

**STATE OF OREGON LOTTERY REVENUE BONDS  
GRANT AGREEMENT**

(Governmental Entity – lump-sum disbursement)

Grantee: City of Tigard

Project Name: Hunziker Infrastructure Project

Lottery Bonds Series Number: 2017 Series A

This Grant Agreement (“Agreement”), is made by the State of Oregon, acting by and through its Department of Administrative Services (“DAS”), and City of Tigard (“Grantee”) for financing of the project referred to above and described in Exhibit A (the “Project”). This Agreement becomes effective only when fully signed and approved as required by applicable law, and shall expire on the date of the last disbursement of the funds provided under this Agreement or the third anniversary date of the sale of the bonds funding this Agreement, whichever is later. This Agreement includes the following exhibits, incorporated into and made a part of this Agreement:

Exhibit A: Project Description

Exhibit B: Project Budget

Exhibit C: Disbursement Request Form

**SECTION 1 – DEFINITIONS OF KEY TERMS**

The following capitalized terms have the meanings assigned below.

“Act” means Article XV, Section 4 of the Oregon Constitution; ORS 286A.560 to 286A.585 and 2015 Oregon Laws, chapter [ ], all as amended from time to time, inclusive.

“Bond Counsel” means a law firm that serves as bond counsel to the State because it has knowledge and expertise in the field of municipal law and issues opinions that are generally accepted by purchasers of municipal bonds.

“Bonds” means the State of Oregon Lottery Revenue Bonds 2017 Series A issued pursuant to the Act, a portion of the sale proceeds of which are funding the Grant.

“Code” means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

“Date of Issuance” means the date the Bonds are issued, which is expected to be spring 2017.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Grant Amount” means an amount of proceeds from the sale of the Bonds, not to exceed \$1,500,000

“Preliminary Expenditures” means costs such as architectural, engineering, surveying, soil testing, and similar costs that, in the aggregate, are not in excess of 20% of the Grant Amount. Costs of land acquisition, site preparation and similar costs incident to commencement of construction are NOT preliminary expenditures.

“Project” means the project described in Exhibit A.

“Project Budget” means the budget for the Project described in Exhibit B.

“Project Completion Date” means the date on which Grantee completes the Project.

“Project Closeout Deadline” means 90 days after the Project Completion Date.

“Project Costs” means Grantee’s actual Project Costs to the extent those costs are (a) reasonable, necessary and directly used for the Project, (b) costs permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project, (c) capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Code, and (d) eligible or permitted uses of the Grant under the Act and this Agreement. Project Costs do NOT include internal costs charged to the Project by Grantee or payments made to Related Parties, do NOT include loans or grants to be made to third parties, and may only include the payment of principal due on interim financing for the Project with the prior written consent of the State.

“Related Parties” means, in reference to governmental units or 501(c)(3) organizations, members of the same controlled group within the meaning of Section 1.150-1(e) of the Code, and in reference to any person that is not a governmental unit or a 501(c)(3) organization, a related person as defined in Section 144(a)(3) of the Code.

“State” means the State of Oregon, acting by and through its agencies including but not limited to DAS, the Office of the State Treasurer and any other agency authorized to administer proceeds and payment of the Bonds.

## **SECTION 2 – FINANCIAL ASSISTANCE**

DAS shall provide Grantee, and Grantee shall accept from DAS, a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount. This Grant is made from the sale proceeds of the Bonds.

## **SECTION 3 – DISBURSEMENTS**

- A. Disbursement Requests. Grantee must request disbursement of some or all of the Grant Amount using the Disbursement Request form attached to this Agreement as Exhibit C, containing the information and certifications shown in Exhibit C.

- B. Conditions to Disbursement. DAS has no obligation to disburse any of the Grant unless all of the following conditions are met on the date of disbursement:
- (1) There is no Default or Event of Default.
  - (2) The representations and warranties made by Grantee in this Agreement are true and correct as if made on such date.
  - (3) The Bonds have been issued and the State, in the reasonable exercise of its administrative discretion, has sufficient funding, appropriations, limitations, allotments, allocation and other expenditure authority to authorize the disbursement.
  - (4) DAS is satisfied that all items listed in the Disbursement Request are for Project Costs that have been or are expected to be incurred by Grantee.
  - (5) DAS has received the following items in form and substance satisfactory to DAS:
    - (i) This Agreement duly signed by an authorized officer of Grantee.
    - (ii) If requested by DAS, an opinion of counsel to Grantee, subject to appropriate assumptions, qualifications, certifications and representations acceptable to Bond Counsel and the State, to the effect that this Agreement has been duly executed and delivered by, and constitutes a valid and binding obligation of, Grantee, enforceable against Grantee in accordance with its terms and that Grantee has taken all actions necessary to and has full authority and power to incur and perform its obligations under this Agreement and to receive financing for and carry out the Project.
    - (iii) Such other certificates, documents, opinions and information as the State may reasonably require.
- C. Disbursement by DAS. Upon receipt of a Disbursement Request, satisfaction of the conditions set forth in Sections 3.B, and DAS's review and approval of the Project Costs set forth in the Disbursement Request, DAS shall disburse or cause to be disbursed the Grant Amount to Grantee.

