

Malheur County Development Corporation Board Meeting Minutes

Tuesday, June 7, 2022
11:30 am (Mountain Time)
Conference Call Number: 541-896-1824
Meeting held via telephone

Members Present:

- Grant Kitamura, Board President
- Greg Smith
- Jason Pearson
- Corey Maag
- Kay Riley

Regular Board Meeting Call to Order and Acceptance of Minutes:

Board President Grant Kitamura called the meeting to order at 11:31am. Kitamura referenced minutes of the May 17th and May 24th board meetings. Kay Riley moved to accept the meeting minutes as presented and Jason Pearson offered a second. Minutes for the board meeting held May 17th and May 24th were accepted unanimously.

Kitamura asked Greg Smith for an update. Items discussed were:

- We need to discuss and vote on Anderson Perry's contract amendment. The contract allows us to continue our services with Anderson Perry. Smith noted that a vote will need to be conducted, and asked for any questions or comments from the board.

Kitamura asked Baird about the hourly fees, and if they have changed.

- Baird responded that the hourly fees change yearly based off an audit, so they have increased.

Kitamura followed by asking for an approximate percentage.

- Baird responded that it is approximately a 5% change per year.

Kitamura asked if the estimated fees have changed with this amendment.

- Baird explained that the amendment incorporates fees for the remaining design and construction engineering. Baird also noted that the amendment does not change any agreement terms, rather the timeline, and total expected fees. Lastly, he noted that the fees are well within industry standard, if not below.

Maag asked how the new budget amounts differ from the original budgeted amount.

- Baird said he would have to go look at original figures, but the percentages should be right in line.

Smith commented that we are within budget for what was expected to be paid to Anderson Perry.

Smith continued his update while Baird tracked down budget amounts.

- Smith has decided not to accept the bid for the building. Because only one bid was received, at a much higher amount than anticipated, it was not economically reasonable to accept this bid.

Kitamura commented that the line of credit with the Bank of Eastern Oregon needs to be extended if the project is going to be delayed.

- Smith responded, saying that he has communicated verbally with the folks at the bank. We will need to amend the note to get the date extended. One item to keep in mind is that the interest will have to be paid in full prior to extension of the note.

Kitamura added that turn arounds on reimbursements is very lengthy, between two and six weeks.

- Smith responded that Kitamura is correct, but there is not a lot we can do to expedite things at this point.

Baird came back on the line to answer Maag's earlier question, noting that a budget from late 2018 indicates an engineering budget of about \$2.1 million.

Smith added that Anderson Perry's contract does not only include design engineering, but also the on-site supervision of the construction activities. Smith also asked about the amount of people behind the scenes that are providing work on behalf of Anderson Perry.

- Baird responded that there are around 10-15 people.

Kitamura asked the board for any other questions regarding Anderson Perry's amendment. None were received. Corey Maag moved to approve the amendment. Kay Riley seconded the motion. The motion passed unanimously.

Kitamura continued to discuss the next agenda item, change order number four corresponding with payment application number six for contract one.

- Baird noted that the change order brings the contract to a total of \$8.1 million. The current estimate puts the total contract cost around \$10.5 million, which is around \$500,000 less than original estimations.
- Baird also noted that the contractor believes at this time, they are complete with importing materials to the site.

Kitamura asked for any questions from the board members for Brad. None were received.

Kay Riley moved to approve change order number four and payment number six for contract one. Jason Pearson seconded. The motion passed unanimously.

Kitamura moved to the next agenda item, the estimate from Idaho Power.

- Baird noted that the cost is to bring necessary power into the facility. The agreement states that MCDC will bear the cost up front, but there is a reimbursement clause that allows MCDC to recoup costs from tenants in the future.
 - Smith added that he believes this agreement puts MCDC in a good place with the reimbursement clause.

Kitamura asked for any more questions on the Idaho Power estimate. None were received.

Corey Maag moved to approve payment of the Idaho Power bill. Kay Riley seconded. The motion passed unanimously.

Baird continued to discuss the building materials, and that MCDC will need to be able to unload and store it in August. He believes that we should prep and gravel a portion of the TVRC's parking lot to place the materials on. There will also be a need for a Conex box to put some of the smaller, more easily stolen items into. We could either rent or purchase the Conex box.

- Smith noted that a motion will be needed to approve necessary spending for building security.

Kitamura asked for any other questions regarding necessary security for the building materials. None were received.

Kay Riley moved to have Lindley unload the building, and to procure a Conex box. Jason seconded. The motion passed unanimously.

Baird moved on to discuss the budget. The current goal is to have the total project costs comfortably under \$26 million so that any unforeseen costs do not cause issues. Additional methods for savings are still being explored. One method to save some funds would be to change order contract four's responsibilities into contract one. Originally, contract four was a lot larger, but as budget challenges continue, this contract has been trimmed significantly. Also, contract one required a crusher to be moved in and placed at the gravel pit just south of the site. This crusher could be used to produce the rock needed for the roads, most likely at a cost lower than any other supply.

Baird also noted another potential savings would be to have the City of Nyssa bring the water line all the way to the facility, rather than to the edge of the property.

Maag asked what the time period would be to bid out contract four.

- Baird noted that it would take about two months. One thing that we could do to determine whether this is the best option would be to request quotes from local suppliers regarding their cost to get the material to the site. Maag responded that he would encourage doing the research.

Kitamura moved on to the agenda item for the Froerer Agreement.

- Smith started by providing a refresher on how the Froerer Agreement was reached, and this his understanding is that the Froerer's are looking to remove the portion of the agreement commonly referred to as the "gag" order.
- Robin Froerer started by noting that she wants to discuss the amount of funds that they are expecting to receive, as well as the removal of the "gag" order.
- Kitamura noted that he does not feel comfortable amending an agreement of this nature, and that he would like to bring in legal counsel for this issue.
- Smith added that the amount of funds received is a conversation that we need to sit down and discuss.

- Pearson added that he recalls a meeting in the past where the “gag” order issue was raised, where a decision was made to not amend the agreement.

Kitamura asked for any other business to come before the board. None was received.

Grant Kitamura asks for questions from the public.

- Les Zaitz asked how MCDC would go out to bid for the building in the future without the funds.
 - Kitamura responded that we would likely not go out for bid without enough money to fund the project.
- Zaitz then asked about the next step for project funding.
 - Kitamura responded that we will continue looking.
- Zaitz asked about the options open to the corporation.
 - Kitamura said that it is yet to be determined.
- Zaitz asked about when the project might be up and running.
 - Kitamura responded that he is not certain at this point, we need to find the funding.
- Zaitz asked if the next bid for the building will be the same design.
 - Kitamura responded that we do not know yet.
- Zaitz asked about the status of Americold’s investment into the TVRC facility.
 - Kitamura responded that he personally has not received a response from them.
 - Smith added that Americold is making investments downstream at about \$5 million.
- Zaitz asked whether UP will move forward with their work.
 - Kitamura responded that the work will be completed as the rail comes in for the facility. The only project component in question is the building.

