements for streets and intersections shall be met.
32. That maintenance of the retaining walls in open space tracts and across multiple lots shall be covered by the development CC&R's. Walls across multiple lots shall be encumbered by a wall easement for maintenance purposes.
33. That proposed stub streets shall be designed and constructed to the development property lines, unless construction of said street will require a construction easement from the adjacent property owner. A fee in lieu of construction shall be paid if the street cannot be constructed to the development property line.
34. That the following facilities shall be built to the City's three-lane Collector Facility standard with a 69-foot wide right-of-way, 48-foot wide paved section, four-and-a-half-foot wide landscape planter and five-foot wide sidewalk:
 - a. Troge Road between existing 172nd Avenue and new Pleasant Valley Parkway;
 - b. Pleasant Valley Parkway between existing 162nd Avenue and the intersection with Scouters Mountain Road;
 - c. Scouters Mountain Road between new 162nd Avenue and 172nd Avenue;
 - d. 162nd Avenue between Scouters Mountain Road and the north property line of the development; and,
 - e. 168th Avenue between previously approved Phase 1 and the south property line of the development.
35. That internal public streets shall be built to the Local Facility cross section per the City's TSP. Parking will be limited to one side of the street along the 28-foot wide paved sections, and the street shall be signed and marked accordingly.

36. That the intersection of Trillium Creek Avenue and Wy'East Way will be redesigned with as a Local Facility with an "eyebrow" radius and private street serving Lots 760-763 as illustrated in Exhibit 12 .
37. That the access to Lot 590 from Ardenwald Park Terrace shall align with Trillium Creek Avenue with no offset in accordance with the City's Design Manual.
38. That all alleyways shall be constructed to meet City standards for a Private Alleyway (22 foot right of way). The alleyways shall include pavement, drainage, and utility easements. All alleyways shall provide public access easements for non-motorized travel.
39. That the private street proposed to connect Sweet Creek Place to the Scouters Mountain Elementary School site be constructed to City standards for a private street.
40. That minimum AASHTO sight distance requirements shall be met at all street intersections and driveways. AASHTO requires sight distance to be measured at a point 14.4 feet from the edge of the traveled way with a driver's eye height of three and one-half feet and an object height of three and one-half feet. An exhibit shall be submitted to the City Engineering Manager demonstrating that sight distance requirements are met in the following locations:
 - a. Along the west side of Lot 338 on Majestic Falls Avenue;
 - b. Along the south side of Lots 198-200 on Shimmering Leaf Street;
 - c. Along the north side of Lot 350 and 818 on Three Sisters Mountain Way;
 - d. Along the west side of Lot 380 on Bridal Veil Falls Place;
 - e. Along the north side of Lot 718 on Pacific Crest Trail Place;
 - f. Along the north side of Tract V on Bridal Veil Falls Place;
 - g. Along the southeast side of Tract U on Punch Bowl Falls Avenue;
 - h. Along the west side of Lot 476 on Horsetail Falls Way;
 - i. Along the southeast side of Tract AA on Smith Rock Street;
 - j. Along the north side of Tract AB on Pacific Crest Trail Place;
 - k. Along the south side of Lot 404 on Pacific Crest Trail Place; and,
 - l. Along the north side of Lot 649 on Pacific Crest Trail Place.
41. That end-of-street markers shall be placed at the end of any stubbed street as shown in City Standard Drawing No. 310 and No. 315.
42. That the applicant shall provide a signing and striping plan as part of the construction plan set, prepared by a registered engineer. The applicant shall be responsible for the installation of all signing and striping as indicated on the plans.

Miscellaneous

43. That demolition permits from the Building Division will be required for the removal of any structures.
44. That plumbing permits will be required for private utilities installed in private access easements through a separate submittal to the City's Building Division.
45. That the Developer shall provide to the City a signed copy of the U.S. Postal Service's "Mode of Delivery Agreement". Submittal of this agreement shall be required prior to a pre-construction meeting taking place.

46. That dust shall be controlled within the development during construction and shall not be permitted to drift onto adjacent properties.
47. That noise shall be kept at the minimum level possible during construction. The developer shall agree to aggressively ensure that all vehicles working on the development shall have adequate and fully functioning sound suppression devices installed and maintained at all times.
48. That all construction sites shall be maintained in a clean and sanitary condition at all times. Construction debris, including food and drink waste, shall be restricted from leaving the construction site through the use of proper disposal containers or construction fencing enclosures. Failure to comply with this condition may result in a "Stop Work" order until deficiencies have been corrected to the satisfaction of the City.
49. That submittal to the City of all required performance bonds, insurance certificates, engineer's agreements, set-aside account letters and/or sureties shall occur prior to establishing a pre-construction meeting date. Review and acceptance by the City Recorder of these instruments shall be required prior to establishing a pre-construction meeting date.
50. That a construction plan deposit shall be paid with the first submittal of the construction plans for each phase of the project. The deposit amount is based upon the number of lots and the Engineering Division Fee Schedule can be found on the City website. All remaining engineering plan review and inspection fees, right-of-way permit fees (if any) and tree cutting permit fees (if any), shall be paid at the time of the pre-construction meeting.

Happy Valley Traffic Engineer (DKS Associates)

51. That the final design of the intersection of 162nd Avenue and Pleasant Valley Parkway shall include a horizontal curve as shown on the site plan, or a "mini" roundabout, subject to compliance with current Clackamas County Roadway Standards. If the proposed intersection cannot be designed to meet the Roadway Standards, and/or there is insufficient right-of-way to construct a "mini" roundabout, the applicant shall submit a revised design of said intersection to be constructed as a "tee" including a free-flowing northbound right turn lane from 162nd Avenue to Pleasant Valley Parkway and stop control for all other movements. The revised design (if necessary) shall maintain, at a minimum, all right-of-way dedication shown in the current site plan. Final design shall be subject to review and approval by the City's Engineering Manager and Clackamas County DTD. If jurisdiction of this portion of 162nd Avenue is transferred from Clackamas County to the City of Happy Valley, this intersection shall be designed to City standards, or as otherwise modified by the City's Engineering Manager.
52. That the applicant shall coordinate with Multnomah County to determine the appropriate proportionate share contribution for planned improvements at 172nd Avenue/Foster Road, in accordance with the Kittelson & Associates September 2016 Pleasant Valley Villages Phases 2-13 Transportation Impact Study.
53. That the Hagen Road intersection at Pleasant Valley Parkway shall be constructed to include a curb extension for sidewalks on the west leg of the intersection that limit the paved cross-section to 24 feet as illustrated in Exhibit 11.
54. That the applicant shall provide a detailed Neighborhood Traffic Management Plan for Pleasant Valley Villages Phases 2-13 to include strategies on 162nd Avenue north of Pleasant

Valley Parkway and Hagen Road west of Pleasant Valley Parkway addressing potential neighborhood circulation issues related to the proposed development.

55. That if planned improvements at 145th Avenue/King Road, as required in the Notice of Decision for City File No. CPA-07-15/PUD-02-15/ERP-06-15/ERP-08-15 (Condition of Approval Number 48), have not already been constructed or otherwise satisfied (i.e. fee-in-lieu or other mechanism) by other developments at the time a Building Permit Release Letter for any phase of this project, the applicant shall coordinate with City of Happy Valley to determine the appropriate proportionate share contribution for improvements at the intersection. Any proportionate share paid for by this development shall reduce the obligation of CPA-07-15/PUD-02-15/ERP-06-15/ERP-08-15.
56. That the site plan shall be revised to include a pedestrian connection between Mist Layer Loop and Bridal Veil Falls Place or between Mist Layer Loop and Pleasant Valley Parkway between Lots 658 and 659 and through the east end of the proposed Neighborhood Park.
57. That the site plan shall be revised to include an extension of Majestic Falls Avenue to the south end of the subject site .
58. That the site plan shall be revised to indicate driveway locations for multi-family housing sites 513 and 590. Driveway locations shall be approved by the City Engineering Manager prior to final site plan approval.
59. That an emergency vehicle access gate shall be constructed on the north side of Mt. Talbert Avenue at the Scouters Mountain Road intersection. The access gate shall prohibit public motor vehicles and allow for emergency vehicle, pedestrian, and bicycle access. Final design shall be subject to review and approval by CFD #1.
60. That the site plan shall be revised to relocate the eastern segment of Ardenwald Park Terrace to the north to align the south side of the right-of-way to the southern property line of Tax Lot 1400.
61. That a paved, minimum 14-foot wide easement with minimum 10-foot wide paved section multi-use regional trail shall be constructed through the project site in accordance with the MSSM Trail Loop Mater Plan and Map, including the issuance of applicable Parks System Development Charge (PSDC) credits. Trail design shall be coordinated with staff from the NCPRD and Metro and approved by the City's Engineering Manager. The final trail design shall all include the following:
 - a. A revised site plan to include consistent multi-use trail facilities and crosswalks at trail crossings on Pleasant Valley Parkway and Majestic Falls Avenue. Consistent 10-foot hard surface trail connections shall be provided in the site plan (i.e., 5-foot sidewalks adjacent to local streets should not be considered substitutes for trail connections on Majestic Falls Avenue and Pleasant Valley Parkway);
 - b. Signing west of Majestic Falls Avenue to identify the temporary lack of a through connection in the regional trail system; and,
 - c. A proposed design for enhanced mid-block crosswalks at trail crossings on Pleasant Valley Parkway and Majestic Falls Avenue. Pleasant Valley Parkway crosswalk shall be located to connect regional trail between Tract X and Tract O (at current trail location through Tract X) and shall include striped crosswalk, ramps, and pedestrian island. Trail crossing at Pleasant Valley Parkway should contain similar design elements to trail-crossings located on 152nd Drive north of Frye Street. Majestic Falls Avenue crosswalk shall be located to provide a direct street crossing between trail

segments on opposite side of the street and should include speed bumps. Trail crossing at Majestic Falls Avenue should contain similar design elements to trail-crossings located on Francesca Lane north of Frye Street. Trail crossing segments shall be constructed in accordance with City of Happy Valley standards. All trail design elements shall be coordinated with staff from North Clackamas Parks & Recreation District and Metro and approved by the City Engineering Manager.

62. That the pedestrian path along the exterior of the development property and in between lots shall be a six-foot wide hard surfaced path in accordance with City Standard Drawing No. 400. The width of the pathway may be narrowed to four feet in specific areas to avoid tree removal, landscaping and other features. Pedestrian paths that do not provide a direct connection to the MSSM trail may be soft surface in areas of the site that are subject to Chapter 16.34 of the City's LDC.
63. That the site plan shall be revised to show additional six-foot wide hard surfaced pedestrian paths to be constructed at the following locations:
 - a. Between Scouters Mountain Road and Trillium Creek Drive (between lot 598 and 599);
 - b. Between Scouters Mountain Road and Hagen Road (between lot 507 and 508);
 - c. Between the multi-use trail and Bridal Veil Falls Place (south of lot 465);
 - d. Between the multi-use trail and Pacific Crest Trail Place (between lots 1,007 and 1,008);
 - e. Between Pleasant Valley Parkway and Silver Creek Falls Drive (near site lots 316/317 and 329/328);
 - f. Between Punch Bowl Falls Avenue and Horse Tail Falls Way (near Tract AE and lot 640);
 - g. Between Pleasant Valley Parkway and Sunshower Place (adjacent to lots 270 and 290 – may replace current paths shown in site plan near lots 267 and 292);
 - h. Between Snow Blanket Terrace and Sunshower Place (east of lot 152 and between lots 169 and 170); and,
 - i. Between the Tract O sidewalk and Mist Layer Loop (near lot 658).
64. That stop signs shall be placed, in accordance with City of Happy Valley standards, at all local street approaches to collectors, the Troge Road approaches to Pleasant Valley Road, on the Pleasant Valley Parkway approaches to Scouters Mountain Road, on the 162nd Avenue approach to Scouters Mountain Road, and on the Hagen Road approaches to Pleasant Valley Parkway. All stop sign locations, including at local street/local street intersections, shall be approved by the City's Engineering Manager prior to final site plan approval.

Clackamas County DTD

65. That all frontage improvements in, or adjacent to Clackamas County right-of-way, shall be compliant with *Clackamas County Roadway Standards* (the "Roadway Standards").
66. That the applicant shall grant an eight-foot wide public utility easement adjacent to the public right-of-way along the entire site frontages of 172nd Avenue, Hagen Road and 162nd Avenue.
67. That the applicant shall dedicate approximately 22.5-feet of additional right-of-way width along the entire site frontage of 172nd Avenue as necessary to accommodate the public improvements, based on the 172nd Plan alignment and shall verify by survey that there is a

52.5-foot wide one-half right-of-way width. The right-of-way dedication between Hagen Road and Scouters Mountain Road shall to be sufficient to accommodate a two-lane roundabout, including curb, landscape strip, raised cycle track and sidewalk. The applicant shall coordinate with Clackamas County and City of Happy Valley Engineering Manager to determine the final design of 172nd Avenue.

68. That the Applicant shall construct a two-lane roundabout, prior to the Building Permit Release Letter for Phase 4, at the intersection of 172nd Avenue and Scouters Mountain Road, in accordance with the 172nd Plan, subject to review and approval by Clackamas County DTD and the City's Engineering Manager. The design shall include a horizontal and vertical profile for 172nd Avenue, based on the 172nd Plan alignment, from the roundabout to the northerly extent of Phase 1 improvements. The plans shall show the conceptual design of the curb, landscape strip, raised cycle track and sidewalk as it transitions in front of the Hagen Road right-of-way. If additional right-of-way is needed for the roundabout, the City shall obtain possession of the additional right of way, including any necessary construction and utility easements. Following acquisition of the additional right of way, or if no additional right of way is needed, the Applicant shall construct the roundabout. The Applicant is responsible for the cost of constructing the roundabout, including the cost to the City of acquiring any additional right of way but excluding the City's survey and legal costs to acquire the additional right of way. The Applicant's costs are subject to (c), below:
 - a. The roundabout center island shall include signage identifying the Pleasant Valley Villages neighborhood, landscaping and art (the "improvements"), but the improvements shall not impair pedestrian or vehicle sight distance. The roundabout center island and improvements within the center island shall be maintained by the Pleasant Valley Villages Homeowners Association (the "HOA") and this requirement shall be included in the HOA's conditions, covenants and restrictions;
 - b. The City agrees to provide maximum allowed credits under the City/County Joint Transportation District, subject to the Joint Capital Improvement Plan Ordinance and System Development Charge ("SDC") Methodology Report or the current Ordinance and Methodology in place at the time of application for TSDC credits for the cost of constructing the roundabout and any needed additional right of way; and,
 - c. If the City fails to obtain possession all needed additional right of way, the Applicant shall construct a traffic signal and crosswalks at the 172nd Avenue and Scouters Mountain Drive intersection, consistent with the Roadway Standards, and the applicant shall pay a fee-in-lieu to the City for the aforementioned roundabout improvements.

69. That the applicant shall design and construct improvements along the entire site frontage of 172nd Avenue in accordance with the 172nd Plan and the Roadway Standards. These improvements shall consist of:
 - a. Up to a 30.5-foot wide half-street improvement for a major arterial roadway. Structural section for 172nd Avenue improvements shall consist of seven and one-half inches of asphalt concrete per Standard Drawing C100 of the Roadway Standards;
 - b. Standard curb, or curb and gutter if curblin slope is less than one percent, and pavement with the face of the new curb located approximately 30.5-feet from right-of-way centerline;
 - c. Adjacent to the curb, an eight-foot wide landscape strip, including street trees shall be constructed along the entire site frontage;

- d. A six-foot wide physically-separated bicycle facility shall be constructed behind the landscape strip and adjacent to the sidewalk. Said facility shall be concrete, constructed per Standard Drawing S960 with a six-inch thickness. Subject to final approval by Clackamas County DTD, there shall be delineation between the cycle track and sidewalk, which may include striping, tactile warning and/or concrete color;
- e. A minimum seven-foot wide unobstructed sidewalk shall be constructed along the entire site frontage, per Standard Drawing S960 with a six-inch thickness. A sidewalk connection shall be provided to the sidewalk on Hagen Road. Where sidewalk does not connect to sidewalk on adjacent property, the end of the sidewalk shall include a temporary asphalt ramp, providing a transition from the new sidewalk to the edge of the pavement. The ramp shall meet ADA guidelines and shall be a minimum of two inches in thickness;
- f. Inbound and outbound tapers shall be provided per Section 250.6.4 of the Roadway Standards;
- g. Adjacent to any lane transitions on the east or west side of 172nd Avenue, a minimum four-foot wide shoulder shall be provided. Where curb is proposed, the shoulder shall be paved between the curb and travel lane;
- h. A striping plan shall be provided for an interim three-lane section with 11-foot wide travel lanes and 13-foot wide turn lane;
- i. The Hagen Road intersection with 172nd Avenue shall be closed at the time that Scouters Mountain Road is constructed from 162nd Avenue to 172nd Avenue. A sidewalk connection shall be provided between the Hagen Road and 172nd Avenue. The closure shall include a cul-de-sac consistent with Standard Drawing C300. The design shall demonstrate compatibility with the future frontage road adjacent to the westerly side of 172nd Avenue. Or, an Alternative Horizontal Curve for Very Low Volume Local Roads may be used, per Standard Drawing C400 or other alternative acceptable to Clackamas County DTD, if adequate turnaround area is provided until the frontage road to the south is constructed. The turnaround area shall accommodate service and delivery vehicles. The final design for the reconstructed intersection cul-de-sac (or Alternative Horizontal Curve) shall be coordinated with Clackamas County DTD, CFD #1 and the City's Engineering Manager;
- j. Curb ramps shall be constructed per Standard Drawing S910; and,
- k. Drainage facilities shall be in conformance with CCSD #1 regulations and Chapter 4 of the Roadway Standards.