#### **SECTION 4 – USE OF GRANT FUNDS**

- A. Use of Proceeds. Grantee shall use disbursements of the Grant only to reimburse itself, or pay, for Project Costs in compliance with Grantee's certifications in its Disbursement Request.
- B. Project Costs paid by Grantee before the Bonds are Issued. Except for certain Preliminary Expenditures for costs that can be capitalized to the Project, the Grant cannot be used for Project Costs that were paid more than 60 days before the earlier of

the following two dates: (i) the Date of Issuance of the Bonds; and (ii) the date on which a Declaration of Official Intent to Reimburse Project Costs with Lottery Revenue Bonds is executed.

- C. Costs Paid for by Others. Grantee may not use any of the Grant to pay internal costs charged to the Project by Grantee or by Related Parties or to repay the interest owed for any interim financing for the Project. Grantee may not use any of the Grant to repay the principal owed on interim financing for the Project without the prior written consent of the State.
- D. Earnings on Bond Proceeds. Any earnings on proceeds of the Bonds prior to disbursement will be retained by the State.
- E. Unexpended Proceeds. Grantee shall complete the Project by the Project Completion Date. Grantee shall immediately repay to DAS, unless DAS otherwise directs, any portion of the Grant disbursed to Grantee, and any interest earned by Grantee on the Grant disbursement, that are not used for Project Costs or that remain after the earliest of (a) the Project Completion Deadline, (b) this date that this Agreement has expired or is terminated; or (c) the third anniversary of the sale date of the Bonds, which is expected to be in [.....].

## **SECTION 5 – REPRESENTATIONS AND WARRANTIES OF GRANTEE**

Grantee represents and warrants to the State:

- A. Organization and Authority.
  - (1) Grantee is a [insert type of governmental entity] validly created and existing under the laws of the State of Oregon.
  - (2) Grantee has all necessary right, power and authority under its applicable enabling statutes, code, ordinances or other Oregon law to (a) execute and deliver this Agreement, (b) incur and perform its obligations under this Agreement, and (c) receive financing for and carry out the Project.
  - (3) This Agreement has been duly authorized by a vote, resolution or other act of the governing body or officer of Grantee, is executed by an authorized representative of Grantee, and when executed by DAS, is legal, valid and binding, and enforceable in accordance with its terms.
- B. Full Disclosure. Grantee has disclosed in writing to DAS all facts that may materially adversely affect the Project, or the ability of Grantee to perform all obligations required by this Agreement. Grantee has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading, regarding the Grant, the Project and this Agreement. The information contained in this Agreement is true and accurate in all respects.

- C. Pending Litigation. Grantee has disclosed in writing to DAS all proceedings, environmental or otherwise, pending (or to the knowledge of Grantee, threatened) against or affecting Grantee, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Grantee to perform all obligations required by this Agreement.
- D. No Defaults.
- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Agreement.
  - (2) Grantee has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Grantee to perform all obligations required by this Agreement.
- E. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Agreement will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which Grantee is a party or by which the Project or any of Grantee's property or assets may be bound; (ii) violate any provision of the applicable enabling statutes, code, ordinances or other Oregon law pursuant to which Grantee was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Grantee, the Project or Grantee's properties or operations.
- F. Governmental Consent. Grantee has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Agreement and undertaking and completion of the Project, including without limitation, all land use approvals and development permits required under local zoning or development ordinances, state law and federal law for the use of the land on which the Project will be located. "Land use approvals and development permits" includes, but is not limited to, any necessary "land use decision" or "limited land use decision" as those terms are defined by ORS 197.015(10) and (12).

## **SECTION 6 – COVENANTS OF GRANTEE**

Grantee covenants as follows for so long as the Bonds and any obligations issued to refund the Bonds are outstanding:

- A. Compliance with Laws. Grantee shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Agreement and the Project. These laws, rules, regulations and orders are incorporated by reference in this Agreement to the extent required by law.

B. Project Reporting Obligations.

- (1) Beginning with the first full calendar quarter after the disbursement of some or all of the Grant Amount, Grantee shall submit reports to the State on the status of the Project including descriptions of the expenditure of the Grant Amount and other funds on the Project compared to the Project Budget and descriptions of the Project milestones or deadlines met, or not met, in accordance with the Project schedule. Each quarterly report shall be due to the State on or before the date that is thirty (30) days after the end of the preceding calendar quarter.
- (2) Promptly after completion of the Project and in no event later than the Project Closeout Deadline, Grantee shall furnish the State with a final report on Grantee's expenditure of the Grant; and
- (3) Grantee shall provide such additional reports as the State may reasonably request from time to time, including information or documentation that the State determines is necessary to comply with arbitration and private use restrictions that may apply to the Bonds.