With no further discussion, Grant Kitamura adjourned the meeting at 12:40 pm.

Respectfully Submitted,
Greg Smith, Officer to the Board

AMENDMENT NO. 1
to the Professional Services Contract between MALHEUR COUNTY DEVELOPMENT CORPORATION, hereinafter referred to as "CORPORATION," and ANDERSON PERRY & ASSOCIATES, INC., hereinafter referred to as "CONSULTANT,"
dated 10-14-2019

The purpose of this AMENDMENT is to extend the contract time, outline estimated engineering fees, and update the CONSULTANT's Hourly Fee Schedule.

TERM OF CONTRACT. This Amendment No. 1 shall become effective upon signature of CORPORATION. Unless terminated earlier in accordance with the terms of this Contract, this Contract shall terminate when CORPORATION accepts CONSULTANT's completed performance. In no event, however, shall this Contract end later than December 31, 2023. Contract termination shall not extinguish or prejudice CORPORATION's right to enforce this contract with respect to any default by CONSULTANT that has not been cured.

ESTIMATED ENGINEERING FEES. The total estimated engineering fees to complete the project as currently proposed are estimated to be as follows:

\$975,000 for design and other engineering services, as required.
\$875,000 for construction engineering services, as required.

CORPORATION will compensate CONSULTANT no more than the totals estimated above, inclusive of time, materials, and expenses. The CONSULTANT's Hourly Fee Schedule for year 2022 is attached as Exhibit A. The CONSULTANT can update the Hourly Fee Schedule annually as required.

The above estimated engineering fees assume the building portion of the project is rebid at a later date, with construction potentially in the fall or winter of 2022, and possibly the spring of 2023. Should conditions change that would affect the assumed fees herein, the CORPORATION and CONSULTANT shall amend this Contract, as required.

CORPORATION:

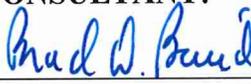
Signature

Grant Kitamura
Printed Name

Malheur County Development Corporation
Board President
Organization, Title

Date

CONSULTANT:


Signature

Brad D. Baird, P.E.
Printed Name

Anderson Perry & Associates, Inc.
President
Organization, Title

06-01-2022
Date

HOURLY FEE SCHEDULE

Revised May 2022

PROFESSIONAL TECHNICAL STAFF

TECHNICIANS	ENGINEERING	ARCHAEOLOGY
Technician I \$ 65.00	Engineering Technician I\$105.00	Archaeological Technician I \$ 60.00
Technician II \$ 75.00	Engineering Technician II\$110.00	Archaeological Technician II \$ 70.00
Technician III \$ 80.00	Engineering Technician III\$115.00	Staff Archaeologist I..... \$ 75.00
Technician IV \$ 90.00	Staff Engineer I\$120.00	Staff Archaeologist II..... \$ 80.00
Technician V \$ 95.00	Staff Engineer II\$125.00	Project Archaeologist I..... \$ 85.00
Technician VI..... \$100.00	Project Engineer I\$130.00	Senior Archaeologist I..... \$105.00
Technician VII..... \$105.00	Project Engineer II\$135.00	Senior Archaeologist II..... \$120.00
Senior Technician I..... \$110.00	Project Engineer III\$145.00	
Senior Technician II..... \$120.00	Project Engineer IV.....\$150.00	PROJECT REPRESENTATIVES
Senior Technician III..... \$125.00	Project Engineer V.....\$155.00	Project Representative I \$ 95.00
Senior Technician IV..... \$135.00	Project Engineer VI.....\$165.00	Project Representative II \$100.00
Senior Technician V..... \$145.00	Project Engineer VII.....\$170.00	Project Representative III \$105.00
Senior Technician VI..... \$155.00	Senior Engineer I\$175.00	Project Representative IV \$110.00
Senior Technician VII..... \$165.00	Senior Engineer II\$180.00	
Senior Technician VIII..... \$170.00	Senior Engineer III\$185.00	OVERTIME
Senior Technician IX..... \$185.00	Senior Engineer IV\$190.00	Overtime Surcharge \$ 35.00
	Senior Engineer V\$200.00	
	Senior Engineer VI\$205.00	
	Senior Engineer VII.....\$210.00	
	Senior Engineer VIII\$225.00	

SURVEYORS AND CREWS

Survey Technician I \$ 70.00	Professional Land Surveyor I\$130.00	Total Station \$ 25.00
Survey Technician II \$ 85.00	Professional Land Surveyor II ...\$140.00	ATV (4-hour minimum) \$ 32.00
Survey Technician III \$ 90.00	Professional Land Surveyor III ..\$155.00	Resource Grade GPS \$ 22.00
Survey Crew Chief I \$ 95.00	Professional Land Surveyor IV ..\$175.00	Electrofisher..... \$ 25.00
Survey Crew Chief II \$100.00	Professional Land Surveyor V ...\$185.00	Unmanned Aircraft System
Survey Crew Chief III \$110.00	GPS Total Station\$ 40.00	(UAS/Drone) \$ 45.00
Survey Crew Chief IV \$140.00	Robotic Survey Station.....\$ 30.00	GIS RTK GPS/GNSS Unit \$ 32.00

OUT OF TOWN WORK

Mileage will be charged at the applicable IRS rate for vehicles, which is \$0.585 per mile for standard highway vehicles as of January 1, 2022. Mileage will be charged at \$0.75 per mile for vans and pickup trucks. Subsistence will be charged either per diem or actual cost, per contract. Lodging will be billed at actual cost.

OTHER

Other miscellaneous, direct, and outside expenses, including special Consultants, will be charged at actual cost plus 10%.

Expert Witness will be charged at two times the standard hourly rate.

All accounts unpaid 30 days after date of invoice may be charged a service fee of 1.0% per month.

This Hourly Fee Schedule is revised annually on or around March 1.