70. That the applicant shall design and construct improvements for the westerly leg of Troge Road at the intersection with 172nd Avenue. These improvements shall consist of:

- a. The road improvements shall be stubbed to the existing 172nd Avenue right-of-way line. The design shall include a horizontal and vertical profile for 172nd Avenue, including the future bridge, based on the Corridor Plan alignment, extending from the roundabout to the northerly extent of Phase 1 improvements. The plans shall demonstrate that the alignment of the Troge Road street stub will tie into the future 172nd Avenue improvements;
- b. The roadway shall align with centerline Troge Road on the east side of 172nd Avenue, consistent with the 172nd Plan; and,
- c. A gated emergency access shall be provided at the terminus of Troge Road, subject to final approval by Clackamas County DTD, the City's Engineering Manager and CFD #1. The access gate shall be paved and shall prohibit public motor vehicles and provide emergency vehicle, pedestrian and bicycle access.

71. That a fee-in-lieu shall be paid to the City for the one half-street improvement of the 172nd Avenue site frontage that cannot be constructed due to lack of public right-of-way, based on the realignment of 172nd Avenue per the 172nd Plan. The fee shall be 125 percent of the approved engineer's estimate of the cost of design and construction, less the amount of TSDC credits received for the eligible portions of the required improvements.
72. That a proportionate share contribution shall be paid to the City for planned improvements at 172nd Avenue and Troge Road at the time a Building Permit Release Letter for any final platted phase of the project in accordance with the Kittelson & Associates September 2016 Pleasant Valley Villages Phases 2-13 Transportation Impact Study. Said fee shall be based on through trips on 172nd Avenue, and an engineer's estimate of the bridge project, as approved by Clackamas County DTD.
73. That the applicant shall design and construct improvements along the entire site frontage of 162nd Avenue, and as shown on the site plan. These improvements shall consist of:
 - a. A minimum paved half-width of 25 feet from the centerline of the right-of-way to the curb, with a structural section per Standard Drawing C100 for a Collector Roadway;
 - b. Standard curb, or curb and gutter, if curblin slope is less than one percent;
 - c. A five-foot wide unobstructed sidewalk shall be constructed along the entire site frontage;
 - d. Where the sidewalk does not connect to sidewalk on adjacent property, the end of the sidewalk shall require the construction of a temporary asphalt ramp, adjacent to the end of the sidewalk, providing a transition from the new sidewalk to the edge of pavement. The ramp shall meet ADA guidelines and shall be a minimum of two inches in thickness;
 - e. A five-foot wide landscape strip between the curb and sidewalk, including street trees;
 - f. Appropriate off-site pavement tapers shall be provided, in accordance with Section 250.6.4 of the County's Roadway Standards;
 - g. Off-site widening on 162nd Avenue between the two sections of frontage, and the section to the north of Pleasant Valley Parkway shall be constructed as shown on the preliminary plans;
 - h. An access restriction shall be applied to lots with frontage on 162nd Avenue; and,
 - i. Drainage facilities in conformance with CCSD #1 requirements, and Chapter 4 of the County's Roadway Standards.
74. That the applicant shall design and construct improvements along the entire site frontage of Hagen Road east of Pleasant Valley Parkway. The roadway shall be constructed to the City's standard for a Neighborhood Facility so long as said standards meet or exceed the following County standards of:
 - a. A minimum paved width of 16 feet from the centerline of the right-of-way to the curb shall be provided, with a structural section per Standard Drawing C100 for a local roadway. Standard curb shall be provided, or curb and gutter if curblin slope is less than one percent;
 - b. A five-foot wide unobstructed sidewalk shall be constructed along the entire site frontage;
 - c. Where the sidewalk does not connect to sidewalk on adjacent property, the end of the sidewalk shall require the construction of a temporary asphalt ramp, adjacent to the end of the sidewalk, providing a transition from the new sidewalk to the edge of

- pavement. The ramp shall meet ADA guidelines and shall be a minimum of two inches in thickness;
- d. A five-foot wide landscape strip between the curb and sidewalk, including street trees;
 - e. An appropriate off-site pavement taper shall be provided to the north, in accordance with County Roadway Standards Section 250.6.4; and,
 - f. Drainage facilities in conformance with WES requirements and County Roadway Standards (Chapter 4).
75. That adequate intersection sight distance, per Section 240 of the County Roadway Standards, shall be provided at all intersections with Clackamas County facilities.
76. That any surface water runoff from the site to the 172nd Avenue, 162nd Avenue and Hagen Road rights-of-way shall be detained outside of the right-of-way in conformance with the County Roadway Standards.
77. That the applicant shall submit an Engineer's cost estimate to be approved by Clackamas County DTD for the asphalt concrete, aggregates, and any other required public improvement in the Clackamas County right-of-way.
78. That prior to commencement of site work and recording of the plat, the applicant shall obtain a Development Permit from the Clackamas County DTD, Engineering Division for design and construction of required improvements to 172nd Avenue, 162nd Avenue and Hagen Road. To obtain the Permit, the applicant shall submit plans prepared and stamped by an Engineer registered in the State of Oregon, provide a Performance Guarantee, and pay an Inspection Fee. The Performance Guarantee is 125 percent of the approved Engineer's cost estimate for the required improvements.
79. That prior to commencement of utility work within the right-of-way, a Utility Placement Permit shall be obtained from the Clackamas County DTD, Engineering Division.
80. That prior to commencement of any work, including grading, and prior to issuance of the Development and Utility Placement permits, the contractor shall provide a traffic control plan for review and approval from Clackamas County DTD, Engineering Division, provide a certificate of liability insurance that names the County as additionally insured and obtain separate "Street Opening Permits" for utility installations within the Clackamas County right-of-way. The applicant shall obtain these permits from the Engineering Division prior to the issuance of the Development Permit.

CCSD #1

General Items

81. That this development shall annex to CCSD #1 prior to connection to the sanitary sewer system.
82. That all costs associated with the design, construction and testing of the sanitary sewer or storm system, including onsite improvements, offsite improvements and easements, shall be provided by, and at the sole expense of the applicant or successors.
83. That the proposed development shall be designed and constructed in accordance with CCSD #1 Sanitary Sewer and Stormwater Management (SWM) Rules and Regulations, and

Standards (RR&S). Any minor or major modification or deviation from the approved construction plans shall be submitted for review and approval by CCSD #1.

84. That the developer is required to install sanitary sewer and storm water conveyance facilities to the limits of the development to facilitate future development of surrounding properties.
85. That CCSD #1 shall review and initially approve the sanitary plans, SWM Plans, and reports prior to the construction plans being officially approved at a pre-construction meeting.
86. That the developer/applicant shall provide the necessary public and/or private sanitary and/or stormwater easements as determined by CCSD #1 in accordance with the RR&S.
87. That final sanitary sewer and stormwater facility testing, video inspection, as-builts and service connection drawings shall be submitted in accordance with the RR&S prior to final acceptance of the public facilities by CCSD #1.

Sanitary

88. That a collection sewer charge shall be required for the benefit of connecting to the existing sanitary sewer line that was constructed with the Rock Creek Interceptor based upon the cost of an eight-inch sanitary sewer line. This charge shall be paid prior to final plat approval of any applicable phase.
89. That the applicant/developer shall submit complete civil-engineered plans for sanitary sewer design, stamped by a licensed Civil Engineer, to CCSD #1 for review and approval. At any time, CCSD #1 may require other licensed professionals to submit plans and/or reports as deemed necessary to assure integrity of the proposed public/private infrastructure. This development is also subject to a plan review fee for sanitary sewer, due at the time of first submittal for plan review.
90. That the developer must provide minimum 15-foot wide sanitary sewer easements where necessary as determined by CCSD #1. Easements for storm and sanitary in a combined area are a minimum of 20 feet wide.
91. That gravity sanitary sewer service connection laterals (four-inch PVC) shall be provided to a point approved by CCSD #1 for every proposed lot within the development (unless otherwise authorized by CCSD #1).
92. That any existing onsite septic tank and drain fields within the boundary of the development shall be removed or abandoned in compliance with DEQ regulations. Any existing residence left on the property will be required to be connected to the public sanitary sewer and is subject to a sanitary sewer system development charge (SDC). In addition:
 - a. Sanitary sewer SDCs shall be paid to connect existing residential homes to the public sanitary sewer system prior to plan approval; and,
 - b. Existing residential homes shall not be connected until the applicant receives written notice by CCSD #1 that the public sanitary sewer system has been inspected and accepted by CCSD #1 in accordance with the CCSD #1 RR&S.
93. That final testing, as-builts and service connection drawings for the sanitary sewer system shall be submitted for review and approval prior to final inspection and acceptance of the public sanitary sewer system. A Building Permit Issuance Letter shall not be approved by

CCSD #1 until the sanitary sewer system is complete in all respects and accepted by CCSD #1.

Storm drainage

94. That the applicant shall submit a storm water management plan for the development prepared by a licensed Civil Engineer in the State of Oregon for review and approval by CCSD #1. At any time, CCSD #1 may require other licensed professionals to submit plans and/or reports as deemed necessary to assure integrity of the proposed public/private infrastructure. Detention, water quality and infiltration facilities are required consistent with CCSD #1 standards. Onsite detention facilities shall be designed to reduce the two-year storm to one-half of the two-year storm (see Appendix E of CCSD #1 Standard Specifications).
95. That preliminary plans indicate the requirement to extend the public storm system to provide services throughout the proposed development.
96. That storm service connection laterals (six-inch PVC) shall be provided to convey the stormwater runoff and foundation drains for every proposed lot within the development.
97. That any necessary public or private stormwater drainage easement(s) will be obtained by, and provided by the applicant/developer/owner(s) at their expense. The easement shall be either recorded on the plat or as a land record with the Clackamas County Clerk's Office prior to approval of the plans.
98. That this development is subject to a minimum Surface Water plan review fee of \$400.00 (or 4 percent of the cost of the storm construction, whichever is greater). Plan review fees are due with the first submittal for plan review.
99. That a site specific civil plan shall be submitted to CCSD #1 that incorporates the requirements of the land use conditions of approval. The plans must be stamped by a Civil Engineer, licensed in the State of Oregon. The civil engineering plans shall be designed according to CCSD #1 Surface Water Management Rules and Regulations and Standard Specifications and as directed by CCSD #1 during the plan review process. Deviation from the approved construction plans must have prior approval of CCSD #1. This development is subject to a surface water plan review, due at the time of first submittal for plan review.
100. That an upstream and downstream stormwater conveyance analysis that identifies current and future development conditions is required. The storm pipes shall be sized and installed to meet the future development of the upstream basin.
101. That the applicant shall provide an onsite (and, if necessary, offsite) safe emergency storm system overflow pathway to a point acceptable to CCSD #1. This condition may require the acquisition of an offsite easement.
102. That a geotechnical report is required if there are fill areas identified on the site prior to, during, or discovered post construction.
103. That a Public Maintenance Agreement is required to be recorded as a land record with Clackamas County Clerk's Office to assure the perpetual maintenance of the stormwater infrastructure.

Natural Resources

104. That the applicant shall submit as part of the plan review process a natural resource assessment.
105. The approval of the land use application does not include any conclusions by the DISTRICT regarding acceptability by the DSL or COE of the wetland delineation. This decision should not be construed to or represented to authorize any activity that will conflict with or violate the DSL or COE requirements. It is the applicant's responsibility to coordinate with the DSL or COE (if necessary) and other responsible agencies to ensure that the development activities are designed, constructed, operated and maintained in a manner that complies with the DSL or COE approval.
106. This site may be subject to the buffer requirements of CCSD#1 SWM RR&S. The DISTRICT has a minimum 50-foot buffer depending on the classification of the wetland, drainageway, intermittent creeks/streams and/or river. This site is subject to the buffer requirements of the SWM Rules and Regulations. The applicant needs to address the buffer requirements and, if there are proposed encroachments, submit a plan that meets the DISTRICT requirements or submit a variance request that is acceptable. The buffer is required to be protected in a conservation easement dedicated to the City and/or a tract, further review will be necessary in the plan review stage. If necessary, the applicant shall file a written request for review and approval of a Buffer Variance and buffer mitigation plan to the City of Happy Valley.

Plat

107. That the following statement must be added to the Restrictions on the subdivision plat:

“CLACKAMAS COUNTY SERVICE DISTRICT #1 (DISTRICT), ITS SUCCESSORS OR ASSIGNS IS HEREBY GRANTED THE RIGHT TO LAY DOWN, CONSTRUCT, RECONSTRUCT, REPLACE, OPERATE, INSPECT AND PERPETUALLY MAINTAIN SEWERS, WASTEWATER, STORM DRAINAGE OR SURFACE WATER PIPELINES, AND ALL RELATED FACILITIES. NO PERMANENT STRUCTURE SHALL BE ERECTED UPON SAID EASEMENT WITHOUT THE WRITTEN CONSENT OF THE DISTRICT. GRANTORS AGREE TO UNDERTAKE NO ACTIVITY THAT WOULD HARM OR IMPAIR THE PROPER FUNCTIONING OF THE SANITARY AND STORM SEWER SYSTEM.”

108. That the following plat restriction must be shown on all subdivision plats that agree to the detention pond maintenance agreement within CCSD #1:

“SUBJECT TO CCSD #1 RULES AND REGULATIONS AND EXISTING STORM WATER FACILITY MAINTENANCE AGREEMENT UNDER FEE NO. _____, CLACKAMAS COUNTY DEED RECORDS”.

109. Prior to final plat approval, the DISTRICT shall review and approve the required sanitary sewer and stormwater final submittal in accordance with the CCSD#1 RR&S.
110. Prior to building permit approval, the sanitary sewer and stormwater facilities shall be accepted by the DISTRICT in all respects in accordance with the CCSD# RR&S.

SWA

111. That all water system construction must be in accordance with the rules, regulations, policies, guidelines and standards of SWA. Cost of the improvements and construction shall be borne entirely by the developer, unless other arrangements are made between the developer and SWA.
112. That SWA has adequate potable water supplies available in sufficient quantities to provide normal domestic and fire protection needs for this proposal, as required by the Oregon Health Division. Commonly held irrigated spaces must be designed to Irrigation Association Best Management Practices Standards and utilize evapo-transpiration controllers. Exact improvements to the water system will be determined during design review by the Water Authority.

CFD #1

113. That address numbering shall be provided on each new home within the development that is clearly visible from a public street.
114. That access roads shall be within 150 feet of all portions of the exterior wall of the first story of a building as measured by an approved route around the exterior of the building. Fire apparatus access roads shall have an unobstructed driving surface width of not less than 20 feet (26 feet adjacent to a fire hydrant) and an unobstructed vertical clearance of 13 feet 6 inches.
115. That the applicant must obtain a stamp of approval from CFD #1 that demonstrates fire apparatus access and water supply requirements will be satisfied. Proposed developments containing more than 30 single family dwellings shall require a secondary access. The applicant shall provide a Phasing Plan to CFD #1 prior to final approval.
116. That "No Parking Fire Lane" signs shall be placed on one or both sides of the roadway and in turnarounds as needed. Roads 26 feet in width or less shall have signs placed on both sides. Roads 26 to 32 feet in width shall have signs placed on one side posting as a fire lane. Red painted curbs may be utilized in lieu of signage.
117. That the applicant shall provide an approved turnaround for dead end access roads exceeding 150 feet in length. For private drives exceeding 150 feet in length without an approved turnaround, residential fire sprinklers will be required for lots that are affected, in lieu of a turnaround.
118. That for private streets or alleys less than 32 feet in width, the Developer shall establish a street maintenance agreement that provides for enforcement of parking restrictions. A copy of said agreement shall be provided to the City.
119. That the minimum number and distribution of fire hydrants available to a building shall not be less than that listed in Table C105.1 of the Fire Code Application Guide.
120. That the first fire hydrant shall be placed at or near the main entrance to the development. If there is an existing fire hydrant within 500 feet of this entrance, that hydrant can be used in calculating the remaining series of hydrants.

