



Deschutes County Board of Commissioners  
1300 NW Wall St., Suite 200, Bend, OR 97701-1960  
(541) 388-6570 - Fax (541) 385-3202 - [www.deschutes.org](http://www.deschutes.org)

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## **AGENDA REQUEST & STAFF REPORT**

**For Board Business Meeting of 5/23/16**

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**DATE:** 5/12/16

**FROM:** Will Groves                      CDD                      Phone 541-388-6518

**TITLE OF AGENDA ITEM:**

Consideration and Signature of Document No. 2016-293, an Improvement Agreement between Deschutes County and VRE Tract Y, L.L.C. for the roads and utilities in the the Forest Gateway Phase I subdivision granted approval under 247-15-000485-TP.

**PUBLIC HEARING ON THIS DATE?** No.

**BACKGROUND AND POLICY IMPLICATIONS:**

VRE Tract Y, L.L.C. is the owner of the Forest Gateway Phase I subdivision granted approval under 247-15-000485-TP. The roads and utilities required under the approval have not been completed. Deschutes County Code (DCC) Section 17.24.120 provides that owner may, in lieu of completing roads and utilities, enter into an agreement with the County for the completion of the roads and utilities and provide a good and sufficient form of security, to provide for the completion of the roads and utilities required improvements.

VRE Tract Y, L.L.C. has proposed to provide an Irrevocable Letter of Credit in the amount of Five Hundred Ninety-Nine Thousand Nine Hundred Fifty-One and 64/100 Dollars (\$599,951.64) (the "Security") in favor of the County, as the "Security" to provide for the completion of the roads and utilities required improvements. The amount of the Security represents one hundred and twenty percent (120%) of the estimated costs, as required under DCC 17.24.120. The estimated cost of construction has been reviewed by the County Road Department. Under this agreement, the required improvements must be completed not later than one (1) year from the recording of the subdivision final plat.

**FISCAL IMPLICATIONS:**

None.

**RECOMMENDATION & ACTION REQUESTED:**

Motion: Approve signature of Document 2016-293.

**ATTENDANCE:** Will Groves, Legal

**DISTRIBUTION OF DOCUMENTS:**

CDD Staff.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

After Recording Return to:  
Deschutes County  
Community Development Department  
117 NW Lafayette Street  
Bend, OR 97701

**IMPROVEMENT AGREEMENT**  
(Roads and Utilities)

This Improvement Agreement ("Agreement"), relating to the construction and installation of certain required improvements (the "Roads and Utilities Required Improvements," as defined below in Section 4) for Forest Gateway Phase I ("Subdivision"), as required in the Subdivision approval in File #247-15-000485-TP ("Tentative Plat"), by and between DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon, ("County"), and VRE Tract Y, L.L.C. ("Owner").

**RECITALS:**

WHEREAS, Owner is the owner of the Subdivision in the approval granted under File No. 247-15-000485-TP; and

WHEREAS, the Roads and Utilities Required Improvements required under the approval have not been completed; and

WHEREAS, Owner filed an application for a final subdivision plat for the Subdivision, File No. \_\_\_\_\_, prior to the completion of the Roads and Utilities Required Improvements; and

WHEREAS, Deschutes County Code (DCC) Section 17.24.120 provides that Owner may, in lieu of completing Roads and Utilities Required Improvements, enter into an agreement with the County for the completion of the Roads and Utilities Required Improvements and provide a good and sufficient form of security, to provide for the completion of the Roads and Utilities Required Improvements; and

WHEREAS, this Agreement is contingent upon the recording of the Subdivision Final Plat approved in File No. \_\_\_\_\_ and that plat stating that it is subject to this Agreement; and

WHEREAS, Roads and Utilities Required Improvements under this Agreement do not constitute a Public Improvement as the term is defined in ORS 279A.010(1)(cc); and

WHEREAS, the Subdivision approval in File No. 247-15-000485-TP subject to this Agreement is exempt from ORS 92.305 to 92.945 for the reason that the County's Comprehensive Land Use Plan and implementing ordinances are acknowledged under ORS 197.251; now, therefore,

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual promise hereinafter stated, as follows:

1. **Recitals.** The Recitals to this Agreement set forth above are hereby incorporated herein as if fully set out, shall constitute contractual provisions and are not mere recitals.
2. **Real Property Description.** The real property subject to this Agreement, hereinafter the "Real Property" is described on the attached **Exhibit A**.
3. **Exhibits.** The exhibits listed below and attached to the Agreement are hereby incorporated herein by reference:
  - 3.1. **Exhibit A** – Legal description of the Real Property.
  - 3.2. **Exhibit B** – List of Roads and Utilities Required Improvements and cost estimates submitted by Owner.
4. **Identification of Roads and Utilities Required Improvements.**
  - 4.1. Owner shall install and complete, or cause to be installed and completed, the improvements listed in **Exhibit B** required by the land use approval as set forth in File No. 247-15-000485-TP to the extent that same remain to be completed ("Roads and Utilities Required Improvements").
  - 4.2. These improvements consist of roads, utilities and other necessary facilities referred to in this Agreement as "Roads and Utilities Required Improvements."
  - 4.3. The final plat shall note and be subject to this Agreement.
5. **Construction of Roads and Utilities Required Improvements.**
  - 5.1. Owner shall install and complete the Roads and Utilities Required Improvements in accordance with the plans and construction specifications related thereto and to any additional County and/or State of Oregon specifications.
  - 5.2. Owner shall promptly repair any damage to existing and new facilities, within and without the Real Property, which occurs during installation of the Roads and Utilities Required Improvements.
  - 5.3. Owner shall cause the Roads and Utilities Required Improvements to be inspected by and receive final written construction approval from County not later than one (1) year from the recording of the Subdivision Final Plat in File No. \_\_\_\_\_ ("Completion Date");
6. **Warranty of Improvements.**
  - 6.1. Owner hereby warrants that the Roads and Utilities Required Improvements shall remain free from defects in materials or workmanship and that the Roads and Utilities Required Improvements continue to meet County and/or State of Oregon standards for twelve (12) months following the Completion Date, as outlined in Section 5.3 above, and any corrections ("Warranty Period").

- 6.2. Upon completion and approval of any portion of the Roads and Utilities Required Improvements, Owner shall provide acceptable security to the County equivalent to ten-percent (10%) of the construction costs of such improvements to secure the warranty obligations under this Section 6.

**7. License to Enter and Remain on Property.**

- 7.1. Owner hereby grants County and County's employees, engineers, consultants, agents, contractors, subcontractors and suppliers license to come onto and remain on the Real Property as necessary to make inspections of the Roads and Utilities Required Improvements.
- 7.2. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, save, hold harmless and indemnify the Owner and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees, contractors, or agents under this Agreement for the inspections of the Roads and Utilities Required Improvements pursuant to Section 7.1.
- 7.2. If County determines that any portion of the Roads and Utilities Required Improvements have not been completed to County's satisfaction by the applicable Completion Date, County or its employees, engineers, consultants, agents, contractors, subcontractors and suppliers may enter onto and remain on the Real Property and may cause the applicable portion of the Roads and Utilities Required Improvements to be installed and completed.

**8. Right to Draw on Security.**

- 8.1. Upon failure of the Owner to complete the Roads and Utilities Required Improvements to County's satisfaction by the applicable Completion Date, County shall notify Owner in writing of such failure.
  - 8.1.1. Owner shall have thirty (30) days from County's notification to complete the Roads and Utilities Required Improvements or that portion that is incomplete or unsatisfactory.
    - 8.1.1.1. In the event the parties agree in writing that the completion cannot reasonably and through no fault of Owner, be accomplished in thirty (30) days, then the parties shall agree in writing to extend such time by a period of time as is reasonably necessary to allow completion so long as Owner promptly commences and thereafter diligently pursues completion of the Roads and Utilities Required Improvements.
    - 8.1.1.2. In no event shall the period for completion be extended beyond 180 days from the date of County's notification of failure to complete per Section 8.1.
  - 8.1.2. Should Owner fail to complete the Roads and Utilities Required Improvements within the time period referred to in Section 8.1.1., then County may cause incomplete or unsatisfactory Roads and Utilities Required Improvements to be completed.

- 8.1.3. If County completes the Roads and Utilities Required Improvements, County may draw upon the Security, as defined below, for any and all costs and expenses anticipated or incurred by County, as determined by County in the completion of the Roads and Utilities Required Improvements.
- 8.2. For the purposes of this Agreement and access to any Security offered and accepted to secure Owner's performance, Owner's failure to complete the Roads and Utilities Required Improvements shall include failure to install or have installed any portion of the Roads and Utilities Required Improvements to County specifications, approved plans or applicable building specialty codes and failure to complete any required inspections by the applicable Completion Date.
- 8.3 In the event that (a) the County receives notice that the bank issuing the Security identified in Section 14 will not renew the Security such that the Security will not remain in place until the expiration of this Agreement; an (b) Owner has not provided alternative Security reasonably satisfactory to the County, then the County shall have the right to declare a default under this Agreement and seek the proceeds of the Security.
9. **No County Guarantee.** County does not guarantee that any of the Roads and Utilities Required Improvements referred to in this Agreement will be constructed, maintained or operated.
10. **License to Use Permits, Specifications and Plans.**
- 10.1. If County determines that any portion of the Roads and Utilities Required Improvements have not been satisfactorily completed as specified by the applicable Completion Date, subject to Owner's notice and cure rights pursuant to Section 8.1.1, Owner shall, upon request of the County, license and assign to County all of Owner's, applicable permits, plans, specifications, shop drawings, instruments, permits and approvals, and other documents necessary or useful in the completion of or related in any manner to the Roads and Utilities Required Improvements that in County's sole discretion have not been completed as specified.
- 10.2. Owner shall be responsible for providing within any contracts for supply of labor and materials used in connection with constructing Roads and Utilities Required Improvements, that such contract rights are assignable by Owner.
- 10.3. Upon such request, Owner shall transfer ownership and deliver physical possession of such Permits, plans, specifications, shop drawings, instruments, permits, approvals, and other documents to the County.
- 10.4. County may sub-assign or license the rights referred to in this Section 10 for any purpose without further approval from Owner.
11. **No Third Party Beneficiaries.**
- 11.1. County and Owner are the only parties to this Agreement and are the only parties entitled to enforce its terms.
- 11.2. Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons

are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.

