

ORDINANCE NO. 19-1017

AN ORDINANCE OF THE CITY OF OREGON CITY AMENDING ORDINANCE 08-1003, A DEVELOPMENT AGREEMENT WITH JOHN JONES CONSTRUCTION, INC., PURSUANT TO ORS 94.504 TO 94.528, AS AMENDED BY ORDINANCE 09-1003

WHEREAS, on March 19, 2008, Ordinance 08-1003 approved a Development Agreement between The City of Oregon City (the "City") and John Jones Construction, Inc. ("Jones"), pursuant to the provisions of ORS 94.504 to 94.528, to mutually accomplish the two goals of a 4-lot residential subdivision ("Wild Horse") for Jones and a sub-regional stormwater facility (the "facility") for the City whereby Jones would construct the facility at the northeast corner of Maplelane Road and Thayer Road to serve 442 homes (which includes an additional 438 homes of capacity over the 4 lots that the City could require Jones to undertake) in five existing or future developments in a single stormwater management facility, thereby saving the City stormwater funding due to economies of scale; and

WHEREAS, the City agreed to provide reimbursement to Jones from future connections for the construction of the facility in excess of the size and capacity needed to serve Jones's 4-lot subdivision; and

WHEREAS, on December 2, 2009, Ordinance 09-1003 approved an amendment to the Development Agreement to accept the facility that Jones constructed, set the final costs of the facility at \$1,169,334.84 (resulting in a per lot cost of \$2,645.55 for the 442 current and future lots, with this amount to be reimbursed to Jones to the extent these lots were issued a building permit within the life of the agreement), and extend the agreement and the time period for repayment of the cost to ten (10) years from the Amendment date; and

WHEREAS, the Development Agreement, as amended, is scheduled to expire on December 2, 2019; and

WHEREAS, there exist additional potentially developable lots for which, if the Development Agreement were in effect, Jones would continue to be reimbursed to the extent the City collects the per lot cost of \$2,645.55 when those lots are issued a building permit; and

WHEREAS, a longer period for the Development Agreement is requested so that Jones can receive additional reimbursement for construction of the facility; and

WHEREAS, pursuant to ORS 94.522, a development agreement may be amended by mutual consent of the parties to the agreement, and the governing body of a city shall amend a development agreement by adoption of an ordinance setting forth the amendments to the agreement; and

WHEREAS, pursuant to ORS 94.504(8)(a), the maximum duration of a development agreement entered into with a city is fifteen (15) years; and

WHEREAS, March 19, 2023 is fifteen (15) years from the date the Development Agreement was executed and the maximum it can be extended, and Jones would like to extend for a longer period; and

WHEREAS, extending the time period for reimbursement to a date beyond March 19, 2023 would require the execution of a new agreement that would require both parties to provide consideration; and

WHEREAS, the City and Jones desire to enter into a new development agreement, whereby Jones would provide consideration in exchange for the City extending the time period for reimbursement beyond the existing statutory maximum; and

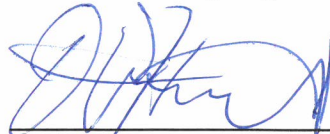
WHEREAS, the City and Jones desire to amend the Development Agreement, as previously amended, by extending the time period for reimbursement of the cost to December 31, 2020, to allow the City and Jones adequate time to enter into a new development agreement.

NOW, THEREFORE, OREGON CITY ORDAINS AS FOLLOWS:

Section 1. Ordinance 08-1003, as amended by Ordinance 09-1003, remains as approved except for the amendment as outlined in Attachment 1.

Section 2. The amendment at Attachment 1 is approved. The amendment extends the agreement term to December 31, 2020.

Read for the first time at a regular meeting of the City Commission held on the 4th day of December 2019, and the City Commission finally enacted the foregoing ordinance this 18th day of December 2019.



DAN HOLLADAY, Mayor

Attested to this 18th day of December 2019,



Kattie Riggs, City Recorder

Approved as to legal sufficiency:



City Attorney

DEVELOPMENT AGREEMENT AMENDMENT

This AGREEMENT is made by and between the CITY OF OREGON CITY, an Oregon municipal corporation, (the "City") and JOHN JONES CONSTRUCTION, INC., an Oregon Corporation ("Jones") this 18th day of December 2019.