121. That where a portion of a structure is more than 600 feet from a hydrant on a fire apparatus access road, as measured in an approved route around the exterior of the structures, on-site fire hydrants and mains shall be provided.
122. That the minimum available fire flow for single family dwellings served by a municipal water supply shall be 1,000 gallons per minute at 20 psi. Structures over 3,600 square feet shall meet the minimum fire flow requirements in Appendix B of the Oregon Fire Code. If fire flow cannot be met, an alternative water supply may be permitted, subject to approval by CFD #1.
123. That prior to the start of combustible construction, all fire hydrants shall be operational and accessible.

CCSD #5

124. That "Westbrook" style street lights on new poles will be required for all applicable property frontages for this development. Existing wood poles may be used where allowed by PGE and CCSD #5.
125. That the property owner shall submit a request in writing for the formation of an assessment area, which will include any new tax lots created by this partition, to help pay for the operation and maintenance of lighting. The applicant shall also provide a copy of this request to the City.

Utilities

126. That the applicant shall provide utility easements where required and shall be responsible for coordinating construction with all utility and service providers and facilitating cooperation among all providers and agencies.
127. That all existing and proposed utilities along the project's existing frontages and within the site, including electrical power, telephone, cable TV, gas and others shall be underground. If the existing utilities along the project's frontage need to remain overhead according to the utility service providers, the required conduit and vaults shall be provided at the applicant's expense (to provide for the future undergrounding). In addition, a fee-in-lieu of construction shall be paid to cover the cost to convert the utilities from overhead to underground, and remove the overhead facilities from the right-of-way. The fee shall be 125 percent of an engineer's estimate of the cost of design and installation, subject to final approval by the City's Engineering Manager. Pre-wiring of the project site for street lighting must be approved by CCSD #5.

Steep Slopes

128. That the applicant shall provide as exhibit to their construction plans calculations detailing the percentage of the subject site that is constrained by transition or conservation slope areas, demonstrating that not more than 30 percent of the onsite transition slope areas that are not manmade slopes will be developed, excepted as otherwise exempted by Section 16.32.045 of the City's LDC or permitted by Section 16.32.050 of the City's LDC.

Natural Resources

- 129. That the applicant shall obtain all necessary local, state and federal approvals to facilitate the proposed wetland and buffer impacts and/or impacts to water quality resources and habitat conservation areas. The applicant shall provide a copy of said approvals to the City.
- 130. That the applicant shall install or financially secure mitigation as required by Section 16.34.070.C, prior to a Building Permit Release Letter. At the time of installation, a two-year maintenance bond shall be required. Subject to review and final approval by the Planning Official, a conservation easement shall be placed over all Title 3 and 13 lands (habitat conservation areas, water quality resources, associated vegetative corridors, etc., including the areas that will be enhanced as "mitigation") that remain onsite. During site and building construction the applicant shall utilize orange construction fencing to protect natural areas. White vinyl or natural cedar split rail fencing shall be installed or with CCSD #1 approved signage or financially secured, prior to issuance of a Building Permit Release Letter. Further, that a buffer variance must be submitted and approved prior to site construction. If the Applicant chooses to provide for financial security, the Applicant shall provide the City with an acceptable instrument to secure the improvements and such improvements shall be constructed no later than Phase 13. The security instrument shall be in a form acceptable to the City, shall be for a value at 125% of the City Engineer's estimated cost of the improvements and shall be for the appropriate period of time.

Flood Management Overlay Zone

- 131. That all development within flood management areas shall be compliance with the standards of Chapter 15.24 of City Code, in addition to local, state or Federal restrictions governing floodplains or flood hazard areas.
- 132. That all development with flood management areas shall be in compliance with the standards of Section 16.35.040 of the City's LDC.
- 133. That the prior to construction plan approval applicant shall provide to the City a copy of an approved CLOMR relative to on-site flood management areas. Prior to a Building Permit Release Letter for any phase located with a flood management area, the applicant shall provide to the City a copy of an approved Letter of Map Change (LOMC) or other approved map revision by FEMA, as well as an "as-built" certification and any other data in support of the approved revision.
- 134. That the applicant shall provide final "as-built" elevations demonstrating that all Lots adjacent to an existing or proposed flood management area are a minimum of one-foot above the adjacent BFE, prior to a Building Permit Release Letter for the phase in which the Lot is located or alternately, provide evidence at the building permit stage tht the development standards listed in Section 16.35.040 are satisfied for any lot that is not a minimum of one-foot above the adjacent BFE.

Design

- 135. This development shall utilize the following development standards:

| Standard | Detached Units | Attached Units |
|----------------------------|----------------|----------------|
| <i>Lot width (minimum)</i> | <i>32 feet</i> | <i>20 feet</i> |
| <i>Lot depth (minimum)</i> | <i>90 feet</i> | <i>90 feet</i> |

| Standard | Detached Units | Attached Units |
|--|---|----------------------------------|
| <i>Street frontage (minimum)</i> | | |
| <i>Lots fronting on culs-de-sac or eyebrow</i> | <i>30 feet</i> | <i>20 feet</i> |
| <i>All other lots</i> | <i>34 feet</i> | <i>20 feet</i> |
| <i>Lot coverage (maximum)</i> | <i>65 percent</i> | <i>65 percent</i> |
| <i>Building setbacks (minimum):</i> | | |
| <i>Front</i> | <i>20 feet (Street Access Garage)</i> <i>10 feet (Alley Access Garage)</i> | <i>10 feet</i> <i>15 feet</i> |
| <i>Rear (Street-access garage)</i> | <i>20 feet</i> | |
| <i>Rear (Alley-access garage)</i> | <i>6 feet</i> | <i>6 feet</i> |
| <i>Interior side</i> | <i>5 feet</i> | <i>5/0 feet</i> |
| <i>Street side (corner lot)</i> | <i>8 feet</i> | <i>8 feet</i> |
| <i>Garage and carport entrances</i> | | |
| <i>Entrances not facing an alley</i> | <i>20 feet</i> | <i>20 feet</i> |
| <i>Entrances facing an alley</i> | <i>6 feet</i> | <i>6 feet</i> |

The Planning Official or designee is authorized by the Planning Commission to permit reductions or increases to these standards as may be necessary to provide for the retention of trees greater than six inches in diameter measured at breast height (4.5 feet). A request to adjust the setbacks for these lots shall be accompanied by a building plan for the subject lot that illustrates the relationship between the proposed structure and significant tree retention. However, in no case shall a garage be located less than 20 feet from a public right-of-way. Prior to final plat approval, area computations in square feet for all building lots must be prepared and submitted by an engineer or surveyor registered in the State of Oregon. Setbacks are measured from the foundation to the property line.

136. That a final landscape plan shall be submitted to the Community Development Director or designee for approval prior to construction plan approval. The final landscape plan shall be in substantial conformance with the preliminary landscape plan and include the following:
- a. Identification of all areas to be landscaped, including but not limited to: “by developer” areas related to public streets indicating street trees and landscape strips; common areas including parks and active open space areas; entry monument sign areas; natural riparian area enhancement plantings; and plantings for storm water facilities;
 - b. A detailed irrigation plan including topsoil replacement provisions; and,
 - c. For any new slopes 2:1 or steeper, adjacent to HCAs and WQRAs shall at a minimum be: constructed with suitable hydro-seeding; include a continuous erosion control blanket; include straw wattles in rows at 25’ OC parallel to the contours, (generally similar to highway slope work); irrigated for at least two seasons to assure hydro-seed establishment, and inspected for establishment and erosion/sediment control prior to release of the open space assurances.
137. That per Section 16.63.130.H.2.b.iv of the City’s LDC, the applicant shall provide assurance to the City in the form of a bond, escrow account or certified letter of credit for 125 percent of the estimated cost of open space improvements. Open space areas shall be completed as shown in the approved plans and inspected and approved by the City prior to final approval (“walk-through”) of the infrastructure improvements, or shall be provided for by financial guarantee. Assurances for the open space improvements shall be held for two years after improvements are made to assure plant survival.

138. That per Section 16.63.130.H of the City's LDC, open space tracts shall be recorded as tracts on the final plat. For the assurance of permanent open space, the applicant shall record all open space tracts as permanent open space on the final plat. A ten (10) year maintenance plan for the open space with cost projections to be provided to the future owners of the property (the homeowner's association or other entity). If the open space is dedicated to the homeowner's association, the codes, covenants, and restrictions of the PUD shall include a provision requiring the homeowner's association to abide by the approved ten (10) year maintenance plan or submit an alternative plan to the Planning Official or designee for approval. If the open space is dedicated to another entity, said entity shall submit a written agreement to the City agreeing to abide by the ten (10) year maintenance plan or provide an alternative plan to be approved by the Planning Official or designee.
139. That a planter strip and street tree plan shall be submitted as part of the construction plan set, detailing to the greatest extent practicable the placement of street trees in conformance with all spacing requirements in regard to street intersections, street lights, driveways, fire hydrants, etc. Per Section 16.50.080 of the City's LDC, the developer and/or builder shall install the planter strip landscaping minus street trees prior to building occupancy, and submit a street tree installation fee based on an amount equal to 125 percent of the cost of the street tree plan, assuming a value of two hundred fifty dollars (\$250.00) per tree. The City of Happy Valley street tree contractor shall install all street trees when the development reaches substantial buildout based on the discretion of the Planning Official or designee, but generally incorporating an 80 percent benchmark, after which time the two-year maintenance bond period will begin. Alternatively, substantially built-out streets, blocks or neighborhoods may also be authorized for street tree planting per the discretion of the Planning Official or designee. Any remaining street tree funds shall be refunded to the developer, any additional street tree installation costs shall be the responsibility of the developer. If in the interest of an expedited timeline for installation by the developer (above and beyond that which might be carried out by the City's contractor), street tree installation may be carried out by the developer, with submittal of adequate information and liquid financial guarantee (traditional guarantee bonds are not accepted) for the review and approval of the Planning Official.
140. That the applicant shall install, or financially secure, perimeter fencing along all Collector and Arterial Facilities, consistent with one of the options of Table 16.42.060-1 of the City's LDC. With respect to "alley-access" lots along Collector Facilities, the applicant shall install decorative metal fencing with brick or masonry columns, consistent with Option 2 of the aforementioned table. Per Section 16.42.060.C.10 of the City's LDC, fencing along open space tracts shall be comprised of either split-rail vinyl or stained cedar; fencing along stormwater detention facilities shall be six-foot tall, black, vinyl-coated chain link.
141. That the developer and/or individual builders are required to obtain either Type "A" (three or less trees) or Type "B" Tree Removal Permits prior to the removal of trees (six-inch diameter at 4.5 feet), subject to the requirements of Section 16.42.050 (Tree cutting and preservation), of the City's LDC. A tree planting mitigation plan at a rate of 2:1 is required for any trees removed outside the limits of the infrastructure improvements and at a 3:1 mitigation ratio for healthy trees removed for establishment of view corridor(s). Any trees that are to be preserved must be fenced at the drip line for protection prior to construction. Tree removal shall occur only in conjunction with engineering approval and required bonding associated with construction of each Phase boundary as determined by the Planning Official and Engineering Manager.
142. That the applicant, Homeowner's Association or other entity is responsible for the continual maintenance of all hardscaped, landscaped and natural areas located on the site.

143. That the applicant shall provide a minimum of two off street parking spaces per single-family detached and attached dwelling unit and shall also provide driveways in accordance with Sections 16.41.030.B and 16.44.010.A.3 of the City's LDC. Off-street parking requirements for multifamily dwellings shall be subject to Table 16.43.030-1, and shall be determined through future Design Review approval.
144. That per Table 16.43.030-1 of the City's LDC, visitor parking for attached single-family dwellings containing four or more dwelling units or multifamily dwellings containing five or more units, shall be provided in addition to the minimum off-street parking required by this subsection, at a rate of 0.35 per dwelling unit (if less than 100 total units); 35 spaces or 0.25 per dwelling unit, whichever is greater (if 100 or more total units).
145. That the applicant shall provide off-street parking per Table 16.43.030-1 of the City's LDC for all recreational facilities/fields shown on the site plan. Per Section 16.43.030.B.3 of the City's LDC, on-street parking within three hundred (300) feet of a use along its property frontage may be counted as part of the minimum spaces required.
146. That sign permits shall be required for all monument signs; and, temporary subdivision signs.
147. That the applicant shall submit an alternate street sign/directional signage design, subject to final review and approval by the Planning Official, which shall also be consistent with that of any prior or subsequent phases of Pleasant Valley Villages. A development agreement shall cover the maintenance of said alternate street signs/directional signage that may be located in the public right-of-way by the Homeowner's Association or similar legal entity.
148. That per Table 16.62.020-1 of the City's LDC, attached dwelling units and multifamily units and recreational facilities/fields shall require separate Design Review approval. The envisioned Community Center and lots may be reconfigured as illustrated in Exhibit "13".
149. That the home builder(s) for detached single-family homes shall submit Floor Plans and Elevations, with building permits, consistent with those illustrated in Exhibit 8. These plans and any replacement plans shall be held to the following detailed design standards:

Detailed design shall be provided by using at least eight of the following 14 architectural features on all elevations as appropriate for the proposed building type and style (for examples, see Figures 16.44.010-4 and 16.44.010-5 from the City's LDC). These features may vary on rear/side/front elevations:

- i. Dormers;
- ii. Gables;
- iii. Recessed entries;
- iv. Covered porch entries;
- v. Cupolas or towers;
- vi. Pillars or posts;
- vii. Eaves (minimum of six-inch projection);
- viii. Offsets in building face or roof (minimum of sixteen (16) inches);
- ix. Window trim (minimum four inches wide);
- x. Bay windows;
- xi. Balconies;

- xii. Decorative patterns on exterior finish (e.g., scales/shingles, wainscoting, ornamentation or similar features);*
- xiii. Decorative cornices and roof lines (e.g., for flat roofs);*
- xiv. An alternative feature providing for visual relief, similar to options i through xiv, subject to the review and approval of the Planning Official or designee.*

ORDINANCE NO. 512
CITY OF HAPPY VALLEY

AN ORDINANCE AMENDING OFFICIAL MAP EXHIBIT 11 OF THE CITY OF HAPPY VALLEY LAND DEVELOPMENT ORDINANCE NO. 97, IN REGARD TO A COMPREHENSIVE PLAN/ZONING MAP AMENDMENT OF PROPERTY OWNED BY PLEASANT VALLEY DEVELOPMENT, LLC, FROM CLACKAMAS COUNTY RURAL RESIDENTIAL FARM FOREST – 5 ACRE (RRFF-5); FARM FOREST -10 ACRE (FF-10); PLANNED MIXED USE (PMU); AND RESIDENTIAL 10,000 SQUARE FEET (R-10) TO MIXED USE RESIDENTIAL – SINGLE-FAMILY (MUR-S); AND FROM COMMUNITY COMMERCIAL CENTER (CCC) TO SINGLE-FAMILY ATTACHED (SFA); AMENDING THE CITY’S COMPREHENSIVE PLAN BY ADOPTING AMENDMENTS TO THE CITY’S TRANSPORTATION SYSTEM PLAN (TSP); AND AMENDING THE CITY’S COMPREHENSIVE PLAN BY ADOPTING AMENDMENTS TO THE CITY’S EAST HAPPY VALLEY COMPREHENSIVE PLAN (EHVCP).

WHEREAS, Application MP-02-16/CPA-11-16/CPA-17-16/LDC-15-16/PUD-04-16/ERP-16-16/ERP-17-16/ERP-18-16 was requested by Pleasant Valley Development, LLC to amend the City’s Development District Map (Official Map Exhibit 11 of Ordinance 97) by applying the MUR-S and SFA zone to a 166.67-acre site known as “Pleasant Valley Villages – Phases 2-13”, as shown on Exhibit “A”; to amend the TSP in order to reclassify the functional classification of multiple facilities located on or adjacent to the subject property, as shown on Exhibit “B”, and to amend the EHVCP as shown in Exhibit “C”.

WHEREAS, a public hearing was held before the City of Happy Valley Planning Commission on November 8, 2016; and,

WHEREAS, the Planning Commission recommended by unanimous vote that said Official Map Exhibit 11 be amended as recommended by the Planning Official in the staff report dated November 8, 2016; and,

WHEREAS, the City has timely forwarded a copy of the proposed map amendments to the Department of Land Conservation and Development of the State of Oregon, Metro and Clackamas County; and,

WHEREAS, the City Council of the City of Happy Valley, Oregon, has determined that it is reasonable, necessary and in the public interest to revise the Official Development District Map, Exhibit 11, the TSP and the EHVCP and approve the Planning Commission’s recommendation pursuant to the findings contained in the staff report to the City Council, dated December 6, 2016, at the regular meeting of the City Council on December 6, 2016.