CONTRACTOR'S APPLICATION FOR PAYMENT NO. 6

To Owner: Malheur County Development Corporation
 From Contractor: Steve Lindley Contracting, Inc.
 Project: Treasure Valley Reload Center - 2021 - Contract 1 - Earthwork and Culverts
 Application Period: May 1, 2022 through May 15, 2022
 Application Date: May 31, 2022

Date of Substantial Completion		Date Ready for Final Payment	
Original:	<u>May 31, 2022</u>	Original:	<u>June 30, 2022</u>
Revised:	<u>September 28, 2022</u>	Revised:	<u>October 28, 2022</u>
On Schedule:	Yes XX No	On Schedule:	Yes XX No

Change Order Summary		
Approved Change Orders		
Number	Additions	Deductions
1	\$63,639.74	
2	\$889,247.43	
3	\$850,022.63	
4	\$1,112,539.32	
TOTALS	\$2,915,449.12	\$0.00
NET CHANGE BY CHANGE ORDERS	\$2,915,449.12	

Current Contract Price	
1. Original Contract Price	\$ 5,195,638.75
2. Net Change by Change Orders	\$ 2,915,449.12
3. Current Contract Price (1 plus 2)	\$ 8,111,087.87

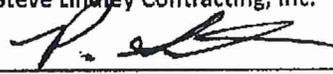
Application For Payment	
1. Total Work Completed and Stored to Date (see attached)	\$ 7,332,736.83
2. Retainage Withheld (5%)	\$ (366,636.84)
3. Retainage Paid	
4. Liquidated Damages Withheld	
5. Less Previous Applications for Payments	\$ (5,882,700.44)
6. AMOUNT DUE THIS APPLICATION	\$ 1,083,399.54

Contractor's Certification:

The undersigned Contractor certifies that (1) all previous progress payments received from Owner on account of Work done under the Contract referred to above have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials, and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Lien, security interest, or encumbrance); (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and not defective; (4) Record Drawings and required job photos are up-to-date, accurate, and complete for Work performed; and (5) certified payroll forms are current and account for all applicable personnel.

Dated: 5/31/2022

Contractor: **Steve Lindley Contracting, Inc.**

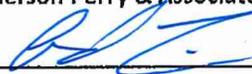
By: 

The "Amount Due this Application" is shown on page 1.

Recommended by Engineer

Anderson Perry & Associates, Inc.

Dated: 5-31-22

By: 

Approved by Owner

Malheur County Development Corporation

Dated: _____

By: _____

Title: _____

**CONTRACTOR'S APPLICATION FOR PAYMENT NO. 6
MALHEUR COUNTY DEVELOPMENT CORPORATION
TREASURE VALLEY RELOAD CENTER - 2021 - CONTRACT 1 - EARTHWORK AND CULVERTS**

Bid Item No.	Description	BID PRICES			PREVIOUS		THIS PERIOD (Calculated)		TOTAL TO DATE (Basis of Payment)	
		Qty.	Unit	Unit Price	Qty.	Amount	Qty.	Amount	Qty.	Amount
1	Mobilization/Demobilization (not to exceed 5% of Total Base Bid Price)	1	L.S.	\$245,000.00	75%	\$183,750.00	0%	\$0.00	75%	\$183,750.00
2	Temporary Protection and Direction of Traffic/Project Safety	1	L.S.	\$100,000.00	75%	\$75,000.00	0%	\$0.00	75%	\$75,000.00
3	Erosion and Sediment Control	1	L.S.	\$100,000.00	50%	\$50,000.00	0%	\$0.00	50%	\$50,000.00
4	Clearing and Grubbing	1	L.S.	\$87,975.00	100%	\$87,975.00	0%	\$0.00	100%	\$87,975.00
5	Building Demolition	1	L.S.	\$74,075.00	90%	\$66,667.50	0%	\$0.00	90%	\$66,667.50
6	Earthwork	1	L.S.	\$710,000.00	0%	\$0.00	0%	\$0.00	0%	\$0.00
7	18-inch Corrugated Metal Pipe (CMP) Culvert (Road)	305	L.F.	\$72.50	0	\$0.00	305	\$22,112.50	305	\$22,112.50
8	24-inch CMP Culvert (Road)	24	L.F.	\$200.00	0	\$0.00	0	\$0.00	0	\$0.00
9	36-inch CMP Culvert (Road)	150	L.F.	\$122.75	0	\$0.00	0	\$0.00	0	\$0.00
10	48-inch CMP Culvert (Road)	150	L.F.	\$152.25	0	\$0.00	0	\$0.00	0	\$0.00
11	24-inch Corrugated Steel Pipe (CSP) Culvert (Rail)	264	L.F.	\$88.75	0	\$0.00	65	\$5,768.75	65	\$5,768.75
12	36-inch CSP Culvert (Rail)	134	L.F.	\$128.75	0	\$0.00	0	\$0.00	0	\$0.00
13	48-inch CSP Culvert (Rail)	137	L.F.	\$156.25	0	\$0.00	0	\$0.00	0	\$0.00
14	Concrete Irrigation Channel	1,525	L.F.	\$178.50	0	\$0.00	0	\$0.00	0	\$0.00
15	Earthen Irrigation Channel	1,450	L.F.	\$13.50	0	\$0.00	0	\$0.00	0	\$0.00
16	Concrete Irrigation Channel	1	L.S.	\$61,275.00	0%	\$0.00	0	\$0.00	0%	\$0.00
17	Welland Control Assembly	3	Each	\$30,825.00	0	\$0.00	0	\$0.00	0	\$0.00
18	Siphon Assembly	6	Each	\$1,050.00	0	\$0.00	0	\$0.00	0	\$0.00
19	Concrete Channel Headwall	1,250	Ton	\$20.50	0	\$0.00	0	\$0.00	0	\$0.00
20	Base Rock	84,500	Ton	\$18.50	0	\$0.00	0	\$0.00	0	\$0.00
21	Railroad Subballast	9,700	Ton	\$43.75	4,972.28	\$217,537.25	0.00	\$0.00	4,972.28	\$217,537.25
22	Loose Riprap, Class 50	29,500	Ton	\$43.50	19,021.87	\$827,451.35	0.00	\$0.00	19,021.87	\$827,451.35
Total Bid Items										\$1,536,262.35

**CONTRACTOR'S APPLICATION FOR PAYMENT NO. 6
MALHEUR COUNTY DEVELOPMENT CORPORATION
TREASURE VALLEY RELOAD CENTER - 2021 - CONTRACT 1 - EARTHWORK AND CULVERTS**