12. **Restoration of Monuments.** Owner shall restore any monument erected or used for the purpose of designating a survey marker or boundary of any town, tract, plat or parcel of land that is broken, damaged, removed or destroyed, during the course of work provided for or anticipated by this Agreement, whether intentional or otherwise, by the Owner or Owner's agents, employees or independent contractors.
13. **Costs of Inspection.** Owner shall pay to County the actual costs incurred by County in the inspection of the completed Roads and Utilities Required Improvements plus any fees, including without limitation plan check fees and structural, electrical, plumbing and other specialty codes inspection fees customarily associated with the review and inspection of any improvements on the Real Property.
14. **Security for Roads and Utilities Required Improvements.**
  - 14.1. Owner's Security shall consist of an Irrevocable Letter of Credit in the amount of Five Hundred Ninety-Nine Thousand Nine Hundred Fifty-One and 64/100 Dollars (\$599,951.64) (the "Security") issued by Academy Bank, N.A. in favor of the County.
  - 14.2. The amount of the Security represents one hundred and twenty percent (120%) of the estimated costs, as set forth in **Exhibit B**, of completing the Roads and Utilities Required Improvements to County standards, as applicable.
15. **Owner's Obligation For Costs.**
  - 15.1. Owner expressly acknowledges, understands, and agrees that this Agreement shall not relieve Owner from the obligation to complete and fully pay for the Roads and Utilities Required Improvements and other costs and fees set forth in this Agreement.
  - 15.2. Should Owner fail to perform its responsibilities under this Agreement in any manner, Owner agrees to reimburse County for all costs and fees to complete and/or perform warranty work on the Roads and Utilities Required Improvements.
16. **Release of Security or Obligation.**
  - 16.1. County shall release the Security within thirty (30) calendar days after the Roads and Utilities Required Improvements have been inspected and approved by the County, provided that Owner shall have provided County with adequate security equal to 10% of the construction costs of the Roads and Utilities Required Improvements to be held by County pursuant to Section 16.4 below.
  - 16.2. Upon written request of Owner after Owner's completion and County's inspection and approval of any portion of the Roads and Utilities Required Improvements, County may release any of Owner's obligations under the terms and conditions of this Agreement in writing, if County, in its sole discretion, determines that adequate Security remains in place for Owner's completion of the remaining Roads and Utilities Required Improvements in accordance with this Agreement.

- 16.3. County's partial release of any portion of the Security shall not be construed as a waiver of County's right to require full compliance with this Agreement and Owner's obligation to satisfy any costs and expenses incurred in completion of the Roads and Utilities Required Improvements and the required warranties associated with such improvements.
- 16.4. Upon expiration of the Warranty Period, and upon subsequent written request from Owner, County shall release the security for the warranty obligations under Section 6 within thirty (30) calendar days.
17. **Shortfall in Security.**
- 17.1. If the amount available to be drawn from the Security is less than the costs and expenses anticipated to be incurred, or actually incurred, by County, County may apply the proceeds of the Security to the anticipated or actual costs and expenses of completion of the Roads and Utilities Required Improvements.
- 17.2. Owner shall be responsible and liable for the difference between the anticipated or actual costs and expenses incurred by County and the amount of the remaining Security.
18. **Incidental Costs.** Without limiting the generality of the foregoing, if Owner fails to complete the Roads and Utilities Required Improvements, subject to Owner's notice and cure rights pursuant to Section 8.1.1, then County's costs of obtaining the proceeds of the Security and/or completing the Roads and Utilities Required Improvements and all incidental costs to the extent not covered by the Security, shall be added to the amount due County from the Owner, and shall be paid to County by Owner, in addition to and with all other amounts due hereunder.
19. **Substandard Improvements.**
- 19.1. If the Roads and Utilities Required Improvements constructed by Owner fail or are determined by County to be defective within the applicable twelve (12) month warranty period in Section 6 of this Agreement, County shall notify Owner of the warranty obligation in writing of such failure or defective Roads and Utilities Required Improvements.
- 19.2. Owner shall then have sixty (60) days to complete repair or replacement of the defective Roads and Utilities Required Improvements.
- 19.3. In the event that the repair or replacement per Section 19.1. and 19.2 cannot reasonably be completed within sixty (60) days, then the same shall be extended by such period of time as is reasonably necessary, provided Owner promptly commences and thereafter diligently prosecutes such repair or replacement.
- 19.4. Should Owner fail to complete repair or replacement of the Roads and Utilities Required Improvements within the required time period, County may remedy the defects and demand payment for such from Owner.
20. **Successors in Interest.**

- 20.1. The original of this Agreement shall be recorded with the Deschutes County Clerk and shall be a condition and covenant that shall run with the Real Property.
- 20.2. It is the intent of the parties that the provisions of this Agreement shall be binding upon the parties to this Agreement, and subject to the terms contained in Section 21, their respective successors, heirs, executors, administrators, and assigns, and any other party deriving any right, title or interest in or to the Real Property, including any person who holds such interest as security for the payment of any obligation, including a mortgagee or other secured party in actual possession of said Real Property by foreclosure or otherwise or any person taking title from such security holder.
- 20.3. Upon completion of the Roads and Utilities Required Improvements, and the expiration of the applicable Warranty Period, County, upon request by Owner or any person or persons owning a lot in the Subdivision, shall release the identified lot from the condition and covenant subsisting under this Agreement.
21. **Residential Lot Purchasers.** Notwithstanding the terms of Section 20, the terms of this Section 21 shall apply to each residential lot ("Residential Lot") created from the Real Property or platted in the Subdivision and sold or transferred to a third party for the principal purpose of constructing and residing therein by such third party (each such buyer or transferee and his or her successors and assigns is a "Residential Buyer") and:
- 21.1. Each such Residential Lot is conveyed free of any obligation to pay money or complete the Roads and Utilities Required Improvements that may arise out of this Agreement;
- 21.2. Each Residential Buyer or Transferee is under no obligation or burden to complete the terms and conditions of this Agreement;
- 21.3. A purpose for the recordation of this Agreement is to place Residential Buyer or Transferee on notice of the Agreement's terms and that the County has no obligation to construct the Roads and Utilities Required Improvements or any portion of the Roads and Utilities Required Improvements nor does the Agreement in anyway guarantee that any of the Roads and Utilities Required Improvements will be constructed; and
- 21.4. The Agreement conveys no right or right of action by any Residential Buyer or Transferee against the County for any act or omission of the County, including but not limited to, the County decisions or acts that result in the Roads and Utilities Required Improvements, or any part of the Roads and Utilities Required Improvements, not being constructed.
- 21.5 This Section 21 shall not apply to assignments or transfers of all or any residential lots to a lender, financing entity or third party not intended as the ultimate use of the residential lot or lots.
22. **Binding Authorization.** By signature on this Agreement, each signatory, signing in a representative capacity, certifies that the signer is authorized to sign the Agreement on behalf of and bind the signer's principal.



23. **Expiration.**

23.1. Unless otherwise extended, this Agreement shall expire at the conclusion of the applicable Warranty Period (as extended or amended) or by the express written release of Owner by County from this Agreement granted as part of an approval for a change of use of the Real Property.

23.2. Upon expiration, County shall provide Owner with a document in recordable form, formally evidencing such expiration and the parties agree to execute such document with thirty (30) days of receipt of such document by the other party.

24. **Survival.** Notwithstanding the provisions of Section 23, County's rights under this Agreement, including County's right to draw upon the Security in whole or in part to pay the full costs and expenses of completing the Roads and Utilities Required Improvements and repairs or replacements required herein along with any licenses granted in this Agreement and any costs of enforcement of this Agreement, shall survive the expiration of this Agreement.

25. **No Agency.**

25.1. It is agreed by and between the parties that Owner is not carrying out a function on behalf of County, and County does not have the right of direction or control of the manner in which Owner completes performance under this Agreement nor does County have a right to exercise any control over the activities of the Owner.

25.2. Owner is not an officer, employee or agent of County as those terms are used in ORS 30.265.

26. **No Joint Venture or Partnership.** County is not, by virtue of this Agreement, a partner or joint venturer with Owner in connection with the Site Plan or the Real Property, and shall have no obligation with respect to Owner's debts or other liabilities of each and every nature.

27. **Liens.**

27.1. Owner shall pay as due all claims for work done on and for services rendered or material furnished to the Real Property and shall keep the Real Property free from liens.

27.2. If Owner fails to pay any such claims or to discharge any lien, County may do so and collect the cost from the Owner or the Security.

27.3. County's payment and satisfaction of any lien pursuant to subsection 27.2 shall not constitute a waiver of any right or remedy that County may have on account of Owner's failure to complete the Roads and Utilities Required Improvements or to recover such expenditures from Owner or from the Security.

