

SPONSOR TAX REIMBURSEMENT AGREEMENT

CITY OF WILSONVILLE INDUSTRIAL AREA

This SPONSOR TAX REIMBURSEMENT AGREEMENT (“Agreement”), Project Number RSIS013, effective as of the date the Agreement is fully executed (“Effective Date”), is made by and between the City of Wilsonville, Oregon (“Sponsor”), and the Oregon Business Development Department (“OBDD”), an agency of the State of Oregon.

RECITALS

- A. The Industrial Readiness Program, governed by Oregon Revised Statutes (“ORS”) 285B.625-632 (the “Act”) and Oregon Administrative Rule (“OAR”) Chapter 123, Division 097, establishes and governs the Regionally Significant Industrial Site (“RSIS”) application and approval process.
- B. OBDD has determined Sponsor’s Application received on 24 March 2023 is complete.
- C. OBDD designated the Site under OAR 123-097-0500 as an RSIS, categorized as a Rural Site, and Sponsor as qualified to participate as the Project sponsor in the Program under OAR 123-097-1000 on 19 May 2023.
- D. The Parties desire to enter into this Agreement, as contemplated by the Act, to set forth the terms and conditions for reimbursement of Eligible Site Preparation Costs from the Estimated Incremental Income Tax Revenues generated by Eligible Employers at the Site (“Incremental Tax Revenues”).

NOW THEREFORE, the Parties agree as follows.

SECTION 1 - RECITALS

The Recitals above are true and are incorporated into this Agreement.

SECTION 2 - DEFINED TERMS

Capitalized terms in this Agreement, unless otherwise indicated, have the meanings ascribed to them in ORS 285B.626.

SECTION 3 - TERM

Subject to earlier termination as provided herein, this Agreement is effective as of the Effective Date and continues until Sponsor has been reimbursed for all Site Preparation Costs that are Eligible Site Preparation Costs.

SECTION 4 - SPONSOR OBLIGATIONS

4.0 Project Description

Sponsor is actively developing an industrial park which includes multiple industrial sites (hereinafter referred to as “industrial properties”) comprising 809 acres (561 developable acres) in the City of Wilsonville in Clackamas County, Oregon as depicted in Exhibit A (the “Site”). Sponsor has completed or intends to complete significant capital infrastructure improvements to render the Site ready for industrial development (the “Project”) and, in doing so, Sponsor has incurred or will incur certain costs (“Capital Infrastructure Improvement Costs”). Sponsor’s Project includes, but is not limited to, road improvements, rail improvements, and water, stormwater, and sewer system improvements, and related permitting and fees.

4.1 Maximum Site Preparation Costs

The types and maximum amounts for each category of Site Preparation Costs that may be eligible for reimbursement under this Agreement are those costs described in the attached **Exhibit B** (“Maximum Site Preparation Costs”).

Sponsor, at its discretion, may increase or reduce the Maximum Site Preparation Costs for any individual line item activity up to 100%. However, if the cumulative amount of changes is to exceed 50% of the total for a category (e.g., “Road Extensions”) or if the amount of changes is to exceed 25% of the total Maximum Site Preparation Costs, Sponsor must apply for prior written approval from OBDD. OBDD may authorize such changes to Exhibit B in writing in its sole discretion.

All discretionary and permitted variances in the Maximum Site Preparation Costs must be included in the annual written invoice described below.

4.2 Annual Site Preparation Costs Invoices and OBDD Determination of Eligible Site Preparation Costs

Sponsor shall deliver to OBDD on or before January 1 of each year during the term of this Agreement a written invoice, in a form designated by OBDD, detailing the Site Preparation Costs incurred by Sponsor during the prior tax year. Sponsor shall provide such additional information as reasonably requested by OBDD. OBDD will determine the eligibility of the Site Preparation Costs for tax reimbursement under OAR 123-097-2000 and ORS 285B.627 (“Eligible Site Preparation Costs”). Sponsor agrees not to submit invoices more frequently than once per year.

Eligible Site Preparation Costs will be determined by the Oregon Administrative Rules in effect at the time the costs were incurred.