WHEREAS, the City and Jones agreed to and entered into a Development Agreement on March 19, 2008 (Exhibit 1) for a zone change (Planning File No. ZC 07-06) for the Jones property (Tax Lot 3400) to R-6; a 4-lot residential subdivision ("Wild Horse") (Planning File No. TP 07-09, and revised Conditions of Approval) on the City Property (Tax Lot 3200); a Water Resource Exemption (Planning File No. WR 07-26); and a sub-regional stormwater facility; and

WHEREAS, the City and Jones amended the Development Agreement on December 2, 2009 (Exhibit 2) to accept the facility that Jones constructed, set the final costs of the facility at \$1,169,334.84 (resulting in a per lot cost of \$2,645.55 for 442 current and future lots, with this amount to be reimbursed to Jones to the extent these lots were issued a building permit within the life of the agreement), and extend the agreement and the time period for reimbursement of the cost to ten (10) years from the amendment date; and

WHEREAS, the Development Agreement, as amended, is scheduled to expire on December 2, 2019; and

WHEREAS, there exist additional potentially developable lots for which, if the Development Agreement were in effect, Jones would continue to be reimbursed to the extent the City collects the per lot cost of \$2,645.55 when those lots are issued a building permit; and

WHEREAS, the City and Jones desire to amend the Development Agreement by extending the time period for reimbursement of the cost to December 31, 2020; and

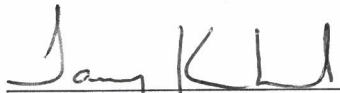
WHEREAS, the Oregon City Commission duly noticed and held a public hearing on the proposed Development Agreement amendment on December 4, 2019, at which time the City Commission accepted public testimony on the proposed Development Agreement amendment; and

WHEREAS, at the end of the public hearing, the City Commission voted to approve the Development Agreement amendment as adopted by City Ordinance 19-1017.

NOW, THEREFORE, based on the foregoing recitals, the City and Jones, hereby agree to the following:

1. **Effective Date, Term and Modification:** This Development Agreement amendment shall be effective upon signature by both parties and shall extend the agreement and the time period for reimbursement of the cost to December 31, 2020. This Development Agreement amendment may be modified or terminated sooner only upon the written agreement signed by the authorized representatives of both parties.
2. All other terms of the Development Agreement, as previously amended, are unchanged by this amendment.

CITY OF OREGON CITY:

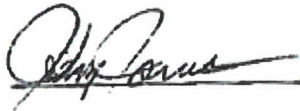


Tony Konkol, City Manager

12-23-19

Date

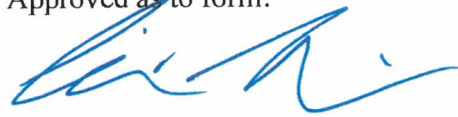
John Jones Construction, Inc.:



11-25-19

Date

Approved as to form:



City Attorney

Attachments:

Exhibit 1 – Development Agreement, March 19, 2008

Exhibit 2 – Amendment 1 to the Development Agreement, December 2, 2009

98
After Recording Return To:
City Recorder: Nancy Ide
City of Oregon City
P.O. Box 3040
Oregon City, OR 97045

Clackamas County Official Records
Sherry Hall, County Clerk

2008-029736



\$71.00

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\$45.00 \$18.00 \$10.00

DEVELOPMENT AGREEMENT

This AGREEMENT is made by and between the CITY OF OREGON CITY, an Oregon municipal corporation, (the "City") and JOHN JONES CONSTRUCTION, INC., an Oregon Corporation ("Jones") this 19th day of March 2008.