28. **Indemnification.** Owner shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities of Owner under this Agreement and on the Real Property; and further agrees to defend, indemnify and save harmless County, its officers, agents and employees from and

against all claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected with any such injury.

29. **Limitation of Liability.** This Agreement is subject to the Oregon Tort Claims Act, ORS 30.260 to 30.300.
30. **Attorney Fees and Costs.** In the event an action, suit, or any other proceeding, including appeal therefrom, is brought by any party arising directly and/or indirectly out of the provisions of this Agreement or the interpretation thereof, to observe any of the terms of this Agreement, or the interpretation thereof, the prevailing party shall be entitled to recover, in addition to other sums or performances due under this Agreement, reasonable attorney's fees and costs as the court may adjudge in said action, suit, proceeding or appeal.
31. **Waiver.**
- 31.1. Waiver of the strict performance of any provision of this Agreement shall not constitute the waiver of any other provision or of the Agreement.
- 31.2. No waiver may be enforced against the County unless such waiver is in writing and signed by the County.
32. **Compliance with provisions, requirements of Federal and State laws, statutes, rules, regulations, executive orders and policies. Debt Limitation.**
- 32.1. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution.
- 32.2. Any provisions herein, which would conflict with the law, are deemed inoperative to that extent.
- 32.3. Additionally, Owner shall comply with any requirements, conditions or limitations arising under the any Federal or State law, statute, rule, regulation, executive order and policy applicable to the Roads and Utilities Required Improvements.
- 32.4. If this Agreement is in any manner construed to constitute the lending of the County's credit or constitute a debt of County in violation of Article XI, Section 10, of the Oregon Constitution, this Agreement shall be void.
33. **No Inducement.** No representations, statements, warranties have induced the making and execution of this Agreement, or Agreements other than those herein expressed.
34. **Governing Law.**
- 34.1. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.
- 34.2. Any claim, action, suit or proceeding (collectively, "Claim") between County and Owner that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall 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 Eugene, Oregon.

- 34.3. Owner, by signing below, hereby consents to the in personam jurisdiction of said courts. The parties agree that the UN Convention on International Sales of Goods shall not apply.
35. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be void, invalid or unenforceable, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held void, invalid unenforceable.
36. **Counterparts.**
- 36.1. This Agreement may be executed in several counterparts, 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.
- 36.2. Each copy of this Agreement so executed shall constitute on original.
- 36.3. If this Agreement is signed in counterpart, each counterpart shall be recorded as provided herein for the recording of this Agreement and each counterpart shall be noted on the recorded plat map.
37. **Notice.**
- 37.1. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing to Owner or County at the address or fax number set forth below or to such other addresses or fax numbers as either party may hereafter indicate in writing.
- 37.2. Delivery may be by personal delivery, facsimile, or mailing the same, postage prepaid.
- 37.3. Communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- 37.4. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against either party, such facsimile transmission shall be confirmed by telephone notice to County's Director of Administrative Services or VRE Management, as applicable.
- 37.5. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Agreement shall be mailed by first class mail or delivered as follows:

To Owner:  
VRE Crescent, L.L.C.  
c.o. VRE Management  
100 S. Brentwood Blvd., Suite 240  
St. Louis, Missouri 63105  
Fax No. 314-244-3519

To County:  
County Administrator  
Deschutes County Administration  
1300 NW Wall Street, Ste 200  
Bend, Oregon 97703  
Fax: 541-388-4752

- 37.6. Notices shall be deemed delivered upon the earlier of actual delivery or refusal of a party to accept delivery thereof, which refusal shall include a party ignoring attempted delivery; *provided, however*, that notices sent by facsimile or email shall be deemed given on the date delivered if delivered before 5:00 pm Pacific Time as shown on a facsimile transmittal sheet or an e-mail record and if simultaneously transmitted by another means allowed by this Section 37.
- 37.7. Either party may change its address for notices by giving written notice to the other given in accordance with this Section 37.
- 37.8. Counsel for a party may give notices on behalf of such party.
38. **Time is of the Essence.** Time is of the essence of each and every provision of this Agreement.
39. **Captions.**
- 39.1. The captions contained in this Agreement were inserted for the convenience of reference only.
- 39.2. Captions do not, in any manner, define, limit, or describe the provisions of this Agreement or the intentions of the parties.
40. **Merger Clause.**
- 40.1. This Agreement and the attached exhibits constitute the entire agreement between the parties and supersede any and all prior or contemporaneous negotiations and/or agreements among the parties, whether written or oral, concerning the subject matters of this Agreement which are not fully expressed herein.
- 40.2. All understandings and agreements between the parties and representations by either party concerning this Agreement are contained in this Agreement.
- 40.3. This Agreement shall bind all parties and its terms may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by all parties.
- 40.4. Except as otherwise expressly provided herein, any written waiver, consent, modification or change shall be effective only when in writing and signed by the parties in the specific instance and for the specific purpose given.

[SIGNATURES CONTINUED ON NEXT PAGE]

DATED this \_\_\_\_ day of \_\_\_\_\_, 2016 BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ALAN UNGER, Chair

ATTEST:

\_\_\_\_\_  
TAMMY BANEY, Vice-Chair

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

\_\_\_\_\_  
ANTHONY DEBONE, Commissioner

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

Before me, a Notary Public, personally appeared TAMMY BANEY, ANTHONY DEBONE and ALAN UNGER the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Notary Public, State of Oregon  
My Commission Expires: \_\_\_\_\_

**OWNER:**

**VRE Tract Y, L.L.C.**

Dated this \_\_\_\_\_ of \_\_\_\_\_,  
2016

\_\_\_\_\_  
Name, Authorized Signatory

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

Before me, a Notary Public, personally appeared \_\_\_\_\_ and acknowledged the foregoing instrument as the authorized signatory of VRE Tract Y, L.L.C.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2016

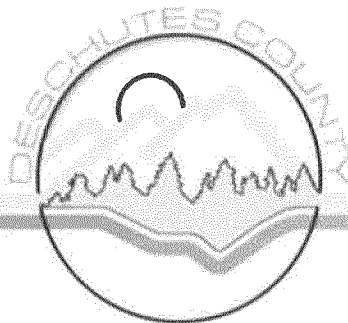
\_\_\_\_\_  
Notary Public, State of Oregon  
My Commission Expires: \_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION OF THE REAL PROPERTY

Tract Y, TETHEROW, Phase 1, Deschutes County, Oregon.

EXHIBIT B  
LIST OF ROADS AND UTILITIES REQUIRED IMPROVEMENTS AND COST ESTIMATES  
[TO BE INSERTED]

16-259-7A



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005

Phone: (541) 388-6575 Fax: (541) 385-1764

<http://www.deschutes.org/cd>

### IMPROVEMENT AGREEMENT APPLICATION

FEE: \$1,365

Applicant's Name (print): VRE Tract Y, L.L.C. Phone: ( )

Mailing Address: c/o VRE Management, 100 S. Brentwood Blvd, Ste 240 City/State/Zip: St. Louis, MO 63105

Property Owner's Name (if different)\*: Phone: ( )

Mailing Address: City/State/Zip:

Property Description: Township 18S Range 11E Section 11 Tax Lot Subdivision of Tract Y, Tetherow, Phase 1

Partition, Subdivision or Site Plan File Numbers: 247-15-000-485-TP / 247-15-000-486-SP

Please submit the following information with your application:

1. Complete application form with appropriate signatures.
2. Schedule for all required improvements including the completion date and cost for each improvement or repair to be covered by this Agreement.
3. A list of contractors who will construct or complete the required repairs and improvements, along with completed bid forms from each listed contractor.
4. A preliminary title report.
5. Correct application fee.
6. Burden of proof statement explaining the reasons why the required repairs and improvements cannot be completed prior to final plat approval and the purpose for the Improvement Agreement. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.
7. Name, address and phone number of the financial institution that will issue the financial assurance for the Agreement.
8. Draft of financial assurance.

### INSTRUCTIONS

Once your application has been reviewed and deemed complete, this office will prepare an Improvement Agreement, with a County contract number, for your signature. As the financial assurance for the Agreement is also subject to County review, the draft of the financial assurance must be approved prior to executing the Agreement. Please sign the Agreement before a notary and send it to your surety company. The surety company can then prepare the final version of the financial assurance, with reference to the County contract number. The financial assurance must be dated the same day as, or later than, the signing date on the Improvement Agreement. Next, bring the Improvement Agreement, along with the financial assurance, to the Community Development Department, so that the Director can sign the Agreement. Finally, you must then record the Agreement and financial assurance with the Deschutes County Clerk, and place the volume and page number of the recorded Agreement on the final mylar, as applicable. Keep in mind that the original Agreement will be recorded, so if your surety company also needs an original, then you will need to prepare two original versions.

Applicant's Signature: [Signature] Date: 4/29/16

Property Owner's Signature (if different)\*: Date:

Agent's Name (if applicable): Jason Eckhoff Phone: (34) 706-8660

Mailing Address: 6158 Riverbluff Trail City/State/Zip: Bend, OR 97702

\*If this application is not signed by the property owner, a letter authorizing signature by the applicant must be attached. 10/15



April 29, 2016

Mr. Will Groves  
Senior Planner  
Deschutes County Community Development  
117 NW Lafayette  
Bend, Oregon 97701

Re: Roads and Utilities Improvement Agreement, VRE Tract Y, L.L.C.


