

RESOLUTION NO. 1662

A RESOLUTION OF THE CITY OF WILSONVILLE APPROVING AND AUTHORIZING AGREEMENT AMONG INFOCUS CORPORATION, MENTOR GRAPHICS CORP., AND THE CITY OF WILSONVILLE TO CONSTRUCT CERTAIN PARKWAY AVENUE IMPROVEMENTS.

WHEREAS, as part of the Mentor Graphics Corp. ("Mentor") land use approval (89PC12) for its office campus in Wilsonville, Mentor and the City of Wilsonville ("City"), entered into a Development Finance Agreement, ("DFA") for the financing and/or construction of certain infrastructure improvements; and

WHEREAS, Mentor received partition approval with conditions of its corporate headquarters site (99DR52) and has entered into an agreement to sell to InFocus Corporation ("InFocus") an undeveloped portion of the partitioned site; and

WHEREAS, the aforementioned DFA will be satisfied and fulfilled upon the construction of the remaining infrastructure project referred to in the DFA as "a full street improvement on Parkway from Boeckman to the north line of the subject Phase 1 site". (Mentor site prior to partition); and

WHEREAS, Mentor's partition approval has been duly conditioned to ensure satisfaction and fulfillment of the aforementioned improvement to Parkway referenced in the DFA; and

WHEREAS, InFocus desires to expand its corporate headquarters and facilities on the undeveloped, partitioned parcel, which expansion will retain the corporate headquarters of InFocus in Wilsonville, aid the local and state economy and create jobs; and

WHEREAS, InFocus, Mentor and the City desire to enter into an Agreement to finance, design and construct the aforementioned improvement to Parkway, a copy of the Agreement is marked Exhibit A, attached hereto and incorporated herein; the Agreement further defines the

aforementioned improvement to Parkway and refers to the improvement as the "Full Parkway Improvement"; and

WHEREAS, the Full Parkway Improvement is a segment of the Parkway Capital Improvement Project listed in the City's current Five-Year Capital Improvement's Plan and is a qualified improvement subject to street system development charges and credits pursuant to Ordinance No. 386 (CB-0-156-91) enacted June 27, 1991; and

WHEREAS, Mentor has certain street SDC credits in the amount of \$267,243.65 from the Canyon Creek Road improvement which Mentor is willing to have assigned to InFocus and apportioned to the partitioned property InFocus is acquiring; provided, the City shares in the cost of the Full Parkway Improvement in the sum of \$267,243.65 in satisfaction of the SDC credit as a form of reimbursement or refund directly to the Full Parkway Improvement project; and

WHEREAS, Ordinance No. 386 (CB-0-156-91), Art. IX, Sec. 3, authorizes the City to provide a share of the costs by other means of an improvement eligible for SDC credits; the City interprets Ordinance No. 386, Art. IX, Sec. 3 and 7 to allow Mentor's SDC credits to be assigned and apportioned to the partitioned parcel being purchased by InFocus as being property subject to Mentor's original condition for land use approval upon which the credit is based and apportioned, and the Sec. 7's prohibition "for any refund" is not intended to apply to a share of the cost of the design and construction of an eligible improvement such as the Full Parkway Improvement under Sec. 3, but rather is intended to apply to prohibit assignments to obtain cash refunds without any additional construction of eligible improvements occurring; and

WHEREAS, the exemption criteria from competitive bidding are set forth in the Agreement, Exhibit A, and are met to award the design and construction contract to InFocus for the Full Parkway Improvement as set forth in the Agreement, Exhibit A; provided, however, a

performance and payment bond satisfactory to the City in favor of the City is provided by InFocus; and

WHEREAS, given the allowable delay for Mentor's financing of the Parkway Improvement under the DFA and the prospect of further delay, the opportunity for the City to satisfy the outstanding credits of Mentor through application to the Full Parkway Improvement project, the retention of InFocus' corporate headquarters and facilities in Wilsonville and the creation of jobs by the InFocus expansion on the undeveloped Mentor partitioned site, the ability to complete the Full Parkway Improvement segment within the current Five-Year Plan through InFocus' SDC credits from its own development and the Mentor assigned credits to InFocus with its interest in the partitioned parcel as Mentor's successor and the City's ability to satisfy same, and the likely cost savings overall, the City's sharing in the cost of the project in the sum of \$267,243.65 is authorized, reasonable and equitable; and