WHEREAS, Jones owns approximately 41,169 square feet of real property located at 14453 Thayer Road, more specifically identified as TL 3400 on Clackamas County Map 3-2E-4CD (the "Jones Property"), zoned by the City as R-10 (Single-Family Residential); and

WHEREAS, the City owns a stormwater facility of approximately 19,948 square feet located at 18453 Elder Road, more specifically identified as TL 3200 on Clackamas County Map 3-2E-4CD (the "City Property"), zoned by the City as R-6 (Single-Family Residential); and

WHEREAS, the City desires to construct a sub-regional stormwater facility in the Thayer Road/Maplelane Road intersection area to serve over four hundred homes in five existing or future developments in a single stormwater management facility; thereby saving stormwater funding due to economies of scale; and

WHEREAS, the City Commission approved Resolution 08-01 to include this sub-regional stormwater facility in the Capital Facilities Improvements Plan on February 6, 2008; and

WHEREAS, the City initiated discussions in 2006 with Jones regarding the potential use of TL 3400 for a sub-regional stormwater facility prior to Jones owning said property; subsequently Jones purchased TL 3400, included it in the annexation Planning File AN 06-04, and received City and voter annexation approval in the November 2006 election; and

WHEREAS, the City Planning Commission recommended approval of a zone change (Planning File No. ZC 07-06) for the Jones property (Tax Lot 3400) to R-6; a 4-lot residential subdivision (Planning File No. TP 07-09, Staff Report at Exhibit 1 and revised Conditions of Approval at Exhibit 2) on the City Property (Tax Lot 3200); and a Water Resource Exemption (Planning File No. WR07-26) on January 14, 2008 with conditions that require Jones to agree to a zone change, lot line adjustment, dedicate street right-of-way to the City and construct certain public improvements that are larger or with greater capacity than needed to serve Jones's subdivision, and

WHEREAS, the Jones and City properties are adjacent to each other and a Lot Line Adjustment (Planning File No. LL 07-19) has been approved by the Community Development Director to align the two properties as shown on Exhibit 3 to accommodate the desired results of a 4-lot subdivision for Jones and a sub-regional stormwater facility for the City; and

WHEREAS, the Lot Line Adjustment/Partition Plat states that the adjusted Parcel 1 shall be retained by the City and that the adjusted Parcel 2 shall be retained by Jones (Exhibit 4); and

WHEREAS, the City and Jones desire to enter into a development agreement to mutually accomplish the two goals of a 4-lot subdivision and a sub-regional stormwater facility; and

WHEREAS, the City has agreed to provide reimbursement to Jones for the construction of public improvements in excess of the size and capacity needed to serve Jones's subdivision; and

WHEREAS, a statutory development agreement, pursuant to ORS 94.504 to 94.528, is an appropriate mechanism for the City and Jones to enter into an agreement for the land exchange, zone change, lot line adjustment, subdivision approval, the dedication and construction of the needed and over-sized public improvements, and to set forth the terms by which the City will pay for and reimburse Jones for the cost of the pond improvements beyond what is needed to serve Jones's subdivision, provided the improvements comply with minimum City design standards; and

WHEREAS, ORS 271.310 permits a city to exchange property for property of "equal or superior useful value" for public use. ORS 271.350 requires the city to appraise both properties prior to the exchange. ORS 271.340 requires the property accepted by the public body to be not less than the value of the property relinquished; and

WHEREAS, the City commissioned an appraisal through Hanna, McEldowney & Associates (HMA) to appraise both properties. HMA's appraisal report (Exhibit 5) dated October 15, 2007 is presented and incorporated herein by this reference; and

WHEREAS, the HMA appraisal report certifies that the City's current stormwater pond property (Tax Lot 3200) is currently appraised at \$225,000 before the trade and lot line adjustment and the future City property (Tax Lot 3400) is currently appraised at \$300,000 after the trade but before the lot line adjustment; and

WHEREAS, under the proposed exchange, the City's land value of \$300,000 after the trade is more than the City's land value of \$225,000 prior to the trade and thus meets the requirements of ORS 271.340; and

WHEREAS, the City's City Commission duly noticed and held a public hearing on the proposed development agreement on March 5, 2008, at which time the City Commission accepted public testimony on the proposed development agreement; and

WHEREAS, at the end of the public hearing, the City Commission voted to approve the development agreement as adopted by City Ordinance 08-1003.

