

**REIMBURSEMENT AGREEMENT FOR NIGHT INSPECTION
SERVICES NECESSARY FOR EXTENDING PUBLIC UTILITIES
WITHIN BEAVERCREEK ROAD**

This AGREEMENT is made by and between the CITY OF OREGON CITY, an Oregon municipal corporation, (the “City”) and PAHLISCH COMMERCIAL, INC. (“Pahlisch”)(taken together, the “Parties”) this ___ day of _____, 2021.

WHEREAS, Pahlisch owns approximately 9.73 acres of real property located at the intersection of Beaver Creek Road and Meyers Road, more specifically identified as TL 800 on Clackamas County Map 32E 10C (the “Property”); and

WHEREAS, on November 14, 2014, the original property owner Beaver Creek Road, LLC obtained Site Plan and Design Review approval authorizing the construction of a mixed-use development (the “Timberview Development”) on the Property, City File: SP 14-01; and

WHEREAS, utility extensions within Beaver Creek Road, as depicted in the Project Improvement Map attached as Exhibit 1, are necessary to serve the Timberview Development including Condition 38 requiring the construction of a water line from Glen Oak Road to Meyers Road and Condition 37 requiring the payment of a fee-in-lieu to cover a portion of the sanitary sewer extension cost; and

WHEREAS, a sanitary sewer extension was constructed by the City under project #CI 16-013 in Beaver Creek Road to the vicinity of the intersection of Loder Road making further extension of this same line by Pahlisch to the Property feasible; and

WHEREAS, rather than pay the fee-in-lieu, Beaver Creek Road, LLC agreed to build the required sanitary sewer extension, in addition to the conditioned water line from Glen Oak Road to Meyers Road (the “Required Beaver Creek Road Utility Extensions”); and

WHEREAS, the Property was subsequently purchased by Pahlisch in order to proceed with the Timberview Development consistent with the conditions set forth in SP 14-01; and

WHEREAS, Clackamas County has restricted utility line installation work within the Beaver Creek Road right-of-way to between the hours of 8:00 PM and 5:00 AM Monday through Friday; and

WHEREAS, all new utility line installation work must be regularly inspected and given the night limitation, the City desires to retain and direct ACMS Northwest, LLC to complete this required work; and

WHEREAS, Pahlisch has agreed to reimburse the City for the costs associated with the ACMS Northwest, LLC inspection work that must occur outside of normal

working hours (7:00 AM to 4:30 PM Monday through Friday), as necessary to serve the Timberview Development.

NOW, THEREFORE, based on the foregoing recitals, the CITY COMMISSION FOR THE CITY OF OREGON CITY and Pahlisch, hereby agree to the following:

1. **Scope of Work:** The City will, through its consultant ACMS Northwest, LLC, inspect the Required Beaver Creek Road Utility Extensions to be completed by Pahlisch in substantial conformance with the approved engineering drawings dated 1-13-21 and as shown in Exhibit 2. ACMS Northwest, LLC inspection of the Required Beaver Creek Road Utility Extensions shall be completed at the sole direction of the City and consistent with standard engineering inspection practices.
2. **Share of Costs and Satisfaction:** Pahlisch shall reimburse the City for the costs invoiced by ACMS Northwest LLC for inspecting the Required Beaver Creek Road Utility Extension installation work. The value of this work is identified as an amount not to exceed \$62,400 as shown in Exhibit 3. The City shall provide monthly invoices for services based on a time and material basis. Pahlisch shall remit payment within thirty days from the date appearing on the invoice from the City.
3. **Effective Date, Term and Modification:** This Reimbursement Agreement shall be effective upon signature by both Parties and will terminate one year from the effective date of this Agreement or when construction work is complete and final invoicing accomplished and paid, whichever is later. This Agreement may be modified or terminated sooner than the period described in the preceding sentence only upon a written agreement signed by authorized representatives of both Parties.
4. **Completion of Public Improvements:** The Parties understand that time is of the essence in completing the Required Beaver Creek Road Utility Extension and as a result, shall cause all necessary construction and inspection work to be completed within one year of the effective date of this Agreement.
5. **Satisfaction of Agreement:** Pahlisch' obligation for reimbursement pursuant to this Agreement shall cease upon payment of the Final Invoice provided by the City for ACMS Northwest, LLC services.
6. **Remedies for Breach:** Should either party materially breach this Agreement, the parties reserve all legal and equitable rights available to them to remedy such a breach. The termination or expiration of this Agreement shall not relieve any party of any obligation arising under this Agreement that accrues prior to such expiration or termination.