C. Real Property. Legal title to all real property financed with the Grant shall be owned in fee simple by Grantee, free and clear of all encumbrances other than minor encumbrances. Grantee shall maintain a standard form of title insurance policy for the value of the purchase price of the property, and where appropriate will purchase endorsements to that policy in amounts to cover improvements. Where Grantee suffers a loss that is covered by title insurance, insurance proceeds will be paid to the State, not to exceed the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance).

D. Operation and Maintenance of the Project. Grantee agrees to construct the Project in accordance with the Project plans, specifications and budget and to contract with competent, properly licensed and bonded contractors and professionals in accordance with the Oregon Public Contracting Code and all other applicable federal, state and local laws regulating construction of the Project. Grantee agrees to have plans and specifications for the Project prepared by a licensed architect or licensed engineer and to require that the Project meets applicable standards of survival in good condition. Prior to commencement of any Project construction, Grantee shall require the general contractor for the Project to procure and maintain in full force and effect throughout the entire time of construction and until one year after the Project Completion Date, a performance and payment bond for the faithful performance and payment of all of the contractor's obligations for the total cost of the Project. The Grantee shall be named as the obligee on the bond. Grantee shall operate and maintain the Project in good repair and operating condition so as to preserve the public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements.

E. Insurance, Damage. Grantee shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is

customarily carried by governmental units constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to the State, not to exceed the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance), unless Grantee has informed the State in writing that the insurance proceeds will be used to rebuild the Project.

- F. Sales, Leases and Encumbrances. Grantee shall not sell, transfer, encumber, lease or otherwise dispose of any property paid for with disbursements of the Grant, unless the State has granted prior, written consent. In the case of sale, lease, exchange, transfer or other disposition of any substantial portion of or interest in the Project, Grantee shall, within 30 days of receipt of any proceeds from such disposition, pay such proceeds to the State, not to exceed the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance), for the defeasance or prepayment of debt service on such Bonds, unless the State agrees otherwise in writing.
- G. Condemnation Proceeds. If the Project or any portion is condemned, within 30 days of receipt of any condemnation proceeds, Grantee shall pay such proceeds to the State, not to exceed the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance), unless Grantee has, after consultation with the State and Bond Counsel, informed the State in writing that the condemnation proceeds will be used to rebuild the Project. The State shall consult with Bond Counsel and Grantee regarding the use of any proceeds paid to the State.
- H. Financial Records. Grantee shall keep accurate books and records for the use of the Grant and the Matching Amount, and maintain them according to generally accepted accounting principles established by the Governmental Accounting Standards Board in effect at the time.
- I. Inspections; Information. Grantee shall permit the State and any party designated by the State: (i) to inspect the Project and (ii) to inspect and make copies of any accounts, books and records, including, without limitation, Grantee's records regarding receipts, disbursements, contracts, investments and any other related matters. Grantee shall supply any reports and information related to the Project as the State may reasonably require.
- J. Records Maintenance. Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Project, or the Grant until the date that is three years following the later of the final maturity or earlier retirement of all of the Bonds (including the final maturity or redemption date of any obligations issued to refund the Bonds) or such longer period as may be required by other provisions of this Agreement or applicable law.
- K. Notice of Default. Grantee shall give the State prompt written notice of any Default as soon as any senior administrative or financial officer of Grantee becomes aware of its existence or reasonably believes a Default is likely.

- L. Prevailing Wage. The prevailing wage rate requirements are set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder (“Prevailing Wage Rate Law” or “PWR”), or, if applicable, 40 U.S.C. 3141 et seq. (“Davis-Bacon Act”). If Grantee believes a construction or renovation project is not subject to prevailing wage requirements, Grantee must obtain and provide DAS with a copy of a coverage determination letter from BOLI that confirms a project is not subject to prevailing wage rate requirements before proceeding. Grantee shall require its contractors and subcontractors to pay the applicable prevailing wage rate and to comply with all other Oregon Bureau of Labor and Industries (“BOLI”) requirements pursuant to the Prevailing Wage Rate Law, including on all contracts and subcontracts and in filing separate works bonds with the Construction Contractors Board, unless exempt under ORS 279C.836 and OAR 839-025-0015. If the Project is subject to the Davis-Bacon Act, Grantee shall comply with and require its contractors and subcontractors to comply with the Davis-Bacon Act and any applicable provisions of Oregon PWR. If the Project is or becomes subject to both PWR and the Davis-Bacon Act, all subject workers must be paid the higher of applicable state or federal prevailing wage rate. The applicable rates are those in effect on the Effective Date of this Agreement. PWR and Davis-Bacon Act prevailing wage rates may be accessed via: [http://www.oregon.gov/boli/WHD/PWR/Pages/pwr\\_state.aspx](http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx) and <http://www.wdol.gov>. Grantee represents and warrants that it is not on the BOLI current [List of Contractors Ineligible to Receive Public Works Contracts](#) and that it will not contract with any contractor on this list.
- M. Indemnity; Release. To the extent allowed by law, Grantee shall defend, indemnify, save and hold harmless and release the State, its officers and employees from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and reasonable attorneys’ fees and expenses at trial, on appeal and in connection with any petition for review, arising out of or relating to Grantee, its officers, employees, contractors, or agents in connection with this Agreement, the Project or the tax-exempt status of the Bonds, including without limitation, any expenses incurred or amounts paid in connection with an inquiry, investigation, audit or similar proceeding by BOLI, the Internal Revenue Service, the Securities and Exchange Commission, Municipal Securities Rulemaking Board and any other federal, state, governmental or quasi-governmental body with regulatory jurisdiction over the Bonds, arising from the Project or the actions or omissions of Grantee.
- N. Representations and Covenants Regarding the Tax-Exempt Status of the Bonds.
- (1) Grantee acknowledges that the Bonds have been or are expected to be issued with the interest paid on the Bonds excludable from gross income for federal income tax purposes and that the uses of the Grant proceeds and the Project by Grantee during the term of the Bonds may impact the tax-exempt status of the Bonds. Grantee agrees to comply with all applicable provisions of the Code necessary to protect the exclusion of interest on the Bonds from federal income taxation.