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

1. **Subdivision Approval (TP 07-09)**: The CITY hereby approves the zone change (Planning File No. ZC 07-06) and 4-lot subdivision application presented by Jones (City

Planning File No. TP 07-09) as reflected in the ZC07-06/TP 07-09 Staff Report and Notice of Decision, attached to this Development Agreement as Exhibit 1, and incorporated herein by this reference (the "Subdivision Approval" or the "Development"). Both parties agree to be bound by and to implement the terms and conditions of the Subdivision Approval, attached as Exhibit 1 and incorporated herein by this reference, except as those terms and conditions are specifically modified and clarified by this Development Agreement.

2. **Maplelane Sub-regional Stormwater Facility (MSSF):** The MSSF improvements including those street improvements detailed in paragraph 3 shall be paid for on an individual lot basis. The City requires the MSSF to serve the sub-regional area for at least 442 lots (442 lots shall be the "basis" for all calculations as detailed in the Cost Share Analysis - Exhibit 6). The Jones' subdivision only requires a stormwater facility sized for four lots. The estimated additional 438-home capacity is in excess of what the City can require Jones to undertake. Jones has provided an Engineer's Estimate (Exhibit 7) for the estimated construction costs of the stormwater facility improvements totaling \$631,149 (\$725,822 with 15% contingencies). Exhibits 7 and 8 detail construction cost distribution based on this Engineer's Estimate and the City's interest calculation sheet that shows an interest rate of 5.6% (1.5% over the Local Government Investment Pool rate). Once construction is completed and final costs are obtained, both parties agree to amend this Development Agreement to clarify final cost distribution through the City Commission. The current estimated per lot cost for the MSSF with interest is \$687,752 (\$790,738) / 442 lots = \$1,556 (\$1,789).

As building permits are issued for homes in this 4-lot subdivision, the CITY shall collect the then-applicable stormwater System Development Charge (SDC) and MSSF fee from the building permit applicant, and issue to Jones a check for up to a total of \$6,224 (\$7,156) except as otherwise determined through paragraph 7 (see Exhibit 9 - Schedule of Charges based on Estimated Costs). Since these fees collected by the CITY for the four buildable lots in this Development are insufficient to pay the total facility costs, the CITY shall repay Jones in two ways. First, the City will reimburse Jones \$136,928 (\$157,432) except as otherwise determined through paragraph 7 (see Exhibit 9 - Schedule of Charges based on Estimated Costs) for the 88 existing homes (Walnut Grove I and II) already connected to the existing pond at the time of City acceptance of the MSSF. Second, the City shall collect stormwater fee-in-lieu-of payments from the other new homes in the drainage basin flowing into the new stormwater facility and pay these fees to Jones not less than quarterly upon receipt of the fees with a total payment not to exceed \$544,600 (\$626,150) except as otherwise determined through paragraph 7.

3. **Thayer and Maplelane Road Construction:** Jones shall construct full Collector and Minor Arterial Street improvements for Thayer and Maplelane Roads, respectively, across the new pond lot frontages as part of the stormwater facility improvements.

- a. Jones shall construct Thayer Road with the following improvements: Centerline monument boxes, Curb return radii and curb (handicap) ramps are required. The improved street portions that the applicant is required to provide includes, but is not to be limited to, base rock, paved half-street width of 23 feet (6-foot half of a turn lane, 11-foot travel lane and 6-foot bike lane), curb, gutter, 6-foot concrete sidewalk, 5-foot planter strip with street trees, dual ADA ramps at the corner, city utilities (water, sanitary and storm drainage facilities), traffic control devices and street lights. All street

improvements shall be in compliance with the CITY'S municipal code, street standards, and its Transportation System Plan.

- b. Jones shall construct Maplelane Road with the following improvements: Centerline monument boxes, Curb return radii and curb (handicap) ramps are required. The improved street portions that the applicant is required to provide includes, but is not to be limited to, base rock, paved half-street width of 32 feet (6-foot half of a turning lane, 12-foot travel lane, 6-foot bike lane, and a 8-foot parking space), curb, gutter, 7-foot concrete sidewalk, 5-foot planter strip with street trees, city utilities (water, sanitary and storm drainage facilities), traffic control devices and street lights. All street improvements shall be in compliance with the CITY'S municipal code, street standards, and its Transportation System Plan.