WHEREAS, the City Council considered the proposed amendments at its regularly scheduled City Council meeting on December 6, 2016; and

Now, therefore, based on the foregoing,

THE CITY OF HAPPY VALLEY ORDAINS AS FOLLOWS:

Section 1. The City of Happy Valley declares that the following city Comprehensive Plan designation and zoning district shall apply to the subject property as listed by Clackamas County Assessor Map No:

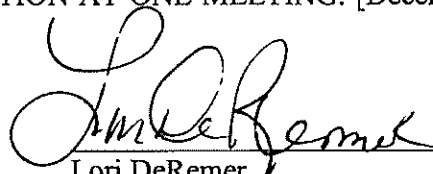
13E-31B-1700 – SFA
13E-31C-6201 – MUR-S
13E-31C-6202 – MUR-S
23E-06BA-100 – MUR-S
23E-06BB-100 – MUR-S
23E-06BB-200 – MUR-S

Section 2. The City Council adopts the subject amendments (MP-02-16/CPA-11-16/CPA-17-16/LDC-15-16/PUD-04-16/ERP-16-16/ERP-17-16/ERP-18-16) and the associated Staff Report to the City Council dated December 6, 2016.

Section 3. The Planning Official is directed to:

1. Amend the City's Comprehensive Plan/Zoning Map to reflect the re-zoning of the subject property to MUR-S and SFA, as shown on Exhibit "A";
2. Amend the City's Comprehensive Plan to reflect the adopted amendments to the TSP, as shown on Exhibit "B";
3. Amend the City's Comprehensive Plan to reflect the adopted amendments to the EHVCP, as shown on Exhibit "C"; and
4. Said change shall become effective within 30 calendar days.

COUNCIL APPROVAL AND ADOPTION AT ONE MEETING: [December 6, 2016]



Lori DeRemer
Mayor

Adoption and date attested by:



Kara Kerpan
Deputy City Recorder

**BEFORE THE CITY COUNCIL
FOR THE CITY OF HAPPY VALLEY, OREGON**

| | | |
|--|---|---|
| <p>“Pleasant Valley Villages – Phases 2-13”</p> <p>Master Plan (MP); Comprehensive Plan/ Zoning Map Amendment (CPA/LDC); Planned Unit Development (PUD); and Environmental Review Permits (ERPs)</p> <p>Applicant: Pleasant Valley Development, LLC</p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p>CITY COUNCIL</p> <p>Approval of</p> <p>Multiple Land Use Applications</p> <p>MP-02-16/CPA-11-16/CPA-17-16/LDC- 15-16/PUD-04-16/ERP-16-16/ERP-17- 16/ERP-18-16</p> |
|--|---|---|

Pursuant to the City’s Land Development Code (“LDC”) §16.61.040, the City provided notice of a public hearing before the City Council. An affidavit of the notice of hearing is a part of the record. The staff report was prepared and available to the public seven days prior to the first evidentiary public hearing as required by state law.

After providing notice and a staff report, the City Council conducted an evidentiary hearing providing an opportunity to submit oral testimony and written evidence on November 8, 2016. The approval criteria for these applications are provided in applicable Statewide Planning Goals; applicable sections of OAR Chapter 660, Division 12; applicable sections of the Metro Urban Growth Management Functional Plan; applicable City of Happy Valley Comprehensive Plan Policies; and applicable sections of the City of Happy Valley Municipal Code; Title 16- Land Development Code, including Chapters 16.22 (Residential Land Use Districts); Chapters 16.23 (Commercial and Employment Districts); 16.32 (Steep Slopes Development Overlay Zone); 16.34 (Natural Resources Overlay Zone); 16.35 (Flood Management Overlay Zone); 16.41 (Access and Circulation); 16.42 (Landscaping, Street Trees, Fences, and Walls); 16.43 (Parking and Loading); 16.44 (Special Standards for Certain Uses); 16.50 (Public Facilities);

16.61 (Types of Review Procedures); 16.63 (Land Divisions and Property Line Adjustments); 16.65 (Master Planned Developments); and 16.67 (Comprehensive Plan Map, Specific Area Plans, Land Use District Map and Text Amendments).

After discussion and deliberation, the City Council voted to approve the proposed applications, per the included conditions of approval.

I. DESCRIPTION OF THE APPLICATION

On November 8, 2016, the City of Happy Valley Planning Commission recommended that the City Council approve “Pleasant Valley Villages – Phases 2-13”, an 898-lot PUD, which consists of single-family residential detached and attached lots, multifamily residential units, open space and recreational amenities; includes a Master Plan, multiple Comprehensive Plan/Zoning Map Amendments, and, three ERPs for steep slopes, natural resources, and floodways/floodplains (Local File No. MP-02-16/CPA-11-16/CPA-17-16/LDC-15-16/PUD-04-16/ERP-16-16/ERP-17-16/ERP-18-16).

II. ADOPTION OF FINDINGS

The City Council specifically adopts the Findings within the December 6, 2016 Staff Report to the City Council in support of this Order approving MP-02-16/CPA-11-16/CPA-17-16/LDC-15-16/PUD-04-16/ERP-16-16/ERP-17-16/ERP-18-16.

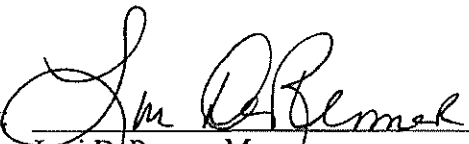
III. ORDER

The City Council hereby approves and orders as follows: the application by Pleasant Valley Development, LLC, for the combined MP-02-16/CPA-11-16/CPA-17-16/LDC-15-16/PUD-04-16/ERP-16-16/ERP-17-16/ERP-18-16 applications based on the findings provided herein and specifically adopted under Section II. This Order requires compliance with the

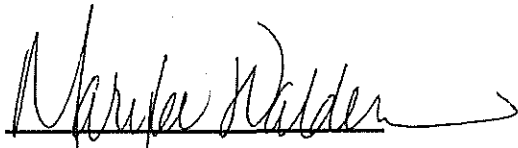
conditions set out in the conditions of approval within the Staff Report to the City Council, dated December 6, 2016, including any amended language.

ORDER OF THE CITY COUNCIL adopted this 6th day of December, 2016 and effective the 5th day of January, 2017.

CITY COUNCIL, CITY OF HAPPY VALLEY

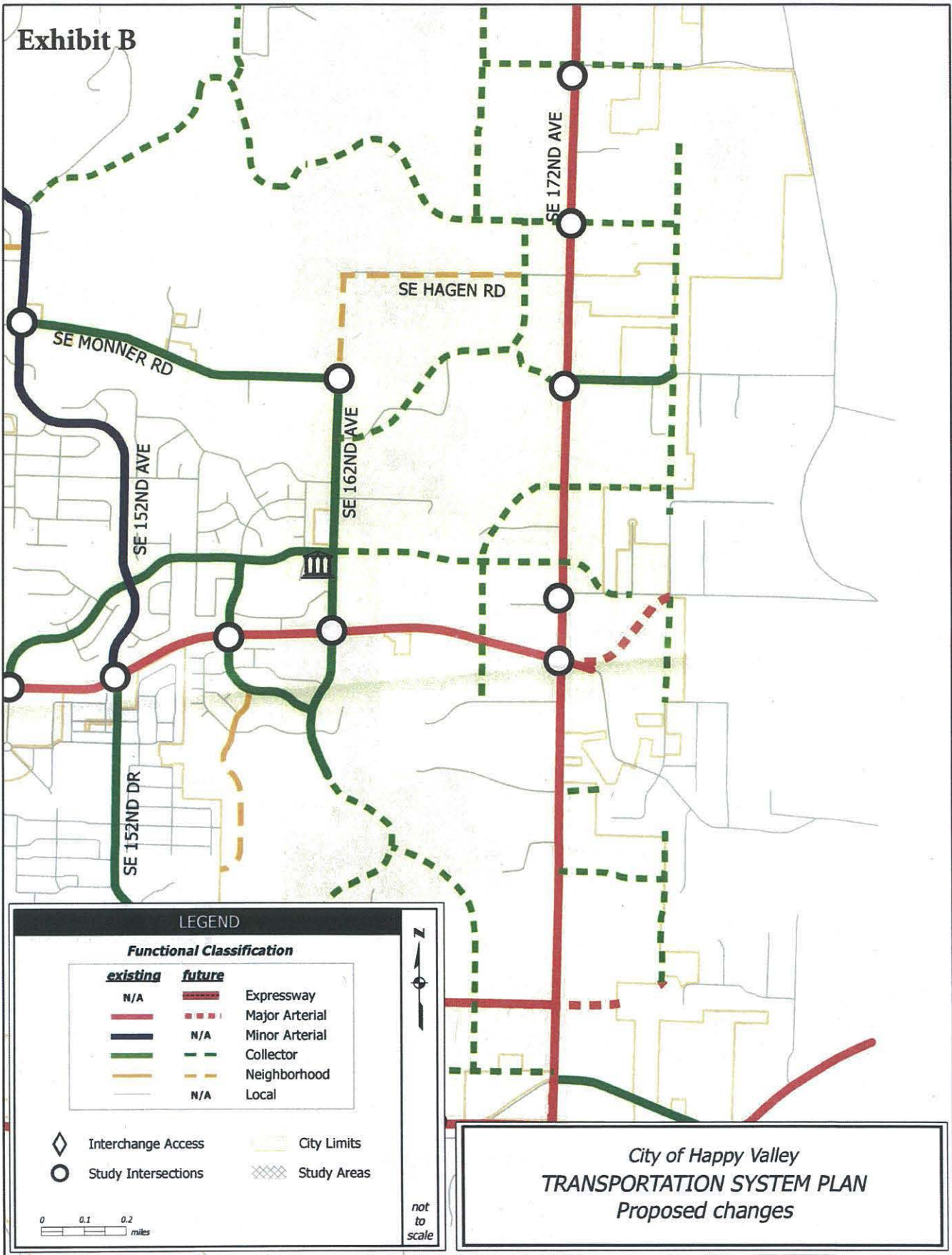
By  _____
Lori DeRemer, Mayor

Adoption and date attested by:

 _____

Marylee Walden
City Recorder

Exhibit B



LEGEND

Functional Classification

| <i>existing</i> | <i>future</i> | |
|-----------------|---------------|----------------|
| N/A | | Expressway |
| | | Major Arterial |
| | N/A | Minor Arterial |
| | | Collector |
| | | Neighborhood |
| | N/A | Local |

- Interchange Access
- Study Intersections
- City Limits
- Study Areas

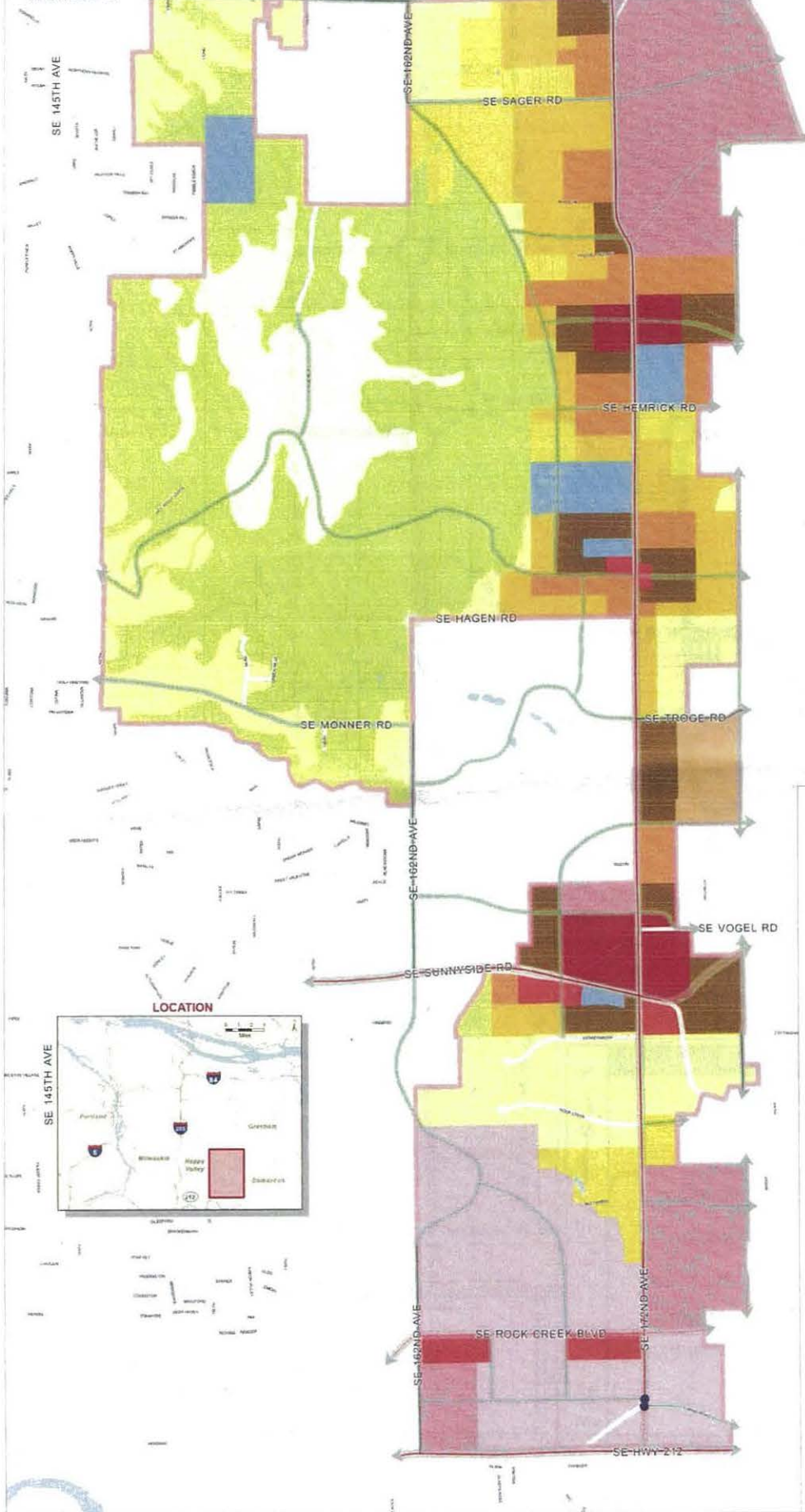
0 0.1 0.2 miles

not to scale

City of Happy Valley
TRANSPORTATION SYSTEM PLAN
Proposed changes

Exhibit C

SE CLATSOP ST



SE TILLSTROM RD

SE FOSTER RD

SE VOGEL RD

SE HWY 212

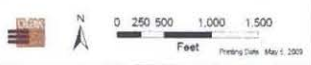
LOCATION



East Happy Valley Comprehensive Plan Update Proposed Changes

Legend

- Existing Roads**
 - Arterial
 - Collector
- Proposed Roads**
 - Arterial
 - Collector
- Right In/Right Out Intersection
- Zoning**
 - MUR-M2 (Mixed Use Residential Multifamily)
 - MUR-S (Mixed Use Residential Single Family)
 - SFA (Single Family Attached)
 - R5 (Residential, 5,000 SF Min.)
 - R7 (Residential, 7,000 SF Min.)
 - R10 (Residential, 10,000 SF Min.)
 - R15 (Residential, 15,000 SF Lot Min.)
 - R20 (Residential, 20,000 SF Lot Min.)
 - CCC (Community Commercial Center)
 - MCC (Mixed Commercial Center)
 - EC (Employment Center)
 - IC (Industrial Campus)
 - IPU (Institutional and Public Use)
- Other**
 - Comprehensive Plan Boundary
 - Tax Lot





DAN JOHNSON
DIRECTOR

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

April 22, 2021

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 Boardman Creek Headwall Repair Project and Authorizing Good Faith Negotiations and Condemnation Actions

| | |
|--|--|
| Purpose/Outcomes | Under ORS Chapter 203, ORS 35 and the federal Uniform Act, a local government agency is authorized to declare by resolution or ordinance the necessity and the purpose for which the project is required by enacting a Resolution of Necessity prior to initiating acquisition of the easements or other property rights needed from abutters to the project. |
| Dollar Amount and Fiscal Impact | Right of Way acquisition costs are estimated not to exceed \$16,000 and will be borne by the Transportation Maintenance 20/21 fiscal year budget for bridge maintenance. |
| Funding Source | County Road Fund |
| Duration | 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. |
| Previous Board Action/Review | 4/13/21 Discussion item at issues |
| Strategic Plan Alignment | <ol style="list-style-type: none"> How does this item align with your department's Strategic Business Plan goals? This project supports the DTD Strategic Focus on Safe Roads and Strategic Result of "Travelers on Clackamas County roads will experience roads in good condition." How does this item align with the County's Performance Clackamas goals? This item aligns with "Build a Strong Infrastructure" by rebuilding this portion of Boardman Avenue that has been undermined, as well as rebuilding the embankment that holds the road up. This item aligns with "Honor, Utilize, Promote, and Invest in our Natural Resources" by excavating sediments and invasive species from the channel downstream of Boardman Avenue, which will help to maximize the flow and capacity of this portion of Boardman Creek. |
| Counsel Review | Date of Counsel review: 4/06/21 NB |
| Procurement Review | <ol style="list-style-type: none"> Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> <p>This item is a resolution of necessity, required under ORS 35 as a precursor in support of possible condemnation action.</p> |

| | |
|------------------------|--|
| Contact Persons | Sharan LaDuca, DTD Sr. Right of Way Agent @ 503-742-4675 |
|------------------------|--|

County Road funds will be used to rebuild a portion of Boardman Avenue and the supporting embankment, excavate sediments and invasive species from the channel downstream of Boardman Avenue (the "Project").