7. **Controlling Law and Venue for Disputes:** This Agreement is governed by the laws of the State of Oregon, without respect to conflict of laws principles. Any action or suit arising out of or related to this Agreement shall be filed in the Circuit Court for the State of Oregon in Clackamas County. The parties consent to the personal jurisdiction of that court.

8. **Entire Agreement:** The City and Pahlisch acknowledge and agree that no promises or representations have been made which do not appear written herein and that this Agreement contains the entire understanding of the parties as to the subject matter contained in this Agreement.

9. **Severability Clause:** If any term, provision, covenant, condition or portion of this Agreement is held to be illegal, invalid, void, voidable or unenforceable, the remainder of the provisions shall remain in full force and effect to the maximum extent permitted by law.

10. **Assignment:** Pahlisch may not assign all or any portion of its right, interest in or obligations set forth in this Agreement, whether by disposition of its property or otherwise, whether by direct or indirect assignment or transfer, by operation or law or by any stock sale, merger, consolidation or other means in any one or more transactions, without the prior written consent of the City, which consent shall not be unreasonably withheld.

11. **Third-Party Beneficiaries:** Pahlisch and City are the only parties to this Agreement. There are no third-parties, intended or otherwise, which benefit from it.

CITY OF OREGON CITY:

City Manager

Date

Pahlisch Commercial, Inc:

Kevin Kunishige, Project Manager

Date

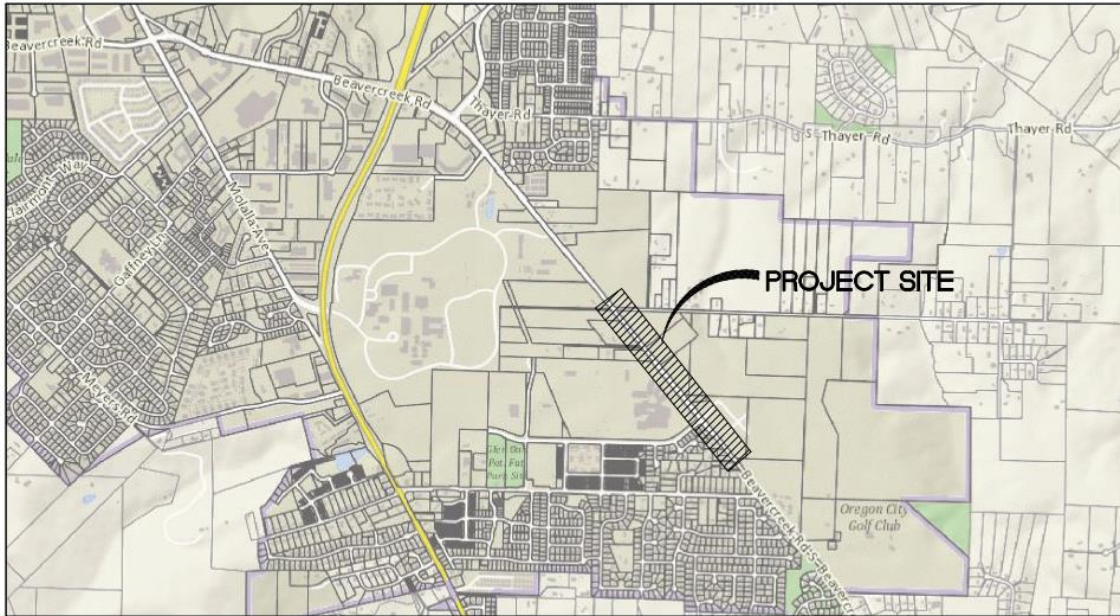
Approved as to form:

City Attorney

Attachments:

- Exhibit 1 – Project Improvements Map
- Exhibit 2 – Scope of Work
- Exhibit 3 – Pahlisch Reimbursement Costs

Exhibit 1 – Project Improvements Map



N.T.S.