WHEREAS, the City has previously collected the sum of \$64,913 from developments along this improvement segment of Parkway Avenue for improvements, which sum is to be contributed to this project as agreed to by the City in the DFA.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The above recitals, interpretations and findings are incorporated herein.
2. The Agreement, Exhibit A, is approved and the City Manager is authorized to execute the Agreement on behalf of the City, subject to the following:

2.1 In approving the Agreement, Exhibit A, the City Council, acting as the Local Contract Review Board, exempts the award of the design and construction contract to InFocus for the Full Parkway Improvement as set forth in the Agreement; provided,

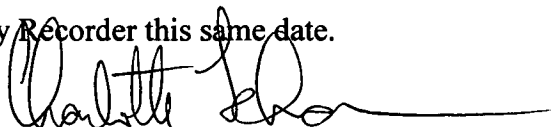
InFocus provides a performance and payment bond for the construction of the Full Parkway Improvement in a form and amount satisfactory to the City's Engineer;

2.2 In approving the Agreement, Exhibit A, the City Council's authorization of the City's share of the design and contract cost is limited to contribution of \$64,913 previously collected and \$267,243.65 in satisfaction of the Mentor's SDC credits as being assigned and apportioned to the partitioned Mentor parcel for InFocus' expansion (total \$332,156.65), and no more.

3. The amounts recited in paragraph 2.2 above in the total of \$332,156.65 shall be paid from the City's SDC Fund when due and payable; and if the SDC Fund shall be insufficient to pay any such sum due and owing, the City Manager shall cause the appropriate resolution to be presented to the Council for approval authorizing the SDC Fund to borrow the necessary amount from such source as may be lawful, reasonable and prudent.

4. The execution of the Agreement, Exhibit A, by all the parties obligating InFocus to construct the Full Parkway Improvement by October 15, 2001, in accordance with the terms of the Agreement, and to provide a performance and payment bond for construction of the Full Parkway Improvement in a form and in an amount satisfactory to City Engineer meets the condition of the Mentor site partition, and the Planning Director or his acting designee may sign off on the partition.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 17th day of July, 2000, and filed with the Wilsonville City Recorder this same date.



CHARLOTTE LEHAN, MAYOR

ATTEST:


SANDRA C. KING, CMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	<u>Yes</u>
Councilor Kirk	<u>Excused</u>
Councilor Helser	<u>Yes</u>
Councilor Barton	<u>Yes</u>
Councilor Holt	<u>Yes</u>



July 13, 2000

HAND DELIVERED

Ms. Arlene Lobel
Mr. Michael E. Kohlhoff
City of Wilsonville
3000 SW Town Center Lp E
Wilsonville, OR 97070

RE: Parkway Avenue Road Improvement Agreement

Dear Mike and Arlene:

Enclosed are two copies of the Parkway Avenue Road Improvement Agreement signed by InFocus Corporation and Mentor Graphics Corporation.

We understand that this agreement will be submitted to City Council on July 17, 2000 for final review, discussion and approval/disapproval processes. Assuming that Council does approve the Parkway Avenue Road Improvement Agreement, we also understand that city staff will be directed to release the Mentor Graphics partition application to the county for final processing.

Thank you for your continuing assistance in working out the details of this agreement.

Sincerely,

A handwritten signature in cursive script that reads "Sharon M. Hayes".

Sharon M. Hayes
Facilities Manager
InFocus Corporation

Enclosures: Parkway Avenue Road Improvement Agreement (2)

AGREEMENT

This Agreement is made by and between Mentor Graphics Corp. ("Mentor"), InFocus ^{Corporation} ~~Systems, Inc.~~ ("InFocus"), and the City of Wilsonville ("City"), and is entered into as the last date of execution. Mentor, InFocus, and City may be referred to herein individually as a "Party," and collectively as the "Parties."