4.3 Report of Eligible Employers at the Site

Sponsor shall deliver to OBDD on or before January 1 of each year during the term of this Agreement a report of all Eligible Employers conducting a traded sector business at the Site during the prior tax year.

4.4 Report of Employee hours worked at the Site

Upon receipt of the report required in section 4.3, OBDD will contact the Oregon Employment Department (“OED”) for information necessary to determine actual hours worked by and wages paid to all employees of Eligible Employers on the Site. If such information is not available from OED, OBDD will request such information from Sponsor. Sponsor must deliver the information requested to OBDD on or before April 1 of each year during the term of this Agreement.

4.5 Sponsor Responsibilities

Sponsor shall comply with all requirements of OAR 123-097-2200.

4.6 Special Conditions

Total reimbursement of Eligible Site Preparation Costs under Section 5 shall not exceed \$299,240,000.

Work on Eligible Site Preparation Costs must commence by 19 May 2033 (the “Commencement Deadline”), unless OBDD has received prior written notice from Sponsor, and OBDD, at its sole discretion, has agreed to an extension by amendment to this Agreement.

Work on all Eligible Site Preparation Costs must be completed by 19 May 2038 (the “Completion Deadline”), unless OBDD has received prior written notice from Sponsor, and OBDD, at its sole discretion, has agreed to an extension by amendment to this Agreement.

Any extensions to the Commencement Deadline and Completion Deadline are cumulative and the total cannot exceed ten years.

Reimbursement of Sponsor’s Eligible Site Preparation Costs will cease on 19 May 2053, regardless of whether there are remaining unreimbursed Eligible Site Preparation Costs, unless amended in accord with an amendment to extend either or both of the Commencement and Completion Deadlines.

RSIS designation shall be restricted to site 1 as described in Exhibit B.

SECTION 5 - REIMBURSEMENT OF ELIGIBLE SITE PREPARATION COSTS

5.1 Annual Reimbursement of Eligible Site Preparation Costs

On an annual basis and subject to the conditions set forth below and in Section 5.2, OBDD shall reimburse Sponsor’s Eligible Site Preparation Costs, incurred, invoiced, and documented to OBDD’s satisfaction and not previously reimbursed hereunder, in an amount equal to the lesser of (a) fifty percent (50%) of the Incremental Tax Revenues received by OBDD and not previously disbursed hereunder or (b) the amount of Sponsor’s Eligible Site Preparation Costs. OBDD shall pay the Reimbursement Amount to Sponsor after the Department of Revenue’s deposit, pursuant to ORS 285B.630(5), of Incremental Tax Revenues in the Oregon Industrial Site Readiness Program Fund established by ORS 285B.632 (the “Fund”).

Notwithstanding the foregoing, if the Reimbursement Amount together with all other reimbursements and loan disbursements reasonably anticipated under the Act during any year (the “Aggregate Annual Reimbursement”) would exceed \$10 million, OBDD shall reduce the Reimbursement Amount in accordance with OAR 123-097-3000 (3)(b), as necessary to reduce the Aggregate Annual Reimbursement to \$10 million.

Eligible Site Preparation Costs not reimbursed in a particular year remain eligible for reimbursement under this Section in future years until such Eligible Site Preparation Costs have been reimbursed or the reimbursement deadline under Section 4.6 has been reached.

5.2 Conditions Precedent

OBDD’s obligation to reimburse Sponsor under this Section is subject to satisfaction of each of the following conditions:

- (a) The OED has provided all requested information necessary to determine hours worked by all employees on the Site; and if not available from OED, Sponsor has provided all requested information necessary to determine hours worked by all employees on the Site.
- (b) Sponsor has provided all reports and other information required by the Act, the implementing administrative rules, and this Agreement.

- (c) Incremental Tax Revenues are available in the Fund to finance the reimbursement.
- (d) OBDD has received sufficient expenditure authorizations to allow OBDD, in the reasonable exercise of its administrative discretion, to make the reimbursement.
- (e) OBDD has the statutory authority to make the reimbursement.
- (f) No Event of Default as described in Section 7 has occurred and is continuing and no event, act, omission, or circumstance has occurred that would constitute an Event of Default after notice or lapse of time or both.