Dear Mr. Groves:

Please find enclosed the following as part of our application for Improvement Agreement (Roads and Utilities).

1. Application Form
2. Check in the amount of \$1,365.00
3. Approved Site Plan
4. Approved Site Plan (incl. highlight of the area subject to the I.A.).
5. Construction Estimates for Roads and Utilities
7. Authorization for signature of Jason Eckhoff
8. Form of Letter of Credit from Academy Bank

Please let me know if there are any questions or concerns.

Thank you,



Jason L. Eckhoff  
VRE Tract Y, L.L.C.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

After Recording Return to:  
Deschutes County  
Community Development Department  
117 NW Lafayette Street  
Bend, OR 97701

**IMPROVEMENT AGREEMENT**  
(Roads and Utilities)

This Improvement Agreement ("Agreement"), relating to the construction and installation of certain required improvements (the "Roads and Utilities Required Improvements," as defined below in Section 4) for Forest Gateway Phase I ("Subdivision"), as required in the Subdivision approval in File #247-15-000485-TP ("Tentative Plat"), by and between DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon, ("County"), and VRE Tract Y, L.L.C. ("Owner").

**RECITALS:**

WHEREAS, Owner is the owner of the Subdivision in the approval granted under File No. 247-15-000485-TP; and

WHEREAS, the Roads and Utilities Required Improvements required under the approval have not been completed; and

WHEREAS, Owner filed an application for a final subdivision plat for the Subdivision, File No. \_\_\_\_\_, prior to the completion of the Roads and Utilities Required Improvements; and

WHEREAS, Deschutes County Code (DCC) Section 17.24.120 provides that Owner may, in lieu of completing Roads and Utilities Required Improvements, enter into an agreement with the County for the completion of the Roads and Utilities Required Improvements and provide a good and sufficient form of security, to provide for the completion of the Roads and Utilities Required Improvements; and

WHEREAS, this Agreement is contingent upon the recording of the Subdivision Final Plat approved in File No. \_\_\_\_\_ and that plat stating that it is subject to this Agreement; and

WHEREAS, Roads and Utilities Required Improvements under this Agreement do not constitute a Public Improvement as the term is defined in ORS 279A.010(1)(cc); and

WHEREAS, the Subdivision approval in File No. 247-15-000485-TP subject to this Agreement is exempt from ORS 92.305 to 92.945 for the reason that the County's Comprehensive Land Use Plan and implementing ordinances are acknowledged under ORS 197.251; now, therefore,

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual promise hereinafter stated, as follows:

1. **Recitals.** The Recitals to this Agreement set forth above are hereby incorporated herein as if fully set out, shall constitute contractual provisions and are not mere recitals.
2. **Real Property Description.** The real property subject to this Agreement, hereinafter the "Real Property" is described on the attached **Exhibit A**.
3. **Exhibits.** The exhibits listed below and attached to the Agreement are hereby incorporated herein by reference:
  - 3.1. **Exhibit A** – Legal description of the Real Property.
  - 3.2. **Exhibit B** – List of Roads and Utilities Required Improvements and cost estimates submitted by Owner.
4. **Identification of Roads and Utilities Required Improvements.**
  - 4.1. Owner shall install and complete, or cause to be installed and completed, the improvements listed in **Exhibit B** required by the land use approval as set forth in File No. 247-15-000485-TP to the extent that same remain to be completed ("Roads and Utilities Required Improvements").
  - 4.2. These improvements consist of roads, utilities and other necessary facilities referred to in this Agreement as "Roads and Utilities Required Improvements."
  - 4.3. The final plat shall note and be subject to this Agreement.
5. **Construction of Roads and Utilities Required Improvements.**
  - 5.1. Owner shall install and complete the Roads and Utilities Required Improvements in accordance with the plans and construction specifications related thereto and to any additional County and/or State of Oregon specifications.
  - 5.2. Owner shall promptly repair any damage to existing and new facilities, within and without the Real Property, which occurs during installation of the Roads and Utilities Required Improvements.
  - 5.3. Owner shall cause the Roads and Utilities Required Improvements to be inspected by and receive final written construction approval from County not later than one (1) year from the recording of the Subdivision Final Plat in File No. \_\_\_\_\_ ("Completion Date");
6. **Warranty of Improvements.**
  - 6.1. Owner hereby warrants that the Roads and Utilities Required Improvements shall remain free from defects in materials or workmanship and that the Roads and Utilities Required Improvements continue to meet County and/or State of Oregon standards for twelve (12) months following the Completion Date, as outlined in Section 5.3 above, and any corrections ("Warranty Period").

- 6.2. Upon completion and approval of any portion of the Roads and Utilities Required Improvements, Owner shall provide acceptable security to the County equivalent to ten-percent (10%) of the construction costs of such improvements to secure the warranty obligations under this Section 6.

**7. License to Enter and Remain on Property.**

- 7.1. Owner hereby grants County and County's employees, engineers, consultants, agents, contractors, subcontractors and suppliers license to come onto and remain on the Real Property as necessary to make inspections of the Roads and Utilities Required Improvements.
- 7.2. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, save, hold harmless and indemnify the Owner and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees, contractors, or agents under this Agreement for the inspections of the Roads and Utilities Required Improvements pursuant to Section 7.1.
- 7.2. If County determines that any portion of the Roads and Utilities Required Improvements have not been completed to County's satisfaction by the applicable Completion Date, County or its employees, engineers, consultants, agents, contractors, subcontractors and suppliers may enter onto and remain on the Real Property and may cause the applicable portion of the Roads and Utilities Required Improvements to be installed and completed.

**8. Right to Draw on Security.**

- 8.1. Upon failure of the Owner to complete the Roads and Utilities Required Improvements to County's satisfaction by the applicable Completion Date, County shall notify Owner in writing of such failure.
- 8.1.1. Owner shall have thirty (30) days from County's notification to complete the Roads and Utilities Required Improvements or that portion that is incomplete or unsatisfactory.
- 8.1.1.1. In the event the parties agree in writing that the completion cannot reasonably and through no fault of Owner, be accomplished in thirty (30) days, then the parties shall agree in writing to extend such time by a period of time as is reasonably necessary to allow completion so long as Owner promptly commences and thereafter diligently pursues completion of the Roads and Utilities Required Improvements.
- 8.1.1.2. In no event shall the period for completion be extended beyond 180 days from the date of County's notification of failure to complete per Section 8.1.
- 8.1.2. Should Owner fail to complete the Roads and Utilities Required Improvements within the time period referred to in Section 8.1.1., then County may cause incomplete or unsatisfactory Roads and Utilities Required Improvements to be completed.

- 8.1.3. If County completes the Roads and Utilities Required Improvements, County may draw upon the Security, as defined below, for any and all costs and expenses anticipated or incurred by County, as determined by County in the completion of the Roads and Utilities Required Improvements.
- 8.2. For the purposes of this Agreement and access to any Security offered and accepted to secure Owner's performance, Owner's failure to complete the Roads and Utilities Required Improvements shall include failure to install or have installed any portion of the Roads and Utilities Required Improvements to County specifications, approved plans or applicable building specialty codes and failure to complete any required inspections by the applicable Completion Date.
9. **No County Guarantee.** County does not guarantee that any of the Roads and Utilities Required Improvements referred to in this Agreement will be constructed, maintained or operated.
10. **License to Use Permits, Specifications and Plans.**
- 10.1. If County determines that any portion of the Roads and Utilities Required Improvements have not been satisfactorily completed as specified by the applicable Completion Date, subject to Owner's notice and cure rights pursuant to Section 8.1.1, Owner shall, upon request of the County, license and assign to County all of Owner's, applicable permits, plans, specifications, shop drawings, instruments, permits and approvals, and other documents necessary or useful in the completion of or related in any manner to the Roads and Utilities Required Improvements that in County's sole discretion have not been completed as specified.
- 10.2. Owner shall be responsible for providing within any contracts for supply of labor and materials used in connection with constructing Roads and Utilities Required Improvements, that such contract rights are assignable by Owner.
- 10.3. Upon such request, Owner shall transfer ownership and deliver physical possession of such Permits, plans, specifications, shop drawings, instruments, permits, approvals, and other documents to the County.
- 10.4. County may sub-assign or license the rights referred to in this Section 10 for any purpose without further approval from Owner.
11. **No Third Party Beneficiaries.**
- 11.1. County and Owner are the only parties to this Agreement and are the only parties entitled to enforce its terms.
- 11.2. Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.
12. **Restoration of Monuments.** Owner shall restore any monument erected or used for the purpose of designating a survey marker or boundary of any town, tract, plat or parcel of land that is broken, damaged, removed or destroyed, during the course

of work provided for or anticipated by this Agreement, whether intentional or otherwise, by the Owner or Owner's agents, employees or independent contractors.