Change Orders:	PREVIOUS		THIS PERIOD		TOTAL TO DATE	
	Qty.	Amount	Qty.	Amount	Qty.	Amount
1.5 Class 700 riprap delivered (35,621.66 tons at \$26.75 per ton)	100%	\$952,879.41	0%	\$0.00	100%	\$952,879.41
1.6 Class 700 riprap installed (5,530.04 tons at \$18.00 per ton)	100%	\$99,540.72	0%	\$0.00	100%	\$99,540.72
1.7 4-inch pit run delivered (11,783.95 ton at \$28.79 per ton)	100%	\$339,259.92	0%	\$0.00	100%	\$339,259.92
1.8 4-inch pit run installed (1,251.13 ton at \$18.75 per ton)	100%	\$23,458.69	0%	\$0.00	100%	\$23,458.69
1.9 Gem Avenue closure barricade	100%	\$9,850.00	0%	\$0.00	100%	\$9,850.00
1.10 Earthwork and aggregate installation (lump sum total \$1,432,537.41, February 7, 2022, through April 1, 2022)	100%	\$1,432,537.41	0%	\$0.00	100%	\$1,432,537.41
2.1 Earthwork and aggregate installation (lump sum total \$889,247.43, April 2, 2022, through April 16, 2022)	100%	\$889,247.43	0%	\$0.00	100%	\$889,247.43
3.1 Earthwork and aggregate installation (lump sum total \$850,022.63, April 17, 2022, through April 30, 2022)	100%	\$850,022.63	0%	\$0.00	100%	\$850,022.63
4.1 Earthwork and aggregate installation (lump sum total \$1,112,539.32, May 1, 2022, through May 15, 2022)	0%	\$0.00	100%	\$1,112,539.32	100%	\$1,112,539.32
Total All Change Orders		\$ 4,596,796.21		\$ 1,112,539.32		\$ 5,709,335.53
Materials Stored to Date:						
Siphon Assembly Materials (See attached invoice)	61%	\$56,719.68	0%	\$0.00	61%	\$56,719.68
H.D. Fowler Invoices I5997032 and I5997279	53%	\$30,419.27	0%	\$0.00	53%	\$30,419.27
Bid item quantity reduced via Change Order No. 1						
Bid item deleted from Contract via Change Order No. 1						
Total Materials Stored to Date						\$ 87,138.95
TOTAL WORK COMPLETED AND MATERIALS STORED TO DATE						\$ 7,332,736.83
Percent of Contract Price Completed to Date						89.33%

RECOMMENDED:

By: 
Engineer (if required)

Title: PROJ. ENGR.

Date: 5-31-22

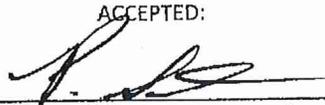
ACCEPTED:

By: _____
Owner (Authorized Signature)

Title: _____

Date: _____

ACCEPTED:

By: 
Contractor (Authorized Signature)

Title: Estimator / P.M.

Date: 5/31/2022

Malheur County Development Corporation
 Treasure Valley Reload Facility
 Contract 1 - Earthwork and Culverts
 CCO #1 Time and Materials Weekly Summary

Project Total Thru CCO #4 / Pay App #6	\$4,284,346.80
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TVRC WEEK 1 (2/6 - 2/12)		WEEK 2 (2/13 - 2/19)	WEEK 3 (2/20 - 2/26)	WEEK 4 (2/27 - 3/5)
ITEM DESCRIPTION	COST			
MATERIALS	\$ -	\$ -	\$ 9,926.09	\$ -
LABOR	\$ 37,174.88	\$ 40,855.80	\$ 39,696.43	\$ 40,291.97
EQUIPMENT	\$ 57,169.91	\$ 68,028.37	\$ 95,939.61	\$ 69,096.89
SPECIALTY SERVICES	\$ -	\$ -	\$ -	\$ -
SUBCONTRACTORS	\$ -	\$ -	\$ -	\$ -

TOTAL \$94,344.79 \$ 108,884.17 \$ 145,562.13 \$ 109,388.86
 **Aggregate materials for weeks 1 thru 4 paid under separate bid items per CCO #1)

TVRC WEEK 5 (3/6 - 3/12)		WEEK 6 (3/13 - 3/19)	WEEK 7 (3/20 - 3/26)	WEEK 8 (3/27 - 4/2)
ITEM DESCRIPTION	COST			
MATERIALS	\$7,963.23	\$ 66,831.83	\$ 147,464.48	\$ 173,220.16
LABOR	\$40,071.48	\$ 39,463.38	\$ 40,202.13	\$ 41,764.93
EQUIPMENT	\$95,234.85	\$ 102,355.41	\$ 99,564.22	\$ 106,802.92
SPECIALTY SERVICES	\$7,188.19	\$ -	\$ -	\$ 6,230.25
SUBCONTRACTORS	\$ -	\$ -	\$ -	\$ -

TOTAL \$150,457.75 \$ 208,650.62 \$ 287,230.83 \$ 328,018.26
 Project Total Weeks 1-8 (CCO #1/Pay App #3) \$1,432,537.41

TVRC WEEK 9 (4/3 - 4/9)		WEEK 10 (4/10 - 4/16)
ITEM DESCRIPTION	COST	
MATERIALS	\$157,040.72	\$ 388,907.84
LABOR	\$39,712.35	\$ 38,034.15
EQUIPMENT	\$107,104.69	\$ 98,169.87
SPECIALTY SERVICES	\$60,277.82	\$ -
SUBCONTRACTORS	\$ -	\$ -

TOTAL \$364,135.58 \$ 525,111.86
 Project Total Weeks 9-10 (CCO #2/Pay App #4) \$889,247.43

WEEK 11 (4/17 - 4/23)		WEEK 12 (4/24 - 5/1)
ITEM DESCRIPTION	COST	
MATERIALS	\$ 296,423.52	\$ 277,604.12
LABOR	\$ 39,427.71	\$ 40,689.94
EQUIPMENT	\$ 70,458.22	\$ 118,444.45
SPECIALTY SERVICES	\$ 2,521.35	\$ 4,453.31
SUBCONTRACTORS	\$ -	\$ -

TOTAL \$408,830.81 \$ 441,191.83
 Project Total Weeks 11-12 (CCO #3/Pay App #5) \$ 850,022.63

Malheur County Development Corporation
Treasure Valley Reload Facility
Contract 1 - Earthwork and Culverts
CCO #1 Time and Materials Weekly Summary

Project Total Thru CCO #4 / Pay App #6 \$4,284,346.80

	WEEK 13 (5/2-5/8)	WEEK 14 (5/9-5/15)
ITEM DESCRIPTION	COST	
MATERIALS	\$ 334,847.05	\$ 463,125.45
LABOR	\$ 38,257.68	\$ 38,352.65
EQUIPMENT	\$ 92,944.70	\$ 138,388.13
SPECIALTY SERVICES	\$ 3,049.31	\$ 3,574.35
SUBCONTRACTORS	\$ -	\$ -
TOTAL	\$469,098.74	\$ 643,440.58
		Project Total Weeks 13-14 (CCO #4/Pay App #6) \$ 1,112,539.32