RECITALS

1. Mentor holds fee title to that real property described on Exhibit A hereto (the "Mentor Site"), which lies adjacent to and east of Parkway Avenue.
2. Pursuant to Wilsonville Code ("Code") § 11.040(4) and Council Resolution No. 842, City assesses Street System Development Charges (the "SDCs") that are payable upon receipt of either a building permit applications. The design and construction of the Full Parkway Improvement (defined below) is a segment of the Parkway Avenue Improvement Project on the City's Capital Improvement Plan. Section 1 of Article V of Resolution No. 842 provides that an applicant for a building permit is eligible for credit against the SDCs for constructing a qualified capital improvement, as provided in Ordinance No. CB-0-156-91, at Article IX. Section 3 of Article IX of such Ordinance authorizes the City to provide credits which exceed the SDC charged for the type of improvement being constructed and, further, authorizes the City to provide a share of the cost of such improvement by other means, if the City so chooses. Section 4 of Article IX of such Ordinance further provides that the City Council may also provide reimbursement of the credit from the appropriate SDCs collected in accordance with the payback provisions for extension of services under Wilsonville Code 3.116 and, in conjunction with transportation SDC credits, provides that the extension of the provision of streets and roads and attendant facilities shall be included as being subject to credit reimbursement from transportation system development charges under the reimbursement provisions set forth in Wilsonville Code 3.116. Section 7 of Article IX of such Ordinance also provides that credits provided for under the Ordinance are assignable so long as they apply to the property subject to the original condition for land use approval upon which the credit is based or any partitioned or subdivided parcel or lots of such property to which the credit has been apportioned.
3. Mentor obtained Stage I Master Development Plan approval (City File No. 89PC5) for the Mentor Site which required certain improvements on Parkway. The motion upon which the Planning Commission approved Mentor's conceptual Master Plan with two phases stated that the specific conditions of approval regarding the on-site and off-site improvements were to be determined at Stage II. Thereafter, Mentor obtained Stage II Master Development Plan approval for Phase I (City File No. 89PC12), which approval required was conditioned upon, among other things, construction of "a full-street improvement on Parkway from Boeckman to the north line of the subject Phase I site," as

well as dedication of property interests necessary to complete such construction. (See Condition No. 18.) The full street improvement shall include a 3-lane road with bike lanes, curb, gutter, and sidewalk on each side, with face of curb to face of curb being 48' within a 60' right-of-way. The aforementioned length on Parkway with necessary dedication to complete the construction and the aforementioned description of the full street improvement shall be hereinafter referred to as the Full Parkway Improvement. A further condition (Condition No. 26) provided that Mentor may apply to the City Council for an off-set from development fees, payback benefits for local improvement districts for such construction costs and dedications which provide a benefit to other affected properties or the public.

4. Pursuant to Condition No. 26 of its Stage II approval (89PC12), on July 3, 1989, Mentor and City entered a Development Financing Agreement (the "DFA"). Section 1 of that agreement obligates Mentor to, among other things, provide street improvements on Parkway Avenue. With the mutual understanding that full completion of such improvements may be deferred until a later date, Section 2 of the DFA further requires such improvements either (i) as part of the first portion of development of the Mentor Site, (ii) provide adequate financial assurance to do so in the future, or (iii) include the improvements within an LID and that, upon completion, the City shall accept the improvements as a dedicated public street.
5. Mentor subsequently constructed that portion of the above-described improvements from the Parkway/Boeckman intersection to the main entrance to the Mentor Site (again as depicted on Exhibit A). The remaining portion of above-described improvements (i.e., to Parkway from the main entrance to the north property line of the Mentor Site) have not been constructed.
6. On January 10, 2000, Mentor obtained a City decision approving partition of the Mentor Site into two parcels (City File No. 99DR52. As depicted in Exhibit A of the City's decision, the partition will divide the Mentor Site into Parcel I and Parcel II. Condition (E) of that decision is that "the provisions of the Development Financing Agreement (dated July 3, 1989) . . . shall be carried out so far as they apply to this partition."
7. After receiving City approval of the partition, InFocus purchased from Mentor fee title to Parcel I, the InFocus site.
8. For improvements Mentor made to Canyon Creek North, Mentor holds SDC Credits in the amount of \$267,243.65 (the "Canyon Creek SDC Credits").
9. City has authority to collect money from entities that are not parties to this Agreement for the purpose of constructing the Full Parkway Improvement. Any such money that City has collected or will collect is referred to herein as a Parkway Construction Contribution. City has approved development of property (other than that held by any of the Parties) abutting the Full Parkway Improvement. In lieu of conditioning such approval on construction of some portion of such improvements, City took and now holds \$64,913 for

use toward such construction. As of the date of this Agreement, this \$64,913 is the only Parkway Construction Contribution.