13. **Costs of Inspection.** Owner shall pay to County the actual costs incurred by County in the inspection of the completed Roads and Utilities Required Improvements plus any fees, including without limitation plan check fees and structural, electrical, plumbing and other specialty codes inspection fees customarily associated with the review and inspection of any improvements on the Real Property.
14. **Security for Roads and Utilities Required Improvements.**
  - 14.1. Owner's Security shall consist of an Irrevocable Letter of Credit in the amount of Four Hundred Three Thousand Three Hundred Thirty and 80/100 Dollars (\$403,330.80) (the "Security") issued by \_\_\_\_\_ in favor of the County.
  - 14.2. The amount of the Security represents one hundred and twenty percent (120%) of the estimated costs, as set forth in **Exhibit B**, of completing the Roads and Utilities Required Improvements to County standards, as applicable.
15. **Owner's Obligation For Costs.**
  - 15.1. Owner expressly acknowledges, understands, and agrees that this Agreement shall not relieve Owner from the obligation to complete and fully pay for the Roads and Utilities Required Improvements and other costs and fees set forth in this Agreement.
  - 15.2. Should Owner fail to perform its responsibilities under this Agreement in any manner, Owner agrees to reimburse County for all costs and fees to complete and/or perform warranty work on the Roads and Utilities Required Improvements.
16. **Release of Security or Obligation.**
  - 16.1. County shall release the Security within thirty (30) calendar days after the Roads and Utilities Required Improvements have been inspected and approved by the County, provided that Owner shall have provided County with adequate security equal to 10% of the construction costs of the Roads and Utilities Required Improvements to be held by County pursuant to Section 16.4 below.
  - 16.2. Upon written request of Owner after Owner's completion and County's inspection and approval of any portion of the Roads and Utilities Required Improvements, County may release any of Owner's obligations under the terms and conditions of this Agreement in writing, if County, in its sole discretion, determines that adequate Security remains in place for Owner's completion of the remaining Roads and Utilities Required Improvements in accordance with this Agreement.
  - 16.3. County's partial release of any portion of the Security shall not be construed as a waiver of County's right to require full compliance with this Agreement and Owner's obligation to satisfy any costs and expenses incurred in completion of the Roads and Utilities Required Improvements and the required warranties associated with such improvements.

- 16.4. Upon expiration of the Warranty Period, and upon subsequent written request from Owner, County shall release the security for the warranty obligations under Section 6 within thirty (30) calendar days.
17. **Shortfall in Security.**
- 17.1. If the amount available to be drawn from the Security is less than the costs and expenses anticipated to be incurred, or actually incurred, by County, County may apply the proceeds of the Security to the anticipated or actual costs and expenses of completion of the Roads and Utilities Required Improvements.
- 17.2. Owner shall be responsible and liable for the difference between the anticipated or actual costs and expenses incurred by County and the amount of the remaining Security.
18. **Incidental Costs.** Without limiting the generality of the foregoing, if Owner fails to complete the Roads and Utilities Required Improvements, subject to Owner's notice and cure rights pursuant to Section 8.1.1, then County's costs of obtaining the proceeds of the Security and/or completing the Roads and Utilities Required Improvements and all incidental costs to the extent not covered by the Security, shall be added to the amount due County from the Owner, and shall be paid to County by Owner, in addition to and with all other amounts due hereunder.
19. **Substandard Improvements.**
- 19.1. If the Roads and Utilities Required Improvements constructed by Owner fail or are determined by County to be defective within the applicable twelve (12) month warranty period in Section 6 of this Agreement, County shall notify Owner of the warranty obligation in writing of such failure or defective Roads and Utilities Required Improvements.
- 19.2. Owner shall then have sixty (60) days to complete repair or replacement of the defective Roads and Utilities Required Improvements.
- 19.3. In the event that the repair or replacement per Section 19.1. and 19.2 cannot reasonably be completed within sixty (60) days, then the same shall be extended by such period of time as is reasonably necessary, provided Owner promptly commences and thereafter diligently prosecutes such repair or replacement.
- 19.4. Should Owner fail to complete repair or replacement of the Roads and Utilities Required Improvements within the required time period, County may remedy the defects and demand payment for such from Owner.
20. **Successors in Interest.**
- 20.1. The original of this Agreement shall be recorded with the Deschutes County Clerk and shall be a condition and covenant that shall run with the Real Property.
- 20.2. It is the intent of the parties that the provisions of this Agreement shall be binding upon the parties to this Agreement, and subject to the terms contained in Section 21, their respective successors, heirs, executors, administrators, and assigns, and any other party deriving any right, title or

interest in or to the Real Property, including any person who holds such interest as security for the payment of any obligation, including a mortgagee or other secured party in actual possession of said Real Property by foreclosure or otherwise or any person taking title from such security holder.

20.3. Upon completion of the Roads and Utilities Required Improvements, and the expiration of the applicable Warranty Period, County, upon request by Owner or any person or persons owning a lot in the Subdivision, shall release the identified lot from the condition and covenant subsisting under this Agreement.

21. **Residential Lot Purchasers.** Notwithstanding the terms of Section 20, the terms of this Section 21 shall apply to each residential lot ("Residential Lot") created from the Real Property or platted in the Subdivision and sold or transferred to a third party for the principal purpose of constructing and residing therein by such third party (each such buyer or transferee and his or her successors and assigns is a "Residential Buyer") and:

21.1. Each such Residential Lot is conveyed free of any obligation to pay money or complete the Roads and Utilities Required Improvements that may arise out of this Agreement;

21.2. Each Residential Buyer or Transferee is under no obligation or burden to complete the terms and conditions of this Agreement;

21.3. A purpose for the recordation of this Agreement is to place Residential Buyer or Transferee on notice of the Agreement's terms and that the County has no obligation to construct the Roads and Utilities Required Improvements or any portion of the Roads and Utilities Required Improvements nor does the Agreement in anyway guarantee that any of the Roads and Utilities Required Improvements will be constructed; and

21.4. The Agreement conveys no right or right of action by any Residential Buyer or Transferee against the County for any act or omission of the County, including but not limited to, the County decisions or acts that result in the Roads and Utilities Required Improvements, or any part of the Roads and Utilities Required Improvements, not being constructed.

21.5 This Section 21 shall not apply to assignments or transfers of all or any residential lots to a lender, financing entity or third party not intended as the ultimate use of the residential lot or lots.

22. **Binding Authorization.** By signature on this Agreement, each signatory, signing in a representative capacity, certifies that the signer is authorized to sign the Agreement on behalf of and bind the signer's principal.

23. **Expiration.**

23.1. Unless otherwise extended, this Agreement shall expire at the conclusion of the applicable Warranty Period (as extended or amended) or by the express written release of Owner by County from this Agreement granted as part of an approval for a change of use of the Real Property.

23.2. Upon expiration, County shall provide Owner with a document in recordable form, formally evidencing such expiration and the parties agree to execute



such document with thirty (30) days of receipt of such document by the other party.

24. **Survival.** Notwithstanding the provisions of Section 23, County's rights under this Agreement, including County's right to draw upon the Security in whole or in part to pay the full costs and expenses of completing the Roads and Utilities Required Improvements and repairs or replacements required herein along with any licenses granted in this Agreement and any costs of enforcement of this Agreement, shall survive the expiration of this Agreement.
25. **No Agency.**
- 25.1. It is agreed by and between the parties that Owner is not carrying out a function on behalf of County, and County does not have the right of direction or control of the manner in which Owner completes performance under this Agreement nor does County have a right to exercise any control over the activities of the Owner.
- 25.2. Owner is not an officer, employee or agent of County as those terms are used in ORS 30.265.
26. **No Joint Venture or Partnership.** County is not, by virtue of this Agreement, a partner or joint venturer with Owner in connection with the Site Plan or the Real Property, and shall have no obligation with respect to Owner's debts or other liabilities of each and every nature.
27. **Liens.**
- 27.1. Owner shall pay as due all claims for work done on and for services rendered or material furnished to the Real Property and shall keep the Real Property free from liens.
- 27.2. If Owner fails to pay any such claims or to discharge any lien, County may do so and collect the cost from the Owner or the Security.
- 27.3. County's payment and satisfaction of any lien pursuant to subsection 27.2 shall not constitute a waiver of any right or remedy that County may have on account of Owner's failure to complete the Roads and Utilities Required Improvements or to recover such expenditures from Owner or from the Security.
28. **Indemnification.** Owner shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities of Owner under this Agreement and on the Real Property; and further agrees to defend, indemnify and save harmless County, its officers, agents and employees from and against all claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected with any such injury.
29. **Limitation of Liability.** This Agreement is subject to the Oregon Tort Claims Act, ORS 30.260 to 30.300.
30. **Attorney Fees and Costs.** In the event an action, suit, or any other proceeding, including appeal therefrom, is brought by any party arising directly and/or indirectly out of the provisions of this Agreement or the interpretation thereof, to observe any of the terms of this Agreement, or the interpretation thereof, the prevailing party shall

be entitled to recover, in addition to other sums or performances due under this Agreement, reasonable attorney's fees and costs as the court may adjudge in said action, suit, proceeding or appeal.

31. **Waiver.**

31.1. Waiver of the strict performance of any provision of this Agreement shall not constitute the waiver of any other provision or of the Agreement.

31.2. No waiver may be enforced against the County unless such waiver is in writing and signed by the County.

32. **Compliance with provisions, requirements of Federal and State laws, statutes, rules, regulations, executive orders and policies. Debt Limitation.**

32.1. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution.

32.2. Any provisions herein, which would conflict with the law, are deemed inoperative to that extent.

32.3. Additionally, Owner shall comply with any requirements, conditions or limitations arising under the any Federal or State law, statute, rule, regulation, executive order and policy applicable to the Roads and Utilities Required Improvements.

32.4. If this Agreement is in any manner construed to constitute the lending of the County's credit or constitute a debt of County in violation of Article XI, Section 10, of the Oregon Constitution, this Agreement shall be void.

33. **No Inducement.** No representations, statements, warranties have induced the making and execution of this Agreement, or Agreements other than those herein expressed.

34. **Governing Law.**

34.1. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

34.2. Any claim, action, suit or proceeding (collectively, "Claim") between County and Owner that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall 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 Eugene, Oregon.