Malheur County Development Corporation
Treasure Valley Reload Facility
Contract 1 - Earthwork and Culverts
Time and Materials Aggregate Materials Weekly Summary

Thru		Qty (Ton)		Class 700 Rip-Rap		Source
			Price / Ton			
12/31/2021	Pay App #1	4,734.10	\$ 43.50	Installed		Rhinehart BLM
1/31/2022	Pay App #2	14,287.77	\$ 43.50	Installed		Rhinehart BLM
2/6/2022		5,324.51	\$ 26.75	Delivered		Rhinehart BLM
2/12/2022	1	7,261.39	\$ 26.75	Delivered		Rhinehart BLM
2/19/2022	2	5,839.59	\$ 26.75	Delivered		Rhinehart BLM
2/26/2022	3	9,032.01	\$ 26.75	Delivered		Rhinehart BLM
3/5/2022	4	8,164.16	\$ 26.75	Delivered		Rhinehart BLM
3/12/2022	5	179.11	\$ 38.00	Delivered		Lacey - Cambridge
3/19/2022	6	1,503.19	\$ 38.00	Delivered		Lacey - Cambridge
3/26/2022	7	3,316.79	\$ 38.00	Delivered		Lacey - Cambridge
4/2/2022	8	3,896.09	\$ 38.00	Delivered		Lacey - Cambridge
	Pay App #3					
4/9/2022	9	3,532.18	\$ 38.00	Delivered		Lacey - Cambridge
4/16/2022	10	2,505.11	\$ 38.00	Delivered		Lacey - Cambridge
	Pay App #4					
4/23/2022	11	3,226.78	\$ 38.00	Delivered		Lacey - Cambridge
5/1/2022	12	4,327.06	\$ 38.00	Delivered		Lacey - Cambridge
	Pay App #5					
5/8/2022	13	4,073.87	\$ 38.00	Delivered		Lacey - Cambridge
5/15/2022	14	6,337.84	\$ 38.00	Delivered		Lacey - Cambridge
	Pay App #6					
Total Thru Pay App #6		87,541.55				
		<i>54,643.53 Rhinehart BLM</i>				
		<i>32,898.02 Lacey - Cambridge</i>				

Malheur County Development Corporation
Treasure Valley Reload Facility
Contract 1 - Earthwork and Culverts
Time and Materials Aggregate Materials Weekly Summary

Thru		Qty (Ton)		PitRun / Structural Fill		Source
			Price / Ton			
12/31/2021	Pay App #1	669.48	\$ 43.75	Installed		Rhinehart BLM
1/31/2022	Pay App #2	4,302.80	\$ 43.75	Installed		Rhinehart BLM
2/6/2022		2,135.08	\$ 28.79	Delivered		Rhinehart BLM
2/7/2022	1	1,632.04	\$ 28.79	Delivered		Rhinehart BLM
2/14/2022	2	2,610.69	\$ 28.79	Delivered		Rhinehart BLM
2/21/2022	3	3,296.27	\$ 28.79	Delivered		Rhinehart BLM
2/28/2022	4	2,109.87	\$ 28.79	Delivered		Rhinehart BLM
3/7/2022	5	-				
3/14/2022	6	-				
3/21/2022	7	-				
3/28/2022	8	-				
	Pay App #3					
4/4/2022	9	-				
4/11/2022	10	3,291.30	\$ 20.00	Delivered		Hilltop
	Pay App #4					
4/18/2022	11	6,536.79	\$ 20.00	Delivered		Hilltop
4/25/2022	12	3,642.01	\$ 20.00	Delivered		Hilltop
	Pay App #5					
5/8/2022	13	6,569.35	\$ 20.00	Delivered		Hilltop
5/15/2022	14	7,749.79	\$ 20.00	Delivered		Hilltop
	Pay App #6					
Total Thru Pay App #6		44,545.47				
		<i>16,756.23 Rhinehart BLM</i>				
		<i>27,789.24 Hilltop</i>				

ROAD IMPROVEMENT AGREEMENT

DATE: MARCH 25, 2021

PARTIES:

FROERER FAMILY LIMITED PARTNERSHIP
an Oregon limited partnership in good standing
3150 Echo Road
Nyssa, Oregon 97913
Phone: (541) 610-0410

(“Froerer”)

MALHEUR COUNTY, OREGON
a political subdivision of the State of Oregon
by and through the Malheur County Court
251 B. Street West
Vale, Oregon 97918
Phone: (541) 473-5124

(“County”)

MALHEUR COUNTY DEVELOPMENT CORPORATION
a 501 (c)(4) Oregon Corporation in good standing
522 SW Fourth Street
Ontario, Oregon 97914
Phone: (541) 889-6216

(“MCDC”)

Collectively, Froerer, County and MCDC are the “Parties”.

AGREEMENT:

In consideration of the mutual covenants and agreements contained herein, and other valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Purpose of Road Improvement Agreement.

1.1 This Road Improvement Agreement (“Agreement”) concerns construction of an alternative farm use access road to mitigate for the closure of the private railroad-road grade crossing/intersection at Gem Avenue and Union Pacific Railroad Company (“UPRR”), Main Line, near Nyssa, Oregon (“Gem Avenue Crossing”).

1.2 Pursuant to a private crossing agreement between UPRR and Froerer, the Gem Avenue Crossing was used by Froerer to access agricultural properties owned or leased by it and other businesses of the Froerer family. The properties include, but are not limited to, property in Malheur County, Oregon east of said UPRR Main Line, identified as follows:

<u>assessor map number</u>	<u>tax lot number</u>	<u>reference number</u>
18S4733	300	9368
18S4733	700	9369
19S4703	200	9370
19S47	100	9371
19S47	1500	9634
19S47	1600	9635
19S47	1800	9637
19S47	1900	9638
19S47	2000	9639
19S47	1700	9636

1.3 An improved UPRR crossing/intersection will be constructed at Gamble Island Road (“Gamble Island Road Crossing”) for the public, which will be used by the Treasure Valley Reload Center (“TVRC”) and the County industrial park, both located on real property owned by the County and commonly referred to as: 290 acres, tax lot 100, reference number 9641, assessor map number 19S47E17. The improved Gamble Island Road Crossing is necessary a result of increased TVRC-related train traffic and required track length.