10. Section 3 of the DFA requires that, "in the event that the City receives any funds for the construction of improvements set forth herein. . . , the City shall apply 100 percent of the funds received for the construction of said improvements to the cost of the improvements borne by Mentor net of applicable credit [either] by financial reimbursement to Mentor or direct assumption by the City of the construction obligations as mutually agreed by both parties."
11. City has approved InFocus' request for Stage I and II approval of development of a portion of the InFocus Site (City File No. 00DB10). That development is referred to herein as "InFocus' Phase I Development." Condition No. 17 of that approval requires InFocus to improve Parkway from the Mentor Site's main entrance to the north property line of the InFocus Site (the "Full Parkway Improvement").
12. Mentor has no applications for approval of the use or development of the Mentor Site now pending before the City, nor does Mentor currently have any plans to submit such an application.
13. The Parties wish to complete construction of the Full Parkway Improvement in a manner that fully satisfies the conditions of approval described at Recitals 3, 4, 6, and 10, as well as Mentor's obligations under the DFA, all pursuant to the terms of this Agreement.
14. The Full Parkway Improvement is in compliance of the above recited land use requirements and in contemplation of satisfying conditions of the DFA. A substantial portion of the necessary right-of-way is in InFocus' or Mentor's control. The City's contracting officer has determined the construction of the Full Parkway Improvement by InFocus and its designated contractor is exempt from competitive bidding in that (1) it is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and (2) given the level of private funding and land dedication under this Agreement, this exemption will result in a substantial cost savings to the City. Provided, however, InFocus shall provide the City a performance and payment bond for the construction.

AGREEMENT

1. InFocus' Obligations. InFocus will:
 - A. Timely take all action reasonably necessary to assist the other Parties and each of them, their agents and assigns, in completing their respective obligations under this Agreement.
 - B. Design and construct the Full Parkway Improvement to the City's public works

standards. InFocus shall use reasonable best efforts to complete such construction by October 15, 2001. If InFocus is delayed in any way in progress toward completion of such construction, by any cause outside of InFocus' control, then this completion date may be extended for an amount of time commensurate with such cause. Upon written acceptance of the Parkway Improvements by the City, InFocus has fully performed the obligations set forth in this subsection of the Agreement.

- C. Maintain access to adjacent properties during the construction of the Full Parkway Improvement.
- D. Prior to construction, obtain a performance and payment bond in favor of the City for the construction of the Full Parkway Improvement.

2. Mentor's Obligations. Mentor will:

- A. Timely take all action reasonably necessary to assist the other Parties and each of them, their agents and assigns, in completing their respective obligations under this Agreement.
- B. Convey any property interest held by Mentor that the Parties agree is reasonably necessary to complete the Full Parkway Improvement (including but not limited to right-of-way, slope easements, and/or construction easements).
- C. Provide any information or signatures reasonably necessary to prepare bid documents or procure government approval (including but not limited to permit applications) to construct the Full Parkway Improvement.
- D. Within thirty days of the date on which the Mentor receives full notice that the City has accepted the Full Parkway Improvement, assign in writing to InFocus Mentor's right to receive the full value of:
 - the Canyon Creek SDC Credits; and
 - any Parkway Construction Contributions.
- E. Within thirty days of the date on which the Mentor receives notice that the City has accepted the Full Parkway Improvement, contribute \$95,000 to InFocus for the Full Parkway Improvement as reimbursement for the latter's construction of those improvements.

3. City's Obligations. City will:

- A. Timely take all action reasonably necessary to assist the other Parties and each of them, their agents and assigns, in completing their respective obligations under this Agreement. Such action shall include, but not be limited to:

