



DAN JOHNSON
DIRECTOR

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

February 2, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of Amendment #5 to a Disposition Agreement with Beaver Creek Structures, LLC. Pertaining to Property Located at 19314 S Beaver Creek Road. Agreement value is \$33,912,241. Funding through Land Sale Proceeds and Road Fund. No County General Funds are involved.

Previous Board Action/Review	March 28 th , 2019 – Executed Disposition Agreement June 6 th , 2019 - 1st Amendment Executed July 30 th , 2020 - 2nd Amendment Executed December 16 th , 2020 - 3rd Amendment Executed August 12 th , 2021 - 4th Amendment Executed		
Performance Clackamas	1. Building trust with good government		
Counsel Review	Yes	Procurement Review	No
Contact Person	Dan Johnson, Director	Contact Phone	(503) 742-4325

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

Staff is proposing a 5th amendment to this agreement to extend the current closing date and adjust closing triggers. This amendment will provide additional time allowing for an organized transition and not interrupt winter weather operations.

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

Respectfully submitted,

Dan Johnson

Dan Johnson- Director
Transportation & Development

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FIFTH AMENDMENT TO DISPOSITION AGREEMENT

THIS FIFTH AMENDMENT TO DISPOSITION AGREEMENT (“**Amendment**”) is entered into effective as of _____, between **CLACKAMAS COUNTY**, a corporate body politic (“**County**”), and **BEAVERCREEK STRUCTURES, LLC**, an Oregon limited liability company (“**Seller**”).

RECITALS

- A. County and Seller are parties to that certain Disposition Agreement dated effective as of April 8, 2019, the First Amendment to the Disposition Agreement dated effective as of May 29, 2019, the Second Amendment to the Disposition Agreement dated effective as of July 30, 2020, the Third Amendment to the Disposition Agreement dated effective as of December 16, 2021 and the Fourth Amendment to the Disposition Agreement dated effective as of August 10, 2021 (collectively, the “**Disposition Agreement**”), concerning approximately 11.76 acres of land located at 19314 S. Beaver creek Road, Oregon City, Oregon, as more particularly described in the Disposition Agreement (the “**Property**”).
- B. The County has deemed it to be vital and in the best interest of the County and the health and safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws to amend the Disposition Agreement. The parties desire to modify the Disposition Agreement on the terms and conditions set forth herein. All capitalized terms used in this Amendment and not otherwise defined herein shall have their meanings as set forth in the Disposition Agreement.
- C. Since the date of the original Disposition Agreement, the COVID-19 pandemic has prompted emergency declarations at the state and local levels, and has fundamentally had an impact on virtually all aspects of our lives. Beyond the COVID-19 pandemic, both the County and the State of Oregon have been faced with other significant public emergencies from wildfires and ice storms.
- D. The aforementioned COVID-19 pandemic has had significant and unforeseen impacts on the construction of the Maintenance Facility, including supply chain disruption, a shortage of qualified labor, and abnormal delays to process design change applications and obtain other necessary approvals by governing jurisdictions.
- E. The County and Seller have agreed to extend the Closing date, which will serve to benefit both the County and the Seller. During the extension time, Seller has agreed to allow the County to complete certain communication cabling and infrastructure work, which County had originally planned to complete after Closing, while Seller completes Maintenance Facility Construction. Lastly, County desires more time to prepare to move out of its current facilities on Abernethy Road and to take occupancy of the Maintenance Facility during the warmer months.

AGREEMENT

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

This transaction shall close (the “**Closing**”) on or before the earlier occurrence of the following: 1) August 20, 2022; or 2) fifteen (15) days after issuance of temporary occupancy for the Maintenance Facility by the City of Oregon City (the “**Closing Date**”). If temporary occupancy

has not been obtained from the City of Oregon City by the Seller on or before August 20, 2022, Seller may extend Closing until temporary occupancy for the Maintenance Facility is obtained. Seller's right to extend the Closing is limited to an additional one hundred eighty (180) days, and may be exercised by giving notice thereof to the County prior to August 20, 2022. In the event Seller exercises its right to extend, the Closing Date shall be set on a date and time within the one hundred eighty (180) day extension timeline that is mutually agreeable to both parties. Seller's exercise of its extension right under this paragraph shall cause a corresponding reduction of the Purchase Price of Sixteen Thousand Six Hundred and Sixty-Seven Dollars (\$16,667) for each thirty (30) day period beyond the Closing Date set forth above.