4. **Construction Schedule:** The stormwater and water quality facility and street improvements (known as Stormwater Facility improvements) as a proportional share shall be included as a condition of the four-lot subdivision. These improvements shall be completed and accepted by the City prior to final plat approval. The stormwater facility improvements construction shall commence within 30 days of the agreement approval or design approval, whichever is later, unless otherwise approved by the City Engineer due to weather conditions, and be completed within two years from the date of this agreement.

5. **Fees, Charges and SDCs:** The CITY and Jones agree that no other dedications, SDCs, assessments and improvement costs, other than what is set out in Exhibit 8 as modified by future mutual agreement addenda to set the final costs, will be imposed on or exacted against Jones or its successors or assigns with respect to the Property for final plat approval or building permits. The parties agree that this agreement shall not affect property taxes against any part of the Jones' Development.

6. **City Construction Plan Review:** The CITY shall use best efforts to review and provide comments to Jones on their construction plans, tree survey and any review applications within 30 days of submission of those applications.

7. **Agreement to be Adopted by Ordinance:** This Agreement shall be adopted by the CITY as a Development Agreement under ORS Chapter 94 and an Ordinance and, upon adoption, will serve as the Land Use Approval of the preliminary subdivision plan for 4 lots of this Development. The subdivision approval will consist of the findings and conclusions contained in the Approval and conditions attached as Exhibit 1 & 2 as modified and clarified in this Agreement. The subsequent final cost amendment to this agreement shall also be adopted by the CITY as a Development Agreement amendment and an Ordinance.

8. **Effective Date, Term and Modification:** This Development Agreement shall be effective upon signature by both parties and shall have a term of two years from the effective date. This Development Agreement may be modified or terminated sooner than two years only upon the written agreement signed by the authorized representatives of both parties. Subsequent Development Agreement amendments for the final cost shall reset the term as agreed upon by the two parties.

9. **City Land Division Requirements Control:** Review of the requirements set out in the subdivision approval (Exhibit 1) shall occur as provided in OCMC Title 16.

10. **Attorneys Fees:** In the event legal action is brought by the city or Jones against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

11. **Completion of Public Improvements:** Construction of the public improvements shall be completed within two years of the effective date of this Agreement.

12. **City Financial Obligations Contingent on Budget Process:** All City obligations to expend moneys under this Agreement shall be contingent upon future appropriations as part of the local budget process.

13. **Dispute Resolution Process:** If a dispute arises between or among the parties regarding breach of this Agreement or interpretation of any term thereof, those parties shall first attempt to resolve the dispute by negotiation as set forth below. If negotiation fails to resolve the dispute, the parties agree to submit the matter to non-binding mediation in accordance with Step 2 below. Lastly, the matter shall be submitted to arbitration in accordance with Step 3 below.

Step 1 – Negotiation. The persons designated by each of the disputing parties will negotiate on behalf of the entity they represent. The issues of the dispute shall be reduced to writing and each negotiator shall then meet and attempt to resolve the issue. If the dispute is resolved with this step, there shall be a written determination of such resolution signed by each representative, which shall be binding upon the parties.

Step 2 – Mediation. If the dispute cannot be resolved within 30 days of initiation of Step 1, a party shall request in writing that the matter be submitted to non-binding mediation. The parties shall use good-faith efforts to agree on a mediator. If they cannot agree, the parties shall request a list of five mediators from an entity or firm providing mediation services. The parties will attempt mutual agreement on a mediator from the list provided, but if they cannot agree, each party shall select one name and the two mediators shall jointly select a third mediator. The dispute shall be heard by the third mediator and any common costs of mediation shall be borne equally by the parties (notwithstanding any other provision of this Agreement), who shall each bear their own costs and fees therefor. If the issue is resolved at this Step 2, then a written determination of such resolution shall be signed by each representative and shall be binding upon the parties.