5.3 Administrative Costs

OBDD may, but is not obligated to, recover costs for its administration of this Agreement. In the event OBDD in its sole discretion determines that such cost recovery is warranted due to a high volume of employers or sites designated under the Program, it will notify Sponsor of such determination. Any such administrative costs will be deducted from Sponsor's annual reimbursement payment but will not exceed one half of one percent (0.5%) of each annual reimbursement.

SECTION 6 - SPONSOR'S REPRESENTATIONS AND WARRANTIES

6.1 Existence and Authority

Sponsor is a county validly existing under the laws of Oregon with full power and authority to transact the business in which it is engaged and full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.

6.2 Binding Obligation

This Agreement has been duly executed and delivered by Sponsor and constitutes the legal, valid, and binding obligation of Sponsor, enforceable in accordance with its terms.

6.3 Approvals

Sponsor will obtain any required authorization, consent, license, approval of, filing or registration with, or notification to any governmental body or regulatory or supervisory authority that is required for the execution, delivery, or performance by Sponsor of this Agreement.

SECTION 7 - TERMINATION; EVENTS OF DEFAULT; REMEDIES

7.1 Mutual Termination

This Agreement may be terminated by mutual written consent of the parties.

7.2 Termination by OBDD

OBDD may terminate this Agreement effective upon written notice to Sponsor, or at such later date as may be established by OBDD in such notice, under any of the following circumstances: (a) OBDD fails to receive sufficient appropriations or other expenditure authorizations to allow OBDD, in the reasonable exercise of its administrative discretion, to continue making reimbursements under this Agreement; (b) there is a change in applicable laws and rules so that the activities funded by this Agreement are no longer eligible for funding; or (c) upon an Event of Default.

7.3 Events of Default

Sponsor shall be in default under this Agreement upon the occurrence of any of the following events (“Events of Default”):

- (a) Other than as set forth in paragraphs (b) through (e) below, Sponsor fails to perform or observe any of the terms of this Agreement and the failure continues for thirty (30) days after Sponsor receives notice, or such longer period as OBDD may authorize in writing in its sole discretion; or
- (b) Any material statement, certification, representation or warranty with respect to current or historical information furnished to OBDD in connection with this Agreement proves to have been incorrect in any material respect when made; or
- (c) Any authorization, consent, license, approval, filing, or registration necessary to enable Sponsor to comply with its obligations fails to be timely issued or granted, or expires or lapses and is not renewed or extended, or is revoked, withdrawn, withheld or modified so as to materially interfere with such compliance; or
- (d) Sponsor: (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 or any substantial part 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 creditor; (iv) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect); (v) files a petition seeking to take advantage of any other law relating to insolvency, reorganization, winding-up, or composition or adjustment of debts; (vi) 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 federal Bankruptcy Code; or (vii) takes any corporate action for the purpose of effecting any of the foregoing; or
- (e) A proceeding or case is commenced, without the application or consent of Sponsor, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Sponsor; (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Sponsor or of all or any substantial part of its assets; or (iii) similar relief in respect to Sponsor under any law relating to 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 Sponsor is entered in an involuntary case under the federal Bankruptcy Code.

7.4 Remedies

In addition to its right to terminate this Agreement under Section 7.2, upon an Event of Default OBDD shall have any other right or remedy available at law or in equity.

SECTION 8 - MISCELLANEOUS

8.1 Amendments, Waivers

This Agreement may not be amended without the prior written consent of OBDD (and when required, the Oregon Department of Justice) and Sponsor. 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.

8.2 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.

8.3 Entire Agreement

This Agreement (including any attachments hereto which are by this reference incorporated herein) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements, or representations, oral or written, regarding this Contract. Any waiver or consent, if made, will be effective only if in writing signed by the party against whom such waiver or consent is sought to be enforced and is effective only in the specific instance and for the specific purpose given.