- expeditious processing of any request for permits or other approvals that InFocus, its agents and assigns, need to construct the Full Parkway Improvement.
- B. Subject to City inspection and InFocus compliance with City street design and public works standards, accept completion of the Full Parkway Improvement. City shall affirmatively acknowledge in writing that such acceptance constitutes full satisfaction with the conditions of permit approval described in Recitals 3, 4, 6, and 10.
- C. Grant InFocus SDC Credits for the total cost of construction of the Full Parkway Improvement as follows:
- 100% of construction costs associated with improvements to the westerly one-half of the street, including 10% of such cost for survey engineering and project administration and less cost for street lighting and miscellaneous electric, fencing, mailboxes, underground utilities, and Parkway Construction Contributions held by City and contributed as set forth in this Agreement. The SDC Credits are currently estimated at \$609,000 (based upon an assumed Full Parkway Improvement cost of 1.265 million) and will be adjusted by the City in accordance with the completed building permit application to be filed by InFocus.
- D. Upon acceptance of the Full Parkway Improvement, reimburse InFocus for the full value of the Canyon Creek SDC Credits (\$267,243.65) as described in recital 8.
- E. In the event City receives any funds for the construction of the Full Parkway Improvement set forth herein or for the acquisition of such real property interests by way of grants, tax increment, or other funding beyond that received normally and customarily by the City, the City shall apply at least 100 percent of the funds received for the construction of said improvements to the cost of the improvements borne by InFocus net of applicable credit. This shall be accomplished either by financial reimbursement to InFocus or direct assumption by the City of the construction obligations as mutually agreed by both parties.
- F. Upon acceptance of the Full Parkway Improvement, remit to InFocus in full any and all the Parkway Construction Contributions held by City, including but not limited to the \$64,913 described in Recital 9.
- G. Accept SDC Credits toward remittance of SDC applicable to development of either the Mentor site or the InFocus Site as set forth in this Agreement. In this regard, City hereby specifically decides that the Mentor Site and the InFocus Site are subject to the original condition for land use approval upon which the SDC

Credits are based, such that Mentor and InFocus may apply any and all such credits to development anywhere on those two sites in accordance with this Agreement.

4. A summary of the above participation in the design and construction of the Full Parkway Improvement by the parties in terms of referenced dollar contributions is as follows:
 - A. The City's cash contribution is limited to \$332,156.65 (\$64,913 + \$267,243.65).
 - B. Mentor's cash contribution is limited to \$95,000.
 - C. Except as set forth in paragraph 4A and B above, InFocus shall pay the cost of the design and construction of the Full Parkway Improvement in full, inclusive of any cost overruns.
 - D. For InFocus' contribution set forth in paragraph 4C above, the City shall allow InFocus SDC Credits as described in paragraph 3(c) against SDCs otherwise owed, which credit is currently estimated at \$609,000.

The items listed in this summary are not intended to waive or replace any obligation of any Party otherwise set forth herein.

5. **Indemnity.** Each Party agrees to indemnify the other Parties and hold them harmless from and against any and all claims of liability arising out of the Party's actions under this Agreement to the extent such claims allege that the Party has either failed to perform as required in the Agreement or performed negligently. InFocus hereby specifically indemnifies Mentor and City against any obligation to pay contractors or suppliers of the Full Parkway Improvement.
6. **Dispute Resolution.** Controversies among the Parties and/or between any two of them shall be resolved, to the extent possible, by informal meetings and discussions in good faith between them. If a dispute cannot be resolved in that manner within five (5) business days of the first such meeting, any party may elect to exercise its right to require mediation of the dispute.

During mediation, the parties agree to negotiate in good faith as to the matter submitted to mediation. In such event, the Party requesting mediation shall appoint a recognized mediator. No mediator shall be an employee, officer, board member, consultant, supplier or customer, or otherwise be affiliated with any of the Parties. The mediator shall be reasonably qualified to act as a mediator with respect to construction contracts. Each Party shall share equally in the out-of-pocket costs for mediation; provided that the mediator shall be empowered to require one Party to pay more than its pro rata share of the expenses if the mediator determines that such Party is not negotiating in good faith in the mediation process. In no instance, however, shall any Party be required to pay attorneys' fees incurred in the mediation by the other Party. The location of the

mediation and specific procedures relating to the mediation shall be determined by the mediator, and each Party agrees to comply with all decisions, directions, instructions and procedures made or established in good faith by the mediator.