Step 3 – Arbitration. After exhaustion of Steps 1 and 2 above, the matter shall be settled by binding arbitration in Clackamas County, Oregon, in accordance with the rules of the Arbitration Service of Portland (ASP). The arbitration shall be before a single arbitrator; nothing shall

prevent the parties from mutually selecting an arbitrator or panel thereof who is not part of the ASP panel and agreeing upon arbitration rules and procedures. The cost of arbitration shall be shared equally. The arbitration shall be held within 60 days of selection of the arbitrator unless otherwise agreed to by the parties. The decision shall be issued within 30 days of arbitration. The arbitration award may be recorded as a judgment. Notwithstanding any other provision of this Agreement, the costs, fees and expenses for arbitration shall be borne equally by the parties.

15. **Remedies for Breach:** Should either party breach this Agreement, remedies available under Oregon law for breach of contract are available to the parties, including damages and injunctive relief.

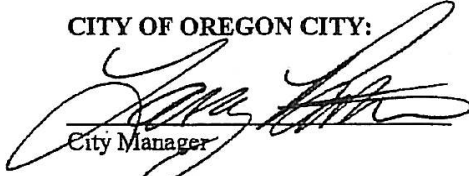
16. **Controlling Law and Venue for Disputes:** This Agreement shall be deemed to have been entered into in the State of Oregon and shall be construed and interpreted in accordance with the laws of Oregon. Any litigation or proceedings arising out of or connected with this Agreement shall be heard and decided in Oregon Circuit Court for Clackamas County.

17. **Entire Agreement:** The CITY and Jones acknowledge and agree that no promises or representations have been made that do not appear written herein and that this Agreement contains the entire agreement of the parties as to this Agreement.

18. **Severability Clause:** The parties to this Agreement agree that 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 as a separate contract and shall in no way be affected, impaired or invalidated.

19. **Assignment:** Jones may not assign all or any portion of its right and interest in and to this Development Agreement, whether by disposition of its property or otherwise, whether by direct or indirect assignment or transfer, by operation of 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.

CITY OF OREGON CITY:

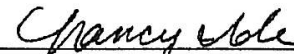

City Manager

3/31/08
Date


State of Oregon
County of Clackamas

The foregoing instrument was acknowledged before me on this 31st day of March, 2008, by Larry Patterson as City Manager of the City of Oregon City, on behalf of said City.




Notary Public for Oregon
My Commission expires: 12-01-09

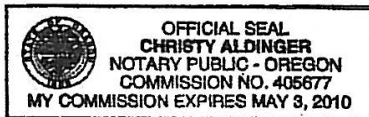
John Jones Construction, Inc.:

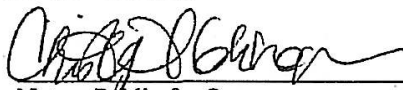


3-26-08
Date

State of Oregon
County of Clackamas

The foregoing instrument was acknowledged before me on this 26th day of March, 2008, by John Jones as an authorized member of John Jones Construction, Inc..




Notary Public for Oregon
My Commission expires: May 3, 2010

DEVELOPMENT AGREEMENT AMENDMENT

This AGREEMENT is made by and between the CITY OF OREGON CITY, an Oregon municipal corporation, (the "City") and JOHN JONES CONSTRUCTION, INC., an Oregon Corporation ("Jones") this 2nd day of December 2009.

WHEREAS, Jones and the City agreed to and entered into a Development Agreement on March 19, 2008 (Exhibit 1) for a zone change (Planning File No. ZC 07-06) for the Jones property (Tax Lot 3400) to R-6; a 4-lot residential subdivision ("Wild Horse") (Planning File No. TP 07-09, and revised Conditions of Approval) on the City Property (Tax Lot 3200); a Water Resource Exemption (Planning File No. WR07-26); and a sub-regional stormwater facility; and

WHEREAS, Jones has completed construction of the sub-regional stormwater facility; and

WHEREAS, the City and Jones agreed in the Development Agreement under section 7 to adopt the final costs as a amendment to the original Development Agreement and ordinance; and

WHEREAS, the City and Jones desire to amend the original development agreement to mutually set the final costs of the sub-regional stormwater facility and set a time period for repayment of the cost; and

WHEREAS, the Oregon City Commission duly noticed and held a public hearing on the proposed development agreement amendment on October 21, 2009, at which time the City Commission accepted public testimony on the proposed development agreement amendment; and

WHEREAS, at the end of the public hearing, the City Commission voted to approve the development agreement as adopted by City Ordinance 09-1003; and

WHEREAS, the final costs for the pond have been determined and the cost per each of the 442 lots that will use the pond needs to be finalized.