8.4 Contributory Liability and Contractor Indemnification

- (1) If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (“Third Party Claim”) against a party (the “Notified Party”) with respect to which the other party may have liability, the Notified Party must promptly notify the other party in writing and deliver a copy of the claim, process, and all legal pleadings related to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. The foregoing provisions are conditions precedent for either party’s liability to the other in regards to the Third Party Claim.

If the parties are jointly liable (or would be if joined in the Third Party Claim), the parties shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable in such proportion as is appropriate to reflect their respective relative fault. The relative fault of the parties shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Each party’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if that party had sole liability in the proceeding. This Section shall survive termination of this Agreement.

- (2) Sponsor shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Sponsor’s contractor or any of the officers, agents, employees or subcontractors of the contractor (“Claims”). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims. This Section shall survive termination of this Agreement.

8.5 No Remedy Exclusive; Waiver; Notice

No remedy available to OBDD 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 Contract shall preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. OBDD is not required to provide any notice in order to exercise any right or remedy.

8.6 No Third Party Beneficiaries

OBDD and Sponsor are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives or provides, or is intended to give or provide, to third persons any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

8.7 Notices and Communication

Except as otherwise expressly provided in this Agreement, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Sponsor or OBDD at the addresses set forth below, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by Sponsor's email system that the notice has been received by Sponsor's email system or 2) Sponsor's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

If to Sponsor: Economic Development Manager
 City of Wilsonville
 29799 SW Town Center Loop E
 Wilsonville, OR 97070

If to OBDD: Deputy Director
 Oregon Business Development Department
 775 Summer Street NE Suite 200
 Salem, OR 97301-1280

8.8 Relationship of Parties; Successors and Assigns

- (1) The parties agree that their relationship is that of independent contracting parties and that Sponsor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
- (2) Nothing in this Contract 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.
- (3) This Contract will be binding upon and inure to the benefit of OBDD, Sponsor, and their respective successors and permitted assigns.
- (4) Sponsor may not assign or transfer any of its rights or obligations or any interest in this Contract without the prior written consent of OBDD. OBDD may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Sponsor shall pay, or cause to be paid to OBDD, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of OBDD's Counsel. Any approved assignment is not to be construed as creating any obligation of OBDD beyond those in this Contract, nor does assignment relieve Sponsor of any of its duties or obligations under this Contract.
- (5) Sponsor hereby approves and consents to any assignment, sale or transfer of this Contract that OBDD deems to be necessary.

8.9 Governing Law; Venue

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 of Oregon'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.

8.10 Severability

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision.

8.11 Attorneys' Fees and Other Expenses

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to OBDD by its attorneys.

8.12 Survival

All provisions of this Agreement that by their terms are intended to survive shall survive termination of this Agreement.

8.13 Titles and Subtitles

The titles in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision of this Agreement.

By their signatures below, the parties acknowledge they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