1.4 Gem Avenue is a County Road (No. 865), maintained by the Nyssa Rural Road Assessment District No. 2. It is approximately 4 miles in length and lies east-west and perpendicular to the UPRR Main Line. The dedicated public/County Road right-of-way for Gem Avenue is generally 50 feet wide with a portion 25 feet wide near the UPRR Main Line. The east end of Gem Avenue terminates at the west side of the UPRR Main Line. UPRR has given notice to Froerer that it intends to close the existing Gem Avenue crossing. In the future, Froerer seeks to re-establish the private Gem Avenue Crossing with UPRR by paying for the construction of an overpass bridge.

1.5 A map attached as **Exhibit 1** illustrates roads, UPRR Main Line, and real properties of Froerer and County referenced above. By its reference herein, Exhibit 1 is made a part of this Agreement.

1.6 The TVRC is being constructed by MCDC under a grant exceeding \$25 million dollars from the State of Oregon identified as Misc. Contracts and Agreements No. 33744 dated October 7, 2019 entitled “*Grant Agreement Oregon Department of Transportation Connect Oregon Fund Program Project Name: Treasure Valley Reload Center*” (“Grant”).

1.7 MCDC is the Applicant in a quasi-judicial land use matter currently pending before the Nyssa and Malheur County Planning Commissions to subdivide the County property referenced in paragraph 1.3 above. The application is titled “Arcadia Industrial Park Subdivision” and identified as Malheur County Planning Department File No. 2020-011-001 (“Application”). Froerer submitted written exhibits and testified in opposition to the Application.

1.8 In order for Froerer to access the Gamble Island Road Crossing, Froerer seeks a private roadway on a portion of property owned by it, as well as a 25-foot roadway/access easement across adjoining property owned by Alscott Farms LLC (“Easement” and “Roadway”). The Easement and Roadway are the most effective and direct means to mitigate the termination of the Froerer access at the Gem Avenue crossing. Alternatively, the next most effective and direct means to mitigate the Froerer access at the Gem Avenue Crossing is an improved access to the King Avenue Crossing (the “Substitute Roadway”).

1.9 This Agreement is necessary in order for MCDC to make expenditures under the Grant for the Easement and Roadway required by Froerer, or if the Easement cannot be secured, for the Substitute Roadway. Use of Grant funds for Froerer to access the Gamble Island Road Crossing, or in the alternative, the King Avenue Crossing, will mitigate its loss of the Gem Avenue Crossing. However, reimbursable Grant funds must be fair, reasonable, and in the public’s best interest, as determined by the Oregon Department of Transportation (“ODOT”).

1.10 County has chosen to enter into this Agreement with respect to the ability of Froerer to obtain a future road permit from County to occupy or perform operations upon or in the Gem Avenue public/County Road right-of-way for any re-establishment of the Gem Avenue Crossing.

2. Obligations of each Party.

2.1 Froerer

A. Froerer expressly grants to MCDC, its contractors, agents, and engineers access to Tax Lots 1500, 1900, and 2000 of their real properties referenced in paragraph 1.2 above to permit, design and construct the Roadway as illustrated on Exhibit 1 and further explained as follows:

Roadway to and from Gamble Island Road. This private Roadway is from Gamble Island Road to Chestnut Avenue at or near Gem Avenue. It is approximately 5,800 feet long. The Roadway extends north from Gamble Island Road, parallel to the east side of the UPRR Main Line, along an existing farm road on property owned by Alscott Farms LLC,

and then north to the Froerer property at or near Chestnut Avenue and Gem Avenue. A portion of this Roadway will be a completely new road. Most of the Roadway follows an existing farm road and therefore the Roadway will consist of augmenting an existing road. The Roadway requires a 25-foot wide Easement from the adjoining landowner, Alscott Farms LLC, on real property commonly identified as assessor map number 19S47, tax lot 2100, reference number 9640.

Easement. Not later than September 1, 2020, Froerer will acquire from Alscott Farms LLC a 25-foot wide Easement for the Roadway. Any necessary appraisal or survey of the Easement area and Roadway will be paid for by Froerer.

Construction Standards. The Easement and Roadway will be permitted, designed and constructed with a 14-foot wide gravel surface, with quality equivalent to existing similar access roads on the Froerer farm property in the area (referred to in paragraph 1.2 above). Permit and construction drawings for the Roadway shall be signed by an engineer licensed in the State of Oregon.

B. If Froerer is unable to secure the Easement from Alscott Farms LLC described in paragraph 2.1.A, Froerer shall have the option, at its discretion, to provide written notice to MCDC requesting construction of the Substitute Roadway (the “Substitute Roadway Notice”). Such notice must be provided to MCDC within 14 days of Froerer’s receipt of notice and or communication from Alscott Farms LLC indicating that the easement will not be granted, or September 15, 2021, whichever occurs first. If Froerer timely provides such notice, this Agreement shall not terminate, and, except as specified herein, all relevant terms of this Agreement governing the parties’ obligations with regard to the Easement and Roadway shall become null and void and the obligations regarding the Roadway, including but not limited to the cost limitations stated in Section 2.2.B and all Froerer obligations, shall instead be construed to apply to the Substitute Roadway. In selecting the Substitute Roadway option, Froerer expressly grants to MCDC, its contractors, agents, and engineers access to Tax Lots 100 and 1500 of their real properties referenced in paragraph 1.2 above to permit, design and construct the Substitute Roadway as illustrated on Exhibit 1 and further explained as follows.

Substitute Roadway to and from King Avenue.

This private Substitute Roadway is approximately 2760 feet long and stretches between King Avenue to an internal farm road south of and parallel to King Avenue. The Substitute Roadway extends south from King Avenue, at a slight angle and then parallel to the east side of the UPRR Main Line, along an existing dirt path on the Froerer property. The Substitute Roadway will be a completely new road and will connect the Froerer’s existing internal farm road to King Avenue. The Substitute Roadway shall be constructed to standards functionally equivalent to the construction standards for the Roadway in Section 2.1.A.

C. The private Easement between Froerer and Alscott Farms LLC for the Easement and Roadway will be recorded in the real property records of the Malheur County Clerk. Froerer shall provide a copy of the easement to MCDC.

D. Froerer will cooperate and work in good faith with MCDC to timely review plans, designs or drawings of the Easement and Roadway for construction.

E. Froerer will utilize the Easement and Roadway as a private road in the same manner/scope as their current internal private road network (e.g. Wet Way) on its properties.

F. At its sole cost, expense and discretion, Froerer will be responsible for all maintenance and future improvements of the Easement and Roadway, or Alternative Roadway, and any re-establishment of the private Gem Avenue Crossing.