34.3. Owner, by signing below, hereby consents to the in personam jurisdiction of said courts. The parties agree that the UN Convention on International Sales of Goods shall not apply.

35. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be void, invalid or unenforceable, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of

the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held void, invalid unenforceable.

**36. Counterparts.**

- 36.1. This Agreement may be executed in several counterparts, 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.
- 36.2. Each copy of this Agreement so executed shall constitute on original.
- 36.3. If this Agreement is signed in counterpart, each counterpart shall be recorded as provided herein for the recording of this Agreement and each counterpart shall be noted on the recorded plat map.

**37. Notice.**

- 37.1. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing to Owner or County at the address or fax number set forth below or to such other addresses or fax numbers as either party may hereafter indicate in writing.
- 37.2. Delivery may be by personal delivery, facsimile, or mailing the same, postage prepaid.
- 37.3. Communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- 37.4. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against either party, such facsimile transmission shall be confirmed by telephone notice to County's Director of Administrative Services or VRE Management, as applicable.
- 37.5. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Agreement shall be mailed by first class mail or delivered as follows:

To Owner:  
VRE Crescent, L.L.C.  
c.o. VRE Management  
100 S. Brentwood Blvd., Suite 240  
St. Louis, Missouri 63105  
Fax No. 314-244-3519

To County:  
County Administrator  
Deschutes County Administration  
1300 NW Wall Street, Ste 200  
Bend, Oregon 97703  
Fax: 541-388-4752

- 37.6. Notices shall be deemed delivered upon the earlier of actual delivery or refusal of a party to accept delivery thereof, which refusal shall include a party ignoring attempted delivery; *provided, however*, that notices sent by facsimile or email shall be deemed given on the date delivered if delivered before 5:00 pm Pacific Time as shown on a facsimile transmittal sheet or an e-mail record and if simultaneously transmitted by another means allowed by this Section 37.

- 37.7. Either party may change its address for notices by giving written notice to the other given in accordance with this Section 37.
- 37.8. Counsel for a party may give notices on behalf of such party.
38. **Time is of the Essence.** Time is of the essence of each and every provision of this Agreement.
39. **Captions.**
- 39.1. The captions contained in this Agreement were inserted for the convenience of reference only.
- 39.2. Captions do not, in any manner, define, limit, or describe the provisions of this Agreement or the intentions of the parties.
40. **Merger Clause.**
- 40.1. This Agreement and the attached exhibits constitute the entire agreement between the parties and supersede any and all prior or contemporaneous negotiations and/or agreements among the parties, whether written or oral, concerning the subject matters of this Agreement which are not fully expressed herein.
- 40.2. All understandings and agreements between the parties and representations by either party concerning this Agreement are contained in this Agreement.
- 40.3. This Agreement shall bind all parties and its terms may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by all parties.
- 40.4. Except as otherwise expressly provided herein, any written waiver, consent, modification or change shall be effective only when in writing and signed by the parties in the specific instance and for the specific purpose given.

[SIGNATURES CONTINUED ON NEXT PAGE]

DATED this \_\_\_\_ day of \_\_\_\_\_, 2016

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ALAN UNGER, Chair

ATTEST:

\_\_\_\_\_  
TAMMY BANEY, Vice-Chair

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

\_\_\_\_\_  
ANTHONY DEBONE, Commissioner

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

Before me, a Notary Public, personally appeared TAMMY BANEY, ANTHONY DEBONE and ALAN UNGER the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Notary Public, State of Oregon  
My Commission Expires: \_\_\_\_\_

**OWNER:**

**VRE Tract Y, L.L.C.**

Dated this \_\_\_\_\_ of \_\_\_\_\_,  
2016

\_\_\_\_\_  
Name, Authorized Signatory

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

Before me, a Notary Public, personally appeared \_\_\_\_\_ and acknowledged the foregoing instrument as the authorized signatory of VRE Tract Y, L.L.C.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Notary Public, State of Oregon  
My Commission Expires: \_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION OF THE REAL PROPERTY

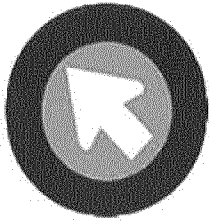
Tract Y, TETHEROW, Phase 1, Deschutes County, Oregon.

EXHIBIT B  
LIST OF ROADS AND UTILITIES REQUIRED IMPROVEMENTS AND COST ESTIMATES  
[TO BE INSERTED]





# Tetherow - Forest Gateway Phase I



## Taylor Northwest LLC

18500 Bull Springs Rd.

Bend, OR 97703

Contact: Justin Barden

Phone: 541.382.7887

Fax: 541.382.3505

Quote To:

Address:

Contact:

Phone:

Fax:

E-Mail:

VRE Tract Y LLC

100 S Brentwood #240

Clayton, MO 63105-1635

Jason Eckhoff

314.706.8660

jleckhoff@baurproperties.net

Job Name:

CCB#:

Date of Plans:

Bid Date:

Estimate #:

Revised Date:

Forest Gateway at Tetherow

159999

8/5/2015

2/1/2016

2016-009

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
<b>SITE SUPPORT &amp; STREET CONSTRUCTION</b>					
10	MOBILIZATION	1.00	LS	15,000.00	15,000.00
20	SURVEY/GPS FILE	1.00	LS	7,200.00	7,200.00
30	CONSTRUCTION WATER	1.00	MO	4,600.00	4,600.00
40	TRAFFIC CONTROL	1.00	LS	2,500.00	2,500.00
50	CLEAR & GRUB	1.60	AC	4,000.00	6,400.00
60	STREET EXCAVATION & EMBANKMENT	1,065.00	CY	17.60	18,744.00
70	12" TYPE "B" CURB	1,080.00	LF	10.50	11,340.00
80	3" LEVEL 2, 1/2" DENSE, PG 64-28 HMA (1-3" LIFT)	1,680.00	SY	16.20	27,216.00
90	6" AGG BASE 3/4"-0 STATE SPEC FOR ROAD	1,680.00	SY	7.80	13,104.00
100	FINISH GRADE	15,120.00	SF	0.10	1,512.00
	<b>SUBTOTAL SITE SUPPORT &amp; STREET CONSTRUCTION</b>				<b>\$107,616.00</b>
<b>SEWER CONSTRUCTION</b>					
110	8" 3034 SEWER 5-10' DEPTH	540.00	LF	67.00	36,180.00
120	4" SEWER SERVICE 5-10' DEPTH	12.00	EA	1,750.00	21,000.00
130	48" SSMH W/ EXPOXY COATING	4.00	EA	4,200.00	16,800.00
140	CONNECT TO EXISTING SEWER	1.00	EA	500.00	500.00
150	TEST SEWER	1.00	LS	500.00	500.00
	<b>SUBTOTAL SEWER CONSTRUCTION</b>				<b>\$74,980.00</b>
<b>WATER CONSTRUCTION</b>					
160	8" CLASS 52 DI WATER	540.00	LF	70.00	37,800.00
170	6" CLASS 52 DI WATER	40.00	LF	66.00	2,640.00
180	1" WATER SERVICE W/METER BOX	12.00	EA	2,450.00	29,400.00

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
190	8X6 TEE, 8" GV, 6" GV AND FIRE HYDRANT	2.00	EA	3,186.00	6,372.00
200	8" BEND	3.00	EA	525.00	1,575.00
210	4" BLOWOFF	1.00	EA	1,250.00	1,250.00
220	CONNECT TO EXISTING WATER	1.00	EA	2,500.00	2,500.00
230	TEST WATER	1.00	LS	1,350.00	1,350.00
	<b>SUBTOTAL WATER CONSTRUCTION</b>				<b>\$82,887.00</b>
	<b>STORM CONSTRUCTION</b>				
240	48" STD DRYWELL	2.00	EA	8,500.00	17,000.00
250	48" STD SED MANHOLE	2.00	EA	3,520.00	7,040.00
260	STD G2 CATCH BASIN	4.00	EA	1,330.00	5,320.00
270	12" C900 STORM	100.00	LF	30.00	3,000.00
280	DRYWELL/SED MH CONC PAD	4.00	EA	450.00	1,800.00
290	TEST STORM	1.00	LS	1,000.00	1,000.00
	<b>SUBTOTAL STORM CONSTRUCTION</b>				<b>\$35,160.00</b>
	<b>DRY UTILITY CONSTRUCTION</b>				
300	COMMON UTILITY TRENCH	660.00	LF	25.00	16,500.00
310	644 VAULT	3.00	EA	2,890.00	8,670.00
320	2" CONDUIT	1,320.00	LF	1.80	2,376.00
330	3" CONDUIT	1,320.00	LF	3.00	3,960.00
340	6" CONDUIT	660.00	LF	6.00	3,960.00
	<b>SUBTOTAL DRY UTILITY CONSTRUCTION</b>				<b>\$35,466.00</b>
<b>GRAND TOTAL</b>					<b>\$336,109.00</b>

**NOTES:**

**EXCLUSIONS:**

- \*All permits
- \*All geotechnical testing & reporting
- \*All landscape & irrigation
- \*All topsoil & placement of topsoil
- \*All concrete/rock retaining walls
- \*All mail box structures
- \*All fencing
- \*All monument signs & electrical to monument signs
- \*All striping & signs
- \*All light pole bases
- \*All environmental/contaminated/hazardous material removal
- \*All hydro-seeding & soil stabilization
- \*All utility relocates by others (power poles, boxes, etc.)