In order to construct the improvements as designed, additional easements will be required. The Project is expected to impact three properties abutting the project alignment. The Board has authority to exercise the power of eminent domain under ORS Chapter 203 and ORS Chapter 35 to acquire the needed rights of way, easements, and fee property by purchase or condemnation proceedings. In accordance with the procedure set forth in ORS Chapter 35, a Resolution of Necessity is required before offers are made for rights of way, easements, and fee property.

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. The design has progressed through the Department of Transportation and Development (the "Department") project development procedures and the final legal descriptions required for acquisition of the needed easements from three properties affected by the Project have been developed.

The Department shall negotiate in good faith and accordance with all applicable laws, rules, and regulations in an attempt to reach agreement as to the amount of Just Compensation owed each affected property owner. To fairly determine the amount of Just Compensation, staff will utilize their own expertise and reliable data sources to prepare Appraisal Waiver Valuations in accordance with applicable law and regulation for acquisitions valued under \$10,000.

The resolution directs Department staff to proceed with good faith negotiations for the acquisition of the needed property rights and to utilize the expertise of authorized real estate appraisers and other such experts to assist in the acquisition process. The resolution further requires the Director of the Department 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.

RECOMMENDATION:

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

Sincerely,

Sharan LaDuca

Sharan LaDuca,
Senior Right of Way Agent

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

In the Matter of Declaring the Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions for the Boardman Creek Headwall Repair Project



Resolution No. _____

Page 1 of 2

This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board") at its regularly scheduled meeting on April 22, 2021 and,

It appearing to the Board that the Boardman Creek Headwall Repair Project ("the Project") will rebuild a portion of Boardman Avenue and the embankment supporting the road; is consistent with the powers and purposes of County government; and is necessary for public use and the continued growth, safety and welfare of the community; and,

It further appearing that the Board has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public; and,

It further appearing to the Board that the Project has been planned in accordance with appropriate standards for the improvement of transportation infrastructure such that property damage is minimized, transportation promoted, and travel safeguarded; and

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,

It further appearing to the Board that easements within the boundaries described in the attached Exhibits A-1, A-2, A-3, B-1, B-2, and B-3 (the "Exhibits") are a necessary part of the Project; and,

It further appearing that the Board has authority under ORS Chapter 203 and ORS Chapter 35 to acquire rights of way, easements, and fee property by good faith negotiation, agreement, and purchase or by exercise of the power of eminent domain with condemnation proceedings; and

NOW, THEREFORE, IT IS HEREBY RESOLVED that this Board declares it necessary and in the public interest that the County Department of Transportation and Development ("the Department"), in connection with this Project, begin the acquisition process, in accordance with all applicable laws, rules, and regulations governing such process, for the necessary rights of way, easements, and fee property, either through good faith negotiation, agreement, and purchase, or, if necessary, by commencement of condemnation proceedings.

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

In the Matter of Declaring the Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions for the Boardman Creek Headwall Repair Project



Resolution No. _____

Page 2 of 2

IT IS FURTHER RESOLVED THAT:

1) The Department be authorized to, in good faith, attempt to negotiate agreements of just compensation with owners of affected property identified in the Exhibits. In so doing, the Department is authorized to retain real estate appraisers, negotiators, and other such experts deemed necessary to assist staff with the acquisition process; and,

2). If the Director of the Department (the "Director") determines that changes to the design of the Project, unanticipated field conditions, or the need to accommodate uneconomic remnants makes it necessary or desirable to modify the rights of way, easements, and fee property required for the Project, the Director shall promptly bring before the Board, and the Board shall promptly consider a resolution amending the Exhibits; and,

3). It is the intention of the Board that the required rights of way, easements, and fee property be obtained through good faith negotiation. The Board acknowledges that the exercise of the power of eminent domain may be necessary. The Director of the Department shall inform the Board when the Director deems eminent domain necessary. Thereafter, the Office of County Counsel is authorized to file complaints of condemnation with the circuit court of the County and take such other steps as it determines necessary for the immediate possession of required rights of way, easements, and fee property 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 _____, 2021.

Tootie Smith, Chair

Recording Secretary

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

In the Matter of Declaring the Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions for the Boardman Creek Headwall Repair Project



Resolution No. _____

Page 1 of 2

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It further appearing that the Board has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public; and,

It further appearing to the Board that the Project has been planned in accordance with appropriate standards for the improvement of transportation infrastructure such that property damage is minimized, transportation promoted, and travel safeguarded; and

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,

It further appearing to the Board that easements within the boundaries described in the attached Exhibits A-1, A-2, A-3, B-1, B-2, and B-3 (the "Exhibits") are a necessary part of the Project; and,

It further appearing that the Board has authority under ORS Chapter 203 and ORS Chapter 35 to acquire rights of way, easements, and fee property by good faith negotiation, agreement, and purchase or by exercise of the power of eminent domain with condemnation proceedings; and

NOW, THEREFORE, IT IS HEREBY RESOLVED that this Board declares it necessary and in the public interest that the County Department of Transportation and Development ("the Department"), in connection with this Project, begin the acquisition process, in accordance with all applicable laws, rules, and regulations governing such process, for the necessary rights of way, easements, and fee property, either through good faith negotiation, agreement, and purchase, or, if necessary, by commencement of condemnation proceedings.

PARCEL 1 - PERMANENT EASEMENT FOR CULVERT FACILITIES

A tract of land located in the Southwest one quarter (SW1/4) of Section 18, Township 2 South, Range 2 East, Willamette Meridian, Clackamas County, State of Oregon, being a portion of that tract of land as described in Document No. 2011-032162, Clackamas County Deed Records, as shown on Exhibit "B" attached hereto and by this reference made a part hereof, more particularly described as follows;

Beginning at the most easterly point of Lot 20 per Plat of "Map of Boardmans Addition to Jennings Lodge" and said point being on the northerly Right-of-Way line of Boardman Avenue (County Rd. No. 1879);

Thence along the northerly Right-of-Way of Boardman Avenue, S 64° 15' W a distance of 15.00 feet to a point;

Thence leaving said Right-of-Way, N 25° 09' E a distance of 14.88 feet to a point being 10.00 feet northerly from said point of beginning measured along the easterly Boundary Line of said Lot 20;

Thence along the easterly Boundary Line of said Lot 20, S 45° 58' E a distance of 10.00 feet to the **Point of Beginning**;

Containing 70 square feet more or less.

Basis of Bearing per Plat of "Map of Boardmans Addition to Jennings Lodge" (Plat – 0158)

PARCEL 2 - TEMPORARY CONSTRUCTION EASEMENT

A tract of land located in the Southwest one quarter (SW1/4) of Section 18, Township 2 South, Range 2 East, Willamette Meridian, Clackamas County, State of Oregon, being a portion of that tract of land recorded as Document No. 2011-032162, Clackamas County Deed Records, as shown on Exhibit "B" attached hereto and by this reference made a part hereof, more particularly described as follows;

Commencing at the intersection with the easterly line of Lot 20 of "Map of Boardmans Addition to Jennings Lodge" and the northerly Right-of-Way line of Boardman Avenue (County Rd. No. 1879);

Thence along the northerly Right-of-Way of Boardman Avenue, S 64°15' W a distance of 15.00 feet to the **True Point of Beginning**;

Thence continuing along said Right-of-Way, S 64°15' W a distance of 15.00 feet to a point;

Thence leaving said Right-of-Way, N 29°50' W a distance of 130.01 feet to a point;

Thence parallel with the southerly boundary line of that parcel of land as described in Book 659, Page 19, S 61°12' W a distance of 103.50 feet to a point;

Thence N 28°48' W a distance of 28.00 feet to a point on said southerly boundary line;

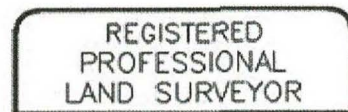
Thence along said southerly boundary line, N 61°12' E a distance of 120.88 feet to the southeast corner of that parcel of land described in Book 659, Page 19 and being a point on the east line of said Lot 20;

Thence along the easterly boundary line of said Lot 20, S 45°58' E, 158.97 feet to a point;

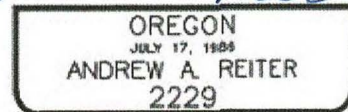
Thence leaving said easterly boundary line, S 25°09' E a distance of 14.88 feet to the **True Point of Beginning**;

Containing 9,387 square feet more or less.

Basis of Bearing per Plat of "Map of Boardmans Addition to Jennings Lodge" (Plat – 0158)



Andrew Reiter



EXPIRES: 12/31/2020

TEMPORARY CONSTRUCTION EASEMENT

A tract of land located in the Southwest one quarter (SW1/4) of Section 18, Township 2 South, Range 2 East, Willamette Meridian, Clackamas County, State of Oregon, being a portion of that tract of land recorded as Document No. 2020-069973, Clackamas County Deed Records, as shown on Exhibit "B" attached hereto and by this reference made a part hereof, more particularly described as follows;

Beginning at the intersection with the westerly boundary line of Lot 22 as shown on "Map of Boardmans Addition to Jennings Lodge" and the northerly Right-of-Way line of Boardman Avenue (County Rd. No. 1879);

Thence along the westerly boundary line of said Lot 22, N 45°58' W a distance of 48.00 feet to a point;

Thence leaving said westerly boundary line, N 54°41'01" E a distance of 26.00 feet to a point;

Thence S 34°53'52" E a distance of 50.00 feet to a point on the northerly Right-of-Way of Boardman Avenue;

Thence along said northerly Right-of-Way, S 64°15' W a distance of 17.00 feet to the **Point of Beginning**;

Containing 1,033 square feet more or less.

Basis of Bearing per Plat of "Map of Boardmans Addition to Jennings Lodge" (Plat – 0158)

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Andrew A. Reiter

OREGON
JULY 17, 1986
ANDREW A. REITER
2229

EXPIRES: 12/31/2020

(Parcel 1)

PERMANENT EASEMENT FOR CULVERT FACILITIES

A tract of land located in the Southwest one quarter (SW1/4) of Section 18, Township 2 South, Range 2 East, Willamette Meridian, Clackamas County, State of Oregon, being a portion of that tract of land recorded as Document No. 1990-036906, Clackamas County Deed Records, as shown on Exhibit "B" attached hereto and by this reference made a part hereof, more particularly described as follows;

Commencing at the intersection with the westerly boundary line of that parcel of land as described Deed Document 1990-036906, also being the westerly boundary line of Lot 21 of "Map of Boardmans Addition to Jennings Lodge", and the southerly Right-of-Way line of Boardman Avenue (County Rd. No. 1879);

Thence along said southerly Right-of-Way, N 64°15' E a distance of 27.00 feet to the **True Point of Beginning**;

Thence continuing along said southerly Right-of-Way, N 64°15' E a distance of 17.06 feet to a point;

Thence leaving said southerly Right-of-Way, S 75°45' E a distance of 9.80 feet to a point;

Thence S 64°15' W a distance of 17.06 feet to a point;

Thence N 75°45'00" W a distance of 9.80 feet to the **True Point of Beginning**;

Containing 107 square feet more or less.

Basis of Bearing per Plat of "Map of Boardmans Addition to Jennings Lodge" (Plat - 0158)

(Parcel 2)

TEMPORARY CONSTRUCTION EASEMENT

A tract of land located in the Southwest one quarter (SW1/4) of Section 18, Township 2 South, Range 2 East, Willamette Meridian, Clackamas County, State of Oregon, being a portion of that tract of land recorded as Document No. 1990-036906, Clackamas County Deed Records, as shown on Exhibit "B" attached hereto and by this reference made a part hereof, more particularly described as follows;

Commencing at the intersection with the westerly boundary line of that parcel of land as described Deed Document 1990-036906, also being the westerly boundary line of Lot 21 of "Map of Boardmans Addition to Jennings Lodge", and the southerly Right-of-Way line of Boardman Avenue (County Rd. No. 1879);

Thence along said southerly Right-of-Way, N 64°15' E a distance of 44.06 feet to the **True Point of Beginning**;

Thence continuing along said southerly Right-of-Way, N 64°15' E a distance of 10.19 feet to a point;

Thence leaving said southerly Right-of-Way, S 66°45'00" E a distance of 40.00 feet to a point;

Thence S 40°00'00" W a distance of 12.50 feet to a point;

Thence N 75°45'00" W a distance of 45.16 feet to a point;

Thence N 64°15'00" W a distance of 17.06 feet to a point;

Thence N 75°45'00" W a distance of 9.80 feet to the **True Point of Beginning**;

Containing 613 square feet more or less.

Basis of Bearing per Plat of "Map of Boardmans Addition to Jennings Lodge" (Plat - 0158)

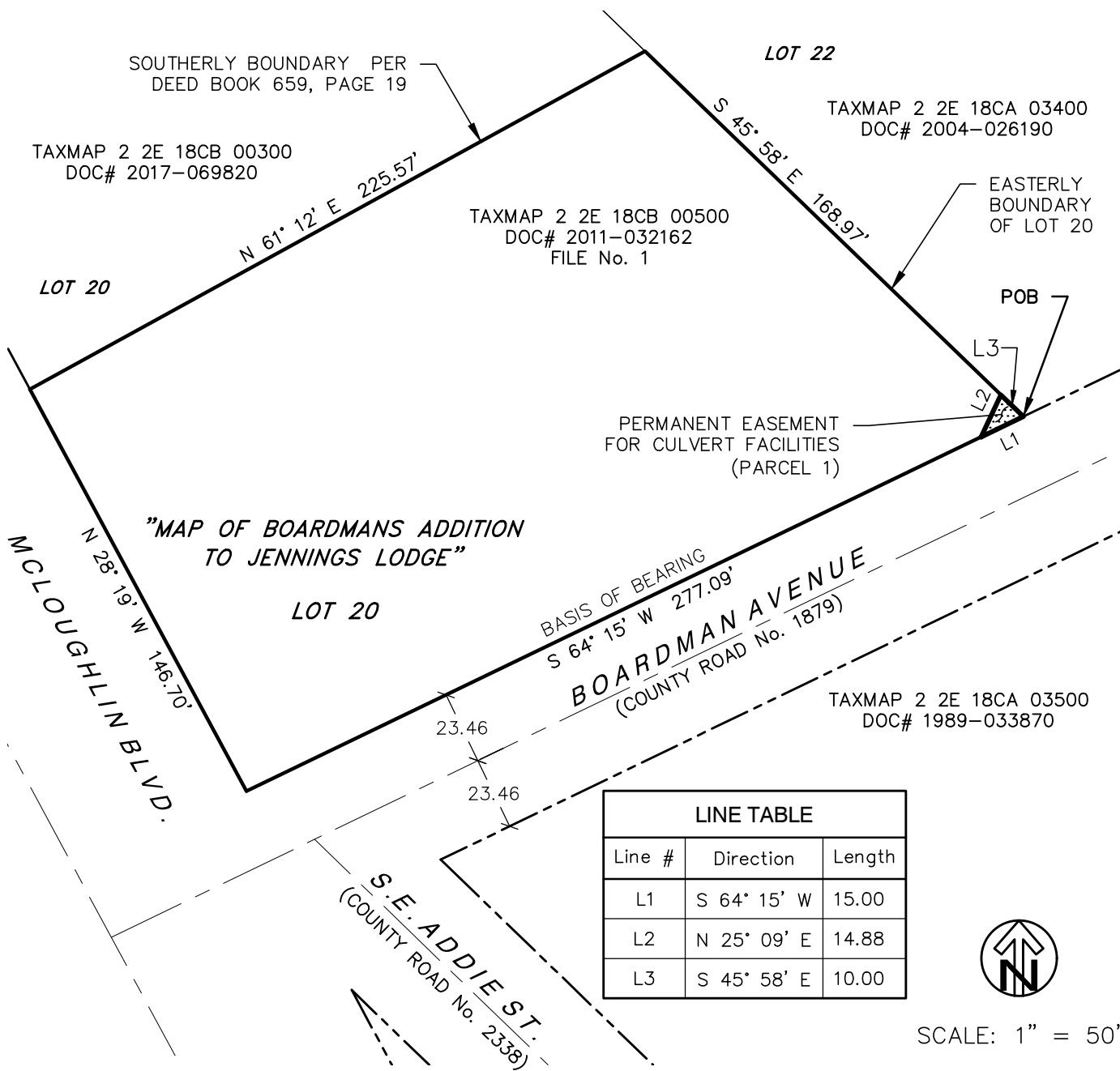
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Andrew Reiter