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

1. Maplelane Sub-regional Stormwater Facility (MSSF): The MSSF improvements including those street improvements shall be paid for on an individual lot basis. The City requires the MSSF to serve the sub-regional area for at least 442 lots (442 lots shall be the "basis" for all calculations as detailed in the Final Cost Share Analysis - Exhibit 2). The Jones' subdivision only requires a stormwater facility sized for four lots. The estimated additional 438-home capacity is in excess of what the City can require Jones to undertake. Jones has provided an accounting of the final costs (Exhibit 3) for the construction costs of the stormwater facility

improvements totaling:

\$901,685.53	Construction Cost including profit
<u>\$267,649.31</u>	Interest
\$1,169,334.84.	Total

Exhibits 4 and 5 detail construction cost distribution based on the final costs and the City's interest calculation sheet that shows an interest rate of 6.5% (matches Jones construction loan percentage) over the ten (10) year agreement period.

The final per lot cost for the MSSF with interest is \$1,169,334.94 / 442 lots = \$2,645.55.

As building permits are issued for homes in the Wild Horse 4-lot subdivision, the CITY shall collect the then-applicable stormwater System Development Charge (SDC) and MSSF fee from the building permit applicant, and issue to Jones a check for up to a total of \$10,582.20 except as otherwise determined through paragraph 7 (see Exhibit 6 – Schedule of Charges based on Final Costs). Since these fees collected by the CITY for the four buildable lots in this Development are insufficient to pay the total facility costs, the CITY shall repay Jones in two ways. First, the City will reimburse Jones for the 88 existing homes (Walnut Grove I and II) already connected to the existing pond at the time of City acceptance of the MSSF:

\$232,808.40	(88 lots X \$2,645.55/lot)
(\$21,806.88)	Paid amount to Jones on 6/23/08
(\$111,625.00)	Paid amount to Jones on 1/14/09
<u>(\$32,094.57)</u>	Unpaid Technical Plan Check Fee
\$67,281.95	Amount Due to Jones

except as otherwise determined through paragraph 7 (see Exhibit 6 – Schedule of Charges based on Final Costs).

Second, the City shall collect stormwater fee-in-lieu-of payments from the other 350 new homes in the drainage basin flowing into the new stormwater facility to the extent they are issued building permits within the life of this Development Agreement and pay these fees to Jones not less than quarterly upon receipt of the fees with a total payment not to exceed \$925,942.50 except as otherwise determined through paragraph 7.

2. **Fees, Charges and SDCs:** The CITY and Jones agree that no other dedications, SDCs, assessments and improvement costs, other than what is set out in Exhibit 6 will be imposed on or exacted against Jones or its successors or assigns with respect to Wild Horse subdivision for final plat approval or building permits. The parties agree that this agreement shall not affect property taxes against any part of the Wild Horse subdivision.

3. **Agreement Amendment to be Adopted by Ordinance:** This Agreement Amendment shall be adopted by the CITY as a Development Agreement under ORS Chapter 94 and an Ordinance.

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4. **Effective Date, Term and Modification:** This Development Agreement amendment for the final cost shall be effective upon signature by both parties and shall have a term of ten (10) years from the Amendment's effective date. This Development Agreement Amendment may be modified or terminated sooner than ten (10) years only upon the written agreement signed by the authorized representatives of both parties.

5. **Attorneys Fees:** In the event legal action is brought by the city or Jones against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

6. **City Financial Obligations Contingent on Budget Process:** All City obligations to expend moneys under this Agreement shall be contingent upon future appropriations as part of the local budget process.

