

DOUGLAS COUNTY TRANSPORTATION & LAND SERVICES

140 19TH STREET NW, SUITE A • EAST WENATCHEE, WA 98802
PHONE: 509/884-7173 • FAX: 509/888-0406
www.douglascountywa.net

January 8, 2015

Fancher Heights Homeowners Association
2472 Twin Peaks View
East Wenatchee, WA 98815

HOA: fancherheights@gmail.com
Jerry Fischer: jerry.andrea2257@gmail.com

Subject: Fancher Heights Boulevard Agreement: Private Improvements within ROW

Dear Mr. Fischer:

A contractor (Dale Gullickson) representing the Fancher Home Owners Association visited the County on December 29th to obtain a permit to work in the Fancher Boulevard right-of-way to perform tree removal. At that time the county was awaiting confirmation from the Fancher Home Owners Association regarding roles and responsibilities associated with private improvements located within the Fancher Boulevard right-of-way and development of plans for replacement of damaged sidewalk.

Your December 30, 2014 e-mail response noted that the Association Board needed additional information in order to move forward with a decision. Additional information requested included the following:

1. *What exactly the permit requires;*
2. *Written assurance from the county that the sidewalk repairs/replacement will be paid for by Douglas County that includes a date by which the repairs will be completed.*

Some of this information has been discussed in previous correspondence, including a letter dated November 14, 2014. To provide assurance and clarity moving forward please find attached an **AGREEMENT RE: PRIVATE IMPROVEMENTS LOCATED WITHIN RIGHT-OF-WAY BETWEEN DOUGLAS COUNTY AND FANCHER HEIGHTS OWNERS ASSOCIATION** for consideration by the Association.

Please provide the County with the Association's decision with regard to entering into the agreement **no later than January 30, 2015.**

Your prompt attention into this matter is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Lange".

Jennifer Lange, PE
Assistant County Engineer

cc: Board of County Commissioners
Steve Clem, Prosecuting Attorney
Doug Bramlette, PE, PLS, County Engineer
Jim Barker, Douglas County Administrator
Casey Mehaffey, Wenatchee World

AGREEMENT RE: PRIVATE IMPROVEMENTS LOCATED WITHIN RIGHT-OF-WAY BETWEEN DOUGLAS COUNTY AND FANCHER HEIGHTS OWNERS ASSOCIATION

This Agreement is made this day by and between Douglas County, Washington, a political subdivision of the State of Washington (the "County") and the Fancher Heights Owners Association, a Washington non-profit corporation (the "Association").

WHEREAS, the Association owns private improvements located in boulevard medians and sidewalk planting areas within the County's right-of-way known as Fancher Heights Boulevard, including trees, shrubbery and other landscaping, irrigation systems, lighting, signage and other features;

WHEREAS, the Association's trees planted and growing within the County's right-of-way have caused damage to sidewalks and will cause future damages;

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions under which the existing trees will be removed, the damaged sidewalks will be repaired and replacement trees will be planted.

NOW, THEREFORE, in consideration of the promises, terms and conditions set forth below, the parties hereby agree as follows:

1. Removal of Trees. The Association shall, at its sole expense, remove the existing trees planted within the Fancher Heights Boulevard right-of-way. All trees shall be removed prior to April 1, 2015. The Association shall obtain a permit from the County to conduct tree removal work with the right-of-way. The permit shall include the following conditions:

a. Tree removal shall include removal of stumps. Removal of stumps shall be performed to minimize damage to surrounding infrastructure. Stumps shall be ground to a minimum depth of 12 inches below the surrounding curb/sidewalk elevation.

b. The Association shall submit, and the Association's contractor(s) shall follow, a traffic control plan designed to protect vehicular, bicycle and pedestrian use of Fancher Heights Boulevard during the work. The traffic plan shall be subject to the review by and approval of the County;

c. The Association shall be solely responsible for injuries to persons and damages to private and public property caused by or arising from the work and shall indemnify the County from all such injuries and damages; and

d. The Association or its contractor(s) providing proof of comprehensive public liability insurance having minimum limits of \$1,000,000 covering the work and naming the County, its officers, employees and agents as additional named insureds by endorsement.

e. The Association shall accept a Grant of Franchise from the County authorizing the Association to locate private improvements within the Fancher Heights Boulevard right-of-way and obligating the Association to maintain such private improvements.