OREGON
JULY 17, 1986
ANDREW A. REITER
2229

EXPIRES: 12/31/2022

LOCATED IN THE SW 1/4 OF SECTION 18
T. 2 S., R. 2 E., W.M.,
CLACKAMAS COUNTY, OREGON



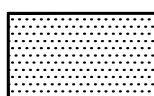
| LINE TABLE | | |
|------------|-------------|--------|
| Line # | Direction | Length |
| L1 | S 64° 15' W | 15.00 |
| L2 | N 25° 09' E | 14.88 |
| L3 | S 45° 58' E | 10.00 |




SCALE: 1" = 50'

LEGEND

POB POINT OF BEGINNING
DOC# DEED DOCUMENT NUMBER

 PERMANENT EASEMENT FOR CULVERT FACILITIES
AREA = 70 Sq.Ft.±



CLACKAMAS COUNTY

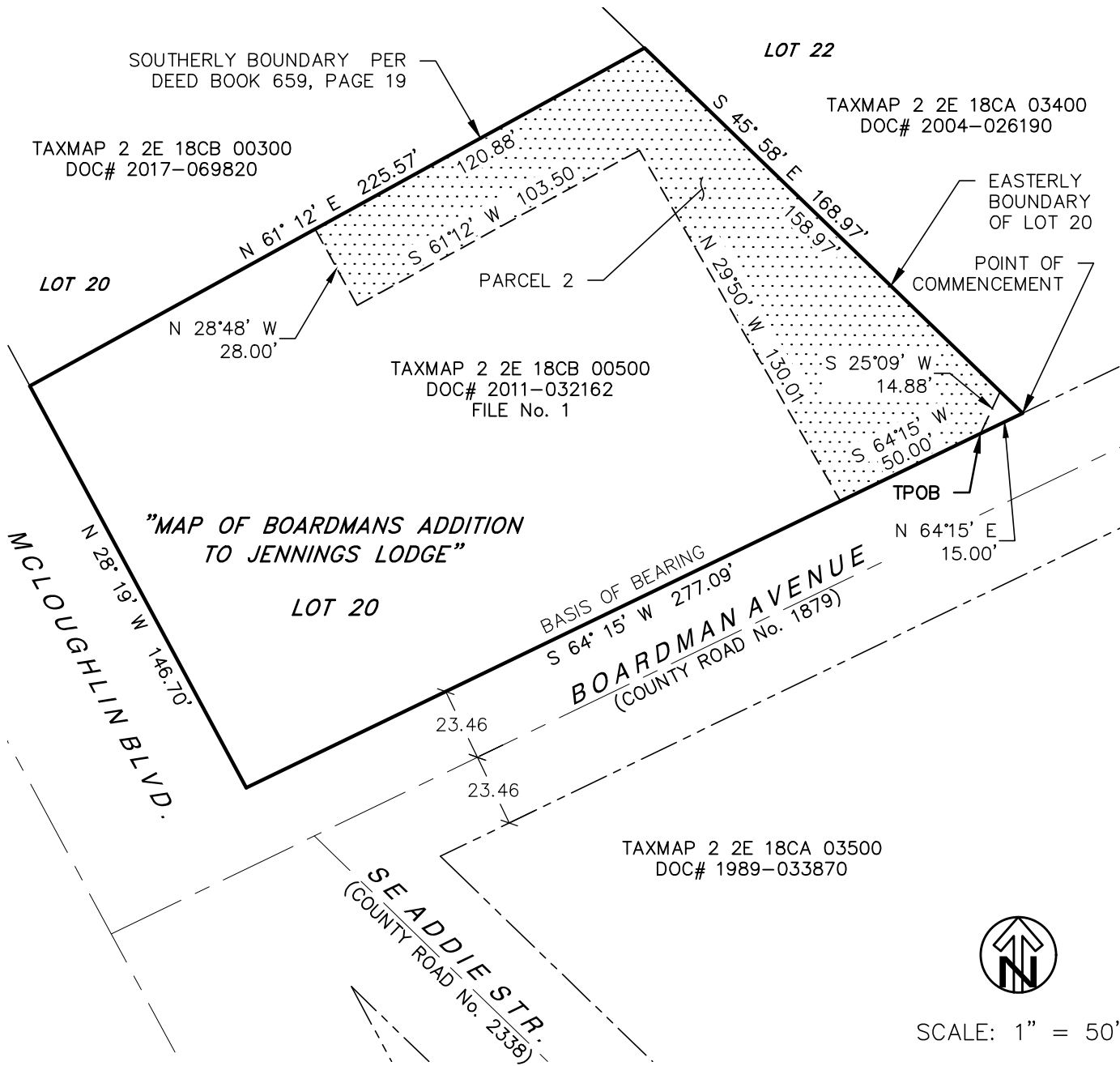
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

EXHIBIT "B-1"
BOARDMAN CREEK PROJECT
FILE NO. 1
PAGE 1 OF 2

PERMANENT EASEMENT FOR CULVERT FACILITIES

| | | | |
|-------------------------|-----------------|------------------|-------------------|
| RD. FILE NO. BM18-59 | DRAWN BY AAR | DESIGN BY AAR | DATE: 12/21/20 |
|-------------------------|-----------------|------------------|-------------------|

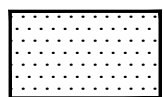
LOCATED IN THE SW 1/4 OF SECTION 18
 T. 2 S., R. 2 E., W.M.,
 CLACKAMAS COUNTY, OREGON



SCALE: 1" = 50'

LEGEND

TPOB TRUE POINT OF BEGINNING
 DOC# DEED DOCUMENT NUMBER



TEMPORARY CONSTRUCTION EASEMENT
 AREA = 9,387 Sq.Ft.±

CLACKAMAS COUNTY
 DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

EXHIBIT "B-1"
 BOARDMAN CREEK PROJECT
 FILE NO. 1
 PAGE 2 OF 2

TEMPORARY CONSTRUCTION EASEMENT

| | | | |
|-------------------------|-----------------|------------------|-------------------|
| RD. FILE NO. BM18-59 | DRAWN BY AAR | DESIGN BY AAR | DATE: 12/21/20 |
|-------------------------|-----------------|------------------|-------------------|

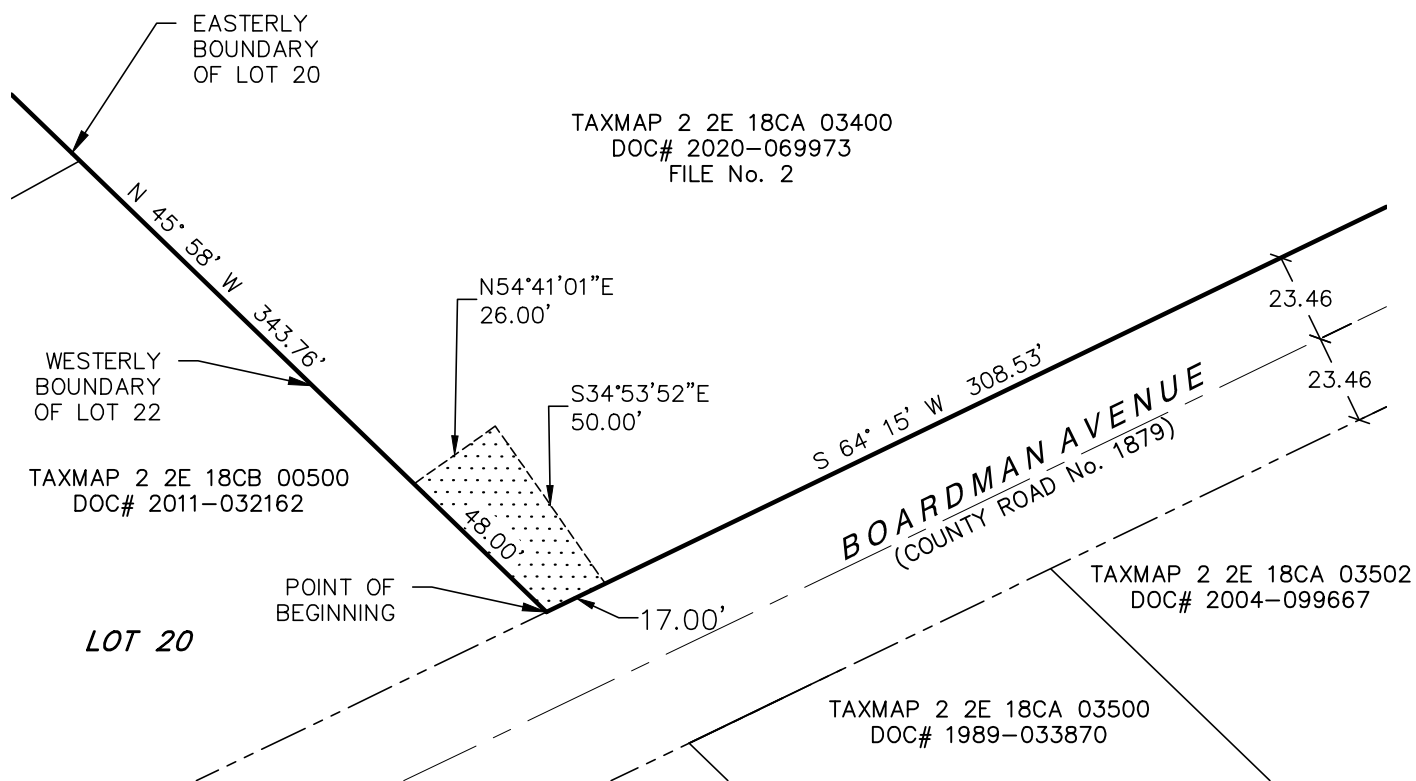
LOCATED IN THE SW 1/4 OF SECTION 18
 T. 2 S., R. 2 E., W.M.,
 CLACKAMAS COUNTY, OREGON



SCALE: 1" = 50'

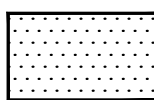
"MAP OF BOARDMANS ADDITION
 TO JENNINGS LODGE"


LOT 22



LEGEND

DOC# DEED DOCUMENT NUMBER

 TEMPORARY CONSTRUCTION EASEMENT
 AREA = 1,033 Sq.Ft.±



CLACKAMAS COUNTY

DEPARTMENT OF
 TRANSPORTATION
 AND
 DEVELOPMENT

EXHIBIT "B-2"
 BOARDMAN CREEK PROJECT
 FILE NO. 2
 PAGE 1 OF 1

TEMPORARY CONSTRUCTION EASEMENT

| | | | |
|-------------------------|-----------------|------------------|-------------------|
| RD. FILE NO. RM18-59 | DRAWN BY AAR | DESIGN BY AAR | DATE: 12/16/20 |
|-------------------------|-----------------|------------------|-------------------|

LOCATED IN THE SW 1/4 OF SECTION 18
T. 2 S., R. 2 E., W.M.,
CLACKAMAS COUNTY, OREGON

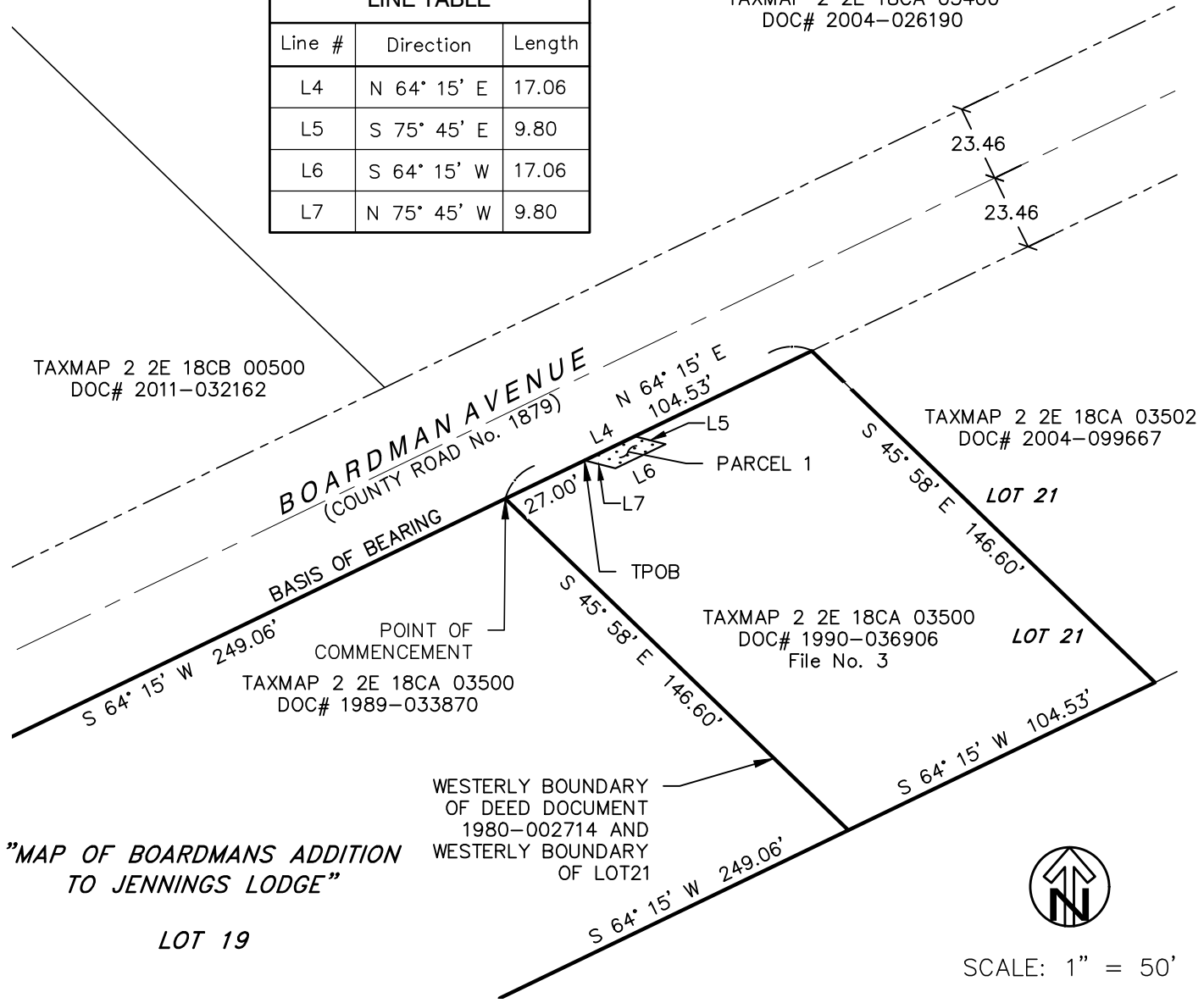
| LINE TABLE | | |
|------------|-------------|--------|
| Line # | Direction | Length |
| L4 | N 64° 15' E | 17.06 |
| L5 | S 75° 45' E | 9.80 |
| L6 | S 64° 15' W | 17.06 |
| L7 | N 75° 45' W | 9.80 |

TAXMAP 2 2E 18CA 03400
DOC# 2004-026190

TAXMAP 2 2E 18CB 00500
DOC# 2011-032162

TAXMAP 2 2E 18CA 03502
DOC# 2004-099667

BOARDMAN AVENUE
(COUNTY ROAD No. 1879)



"MAP OF BOARDMANS ADDITION
TO JENNINGS LODGE"

LOT 19

WESTERLY BOUNDARY
OF DEED DOCUMENT
1980-002714 AND
WESTERLY BOUNDARY
OF LOT21



SCALE: 1" = 50'

LEGEND

TPOB TRUE POINT OF BEGINNING
DOC# DEED DOCUMENT NUMBER

 PERMANENT EASEMENT FOR
CULVERT FACILITIES
AREA = 107 Sq.Ft.±



DEPARTMENT OF
TRANSPORTATION
AND
DEVELOPMENT

EXHIBIT "B-3"
BOARDMAN CREEK PROJECT
FILE NO. 3
PAGE 1 OF 2

PERMANENT EASEMENT
FOR CULVERT FACILITIES

| | | | |
|-------------------------|-----------------|------------------|-------------------|
| RD. FILE NO. RM18-59 | DRAWN BY AAR | DESIGN BY AAR | DATE: 12/21/20 |
|-------------------------|-----------------|------------------|-------------------|

LOCATED IN THE SW 1/4 OF SECTION 18
T. 2 S., R. 2 E., W.M.,
CLACKAMAS COUNTY, OREGON

| LINE TABLE | | |
|------------|-------------|--------|
| Line # | Direction | Length |
| L8 | N 64° 15' E | 10.19 |
| L9 | S 66° 45' E | 40.00 |
| L10 | S 40° 00' W | 12.50 |
| L11 | N 75° 45' W | 45.16 |
| L12 | N 64° 15' E | 17.06 |
| L13 | N 75° 45' W | 9.80 |