G. Froerer will immediately withdraw its opposition to the Application, including a written and/or oral withdrawal of all testimony in opposition to the Application prior to the close of the administrative record on the Application, and will not participate (except in support of the Application) in any proceedings before the Nyssa Planning and Zoning Commission, Malheur County Planning and Zoning Commission, Nyssa City Council or Malheur County Court on the Application. Froerer shall waive any rights to remonstrate against, object to, or otherwise challenge or contest permitting or completion of the TVRC. In addition, Froerer will forever discharge, remise, release and waive County and MCDC and their representatives, agents, and employees from any and all debts, claims, demands, actions, suits, causes of action, accounts or controversies of any nature whatsoever, known or unknown, whether asserted or not, whether or not well founded in fact or in law, whether in law or equity or otherwise, which Froerer may have, ever had or can have, shall or may have by reason of any matter, cause or anything whatsoever relating to the Application or closure of the Gem Avenue Crossing. This release as stated above includes, but is not limited to, claims for monies, damages (whether actual, presumed, foreseen or unforeseen), attorney fees or expenses.

H. From the date of this Agreement until the TVRC is constructed and operating, Froerer shall not fund, encourage, support, arrange or influence in any way opposition to the TVRC by Froerer or others. Neither Froerer, any Froerer family member, nor related business entity shall make any statement to the local, state, or federal media concerning the TVRC until after the project is completed and operating. Media reporting of statements made prior to signing this Agreement shall not constitute a violation of this Agreement.

I. Froerer obligations under this Agreement shall extend to all Froerer family members, employees, marital or domestic relations, representatives, related business entities, and associates.

2.2 MCDC

A. MCDC will pay a fair and reasonable price, determined by ODOT, and based on an appraisal or other valuation process accepted by ODOT, up to \$100,000 directly to Alscott Farms LLC to acquire the Easement. This \$100,000 limit and other limits contained in this provision shall not prohibit Froerer from contributing additional funds to ensure the purchase of the Easement and completion of the Roadway.

B. MCDC will design, construct and obtain all permit(s) required for the Roadway described and explained in paragraph 2.1 above. Construction will consist of 6 inches of aggregate base rock for the structural base and 6 inches of base rock for a finished surface with some basic shaping and grading prior to placement of material. Upon completion, the construction of the Roadway will be reviewed and approved by an Oregon licensed engineer. MCDC will pay up to \$300,000 for the actual, fair and reasonable costs, as determined by ODOT, of the construction, design and permitting of the Roadway. This \$300,000 limit shall not prohibit Froerer from contributing additional funds to ensure complete construction, design and permitting of the Easement and Roadway. In no event will MCDC pay more than actual costs for the Roadway, but will use its best reasonable efforts to obtain additional ODOT grant funding for any Roadway construction costs exceeding \$300,000, provided that in any such event, the total amount paid by MCDC for the Easement and Roadway, or Substitute Roadway, shall not exceed \$400,000.

C. MCDC will work in good faith with Froerer to share information and plan construction activities. MCDC will construct the Roadway as illustrated on the attached Exhibit 1, or if the Substitute Roadway is selected by Froerer, will construct the Substitute Roadway as illustrated on the attached Exhibit 1, as described and explained in paragraph 2.1 above. Construction of the Roadway will be performed contemporaneously with construction of the private internal roads for the TVRC, which is estimated to be by June 2022. This time frame for construction of the Roadway may be extended by MCDC upon written notice to Froerer. MCDC will provide Froerer with 30 days' advance written notice before constructing the Roadway ("30 Day Notice"). If the Easement from Alscott Farms LLC has not been obtained by Froerer as evidenced by a recording in the Malheur County Clerk's Office by September 1, 2021, MCDC's obligation to construct, design and permit the Roadway will terminate and MCDC will have no further obligations to construct, design and permit the Roadway or contribute any Grant funds for the Easement and Roadway.

D. Notwithstanding the foregoing, if Froerer timely provides the Substitute Roadway Notice to MCDC directing MCDC to construct the Substitute Roadway in place of the Easement and Roadway, this Agreement shall not terminate and MCDC shall be obligated to design, engineer and construct the Substitute Roadway in place of the Easement and Roadway on the same terms provided in the Agreement as further explained in paragraph 2.1.B., provided that

such obligation may be subject to reasonable delay to allow time for additional engineering and contract administration necessary for the Substitute Roadway.

E. MCDC makes no express or implied warranties, representations or guarantees that the Easement and Roadway can be used for any particular purpose by Froerer.

F. MCDC will work in good faith to secure approval and funding from ODOT, under the Grant, for the Easement and Roadway or the Substitute Roadway, subject to the limits set forth above.

2.3 County

A. Subject to a fully negotiated and executed permit by the Malheur County Court and Froerer setting out terms and conditions, to include, but not limited to: insurance requirements, indemnification and hold harmless of County, traffic control, quality control of construction and materials, etc., and subject to County's approval of engineered drawings, a road permit may be issued for placement of dirt, pipe, poles and other similar facilities in the Gem Avenue public right-of-way to re-establish the Gem Avenue Crossing by a bridge or overpass.

B. County will work in good faith with Froerer to share information and plan construction activities.

C. County will work in good faith to secure approval and funding from ODOT, under the Grant, for the Easement and Roadway subject to the limits set forth above.

D. Within a reasonable time after submittal by Froerer of a complete right-of-way permit application(s), County will grant necessary permits to Froerer, if any, for construction of an elevated road crossing at Gem Avenue, provided that Froerer's design(s) for such improvement meet applicable UPRR, county and state design standards and requirements.

3. **Miscellaneous Terms**

3.0 Conditions and Limitations.

i. Funding under this Agreement for the Easement and Roadway or Substitute Roadway is contingent upon approval by ODOT, in its sole and exclusive discretion.

ii. The Agreement is specifically predicated and contingent upon approval of preliminary and final plats for the TVRC subdivision or equivalent ground-leasing plan for the TVRC. Should the subdivision or equivalent ground lease arrangement for the TVRC not be completed for any reason, the Agreement may be unilaterally terminated upon 30 days' notice by MCDC.

iii. Based upon MCDC's or County's reasonable discretion, this Agreement shall be deemed null and void if the Application is appealed to the Oregon Land Use Board of Appeals or Circuit Court, whether the appeal is by Froerer or any other person or entity. In any such case, any and all mutual obligations in this Agreement shall be deemed void and terminated.

3.1 Term of Agreement. This Agreement is effective on the date it has been signed by all parties and will expire when terminated as set forth below.