2. **Sidewalk Replacement.** After all trees have been removed by the Association pursuant to paragraph 1, the County shall inspect the sidewalks and determine the scope of sidewalk repairs. The County has budgeted \$80,000 in county road funds for Fancher Heights Boulevard sidewalk repairs for 2015 and will conduct repairs not to exceed that budgeted amount. If the 2015 budgeted amount is insufficient to conduct all repairs, the County will complete repairs during 2016 so long as county road funds are available and budgeted.

3. **Replacement of Trees.** The Association shall, at its sole expense, plant replacement trees and assure that all irrigation systems are complete and operating properly. The replanting and irrigation work shall commence within 90 days after the County has completed all Fancher Heights Boulevard sidewalk repairs. The Association shall obtain a permit from the County to conduct replanting and irrigation work within the right-of-way. The conditions of the permit shall include:

a. The Association shall submit a landscaping and maintenance plan specifying the species, size and location of trees to be planted, required maintenance and the location of all irrigation systems. Trees shall be one or more species and sizes that are compatible with urban sidewalk planting, eliminate future risk of sidewalk, curb and asphalt damage, and minimize ongoing maintenance requirements. The Association's landscaping plan shall be prepared and certified by a Washington State licensed landscape architect and shall subject to review by and approval of the County;

b. The Association shall submit, and the Association's contractor(s) shall follow, a traffic control plan designed to protect vehicular, bicycle and pedestrian use of Fancher Heights Boulevard during the work which has been reviewed and approved by the County;

c. The Association shall be solely responsible for injuries to persons and damages to private and public property caused by or arising from the work and shall indemnify the County from all such injuries and damages; and

d. The Association or its contractor(s) providing proof of comprehensive public liability insurance having minimum limits of \$1,000,000 covering the work and naming the County, its officers, employees and agents as additional named insureds by endorsement.

4. **Disputes.**

a. **Time.** Time is of the essence of this Agreement.

b. **Contract Representative.** The County and the Association shall each designate the person who has the authority and responsibility for administering this Agreement. Absent such designation, the representatives executing this Agreement on the behalf of the parties shall be conclusively presumed to have such authority and responsibility. All notices regarding the performance or interpretation of this Agreement shall be in writing and be served on such person.

c. **Conflict.** In the event of conflict among the terms and conditions of this Agreement and federal, state or local law, the inconsistency shall be resolved by giving precedence of interpretation in the following order:

- i. Applicable federal case law, statutes and regulations; then
- ii. Applicable Washington case law, statutes and regulations; then
- iii. The terms and conditions of any Permit issued to the Association; then
- iv. The terms and conditions of the Grant of Franchise issued by the County; then
- v. Any other terms and conditions of this Agreement.

d. **Waiver Limited.** A waiver of any term or condition of this Contract must be in writing and signed by the party. Any express or implied waiver of a term or condition of this Contract shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission.

e. **Attorney's Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each party agrees to pay its own attorney's fees and other costs incurred in that action, arbitration or proceeding.

f. **Governing Law and Venue.** This Agreement shall be governed exclusively by the laws of the State of Washington. The Douglas County Superior Court shall be the sole proper venue for any and all suits brought to enforce or interpret the provisions of this Agreement.

5. **Assignment.** This Agreement is personal to the Association. The Association may not assign its rights or delegate its duties under this Agreement, whether by assignment, further contract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

6. **Entire Agreement.** This Agreement constitutes the entire agreement between the County and the Association. There are no understandings or agreements between County and the Association other than those set forth in this Agreement. No other statement, representation or promise has been made to induce either party to enter into this Agreement.

7. **Modification.** This Agreement may not be amended, supplemented or otherwise modified unless expressly set forth in a written agreement signed by the parties.