**ADDITIONAL COMMENTS:**

- \*Proposal is good for preliminary budget only
- \*Taylor Northwest LLC reserves the right to review and re-price in conjunction with finalized and/or revised plans



April 28, 2016

Commissioner Tammy Baney  
Commissioner Alan Unger  
Commissioner Tony Debone  
Offices of the Deschutes County Commissioners  
1300 NW Wall Street  
Bend, OR 97701

Mr. Will Groves  
Senior Planner  
Deschutes County Community Development  
117 NW Lafayette  
Bend, Oregon 97701

Re: Owner's Authorized Representative / Agent  
Tetherow Resort – Deschutes County Oregon

Dear Commissioners and Mr. Groves:

I am writing you to submit this correspondence as our authorization, on behalf of our various ownership interests at the Tetherow Resort, to allow Mr. Jason Eckhoff to act as our representative on matters concerning land use and construction permits, entitlements and improvement / implementation agreements associated with the Tetherow Resort. We hereby authorize Mr. Eckhoff to submit, process and execute such applications, permits and agreements necessary for the continued development of the Tetherow Resort properties owned by VRE, or owned by our related entities as suggested below:

**Resort Property**


Development Tract AB  
Development Tract Y  
Crescent Homesites (Hosmer Lake Drive)

**Ownership Entity**

VRE Lodge Homes, L.L.C.  
VRE Tract Y, L.L.C.  
VRE Crescent, L.L.C.

We greatly appreciate your assistance and please do not hesitate to contact me, or Jason Eckhoff if you have additional needs in this regard.

Sincerely,

  
Henry Warshaw  
President  
Ocala First Corporation, Inc., manager of  
Virtual Realty Enterprises, L.L.C.

100 S Brentwood Blvd, Suite 240 • Saint Louis, Missouri 63105-1635 • PHONE: 314.244.3500 • WEBSITE: [www.vrellc.com](http://www.vrellc.com)

OFFICES IN: MISSOURI • FLORIDA • ARIZONA

[BANK LETTERHEAD]

STANDBY LETTER OF CREDIT

\_\_\_\_\_, 2016

Letter of Credit No. \_\_\_\_\_

**"Expiry Date":** 2:00 P.M., CST, \_\_\_\_\_, 2018

Deschutes County Administration  
County Administration  
1300 NW Wall Street, Suite 200  
Bend, Oregon 97701

Gentlemen/Ladies:

1. At the request and for the account of our customers, **VRE TRACT Y, L.L.C.**, a Missouri limited liability company ("**Owner**"), a wholly owned subsidiary of Virtual Realty Enterprises, L.L.C., a Missouri limited liability company ("**Account Party**"), **ACADEMY BANK, N.A.** ("**Bank**"), hereby establishes in favor of Deschutes County, Oregon, a political subdivision of the State of Oregon, ("**Beneficiary**"), this Standby Letter of Credit ("**Letter of Credit**"). This Letter of Credit is issued to you pursuant to the terms of that certain Improvement Agreement \_\_\_\_\_ by and between Owner and Deschutes County, Oregon, dated as of \_\_\_\_\_, 2016 (collectively, the "**Agreement**"). This Letter of Credit authorizes you to draw on us in amounts which in the aggregate shall not exceed the "**Stated Amount**" of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).
2. You or your duly authorized successor or transferee may obtain the funds available under this Letter of Credit by presentment to us, of your sight draft or drafts drawn on us in the form set forth as Exhibit "A" hereto, accompanied by your executed statement certifying that the amount set forth in the draft is immediately due and payable pursuant to the Agreement and accompanied by the original of this Letter of Credit and amendment(s) thereto, if any.
  - (i) If cancellation of this Letter of Credit is required at any time before the then-effective Expiry Date, the original of this Letter of Credit and amendment(s) thereto, if any, must be returned to us accompanied by the Beneficiary's letter requesting cancellation in the form attached hereto as Exhibit "B".
  - (ii) We hereby engage with the Beneficiary that draft(s) drawn and required documents presented in compliance with the terms contained in this Letter of Credit will be duly honored upon presentation and delivery to us on or before the then-effective Expiry Date hereof.
3. Your sight draft will be honored by payment to you of the draft amount in immediately available funds. Each draft presented for payment under this Letter of Credit must be dated as of the date of its presentation to us and must be marked conspicuously, "Drawn under Academy Bank, N.A."

Standby Letter of Credit No. \_\_\_\_\_", accompanied by your certification(s) to us stating the following:

"I am a duly authorized representative of the beneficiary of Academy Bank, N.A. Standby Letter of Credit No. \_\_\_\_\_ and hereby certify that the amount drawn hereunder represents funds due as a result of a failure of Owner to [construct the Improvements in accordance with the plans and specifications approved by the undersigned on or before the date required] [complete the Improvements on or before the date required] or [renew the Letter of Credit on or before the date required] in accordance with the terms of the Improvement Agreement \_\_\_\_\_ between Owner and the undersigned."

4. All drafts, statements, documents and other materials required or permitted to be delivered to us pursuant to this Letter of Credit shall be delivered in person or by nationally recognized overnight courier to Academy Bank, N.A., Attention: Mike Jobe, 1111 Main Street, Suite 202, Kansas City, Missouri 64105. Any such delivery not actually received by us as required herein by 2:00 P.M., Central Standard Time, shall be deemed received by us on the following banking day.
5. You may draw the full amount of this Letter of Credit or only part of it, in your discretion for any request properly submitted pursuant to the Agreement provided that drafts honored by us under this Letter of Credit shall not exceed the original Stated Amount available to you under this Letter of Credit (as such may be increased by amendment).
6. We consider this Letter of Credit to be irrevocable and unconditional (except as expressly stated herein) under the terms above mentioned.
7. Unless otherwise expressly stated herein, this irrevocable Standby Letter of Credit is subject to the uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600.

Very truly yours,

**ACADEMY BANK, N.A.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT "A"**

**TO LETTER OF CREDIT**

**Drawn Under Academy Bank, N.A. Standby Letter of Credit No. \_\_\_\_\_**

\$ \_\_\_\_\_ (U.S.) \_\_\_\_\_, 20 \_\_\_\_\_

**To: Academy Bank, N.A.**

Drawn under Academy Bank, N.A. Standby Letter of Credit No. \_\_\_\_\_.

I am a duly authorized representative of the beneficiary of Academy Bank, N.A. Standby Letter of Credit No. 9610200193 and hereby certify that the amount drawn hereunder represents funds due as a result of a failure of Owner to [construct the Improvements in accordance with the plans and specifications approved by the undersigned on or before the date required] [complete the Improvements on or before the date required] or [renew the Letter of Credit on or before the date required] in accordance with the terms of the Improvement Agreement \_\_\_\_\_ between Owner and the undersigned.

Accordingly, please pay to the order of the Deschutes County, Oregon

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

**DESCHUTES COUNTY, OREGON**

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

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

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

**EXHIBIT "B"**  
**TO LETTER OF CREDIT**

Date: \_\_\_\_\_

To: Academy Bank, N.A.  
1111 Main Street, Suite 1600  
Kansas City, Missouri 64105

Ref: Letter of Credit No. \_\_\_\_\_

As parties to the above referenced Letter of Credit, we request that this Letter of Credit be canceled, effective immediately.

Enclosed herewith are the original Letter of Credit documents, including the amendment(s), if any, thereto.

(Note: If any of these documents are not included with this letter, you must specify each missing document and explain the reason why it is not being returned.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Authorization:

**Beneficiary:**

**Deschutes County, Oregon**  
a political subdivision of the State of Oregon

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

**Account Party:**

**Virtual Realty Enterprises, L.L.C.,**  
a Missouri limited liability company

By: **Ocala First Corporation, Inc.,**  
a Florida corporation,  
its Manager

By: \_\_\_\_\_  
Print Name: **Henry Warshaw**  
Title: President



## Road Department

61150 SE 27th St. • Bend, Oregon 97702  
(541) 388-6581 • FAX (541) 388-2719

# MEMORANDUM

**Date:** May 20, 2016

**To:** Will Groves, Senior Planner

**From:** George Kolb, County Engineer

**RE:** Cost Estimate for Bonding of File # 247-15-000485-TP; Forest Gateway at Tetherow Phase 1

**CC:** Keith Dagostino, D'Agostino Parker, LLC  
Jason Eckhoff, Maryville Hotel Associates

---

The Road Department has reviewed and approved the cost estimate from Taylor Northwest supplied by Jason Eckhoff, Maryville Hotel Associates for bonding of the road improvements for Forest Gateway at Tetherow, Phase 1 (File # 247-15-000485-TP). The required bond for the project will be \$599,951.64 (\$499,959.70.00 x 1.20%)

Attached is the cost estimate from the Developer.

Let me know if you need more information.