Closing shall occur in escrow on or before the Closing Date by and through a mutually acceptable escrow officer (the "**Escrow Officer**") of First American Title, 9200 SE Sunnyside Rd. #400, Clackamas, OR 97015 (the "**Title Company**"), in accordance with the terms and conditions of this Disposition Agreement. County agrees, subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Subject Property and pay to Seller at Closing the Purchase Price for the Subject Property by wire transfer of immediately available funds, subject to the credits, debits, prorations and adjustments provided for in this Disposition Agreement, including a credit for the Initial Earnest Money, the Second Earnest Money Deposit, the Third Earnest Money Deposit, and the Final Earnest Money Deposit in a total amount of Thirty One Million Six Hundred Thirty Thousand Three Hundred Seventy Eight Dollars (\$31,630,378), and any reduction attributable to the County's portion of the Contingency Savings. The County and the Seller agree to perform all acts necessary to close this transaction in accordance with the terms of this Disposition Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Disposition Agreement. Once submitted, instructions may not be withdrawn or altered without the consent of both the County and the Seller.

Section 3.3 of the Disposition Agreement, as amended, is hereby deleted in its entirety and is replaced with the following:

This transaction shall close (the "**Closing**") after issuance of temporary occupancy by the City of Oregon City, on a date that occurs on or before the earlier occurrence of the following:

1) August 20, 2022, or any extension thereto as set forth below; or 2) 30 days after written notification by the Seller of the intent to proceed to Closing (the "Closing Date"). If temporary occupancy has not been obtained from the City of Oregon City by the Seller on or before August 20, 2022, Seller may extend Closing until temporary occupancy for the Maintenance Facility is obtained. Seller's right to extend the Closing is limited to an additional three hundred ninety-four (394) days and may be exercised by giving notice thereof to the County prior to August 20, 2022. The Seller has, in fact, exercised its option to extend the Closing and the County acknowledges receipt of the aforementioned extension notice as of August 20, 2022. Since the Seller has exercised its right to extend, the Closing Date shall be set on a date and time that is on or before September 18, 2023 [which is the expiration of the three hundred ninety-four (394) day extension period] and that is mutually agreeable to both parties. Seller's exercise of its extension right under this paragraph shall cause a corresponding reduction of the Purchase Price of One Hundred Thousand Dollars (\$100,000).

Closing shall occur in escrow on or before the Closing Date by and through a mutually acceptable escrow officer (the "**Escrow Officer**") of First American Title, 9200 SE Sunnyside Rd. #400, Clackamas, OR 97015 (the "**Title Company**"), in accordance with the terms and conditions of this Disposition Agreement. County agrees, subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Subject Property and pay to Seller at Closing the Purchase Price for the Subject Property by wire transfer of immediately available funds, subject to the credits, debits, prorations and adjustments provided for in this Disposition Agreement, including a credit for the Initial Earnest Money, the Second Earnest Money Deposit, the Third Earnest Money Deposit, and the Final Earnest Money Deposit in a total amount of Thirty One Million Six Hundred Thirty Thousand Three Hundred Seventy Eight Dollars (\$31,630,378), and any reduction attributable to the Seller's exercise of its option to extend Closing and the County's portion of the Contingency Savings, if any. The County and the Seller agree to perform all acts necessary to close this transaction in accordance with the terms of this Disposition Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Disposition Agreement. Once submitted, instructions may not be withdrawn or altered without the consent of both the County and the Seller.

2. **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.

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

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

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

COUNTY:

CLACKAMAS COUNTY a corporate body politic

By: _____

Name: Tootie Smith

Its: Chair – Clackamas County Board of County Commissioners

SELLER:

BEAVERCREEK STRUCTURES, LLC,

An Oregon limited liability company

By: _____

Name: _____

Its: Manager _____