(2) Grantee shall not, without prior written consent of DAS, permit more than five percent (5%) of the Project to be used in a "private use" by a "private person" (as defined in the Code) if such private use could result in the State of Oregon, receiving direct or indirect payments or revenues from the portion of the Project to be privately used.

## **SECTION 7 – DEFAULTS**

Any of the following constitutes an “Event of Default” of Grantee:

- A. Any false or misleading representation is made by or on behalf of Grantee, in this Agreement or in any document provided by Grantee to DAS related to this Grant or the Project.
- B. Grantee fails to perform any obligation required under this Agreement, other than those referred to in subsection A of this Section 8, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Grantee by DAS, or such longer period as DAS may agree to in writing, if DAS determines Grantee has instituted and is diligently pursuing corrective action.
- C. If and to the extent allowed by law, Grantee: (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any corporate action for the purpose of effecting any of the foregoing.
- D. If and to the extent allowed by law, a proceeding or case is commenced, without the application or consent of Grantee, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Grantee, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (iii) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

## SECTION 8 – REMEDIES

A. Remedies. Upon any Event of Default, DAS may pursue any or all remedies in this Agreement, and any other remedies available at law or in equity (including specific performance) to collect amounts due or to become due or to enforce the performance of any obligation of Grantee. Remedies may include, but are not limited to:

- (1) Terminating DAS' commitment and obligation to make any further disbursements of the Grant under this Agreement.
- (2) While any of the Grant remains undisbursed, withholding amounts otherwise due to Grantee and applying such amounts to the payment of amounts due under this Agreement.
- (3) Requiring repayment of the Grant (including any costs of defeasing the portion of the Bonds relating to the Project (including all allocable costs of issuance), if necessary) and the State of Oregon's costs of exercising its remedies under this Agreement, including reasonable attorney's fees and costs.

If, as a result of an Event of Default, DAS demands return of the portion of the Grant moneys related to the Event of Default, such amount shall be due and payable upon demand, and DAS may charge and demand payment of interest on all or any portion of the Grant moneys required to be returned.

B. Application of Moneys. Any moneys collected by DAS pursuant to Section 8.A will be applied first, to pay any reasonable attorneys' fees and other fees and expenses incurred by the State of Oregon; then, to repay any Grant proceeds owed; and last, to pay any other amounts due and payable under this Agreement.

C. No Remedy Exclusive; Waiver; Notice. No remedy available to DAS is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Agreement will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. DAS is not required to provide any notice in order to exercise any right or remedy, except as set forth in Section 7.B.

## SECTION 9 – MISCELLANEOUS

A. Time is of the Essence. Grantee agrees that time is of the essence under this Agreement.

B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.

- (1) Nothing in this Agreement gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.

- (2) This Agreement will be binding upon and inure to the benefit of DAS, Grantee, and their respective successors and permitted assigns.
- (3) Grantee may not assign or transfer any of its rights or obligations or any interest in this Agreement without the prior written consent of DAS. DAS may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Grantee shall pay, or cause to be paid to DAS, any fees or costs incurred because of such assignment, including but not limited to reasonable attorneys' fees of DAS's counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of the State beyond those in this Agreement, nor DAS's assignment relieve Grantee of any of its duties or obligations under this Agreement.
- (4) Grantee hereby approves and consents to any assignment or transfer of this Agreement that DAS deems to be necessary.

C. Disclaimer of Warranties; Limitation of Liability. Grantee agrees that:

- (1) DAS makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
- (2) In no event is DAS, any agency of the State or Oregon or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Agreement or the existence, furnishing, functioning or use of the Project.

D. Notices. All notices to be given under this Agreement must be in writing and addressed as shown below, or to other addresses that either party may hereafter indicate pursuant to this section. Notices may only be delivered by personal delivery or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered.