George Kolb, PE  
County Engineer  
Deschutes County Road Department  
[georgek@co.deschutes.or.us](mailto:georgek@co.deschutes.or.us)  
(541) 322-7113



# Tetherow - Forest Gateway Phase 1



## Taylor Northwest LLC

18500 Bull Springs Rd.

Bend, OR 97703

Contact: Justin Barden

Phone: 541.382.7887

Fax: 541.382.3505

Quote To: VRE Tract Y LLC  
 Address: 100S Brentwood #240  
 Clayton, MO 63105-1635  
 Contact: Jason Eckhoff  
 Phone: 314.706.8660  
 Fax:  
 E-Mail: jleckhoff@baurproperties.net

Job Name: Forest Gateway Phase I  
 CCB#: 159999  
 Date of Plans: 4/29/2016  
 Bid Date: 5/19/2016  
 Estimate #: 2016-037  
 Revised Date:

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
<b>SITE SUPPORT</b>					
10	MOBILIZATION	1.00	LS	15,000.00	15,000.00
20	SURVEY/GPS FILE	1.00	LS	7,200.00	7,200.00
30	CONSTRUCTION WATER	2.00	MO	4,600.00	9,200.00
40	CONSTRUCTION ENTRANCE	1.00	EA	2,000.00	2,000.00
50	EROSION CONTROL	1.00	LS	2,810.00	2,810.00
60	TRAFFIC CONTROL	1.00	LS	4,950.00	4,950.00
70	POT HOLE EXISTING UTILITIES	1.00	LS	2,800.00	2,800.00
	<b>SUBTOTAL SITE SUPPORT</b>				<b>\$43,960.00</b>
<b>EARTHWORK CONSTRUCTION</b>					
80	CLEAR & GRUB	1.60	AC	3,900.00	6,240.00
90	STREET EXCAVATION & EMBANKMENT	1,065.00	CY	17.60	18,744.00
	<b>SUBTOTAL EARTHWORK CONSTRUCTION</b>				<b>\$24,984.00</b>
<b>RIGHT-OF-WAY CONSTRUCTION</b>					
100	DEMO EXISTING	4,390.00	SF	0.65	2,853.50
110	8" 3034 SEWER 5-10' DEPTH	✓ 297.00	LF	113.00	33,561.00
120	60" SSMH W/EXPOXY COATING	✓ 1.00	EA	8,800.00	8,800.00
130	CONNECT TO EXISTING SSMH W/DROP	✓ 1.00	EA	1,775.00	1,775.00
140	TEST SEWER	1.00	LS	180.00	180.00
150	8" CLASS 52 DI WATER	✓ 32.00	LF	121.00	3,872.00
160	8" BEND	✓ 4.00	EA	525.00	2,100.00
170	TEST WATER	1.00	LS	1,175.00	1,175.00
180	CONNECT TO EXISTING WATER	✓ 1.00	EA	1,500.00	1,500.00
190	REMOVE/ABANDON EXISTING FH	1.00	EA	1,100.00	1,100.00
200	COMMON FRANCHISE UTILITY TRENCH	140.00	LF	25.00	3,500.00
210	LIGHTING TRENCH	95.00	LF	23.00	2,185.00

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
220	LIGHT POLE EXCAVATION ONLY	2.00	EA	375.00	750.00
230	2" CONDUIT	280.00	LF	1.80	504.00
240	3" CONDUIT	375.00	LF	3.00	1,125.00
250	6" CONDUIT	140.00	LF	6.00	840.00
260	4" AGG BASE 3/4"-0 STATE SPEC FOR CURB	85.00	LF	5.00	425.00
270	4" AGG BASE 3/4"-0 STATE SPEC FOR SIDEWALK	340.00	SF	1.15	391.00
280	4" AGG BASE 3/4"-0 STATE SPEC FOR PATH	905.00	SF	1.15	1,040.75
290	6" AGG BASE 3/4"-0 STATE SPEC FOR ENTRY	88.00	SY	9.90	871.20
300	6" AGG BASE 3/4"-0 STATE SPEC FOR PATCH	480.00	SY	9.90	4,752.00
310	12" STD CURB	85.00	LF	14.80	1,258.00
320	4" STD CONC SIDEWALK	340.00	SF	4.00	1,360.00
330	ADA	2.00	EA	350.00	700.00
340	2" LEVEL 2 HMAC 1/2" DENSE PG 64-28 PATH	✓ 905.00	SF	2.60	2,353.00
350	3" LEVEL 2 HMAC 1/2" DENSE PG 64-28 ENTRY	88.00	SY	16.20	1,425.60
360	4" LEVEL 3 HMAC 1/2" DENSE PG 64-28 PATCH	480.00	SY	23.00	11,040.00
370	STRIPPING	1.00	LS	1,300.00	1,300.00
380	SIGNS	4.00	EA	405.00	1,620.00
	<b>SUBTOTAL RIGHT-OF-WAY CONSTRUCTION</b>				<b>\$94,357.05</b> ✓
	<b>ONSITE SEWER CONSTRUCTION</b>				
390	8" 3034 SEWER 5-10' DEPTH	✓ 508.00	LF	88.00	44,704.00
400	4" 3034 SEWER SERVICE 5-10' DEPTH	12.00	EA	1,750.00	21,000.00
410	48" SSMH W/EXPOXY COATING	5.00	EA	7,935.00	39,675.00
420	TEST SEWER	1.00	LS	500.00	500.00
	<b>SUBTOTAL ONSITE SEWER CONSTRUCTION</b>				<b>\$105,879.00</b> ✓
	<b>ONSITE WATER CONSTRUCTION</b>				
430	8" CLASS 52 DI WATER	✓ 528.00	LF	70.00	36,960.00
440	6" CLASS 52 DI WATER	36.00	LF	68.00	2,448.00
450	1" WATER SERVICE W/METER BOX	12.00	EA	2,200.00	26,400.00
460	8X6 TEE, 6" GV AND FIRE HYDRANT	1.00	EA	4,161.00	4,161.00
470	8X6 TEE, 8" GV, 8" CAP, 6" GV AND FIRE HYDRANT	1.00	EA	5,535.00	5,535.00
480	8" BEND	5.00	EA	525.00	2,625.00
490	4" BLOWOFF	1.00	EA	1,150.00	1,150.00
500	TEST WATER	1.00	LS	1,445.00	1,445.00
510	CONNECT TO EXISTING	1.00	EA	850.00	850.00
	<b>SUBTOTAL ONSITE WATER CONSTRUCTION</b>				<b>\$81,574.00</b> ✓
	<b>ONSITE STORM CONSTRUCTION</b>				
520	48" STD DRYWELL	1.00	EA	8,430.00	8,430.00
530	48" STD SED MANHOLE	1.00	EA	4,300.00	4,300.00
540	STD DOUBLE CATCH BASIN	2.00	EA	1,450.00	2,900.00

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
550	8" C900 STORM	25.00	LF	47.00	1,175.00
560	12" C900 STORM	20.00	LF	57.00	1,140.00
570	DRYWELL/SED MH CONC PAD	2.00	EA	450.00	900.00
580	TEST STORM	1.00	LS	500.00	500.00
	<b>SUBTOTAL ONSITE STORM CONSTRUCTION</b>				<b>\$19,345.00</b> ✓
	<b>ONSITE FRANCHISE UTILITY CONSTRUCTION</b>				
590	COMMON FRANCHISE UTILITY TRENCH	1,150.00	LF	25.00	28,750.00
600	644 VAULTS	2.00	EA	3,555.00	7,110.00
610	575 VAULTS	1.00	EA	4,455.00	4,455.00
620	2" CONDUIT	2,300.00	LF	1.80	4,140.00
630	3" CONDUIT	2,300.00	LF	3.00	6,900.00
640	6" CONDUIT	1,150.00	LF	6.00	6,900.00
	<b>SUBTOTAL ONSITE FRANCHISE UTILITY CONSTRUCTION</b>				<b>\$58,255.00</b> ✓
	<b>ONSITE AGGREGATE CONSTRUCTION</b>				
650	4" AGG BASE 3/4"-0 STATE SPEC FOR CURB	1,040.00	LF	3.00	3,120.00
660	4" AGG BASE 3/4"-0 STATE SPEC FOR SIDEWALK	2,230.00	SF	1.00	2,230.00
670	6" AGG BASE 3/4"-0 STATE SPEC FOR DRIVEWAY	420.00	SF	1.50	630.00
680	6" AGG BASE 3/4"-0 STATE SPEC FOR ROAD	1,617.00	SY	9.25	14,957.25
	<b>SUBTOTAL AGGREGATE CONSTRUCTION</b>				<b>\$20,937.25</b> ✓
	<b>SUBCONTRACTOR CONSTRUCTION</b>				
690	12" MODIFIED LOW PROFILE CURB	1,040.00	LF	11.00	11,440.00
700	4" STD CONC SIDEWALK	2,230.00	SF	4.00	8,920.00
710	6" STD CONC DRIVEWAY	420.00	SF	6.90	2,898.00
720	3" LEVEL 2 HMAC 1/2" DENSE PG 64-28 ENTRY	1,617.00	SY	16.20	26,195.40
730	SIGNS	3.00	EA	405.00	1,215.00
	<b>SUBTOTAL SUBCONTRACTOR CONSTRUCTION</b>				<b>\$50,668.40</b> ✓
<b>GRAND TOTAL</b>					<b>\$499,959.70</b> ✓

x 1.20

599,951.64

**NOTES:**

**GENERAL EXCLUSIONS:**

- \*All permits
- \*All geotechnical testing & reporting
- \*All landscape & irrigation & repair
- \*All topsoil & placement of topsoil
- \*All hydro-seeding
- \*All monument signs & electrical to monument signs

- \*All light pole bases
- \*All mail box structures & boxes
- \*All concrete/rock retaining walls
- \*All fencing
- \*Plumber (if needed behind meter will be billed on a T&M basis)
- \*All utility relocates by others (power poles, vaults, boxes etc.)
- \*All environmental/contaminated/hazardous material removal
- \*Removal of access excavated site material

ADDITIONAL COMMENTS:

\*Taylor Northwest LLC reserves the right to review and re-price proposal in conjunction with finalized and/or revised plans

ACCEPTANCE SIGNATURE: \_\_\_\_\_

DATE OF SIGNATURE: \_\_\_\_\_