7. **Dispute Resolution Process:** If a dispute arises between or among the parties regarding breach of this Agreement or interpretation of any term thereof, those parties shall first attempt to resolve the dispute by negotiation as set forth below. If negotiation fails to resolve the dispute, the parties agree to submit the matter to non-binding mediation in accordance with Step 2 below. Lastly, the matter shall be submitted to arbitration in accordance with Step 3 below.

Step 1 – Negotiation. The persons designated by each of the disputing parties will negotiate on behalf of the entity they represent. The issues of the dispute shall be reduced to writing and each negotiator shall then meet and attempt to resolve the issue. If the dispute is resolved with this step, there shall be a written determination of such resolution signed by each representative, which shall be binding upon the parties.

Step 2 – Mediation. If the dispute cannot be resolved within 30 days of initiation of Step 1, a party shall request in writing that the matter be submitted to non-binding mediation. The parties shall use good-faith efforts to agree on a mediator. If they cannot agree, the parties shall request a list of five mediators from an entity or firm providing mediation services. The parties will attempt mutual agreement on a mediator from the list provided, but if they cannot agree, each party shall select one name and the two mediators shall jointly select a third mediator. The dispute shall be heard by the third mediator and any common costs of mediation shall be borne equally by the parties (notwithstanding any other provision of this Agreement), who shall each bear their own costs and fees therefor. If the issue is resolved at this Step 2, then a written determination of such resolution shall be signed by each representative and shall be binding upon the parties.

Step 3 – Arbitration. After exhaustion of Steps 1 and 2 above, the matter shall be settled by binding arbitration in Clackamas County, Oregon, in accordance with the rules of the Arbitration Service of Portland (ASP). The arbitration shall be before a single arbitrator; nothing shall prevent the parties from mutually selecting an arbitrator or panel thereof who is not part of the ASP panel and agreeing upon arbitration rules and procedures. The cost of arbitration shall be shared equally. The arbitration shall be held within 60 days of selection of the arbitrator unless

otherwise agreed to by the parties. The decision shall be issued within 30 days of arbitration. The arbitration award may be recorded as a judgment. Notwithstanding any other provision of this Agreement, the costs, fees and expenses for arbitration shall be borne equally by the parties.

8. **Remedies for Breach:** Should either party breach this Agreement, remedies available under Oregon law for breach of contract are available to the parties, including damages and injunctive relief.

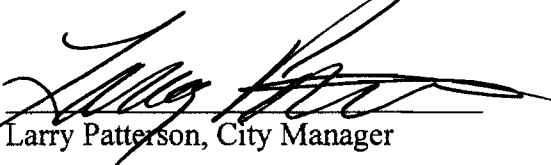
9. **Controlling Law and Venue for Disputes:** This Agreement shall be deemed to have been entered into in the State of Oregon and shall be construed and interpreted in accordance with the laws of Oregon. Any litigation or proceedings arising out of or connected with this Agreement shall be heard and decided in Oregon Circuit Court for Clackamas County.

10. **Entire Agreement:** The CITY and Jones acknowledge and agree that no promises or representations have been made that do not appear written herein and that this Agreement contains the entire agreement of the parties as to this Agreement.

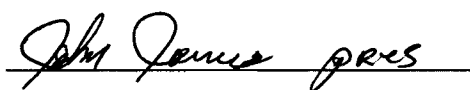
11. **Severability Clause:** The parties to this Agreement agree that if any term, provision, covenant, condition or portion of this Agreement is held to be illegal, invalid, void, voidable or unenforceable, the remainder of the provisions shall remain in full force and effect as a separate contract and shall in no way be affected, impaired or invalidated.

12. **Assignment:** Jones may not assign all or any portion of its right and interest in and to this Development Agreement, whether by disposition of its property or otherwise, whether by direct or indirect assignment or transfer, by operation of 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.


CITY OF OREGON CITY:

 12-02-09
Larry Patterson, City Manager Date

John Jones Construction, Inc.:

 10-14-09
Date

Approved as to form:


City Attorney