Exhibit 2 – Scope of Work

Construction of Sanitary Sewer within Beaver Creek Road as shown on approved Engineering Plans in the images below :

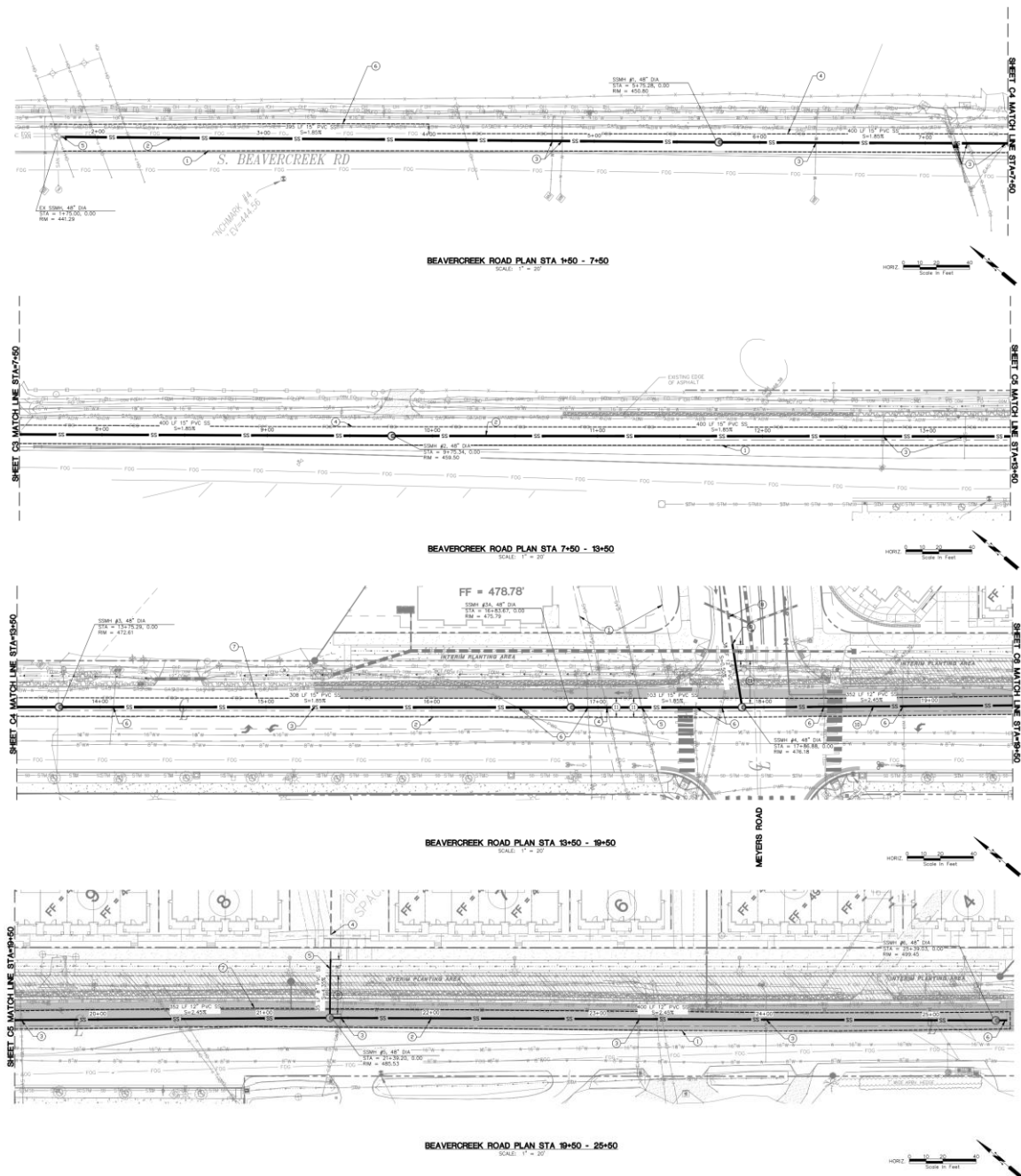


Exhibit 3 – Pahlisch Reimbursement Costs

The following scope of work will be completed by ACMS Northwest, LLC under contract with the City of Oregon City. Pahlisch will reimburse City of Oregon City for costs associated with night inspection by ACMS Northwest, LLC as invoiced on a monthly basis at the listed hourly billing rates not to exceed \$62,400.

Workdays/Shift: Workdays will be Monday through Friday starting at 8:00 p.m. and ending at 6:00 a.m.
 Scope of Work: Night work consisting of approximately 2,800 LF of pipe and seven (7) manholes.

CLASSIFICATION	HOURLY BILL RATE	TOTAL HOURS/DAYS	TOTAL COST
Construction Inspector <i>Regular Hourly Rate</i>	\$ 130.00	480 Estimated Reg Hours	\$ 62,400.00
Construction Inspector <i>Overtime Hourly Rate</i>	\$ 195.00	OT Hours TBD	
Estimated Total:			\$ 62,400.00