8. **Invalid Provisions.** The invalidity or unenforceability of any particular term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision and this Agreement shall be construed in all respects as if such invalid or unenforceable term or provision was omitted.

FANCHER HEIGHTS OWNERS ASSOCIATION

DATED: _____

By: _____
Authorized Officer Title

DOUGLAS COUNTY, WASHINGTON
BOARD OF COUNTY COMMISSIONERS

DATED: _____

Chair

Vice Chair

Commissioner

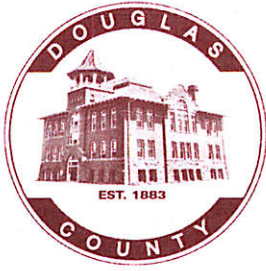
ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

Prosecuting Attorney

County Engineer



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November 14, 2014

Fancher Heights Homeowners Association
2472 Twin Peaks View
East Wenatchee, WA 98815

HOA: fancherheights@gmail.com
Jerry Fischer: jerry.andrea2257@gmail.com

Subject: Fancher Heights Boulevard Landscaping

Dear Mr. Fischer,

Your letter of November 3, 2014 and subsequent e-mails from November 7, 2014 have been reviewed and considered.

The November 29, 1988 correspondence between Jeffrey Rhodes and the Douglas County Public Works Director is a document accepting the roadway as complete.

The operation and maintenance of the right-of-way has been conducted as intended since the time of development approval and consistent with the November 29, 1988 roadway acceptance document. Operation and maintenance of the roadway has been performed by Douglas County, while operation and maintenance of the landscaping within the right-of-way has been provided by the Fancher Heights Homeowners Association or by contractors working at the direction of the Homeowners Association.

Based upon your recent emails to Douglas County, the status/position of the Homeowners Association with respect to the Boulevard Landscaping is unclear.

To further clarify the County's position with regard to Boulevard Landscaping, the following are responses to the inquiries contained within the November 3, 2014 correspondence.

Can we obtain written permission from Douglas County to allow the FHOA to remove the trees in question along the boulevard?

Upon receipt of a written request/plan for removing the trees, the County will issue a Permit to Perform Work in the right-of-way. Work within the right-of-way must be conducted by a licensed bonded contractor. Provisions for traffic control during tree removal shall be approved by the County and implemented throughout the removal process.

Can we get a commitment in writing that states Douglas County will make the necessary repairs to the sidewalks along with a completion date for the work?

Douglas County believes it is appropriate to make sidewalk repairs. However, until the trees are removed and the extent of cleanup necessary to facilitate sidewalk repair is determined, the

actual costs for repairs will be difficult to determine. If additional sidewalk is damaged during tree removal, the cost for repairs will increase. The ability to conduct repairs in 2015 depends upon the estimated cost of repairs, *determined after tree removal*, and the 2015 budget available for such work. Funding for sidewalk repair must be reviewed and approved by the Board of County Commissioners and authorized in the 2015 budget.

Can we get a commitment in writing that states we can replant the boulevard with comparable landscaping?

The County is willing to enter into agreement(s) with the Homeowners Association to authorize replacement landscaping and infrastructure (irrigation and lighting) within the right-of-way. Prior to entering into any agreement, the Homeowners Association will need to submit a landscaping plan to the County for review and subject to the county's approval. The plan must include appropriate plant selections and provide specific criteria for maintenance, as well as a plan for replacement or repair of related landscaping infrastructure. Any agreement must outline the roles and responsibilities of both the Homeowners Association and the County, and incorporate these plans. The ultimate approval of any agreements, including maintenance agreements and right-of-way franchise agreements, requires review by the Prosecuting Attorney's office and approval by the Board of County Commissioners. Written assurances cannot be provided at the staff level at this time.

Your prompt attention into this matter is appreciated.

Sincerely,



Jennifer Lange, PE
Assistant County Engineer

cc: Doug Bramlette, PE, PLS, Douglas County Engineer
Jim Barker, Douglas County Administrator
Board of County Commissioners