If to DAS: Jean Gabriel, Capital Finance & Planning Manager  
Department of Administrative Services  
155 Cottage Street NE U90  
Salem, OR 97301-3966  
Phone (503) 378-3107  
Fax (503) 373-7643

If to Grantee: City: [13125 SW Hall Blvd.](#)  
[Tigard OR 97223](#)  
[Attn: Lloyd Purdy](#)

With a copy to: Jordan Ramis  
Two Centerpointe Drive, 6<sup>th</sup> Floor

Lake Oswego, OR 97035  
Attn : Tim Ramis  
Email: tim.ramis@jordanramis.com

- E. No Construction Against Drafter. This Agreement is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Agreement is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Survival. Except as specifically provided in Section 3.C, and notwithstanding any other provision of this Agreement, the covenants of Grantee related to the tax-exempt status of the Bonds and the obligations of the parties under this Agreement survive disbursement of the Grant Amount and payment of the Bonds and do not terminate.
- H. Amendments, Waivers. This Agreement may not be amended without the prior written consent of DAS (and when required, counsel or review by Bond Counsel) and Grantee. This Agreement may not be amended in a manner that is not in compliance with the Act or the provisions of the Code applicable to obligations bearing interest that is excludable from gross income. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- J. Integration. This Agreement (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Agreement.
- K. False Claims. Grantee will refer to the Agency Agreement Administrator any credible evidence that a principal, employee, agent, sub-grantee contractor, contractor or other person has submitted a false claim under the False Claims Act, ORS180.750 to 180.785, or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving funds provided under this Grant Agreement.
- M. Execution in Counterparts. This Agreement may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

Grantee, by its signature below, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

**STATE OF OREGON**  
acting by and through the  
Department of Administrative Services

**[GOVERNEMENTAL ENTITY]**

By: \_\_\_\_\_  
George Naughton, Chief Financial Officer

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

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

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

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:**

\_\_\_\_\_  
[ ], Assistant Attorney General

## EXHIBIT A – PROJECT DESCRIPTION

Tigard estimates \$7.2 million investment in public infrastructure will catalyze an *immediate* private sector investment of more than \$22 million, in new industrial development, and space for 150 - 300 new jobs in the Hunziker Industrial Core. New public infrastructure will set the foundation for the Hunziker Industrial Core's evolution into a mixed use employment center that supports a wider range of businesses and higher levels of employment.

### ***Wall Street Improvements***

Wall Street will be constructed from Hunziker Road to the existing Portland & Western Railroad "heavy tracks" to the southeast totaling 2,040 linear feet of new public road including a road segment at the current end of Tech Center Drive. The paved width of the new road will be 46 feet with curb and gutter, 5 foot sidewalks on each side, bike lanes and storm water planter areas for water quality treatment within a 70 foot right-of-way. Within the new road alignment, an 8" sewer, 12" waterline and a 15" storm line will be placed to serve the adjacent properties. Project alignment included as exhibit in this report.

### **Proposed Project Schedule**

Planning and Predesign	September, 2015
RFP – Consultant Design Services	November, 2015
Hire Consultants for 30% Design	December, 2015
30% Design	May, 2016
ROW Acquisition	September – December 2016
RFP – Consultant for Final design services	November, 2016
60% Design	February, 2017
90% Design	March, 2017
Final Design	April, 2017
Permits (PFI, CWS, DSL, Corps)	September, 2017
Request for Proposal – Construction Services	April, 2017
Bid and Award	May, 2017
Begin Construction	June, 2017
End Construction and Project Closeout	November, 2017

## EXHIBIT B – PROJECT BUDGET

Grant Amount:<sup>1</sup>               \$ 1,500,000  
Matching Amount:       \$ 1,600,000 Trammell Crow - developer's contribution  
                                     \$ 2,080,000 U.S. Department of Commerce Grant  
                                     \$ 1,851,000 METRO RFFA funding under consideration

Other Amounts:           \$

Total Project Budget:     \$7,200,000 Per Engineering Budget Estimate

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<sup>1</sup> Includes amounts allocable to costs of issuance of the Bonds.

## EXHIBIT C – DISBURSEMENT REQUEST

DATED: [insert date of request]

Project Name: [ Hunziker Infrastructure Project ]

Bonds: Lottery Revenue Bonds: 2017 Series A

Date of Grant Agreement: [ ]

Name of Grantee: [ City of Tigard ]

On behalf of [ ] (the “Grantee”) I hereby request a total disbursement of \$\_\_\_\_\_ under the Grant Agreement listed above (the “Grant Agreement”).

I hereby make the following certifications in connection with this Disbursement Request:

1. As of the date of this Disbursement Request, Grantee has spent a portion of the Grant Amount in the amount of \$[\_\_\_\_\_] as detailed on the attached list and documentation.
2. All of the disbursement requested by this Disbursement Request (the “Disbursement”) will be used to reimburse Grantee for payments that Grantee has made for Project Costs.
3. Grantee is eligible to receive the Disbursement under the terms of the Grant Agreement, and has satisfied all conditions that the Grant Agreement requires be satisfied for DAS to make the Disbursement.
4. The invoices or other documents provided to DAS in connection with this Disbursement Request evidence that the Project Costs to be paid from the Disbursement have been paid or are currently payable by Grantee.
5. All the Disbursement will be used to pay for Project Costs that have not been previously paid from disbursements under the Grant.
6. All representations of Grantee in the Grant Agreement are true and correct on the date of this Disbursement Request and all warranties by Grantee in the Grant Agreement continue to be in effect.