3.2 Termination of Agreement. This Agreement will terminate:

i. By mutual written consent of all parties.

ii. By MCDC, immediately upon notice to all parties, if the Grant is terminated, for any reason, or MCDC fails, for any reason, to receive funding, appropriations, limitations, allotments or other expenditure authority from ODOT under the Grant to fulfill this Agreement.

iii. Automatically, when the Roadway or Substitute Roadway is fully constructed as set out in this Agreement and approved by an engineer licensed in Oregon.

iv. If this Agreement is terminated pursuant to paragraph i., ii. or iii. above, all obligations of MCDC and County shall cease.

3.3 Governing Law. This Agreement shall be governed by the State of Oregon. Any actions or suits commenced in connection with this Agreement shall be in Circuit Court of Malheur County or Federal District Court for Oregon located in Pendleton.

3.4 Notices. Any communication between the Parties or notice to be given shall be given in writing by personal delivery or mailing the same, postage prepaid to any party at the address set forth above. Any communication so addressed and mailed shall be deemed to be given three (3) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

3.5 Amendments. This Agreement may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by all parties.

3.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors and assigns.

3.7 Complete Agreement. This Agreement and its attached exhibits are the complete and exclusive statement of the Agreement between the parties relevant to the purposes and obligations described above and supersedes all prior agreements or proposals, oral or written and all other communication between the parties relating to the subject matter of this Agreement.

3.8 Public Record. The parties acknowledge this Agreement is a public record and after it is fully executed will be recorded in the Malheur County Commissioner's Journal maintained by the Malheur County Clerk.

3.9 Attorney Fees. Regardless of the outcome of any negotiation, litigation, appeal, or other dispute, each party agrees to pay its own attorney fees and shall not seek a fee award against any other party related to any dispute concerning the Agreement.

3.10 Severability. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

3.11 Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

3.12 Authority. By signing this Agreement, each Party expressly represents that its signatory has the authority to act on behalf of such Party and any related entities bound by the Agreement. Such authority is material to the Agreement.

3.13 Survival. The provisions of this Agreement set forth in the following paragraphs shall survive termination of this Agreement: 2.1 E-I., 2.3, and 3.3 through 3.12.

FROERER FAMILY LIMITED PARTNERSHIP

MALHEUR COUNTY DEVELOPMENT
CORPORATION

By _____
Sharla Froerer, General Partner

By _____
Grant Kitamura, Chair

By _____
Colleen Froerer, General Partner

MALHEUR COUNTY, OREGON

Dan P. Joyce, County Judge

Don Hodge, County Commissioner

Ron Jacobs, County Commissioner

Approved as to Form:

Stephanie Williams, County Counsel

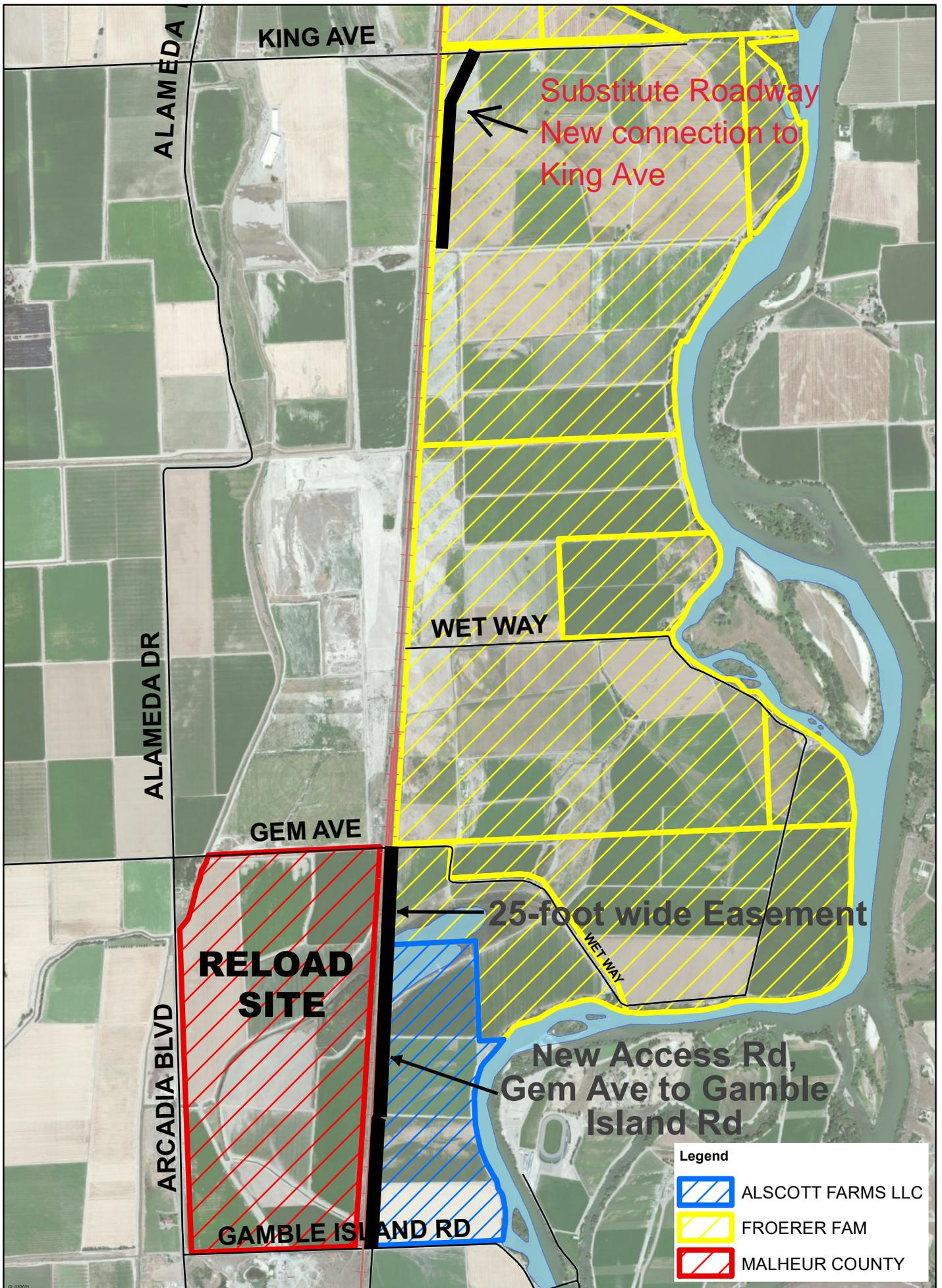


Exhibit 1