TAXMAP 2 2E 18CA 03400
DOC# 2004-026190

TAXMAP 2 2E 18CB 00500
DOC# 2011-032162

TAXMAP 2 2E 18CA 03502
DOC# 2004-099667

TAXMAP 2 2E 18CA 03500
DOC# 1990-036906
FILE No. 3

TAXMAP 2 2E 18CA 03500
DOC# 1989-033870

"MAP OF BOARDMANS ADDITION
TO JENNINGS LODGE"

LOT 19

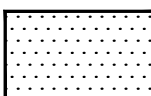
WESTERLY BOUNDARY
OF DEED DOCUMENT
1980-002714 AND
WESTERLY BOUNDARY
OF LOT21



SCALE: 1" = 50'

LEGEND

TPOB TRUE POINT OF BEGINNING
DOC# DEED DOCUMENT NUMBER

 TEMPORARY CONSTRUCTION
EASEMENT
AREA = 613 Sq.Ft.±



DEPARTMENT OF
TRANSPORTATION
AND
DEVELOPMENT

EXHIBIT "B-3"
BOARDMAN CREEK PROJECT
FILE NO. 3
PAGE 2 OF 2

TEMPORARY CONSTRUCTION
EASEMENT

| | | | |
|-------------------------|-----------------|------------------|-------------------|
| RD. FILE NO. RM18-59 | DRAWN BY AAR | DESIGN BY AAR | DATE: 12/21/20 |
|-------------------------|-----------------|------------------|-------------------|



DAN JOHNSON
DIRECTOR

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

April 22, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between Clackamas County and the City of Canby to Transfer Permitting Authority and Maintenance Responsibility for of Portions N. Locust Street (County Road #1782, DTD #31077, N. Maple Street (County Road #2579, DTD #31029) and S. Redwood Street (County Road #0277, DTD #41023 to the City

| | |
|--|---|
| Purpose/Outcomes | Transfers permitting authority and maintenance responsibility for construction on portions of N. Locust Street, N. Maple Street and S. Redwood Street to the City of Canby. |
| Dollar Amount and Fiscal Impact | Cost savings in the form of staff time and materials related to the permitting, maintenance and oversight of this roadway and a onetime payment of \$348,523, which represents the cost of a 2" asphalt overlay, one area of pre-overlay preparation and ADA improvements along the portions being transferred. |
| Funding Source | Community Road Fund |
| Duration | Upon execution; permanent |
| Previous Board Action | April 13, 2021: Discussion item at issues |
| Strategic Plan Alignment | 1. This transfer will directly align with our departments Business Plan goal of completing jurisdictional transfer of roads to cities. 2. The cost savings realized by this transfer will allow transparency for the budget. |
| Counsel Review | 1. Date of Counsel review: March 04, 2021 2. NB |
| Procurement Review | Was this item processed through Procurement? No This item is an IGA related to a transfer of Jurisdiction |
| Contact Person | Michael Bays, Survey Cadd Supervisor; 503-742-46667 |

Clackamas County currently has jurisdiction, including permitting authority, enforcement of road standards and maintenance responsibility of N. Locust Street, N. Maple Street and S. Redwood Street. This intergovernmental agreement addresses transferring rights and duties as "road authority," including permitting authority, development of road standards, and maintenance responsibility to the City for portions of N. Locust Street, N. Maple Street and S. Redwood Street. This Transfer was vetted though the Clackamas County Coordinating Committee in early 2020 and will be the first transfer under the Community Road Fund's Strategic Investment Fund.

Transferring the rights and duties as road authority for these portions of N. Locust Street, N. Maple Street and S. Redwood Street to the City of Canby will eliminate confusion and improve efficiencies of maintenance and public service. The City will perform all construction and reconstruction; improvement or repair and maintenance; review and issuance of access permits; establishment of roadway standards; acquisition of right of way; storm water and drainage facility repair and maintenance; and review and issuance of street opening permits. The County will retain official jurisdiction of these portions of the roadways until such time as jurisdictional transfer as outlined in this agreement with the County has been completed.

RECOMMENDATION:

Staff respectfully recommends that the Board approve this Intergovernmental Agreement with the City of Canby to transfer rights and duties as road authority for portions of N. Locust Street, N. Maple Street and S. Redwood Street to the City.

Respectfully submitted,

Michael Bays

Michael Bays, Survey Cadd Supervisor
Attachments: IGA, Exhibits

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CANBY AND
CLACKAMAS COUNTY RELATED TO THE TRANSFER OF A PORTION OF N.
LOCUST STREET, N. MAPLE STREET AND S. REDWOOD STREET**

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

RECITALS

WHEREAS, ORS Chapter 190 authorizes local governments to enter into intergovernmental agreements for the performance of any or all functions and activities that a local government, its officers or agencies, have the authority to perform;

WHEREAS, the portions of N. Locust Street, N. Maple Street and S. Redwood Street subject to this Agreement are located entirely within the boundaries of the City and are County Roads, as defined in ORS 368.001 (“N. Locust Street, N. Maple Street and S. Redwood Street”);

WHEREAS, N. Locust Street, N. Maple Street and S. Redwood Street are depicted in Exhibits “B-1, B-2 and B-3”, and more particularly described in Exhibits “A-1, A-2 and A-3”, all of which are attached hereto and incorporated herein;

WHEREAS, the Parties agree that the City is best suited to assume primary responsibility for maintenance and permitting of N. Locust Street, N. Maple Street and S. Redwood Street;

WHEREAS, ORS 373.270 provides a procedure whereby a county may transfer jurisdiction over any county roads within a city to that city, and the Parties desire to pursue a transfer of jurisdiction of N. Locust Street, N. Maple Street and S. Redwood Street pursuant to the terms of this Agreement; and

WHEREAS, the Parties agree that N. Locust Street, N. Maple Street and S. Redwood Street should be improved, or the City should be compensated, consistent with the terms of this Agreement at, or prior to, the completion of the full transfer pursuant to ORS 373.270.

AGREEMENT

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

1. **Term.** This Agreement shall be effective upon execution, and shall expire automatically at the time the City assumes jurisdiction of N. Locust Street, N. Maple Street and S. Redwood Street pursuant to ORS 373.270, and the County has paid the amount of money set forth herein.

2. **Transfer of Authority.**

- A. Responsibility for Road Authority activities (as outlined in Section 3) for N. Locust Street, N. Maple Street and S. Redwood Street shall be surrendered to the City pursuant to the terms and conditions of this Agreement. The only portions of N. Locust Street, N. Maple Street and S. Redwood Street subject to this Agreement measures approximately 1,823 feet and 85,569 square feet in area, 1,132 feet and 52,988 square feet in area and 1,354 feet and 87,938 square feet in area, respectively, as more particularly depicted on Exhibit “B-1, B-2 and B-3”, and more specifically described on Exhibit “A-1, A-2 and A-3”.
- B. To facilitate the performance of responsibilities under this Agreement, the City hereby accepts responsibility for Road Authority activities (as outlined in Section 3) for N. Locust Street, N. Maple Street and S. Redwood Street, as described herein.
- C. The City shall be solely responsible for all costs associated with the Road Authority activities assumed by the City as set forth in this Agreement.

3. **Road Authority Obligations.** For purposes of this Agreement, the Road Authority activities include those activities the City deems necessary in accordance with City standards, including but not necessarily limited to, the following:

- A. Construction and reconstruction (including capital improvements);
- B. Improvement or repair, and maintenance;
- C. Maintenance and repair of related facilities within the roadway, including but not limited to storm water drainage facilities, traffic control devices, street lights and roadside barriers;
- D. Timely repair or mitigation of known hazards to the road users;
- E. Issuance of permits for work or the establishment of roadway standards on N. Locust Street, N. Maple Street and S. Redwood Street; and
- F. All other responsibilities the County may have under ORS 368 with regards to N. Locust Street, N. Maple Street and S. Redwood Street which may be assumed by the City under state law.

4. **Maintenance Standard.** Any maintenance on N. Locust Street, N. Maple Street and S. Redwood Street required by this Agreement shall be carried out in a manner that is similar to other roads with similar features, function, and characteristics under the City’s jurisdiction.

5. **County Responsibilities.**

- A. The County shall give notice and shall carry out those procedures set forth in ORS 373.270 to determine whether it is necessary, expedient or for the best interests of the County to surrender jurisdiction over N. Locust Street, N. Maple Street and S. Redwood Street

- B. The County shall provide to the City the sum of \$348,523, which is equivalent to the cost of the following improvement: a 2-inch asphalt overlay, one area of pre-overlay preparation and ADA ramp improvements on the portions of N. Locust Street (\$126,482), N. Maple Street (\$95,583) and S. Redwood Street (\$126,458) identified in the exhibits attached to this Agreement. The sum of \$330,523 identified in this paragraph shall be payable to the City within 30 days of the date that full and absolute jurisdiction over N. Locust Street, N. Maple Street and S. Redwood Street is surrendered by the County and accepted by the City as described below.

6. City Responsibilities.

- A. After the County has initiated the process to transfer jurisdiction of N. Locust Street, N. Maple Street and S. Redwood Street, the City shall carry out any additional procedures necessary, as set forth in ORS 373.270, for purposes of finalizing the transfer. The City shall not unreasonably delay or withhold its consent to the transfer of N. Locust Street, N. Maple Street and S. Redwood Street, and shall complete the process to finalize the transfer within 90 days from the date that the County concludes its hearing and decision on the matter. This obligation shall terminate in the event the governing body of the County fails to find that it is necessary, expedient or for the best interests of the County to surrender jurisdiction over N. Locust Street, N. Maple Street and S. Redwood Street
- B. The City agrees to assume full and absolute jurisdiction over the portion of N. Locust Street, N. Maple Street and S. Redwood Street identified in the exhibits attached to this Agreement, if the governing body of the City and the governing body of the County both determine that it is necessary, expedient or for the best interests of their respective jurisdictions to complete the transfer described herein.

7. Termination.

- A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- B. Either the County or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.

- D. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

8. **Indemnification.**

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.
- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

9. **General Provisions**

- A. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three

years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.

- E. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.
- K. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.

L. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

M. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.

N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

CLACKAMAS COUNTY

CITY OF CANBY

Chair

Mayor

Date

Date

Recording Secretary

Recording Secretary



DAN JOHNSON
DIRECTOR

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

April 22, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between Clackamas County and the City of Canby to Transfer Permitting Authority and Maintenance Responsibility for Portions of N. Maple Street (County Road #2579, DTD #31029) and N. Redwood Street (County Road #2163, DTD #31017) to the City

| | |
|--|---|
| Purpose/Outcomes | Transfers permitting authority and maintenance responsibility for construction on portions of N. Maple Street and N. Redwood Street to the City of Canby. |
| Dollar Amount and Fiscal Impact | Cost savings in the form of staff time and materials related to the permitting, maintenance and oversight of this roadway and a onetime payment of \$433,342, which represents the cost of a 2" asphalt overlay and ADA improvements along that portions being transferred. |
| Funding Source | Community Road Fund |
| Duration | Upon execution; permanent |
| Previous Board Action | April 13, 2021: Discussion item at issues |
| Strategic Plan Alignment | 1. This transfer will directly align with our departments Business Plan goal of completing jurisdictional transfer of roads to cities. 2. The cost savings realized by this transfer will allow transparency for the budget. |
| Counsel Review | 1. Date of Counsel review: March 4, 2021 2. NB |
| Procurement Review | Was this item processed through Procurement? No This item is an IGA related to a transfer of Jurisdiction |
| Contact Person | Michael Bays, Survey Cadd Supervisor; 503-742-4667 |

Clackamas County currently has jurisdiction, including permitting authority, enforcement of road standards and maintenance responsibility of N. Maple Street and N. Redwood Street. This intergovernmental agreement addresses transferring rights and duties as "road authority," including permitting authority, development of road standards, and maintenance responsibility to the City for portions of N. Maple Street and N. Redwood Street. This Transfer was vetted though

the Clackamas County Coordinating Committee in early 2020 and will be the first transfer under the Community Road Fund's Strategic Investment Fund.

Transferring the rights and duties as road authority for these portions of N. Maple Street and N. Redwood Street to the City of Canby will eliminate confusion and improve efficiencies of maintenance and public service. The City will perform all construction and reconstruction; improvement or repair and maintenance; review and issuance of access permits; establishment of roadway standards; acquisition of right of way; storm water and drainage facility repair and maintenance; and review and issuance of street opening permits. The County will retain official jurisdiction of this portion of the roadway until such time as the roads are annexed into city limits and the County and the City of Canby can complete a transfer of jurisdiction of these portions of roadway as set forth in this Intergovernmental Agreement.

RECOMMENDATION:

Staff respectfully recommends that the Board approve this Intergovernmental Agreement with the City of Canby to transfer rights and duties as road authority for portions of N. Maple Street and N. Redwood Street to the City.

Respectfully submitted,

Michael Bays

Michael Bays, Survey Cadd Supervisor
Attachments: IGA, Exhibits

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CANBY AND
CLACKAMAS COUNTY RELATED TO ROAD MAINTENANCE AND PERMITTING
AUTHORITY ON A PORTION OF NORTH MAPLE STREET AND NORTH
REDWOOD STREET**

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

RECITALS

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

WHEREAS, portions of North Maple Street and North Redwood Street are County Roads, as defined in ORS 368.001, lying partially outside, but adjacent to the boundaries of the City.

WHEREAS, the Parties agree that the City is best suited to assume primary responsibility for maintenance and permitting of a portion of North Maple Street, measuring approximately 2,020 feet and 113,670 square feet in area, and a portion of North Redwood Street, measuring approximately 2,298 feet and 161,147 square feet in area as more particularly depicted on Exhibits “B-1 and B-2” and which are attached hereto and incorporated herein (“North Maple Street and North Redwood Street”).

WHEREAS, transfer of responsibility with regards to North Maple Street and North Redwood Street will lead to efficient and consistent road maintenance activities and reduce any confusion on the part of the public as to which Party is responsible for the condition and maintenance of North Maple Street and North Redwood Street, which primarily serves the residents of the City;

WHEREAS, the Parties agree that each will consider the full transfer of jurisdiction of North Maple Street and North Redwood Street to the City once North Maple Street and North Redwood Street are entirely annexed into the City’s boundary, and that this Agreement will no longer be necessary if North Maple Street and North Redwood Street are completely annexed into the City; and

WHEREAS, it is the intent of the Parties that the County transfer as much of its responsibility under ORS 368 with regards to North Maple Street and North Redwood Street as may be allowed under state law in order to grant the City control of North Maple Street and

North Redwood Street prior to the annexation and potential jurisdictional transfer of North Maple Street and North Redwood Street.

AGREEMENT

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

1. **Term.** This Agreement shall be effective upon execution. This Agreement shall expire automatically at the time North Maple Street and North Redwood Street are annexed into the City and the City assumes jurisdiction of North Maple Street and North Redwood Street pursuant to ORS 368 and ORS 373.
2. **Transfer of Authority.**
 - A. Responsibility for Road Authority activities (as outlined in Section 3) for North Maple Street and North Redwood Street shall be surrendered to the City pursuant to the terms and conditions of this Agreement. The only portion of North Maple Street and North Redwood Street subject to this Agreement measures approximately 2,020 feet and 113,670 square feet in area and 2,298 feet and 161,147 square feet in area, respectively, as more particularly depicted on Exhibit “B-1, and B-2”, and more specifically described on Exhibit “A-1 and A-2”.
 - B. To facilitate the performance of responsibilities under this Agreement, the City hereby accepts responsibility for Road Authority activities (as outlined in Section 3) for North Maple Street and North Redwood Street, as described herein.
 - C. The City shall be solely responsible for all costs associated with the Road Authority activities assumed by the City as set forth in this Agreement.
3. **Road Authority Obligations.** For purposes of this Agreement, the Road Authority activities include those activities the City deems necessary in accordance with City standards, including but not necessarily limited to, the following:
 - A. Construction and reconstruction (including capital improvements);
 - B. Improvement or repair, and maintenance;
 - C. Maintenance and repair of related facilities within the roadway, including but not limited to storm water drainage facilities, traffic control devices, street lights and roadside barriers;
 - D. Timely repair or mitigation of known hazards to the road users;
 - E. Issuance of permits for work or the establishment of roadway standards on North Maple Street and North Redwood Street; and

- F. All other responsibilities the County may have under ORS 368 with regards to North Maple Street and North Redwood Street which may be assumed by the City under state law.
4. **Maintenance Standard.** Any maintenance on North Maple Street and North Redwood Street required by this Agreement shall be carried out in a manner that is similar to other roads with similar features, function, and characteristics under the City's jurisdiction.
5. **County Responsibilities.**
- A. After such time that North Maple Street and North Redwood Street have been annexed into the City, the County shall give notice and shall carry out those procedures set forth in ORS 373.270 to determine whether it is necessary, expedient or for the best interests of the County to surrender jurisdiction over North Maple Street and North Redwood Street.
- B. The County shall provide to the City the sum of \$433,342, which is equivalent to the cost of the following improvement: a 2-inch asphalt overlay on the portions of North Maple Street (\$124,508) and North Redwood Street (\$303,834) identified in the exhibits attached to this Agreement. The sum of \$433,342 identified in this paragraph shall be payable to the City within 60 days of the effective date of this Agreement.
6. **City Responsibilities.**
- A. After the County has initiated the process to transfer jurisdiction of North Maple Street and North Redwood Street, the City shall carry out any additional procedures necessary, as set forth in ORS 373.270, for purposes of finalizing the transfer. The County may initiate separate processes to transfer jurisdiction of North Maple Street and North Redwood Street, or may process the jurisdictional transfer of the roads together. The City shall not unreasonably delay or withhold its consent to the transfer of North Maple Street or North Redwood Street., and shall complete the process to finalize the transfer within 90 days from the date that the County concludes its hearing and decision on the matter. This obligation shall terminate in the event the governing body of the City or County fails to find that it is necessary, expedient or for the best interests of the County to surrender jurisdiction over North Maple Street or North Redwood Street.
- B. The City agrees to assume full and absolute jurisdiction over the portion of North Maple Street and North Redwood Street identified in the exhibits attached to this Agreement, if the governing body of the City and the governing body of the County both determine that it is necessary, expedient or for the best interests of their respective jurisdictions to complete the transfer described herein.
7. **Termination.**
- A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- B. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- C. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination

8. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.
- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

9. General Provisions

- A. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- E. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent

upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- J. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.