The certifications in this Disbursement Request are true and accurate to the best of my knowledge and belief, after reasonable investigation.

Capitalized terms that are used but are not defined in this Disbursement Request have the meanings defined for those terms in the Grant Agreement.

**[insert name]**

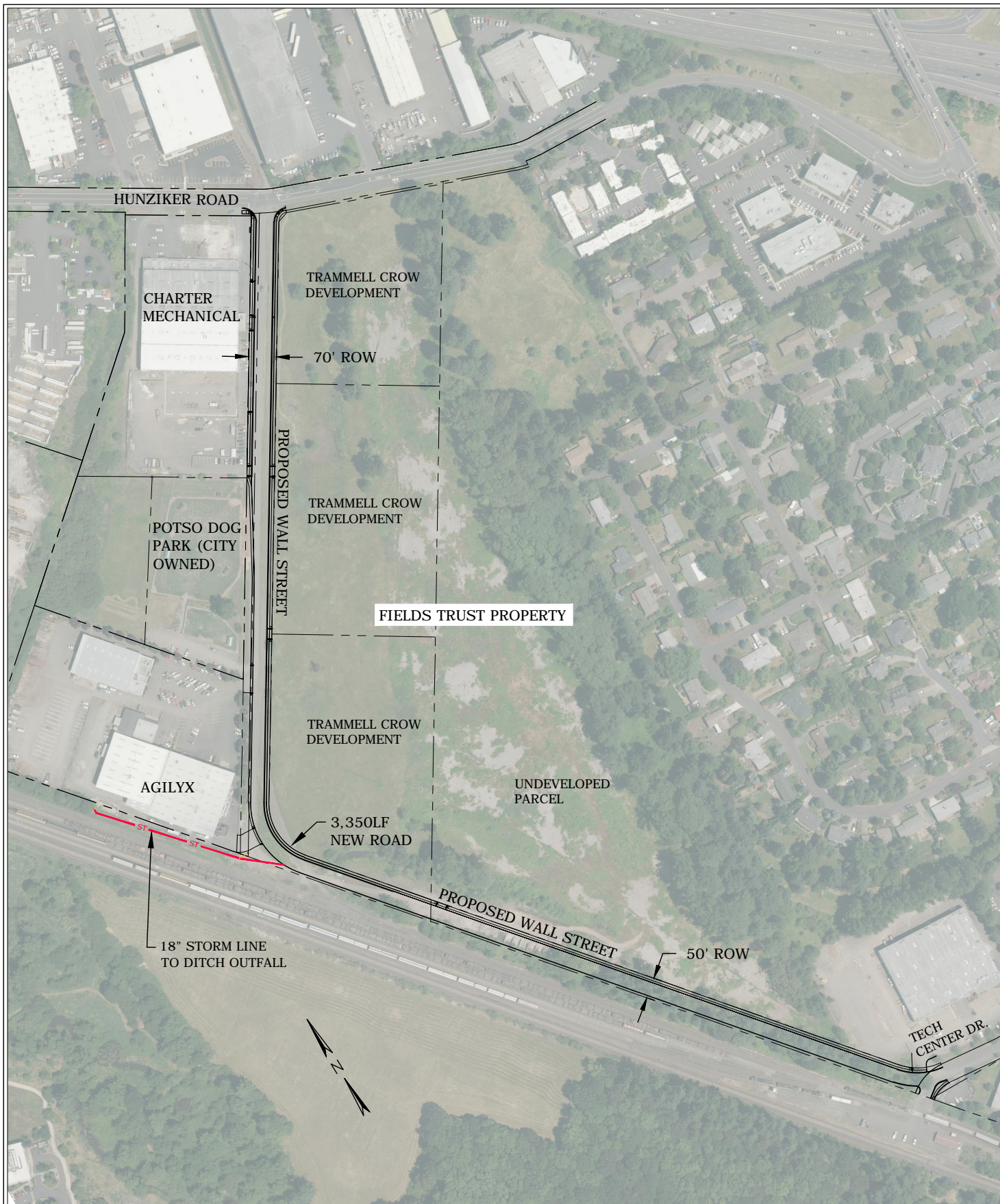
By: \_\_\_\_\_

Name:

Title:

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





**ENGINEERING DIVISION  
PUBLIC WORKS DEPARTMENT**

13125 S.W. HALL BLVD.  
TIGARD, OREGON 97223  
VOICE: 503-639-4171  
FAX: 503-624-0752  
WWW.TIGARD-OR.GOV

# **HUNZIKER INFRASTRUCTURE WALL STREET EXHIBIT A - 9/29/16**

**FIGURE  
EX A**

**FILE NO  
95047**

<i>CONSTRUCTION COSTS</i>					
ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
<i>TEMPORARY FEATURES AND APPURTENANCES</i>					
0210-0100000A	MOBILIZATION	1	LS	\$ 356,000	\$ 356,000
0225-0101000A	TEMPORARY WORK ZONE TRAFFIC CONTROL, COMPLETE	1	LS	\$ 30,000	\$ 30,000
0280-0100000A	EROSION CONTROL	1	LS	\$ 38,000	\$ 38,000
0290-0100000A	POLLUTION CONTROL PLAN	1	LS	\$ 500	\$ 500
0290-0200000A	TURBIDITY MONITORING	1	LS	\$ 500	\$ 500
<i>ROADWORK</i>					
0305-0100000A	CONSTRUCTION SURVEY WORK	1	LS	\$ 35,500	\$ 35,500
0310-0106000A	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	1	LS	\$ 25,000	\$ 25,000
0320-0100000A	CLEARING AND GRUBBING	1	LS	\$ 33,000	\$ 33,000
0330-0105000K	GENERAL EXCAVATION	22,495	CUYD	\$ 17	\$ 382,415
0330-0130000K	EXTRA FOR SELECTED EMBANKMENT MATERIAL	10,125	CUYD	\$ 10	\$ 101,250
0350-0105000J	SUBGRADE GEOTEXTILE	13,164	SQYD	\$ 1.50	\$ 19,746
<i>DRAINAGE AND SEWERS</i>					
0415-9Z90000A	STORMWATER DETENTION	1	LS	\$ 120,400	\$ 120,400
0430-0100060F	6 INCH DRAIN PIPE	200	FOOT	\$ 35	\$ 7,000
0445-010012AF	12 INCH CULVERT PIPE, 5 FT DEPTH	55	FOOT	\$ 50	\$ 2,750
0445-030008BF	8 INCH SANITARY SEWER PIPE, 10 FT DEPTH	2,731	FOOT	\$ 60	\$ 163,860
0445-035010BF	10 INCH STORM SEWER PIPE, 10 FT DEPTH	1,463	FOOT	\$ 65	\$ 95,095
0445-035012BF	12 INCH STORM SEWER PIPE, 10 FT DEPTH	1,141	FOOT	\$ 75	\$ 85,575
0445-035015BF	15 INCH STORM SEWER PIPE, 10 FT DEPTH	542	FOOT	\$ 80	\$ 43,360
0445-035018BF	18 INCH STORM SEWER PIPE, 10 FT DEPTH	971	FOOT	\$ 85	\$ 82,535
0445-0700120E	SLOPED END SECTIONS	4	EACH	\$ 250	\$ 1,000
0470-0100000E	CONCRETE SANITARY SEWER MANHOLES	9	EACH	\$ 3,750	\$ 33,750
0470-0101000E	CONCRETE STORM SEWER MANHOLES	19	EACH	\$ 3,750	\$ 71,250
0470-9Z90000A	CONCRETE INLETS, TYPE BEEHIVE	12	EACH	\$ 1,100	\$ 13,200
0470-9Z90000A	CONCRETE INLETS, TYPE METAL	79	EACH	\$ 650	\$ 51,350
0490-0100000E	ADJUSTING BOXES	12	EACH	\$ 475	\$ 5,700
0490-0104000E	CONNECTION TO EXISTING STRUCTURES	5	EACH	\$ 1,250	\$ 6,250
0490-0120000E	MINOR ADJUSTMENT OF MANHOLES	2	EACH	\$ 650	\$ 1,300
0495-0100000J	TRENCH RESURFACING	40	SQYD	\$ 37	\$ 1,480