SIGNATURE PAGE FOLLOWS



STATE OF OREGON
acting by and through its
Oregon Business Development Department



CITY OF WILSONVILLE

By: _____
Chris Cummings, Deputy Director

Date: _____

By: Julie Fitzgerald
The Honorable Julie Fitzgerald, Mayor

Date: 6/19/2023

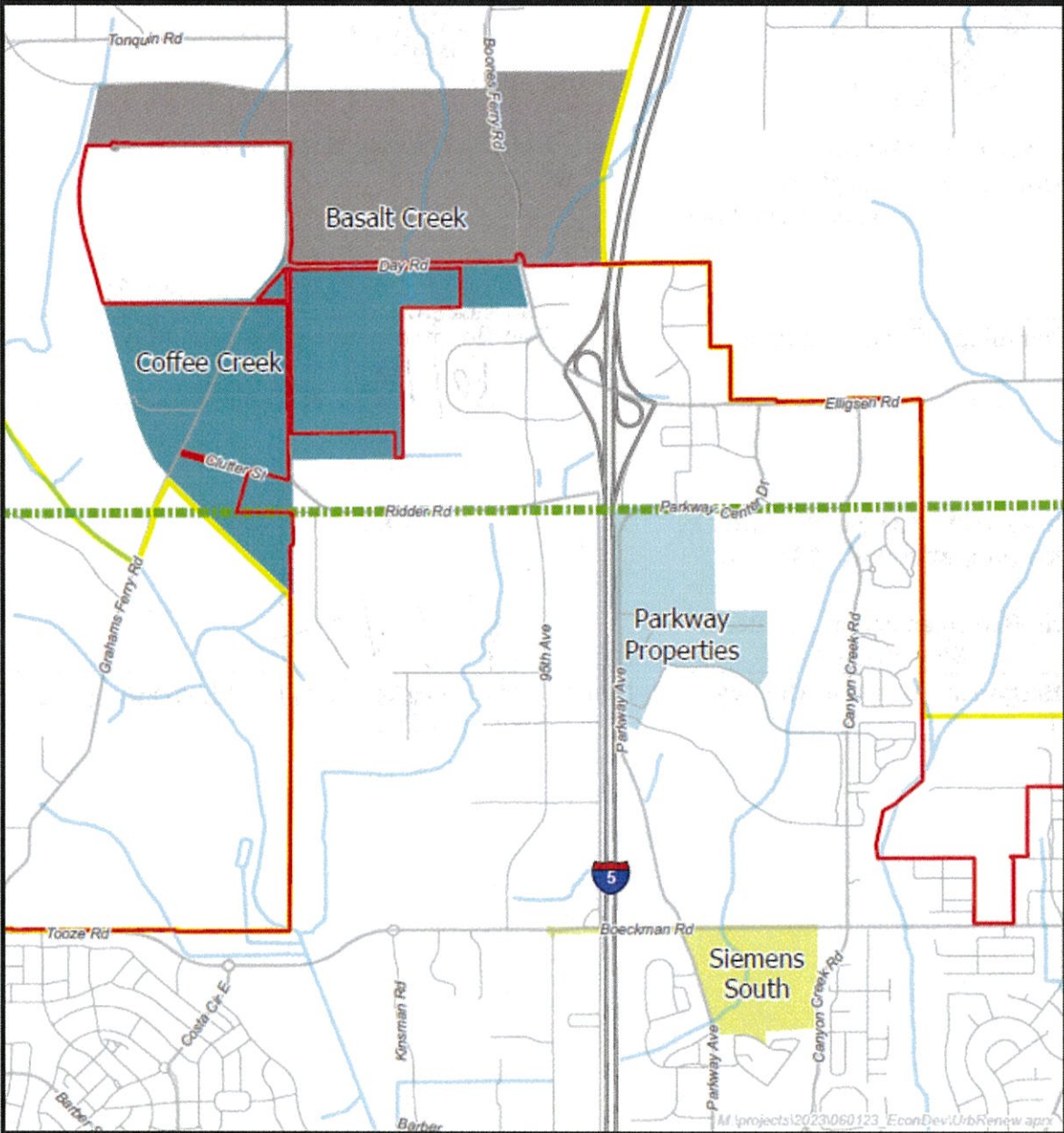
**APPROVED AS TO LEGAL SUFFICIENCY IN
ACCORDANCE WITH ORS 291.047:**

/s/ David Berryman per email dated 26
May 2023
By: _____
David Berryman, Assistant Attorney
General

LEGAL REVIEW:

By: A. Little
Name: Amanda Guile-Hinman
Sponsor's Counsel

EXHIBIT A - THE "SITE"



The City of Wilsonville, Oregon
Clackamas and Washington Counties



Wilsonville Boundaries

- Wilsonville City Limits
- County Boundary
- UGB

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EXHIBIT B - MAXIMUM SITE PREPARATION COSTS

<i>Investment Activity</i>	<i>Total Investment</i>	<i>Comment</i>
Roads	\$241,770,000	Across four industrial properties
Stormwater	\$18,610,000	Across two industrial properties
Sewer	\$17,800,000	Across two industrial properties
Water	\$17,800,000	One industrial property
Fees/Permitting/Misc.	\$3,260,000	Across all industrial properties
Total Investment	\$299,240,000	Totals have been rounded to account for fluctuation in costs