If the Parties are unable to resolve a controversy using mediation within fifteen (15) days after commencement thereof, the dispute shall be settled by binding arbitration, and a corresponding judgment may be entered in a court of competent jurisdiction. Arbitration of any dispute may be initiated by any Party by sending a written demand for arbitration to the other Party. This demand will specify the matter in dispute and request the appointment of an arbitrator. The mailing of the demand to the Parties at the address set forth herein will be deemed personal service and accepted by the Parties for any arbitration or proceeding with respect to this Agreement. The arbitrator will be selected from a list provided by the arbitration service selected by the Party initiating arbitration. The arbitration hearing will be conducted in accordance with the procedural rules set forth in the arbitration rules of the arbitration service selected. The situs of the arbitration will be in the Portland-Metropolitan Area or such other place as the Parties agree. The arbitrator shall not be empowered to award punitive or exemplary damages to any Party. The decision of the arbitrator shall be binding on the Parties and may be enforced by any court of competent jurisdiction.

7. Notices. All notices under this Agreement shall be in writing and delivered in person, by facsimile, or by first-class mail to the following:

<u>If to Mentor:</u>	<u>If to InFocus:</u>	<u>If to City:</u>
Attn: General Counsel	Tim Carlson	Michael Kohlhoff, City Attorney
Mentor Graphics Corp.	InFocus Systems, Inc.	City of Wilsonville
8005 SW Boeckman Rd.	27700B SW Parkway Ave.	3000 SW Town Center Lp E
Wilsonville, OR 97070	Wilsonville, OR 97070	Wilsonville, OR 97070


8. Assignment. The Agreement is binding upon each Party, their successors, heirs or assigns including, but not limited to, any successor interest in Exhibit A. The rights and obligations of any Party to this Agreement may be assigned to any other entity without the prior written consent of the other Parties.
9. Attorney Fees. In the event of any suit, action or arbitration concerning the subject matter of the Agreement, the losing party agrees to pay such sum as the trial court, appellate court or arbitrator may adjudge reasonable as attorneys' fees together with all reasonable costs expended therein. In no instance, however, shall any party be required to pay attorneys' fees incurred by the other party in mediation.
10. Integration/Modification. This Agreement represents the entire agreement between the Parties and each of them on the issues described herein and supersedes all prior negotiations, representations, or agreements, including but not limited to the DFA. This Agreement may be amended only by a written document signed by all Parties.

11. Severability. Should any provision of this Agreement at any time be determined by competent government or judicial authority to conflict with any law, ruling or regulation, and be unenforceable, then such provision shall continue in effect only to the extent that it remains valid and the remainder of this Agreement shall nevertheless remain in full force and effect.
12. Authority. Each signatory hereto represents that he or she is authorized to obligate the Party on whose behalf he or she executes this Agreement to perform that Party's obligations hereunder.

Dated: July 13, 2000

MENTOR GRAPHICS CORP.

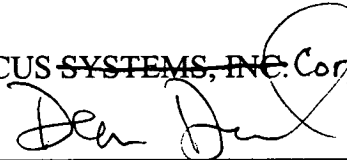
By
Its


LARRY C. GARDNER
Director of Worldwide Facilities

Dated: July 13, 2000

~~INFOCUS SYSTEMS, INC.~~ Corporation


By
Its


Dwyer

Dated: July 17, 2000

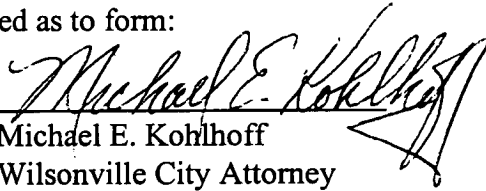
CITY OF WILSONVILLE

By
Its


City Manager

Approved as to form:

By


Michael E. Kohlhoff
Wilsonville City Attorney

City of

WILSONVILLE
in OREGON



30000 SW Town Centre Loop, E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 FAX
(503) 682-0843 TDD

July 18, 2000

Sharon M. Hayes
Facilities Manager
InFocus Corporation
27700B SW Parkway Avenue
Wilsonville, OR 97070

Dear Ms. Hayes:

Please find enclosed two copies of the fully executed agreement between the City of Wilsonville, InFocus Corporation and Mentor Graphics for the Parkway Avenue roadway improvements as well as a copy of the resolution adopted by the City Council at their July 17, 2000 City Council meeting approving and authorizing the agreement.

A letter from Chris Neamtzu, Associate Planner, to Clackamas County, regarding the partition plat is attached also.

Please do not hesitate to contact me if you have any questions. I can be reached at 570-1506.

Sincerely,

A handwritten signature in cursive script that reads "Sandra C. King".

Sandra C. King, CMC
City Recorder

/sck

Enclosures



"Seeking The Community With A Smile"