<i>CONSTRUCTION COSTS</i>					
ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
<i>BRIDGES</i>					
0596-9Z90000A	MODULAR RETAINING WALL	3,862	SQFT	\$ 37	\$ 142,894
<i>BASES</i>					
0620-010400J	COLD PLANE PAVEMENT REMOVAL, 0-2 INCHES DEEP	1,000	SQYD	\$ 3	\$ 3,000
0641-0112000M	3/4 INCH - 0 AGGREGATE BASE	9,689	TON	\$ 23	\$ 222,847
<i>WEARING SURFACES</i>					
0730-0100000M	EMULSIFIED ASPHALT FOR TACK COAT	12	TON	350	\$ 4,200
0744-0302000M	LEVEL 3, 1/2 INCH ACP MIXTURE	4,445	TON	75	\$ 333,375
0759-0110000F	CONCRETE CURBS, STANDARD CURB	1,497	FOOT	16	\$ 23,952
0759-0102000F	CONCRETE CURBS, MODIFIED	3,387	FOOT	28	\$ 94,836
0759-0103000F	CONCRETE CURBS, CURB AND GUTTER	501	FOOT	18	\$ 9,018
0759-0105000F	CONCRETE CURBS, CURB AND GUTTER, MODIFIED	3,934	FOOT	30	\$ 118,020
0759-0127000J	CONCRETE DRIVEWAYS, REINFORCED	5,342	SQFT	8	\$ 42,736
0759-0128000J	CONCRETE WALKS	27,647	SQFT	6	\$ 165,882
<i>PERMANENT TRAFFIC SAFETY AND GUIDANCE DEVICES</i>					
0860-0200000F	THERMOPLASTIC, SPRAYED, SURFACE, NON-PROFILED	11,259	FOOT	\$ 2	\$ 22,518
0867-0102000E	PAVEMENT LEGEND, TYPE A: ARROWS	10	EACH	\$ 275	\$ 2,750
0867-0131000E	PAVEMENT LEGEND, TYPE B-HS: BICYCLE LANE STENCIL	4	EACH	\$ 275	\$ 1,100
<i>PERMANENT TRAFFIC CONTROL AND ILLUMINATION SYSTEMS</i>					
0905-0101000A	REMOVE AND REINSTALL EXISTING SIGNS	1	LS	\$ 3,000	\$ 3,000
0930-9Z90000A	TRAFFIC SIGNING	1	LS	\$ 5,000	\$ 5,000
0970-9Z90000A	UTILITY VAULTS AND CONDUIT	1	LS	\$ 248,950	\$ 248,950
0970-9Z90000A	STREET LIGHTING	1	LS	\$ 167,500	\$ 167,500
<i>RIGHT OF WAY DEVELOPMENT AND CONTROL</i>					
1030-0103000R	TEMPORARY SEEDING	1	LS	\$ 8,800	\$ 8,800
1030-010800R	PERMANENT SEEDING	1	LS	\$ 8,800	\$ 8,800
1040-010100K	TOPSOIL	1,124	CUYD	\$ 40	\$ 44,960
1040-0000000Z	LANDSCAPING & ESTABLISHMENT	1	LS	\$ 229,140	\$ 229,140
1050-0135000F	6' CHAINLINK FENCE	1,240	FOOT	\$ 25	\$ 31,000

<i>CONSTRUCTION COSTS</i>					
ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
<i>WATER SUPPLY SYSTEMS</i>					
1140-0145000H	12 INCH POTABLE WATER PIPE, FITTINGS AND COUPLINGS WITH RESTRAINED JOINTS AND CLASS A BACKFILL	3,475	FOOT	\$ 125	\$ 434,375
1150-0400000E	BACKFLOW ASSEMBLY	2	EACH	\$ 2,000	\$ 4,000
1140-0300000E	12 INCH CONNECTION TO 12 INCH EXISTING MAIN	3	EACH	\$ 1,600	\$ 4,800
1140-0195000E	BLOWOFF ASSEMBLY, 4 INCH	1	EACH	\$ 1,875	\$ 1,875
1140-0400000A	DUCTILE IRON PIPE TEES	13	EACH	\$ 1,500	\$ 19,500
1140-0400000B	DUCTILE IRON PIPE BEND	5	EACH	\$ 875	\$ 4,375
1140-0400000C	DUCTILE IRON PIPE LONG SLEEVE	4	EACH	\$ 625	\$ 2,500
1150-0100000E	12 INCH GATE VALVE	5	EACH	\$ 3,125	\$ 15,625
1160-0100000E	HYDRANT ASSEMBLIES	7	EACH	\$ 6,250	\$ 43,750
1170-9Z90000A	4 INCH DI WATER SERVICE LINE	95	FOOT	\$ 45	\$ 4,275
<i>TOTALS</i>					

Construction Subtotal \$ 4,277,119

30% Contingency \$ 1,283,136

**Construction Total \$ 5,560,255**

<i>ARCHITECTURAL AND ENGINEERING FEES</i>		
	DESCRIPTION	TOTAL
	GEOTECHNICAL FEES	\$ 25,000
	WETLAND BIOLOGIST FEES	\$ 29,000
	CULTURAL/ARCHAEOLOGICAL FEES	\$ 8,000
	LANDSCAPE DESIGN FEES	\$ 28,000
	PRIVATE UTILITY LOCATIONS	\$ 7,000
	SURVEY FEES	\$ 40,000
	CIVIL ENGINEERING FEES	\$ 486,000
Total		<b>\$ 623,000</b>

<i>CONSTRUCTION COSTS</i>					
ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
<i>PROJECT INSPECTION FEES</i>					
	DESCRIPTION				TOTAL
	INSPECTION FEES				\$ 250,000
Total					<b>\$ 250,000</b>

<i>MISCELLANEOUS FEES</i>			
	DESCRIPTION		TOTAL
	CITY PROJECT MANAGEMENT FEES		\$ 275,000
Total			<b>\$ 275,000</b>

<i>RIGHT-OF-WAY EXPENSES</i>			
	DESCRIPTION		TOTAL
	ROW PURCHASE FEES		\$ 500,000
Total			<b>\$ 500,000</b>

TOTAL PROJECT COSTS      **\$ 7,208,255**