- K. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.

- L. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

M. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.

N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

CLACKAMAS COUNTY

CITY OF CANBY

Chair

City Manager

Date

Date

Recording Secretary

Recording Secretary

Exhibit "A-1"

N. Maple Street Transfer of Jurisdiction (North of NE Territorial Rd.)

Clackamas County to City of Canby

Description

All that portion of N. Maple Street, County Road No. 2579, Department of Transportation and Development maintenance No. 31029; Situated in the NE 1/4 and the SE 1/4 of Section 28, T. 3 S., R 1 E., W.M. as shown in Exhibit "B", attached hereto, lying south of the Northerly boundary line of Tax Lot 31E28A 00402, as described in Document No. 2002-093016, Clackamas County deed records (mile point 0.09) and lying North of the Southerly Lot Line of Lot 50 of "Country Club Estates" subdivision, as recorded in Clackamas County records, also lying north of the northerly Right-of-Way of Territorial Road (mile post 0.48), being approximately 2,020 feet long.

Contain 113,670 square feet, more or less.

Exhibit "A-2"

N. Redwood Street Transfer of Jurisdiction (South of NE Territorial Rd.)

Clackamas County to City of Canby

Description

All that portion of N. Redwood Street, County Road No. 2163, Department of Transportation and Development maintenance No. 31017; Situated in the SW 1/4 of Section 27 and the NW 1/4 of Section 34, T. 3 S., R 1 E., W.M. as shown in Exhibit "B", attached hereto, lying south of and between, Mile Point 0.16 being the north Lot Line of Lot 92 of "Canby Gardens" Plat No. 0230 Clackamas County Plat Records and Mile Point 0.72, more or less, being the north Lot Line of Lot 8 of "Redwood Corner" Plat No. 3698 Clackamas County Plat Records, being 2,298 feet long more or less.

Containing 161,147 square feet, more or less.

EXHIBIT "B-1"



1"=300'

CITY LIMITS

BEGIN MILE POINT 0.09

31E28A 00402
DOC. NO. 2002-093016

CLACKAMAS COUNTY

NE 22ND AVENUE

LOT 1, "LOCUST CORNER"

CITY LIMITS

NE 21TH PL

NE 21TH AVE

CITY OF CANBY

CR NO. 2579

N. MAPLE STREET

Willamette Valley
Country Club

NE 20TH AVE

NE 20TH AVE

N LUPINE AVE

NE GREENVIEW CT

NE 19TH AVE

NE FAIRWAY LANE

LAURELWOOD

LOT 50, "COUNTRY CLUB ESTATES"

NE

LOOP

NE TERRITORIAL ROAD

N OAK ST

END MILE POINT 0.48



TRANSFERED ROAD

LOCATED IN THE NE 1/4 AND SE 1/4 OF
SECTION 28, T. 3 S., R. 1 E., W.M.
CLACKAMAS COUNTY, OREGON

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



02/25/2021

A. REITER

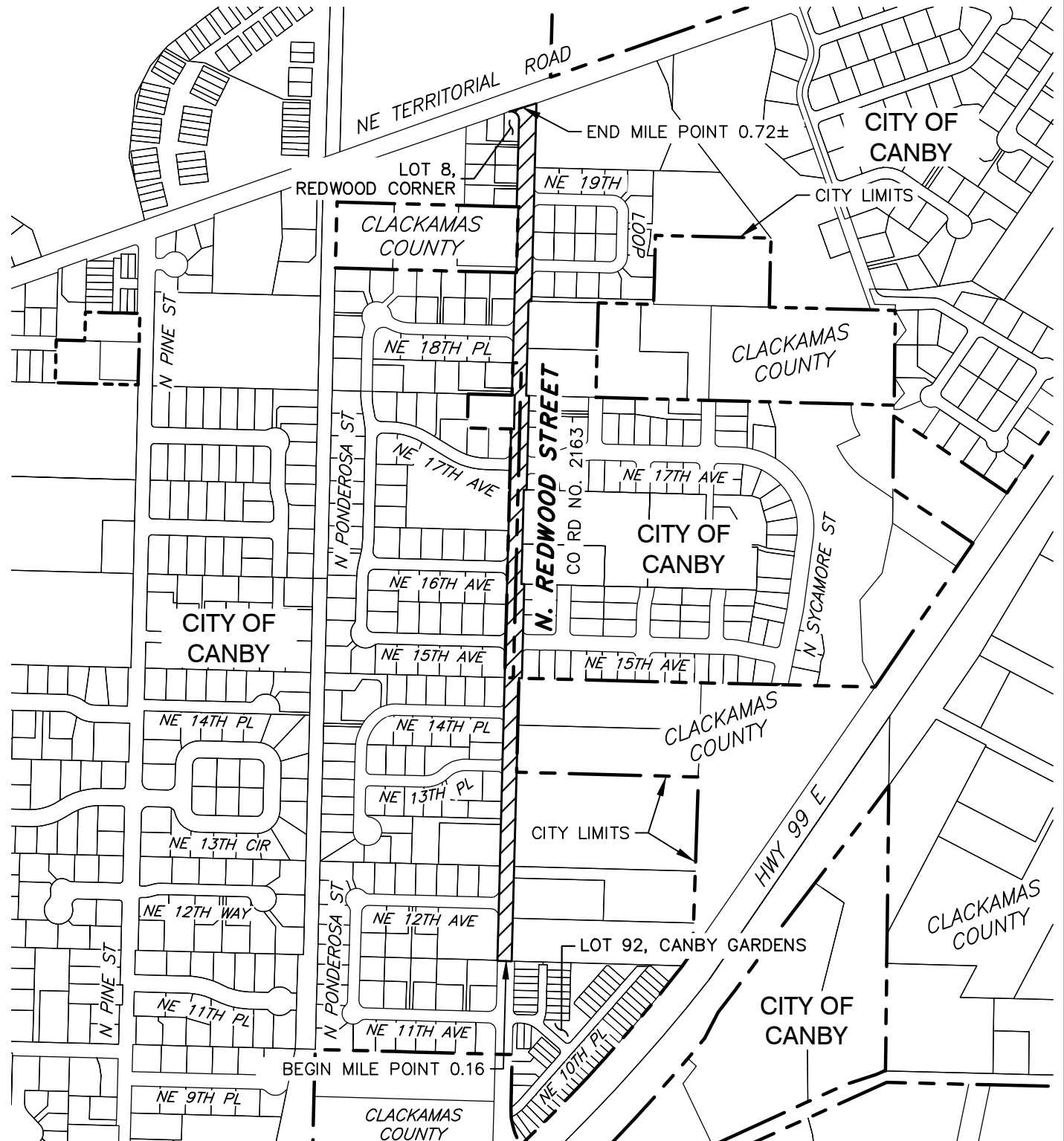
JURISDICTIONAL TRANSFER
N. LOCUST STREET
COUNTY ROAD NO. 2579

SHEET

1 OF 1

EXHIBIT "B-2"

1' = 500'



LOCATED IN THE SW 1/4 OF SECTION 27,
AND THE NW 1/4 OF SECTION 34,
T. 3 S., R. 1 E., W.M.
CLACKAMAS COUNTY, OREGON

 TRANSFERRED ROAD

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



02/25/2021 A. REITER
JURISDICTIONAL TRANSFER
S. REDWOOD STREET
COUNTY ROAD NO. 2163

SHEET
1 OF 1



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

April 22, 2021

Board of Commissioners
Clackamas County

Members of the Board:

A Board Order Adopting the Vacation of a Portion of Deer Park Road

| | |
|--|---|
| Purpose/Outcomes | Vacates a Portion of Deer Park Road |
| Dollar Amount and Fiscal Impact | Application and processing fee received. |
| Funding Source | N/A |
| Duration | Upon execution; permanent vacation. |
| Previous Board Action | 4/13/21: Discussion item at issues |
| Strategic Plan Alignment | Grow a Vibrant Economy |
| Procurement Review | This item was not processed through Procurement. This is a Petition for a Road Vacation. |
| Counsel Review | Reviewed and approved by County Counsel on 4/7/21, NB |
| Contact Person | Doug Cutshall, Engineering Technician 503-742-4669 |

BACKGROUND

Deer Park Road, a Non-Maintained Local Access Road was dedicated to the public through the Map of Deer Park, April 5, 1910, located in Welches, a small community lying south of Highway 26. The petitioners wish to vacate the portion of Deer Park Road that lies north of their property. Although the plat of Deer Park shows Deer Park Road ending at the Salmon River it does not now. The alluvial accretion has been purchased and is private property preventing public access to the river. This portion of Deer Park Road right of way is being used as a driveway to access the petitioner's property.

The portion to be vacated contains approximately 1,270 square feet, being an unconstructed right-of-way that serves no public need and is not a benefit to the traveling public. Vacating this portion of road right of way will not affect area traffic flow or deprive public access to adjoining properties.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Clackamas County Department of Transportation Maintenance, Engineering, Planning, Traffic Divisions, and all local utility companies, have been contacted and do not have any objections to this vacation.

RECOMMENDATION

Staff respectfully recommends that the Board adopt the attached Board Order approving the vacation of this portion of Deer Park Road right of way.

Sincerely,

Doug Cutshall

Douglas Cutshall

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

In the matter of the Vacation of
A portion of Deer Park Road,
A Local Access Road, situated
In Section 9, T.3 S., R.7 E., W.M.
Clackamas County, Oregon



Board Order No. _____
Page 1 of 1

This matter coming before the Board of County Commissioners at this time and appearing to the Board that in accordance with ORS 368.341 and pursuant to ORS 368.346, a petition has been filed with the determined fee, and a written report finding this vacation to be in the public interest from the County Road Official, Dan Johnson, Director, have been submitted in the matter of the vacation of a portion of Deer Park Road, a Non-Maintained Local Access Road, described as follows:

All of that portion of Deer Park Road (Union Avenue (p)), depicted on attached Exhibit "A" and, by this reference a part of this description, in Deer Park, Plat Number 246, Clackamas County Plat Records, situated in the northwest ¼ of Section 9, T.3 S., R.7 E., W.M., Clackamas County, Oregon, lying west of, and between, the southerly extension of the west right of way line of Riverwood Lane (Riverside Drive (p)) of said plat and the easterly property line of that property described in Warranty Deed 1999-84976, to James Samuel, Clackamas County Deed Records.

Whereas the Board having read said petition and report from the County Road Official, have determined the vacation of the above described portion of roadway to be in the public interest; and,

Whereas Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, along with all local utility companies, have been contacted and do not have any objections to this vacation; now therefore,

IT IS HEREBY ORDERED, that the Board adopts as its own, the findings and conclusions contained in the written report from the County Road Official dated March 5, 2021; and,

IT IS HEREBY ORDERED that the attached described portion of Deer Park Road, containing, 1,273 square feet, more or less, be vacated; and,

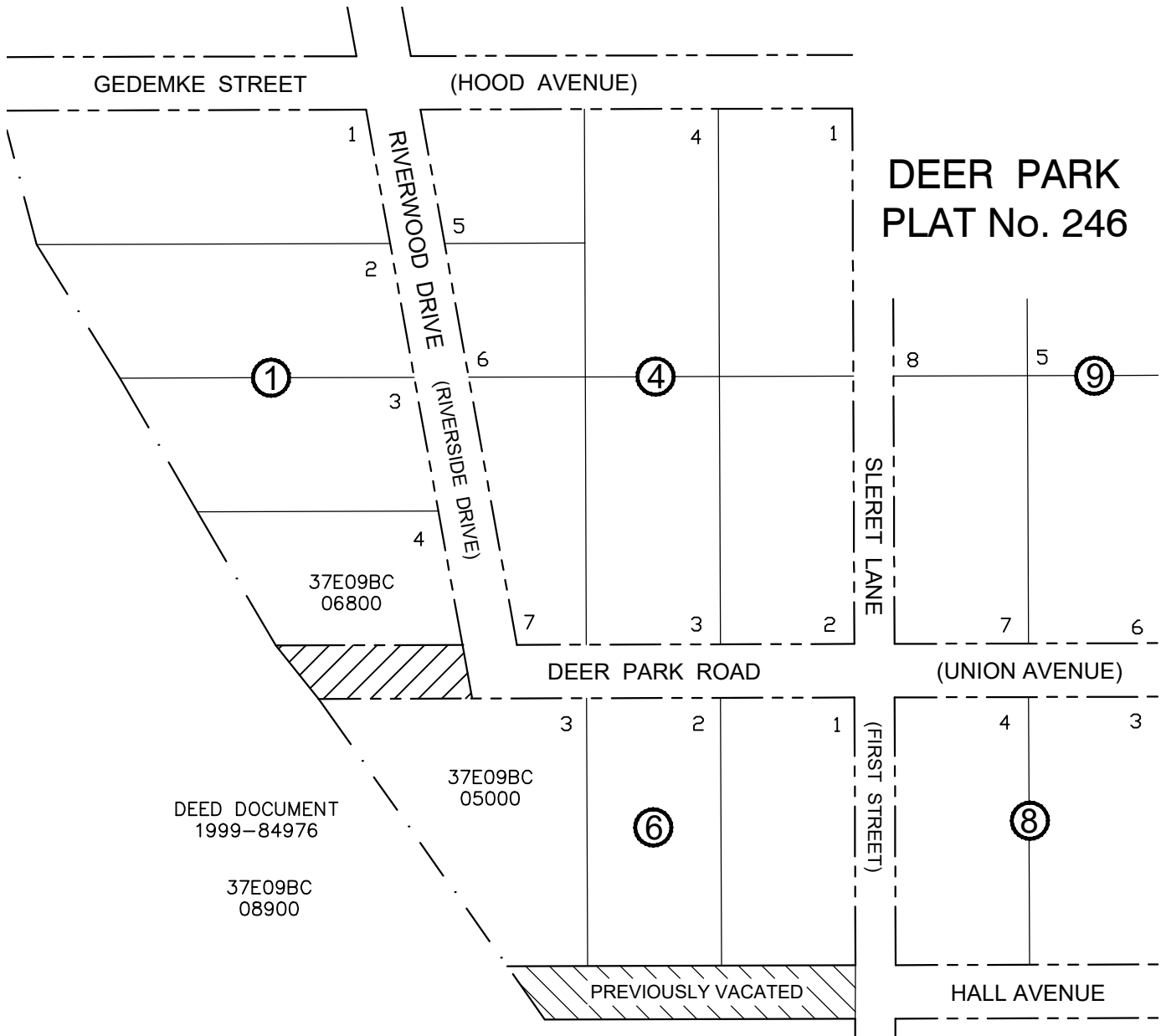
IT IS FURTHER ORDERED, that this Order and attached exhibits be recorded in the Deed Records for Clackamas County and that a copy be filed with the County Surveyor, County Assessor, and Finance Office/Fixed Assets.

ADOPTED this _____ day of _____, 2021
BOARD OF COUNTY COMMISSIONERS

Chair

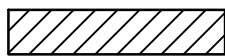
Recording Secretary

SITUATED IN THE NW¹/₄ OF
SECTION 9, T.3 S., R.7 E., W.M.



DEER PARK
PLAT No. 246

LEGEND



VACATED AREA
1,273 Sq. Ft.



SCALE 1" = 60'