

**CITY OF BANDON**

**City Council Agenda Documentation**

**Date:** May 11, 2020

**Subject:** Resolution No. 20-11- Approving the Real Estate Transaction between FRC, LLC & City of Bandon

**Item No.:** 5.3.1

**BACKGROUND:**

The City has been negotiating the sale for several years of the land that is owned by the City/URA essentially south of Third Street on the other side of the current cheese factory. As the City is aware, the negotiations were somewhat drawn out because of the issue of the upland drainage on 11th St. and Elmira that needed to be attended to before the sale could be made and development began.

The attached Sale Agreement is dated on or about February 24, 2020, and the title company has asked for a specific resolution relating to the transfer of the real estate known as the Old City Shop to be sold to FRC, LLC. The Buyer has asked for a Release of old sewer easements that are no longer relevant to the property, and that Release is included for review in your packet.

Currently the property has been used, by in part, by the cheese factory for storage. It was formerly used for the City shops. The property will continue to be used for parking for the current cheese factory and any attended businesses.

**ACTION:**

If the Council wishes to finalize the Agreement and sale then MOVE to authorize the execution of Resolution No. 20-11 allowing the City Manager to enter into any and all sales and closing documents in connection with the transfer of the real estate by the City to FRC, Inc. for \$850,000.00, including a deed and to accept the financing documents to be given to the Sellers and to execute such other documents to allow any extension of closing as necessary, including the Release of Easements.

SUBMITTED BY:

*/s/Frederick J. Carleton*

Frederick J. Carleton, City Attorney

**RESOLUTION NO. 20-11**

**A RESOLUTION OF THE MAYOR AND CITY  
COUNCIL OF THE CITY OF BANDON  
APPROVING THE REAL ESTATE TRANSACTION  
BETWEEN FRC, LLC AND THE CITY OF BANDON**

WHEREAS, In connection with the closing of the real estate transaction between FRC, LLC (“Creamery”) and the CITY OF BANDON (“City”) in which the Sale Agreement is dated on or about February 24, 2020, and the title company has asked for specific resolutions relating to the transfer; and

WHEREAS, The CITY finds it is in its best interest that the CITY enter into a transaction whereby the real estate identified in the attachment as Exhibit “A” be sold to FRC, LLC; and

WHEREAS, The CITY approves the Release of two old sewer Easements across the parcels being sold that are no longer relevant or required by the City or wanted by the Creamery; and

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of Bandon resolve that the City Manager is authorized to enter into any and all sales and closing documents in connection with the transfer of the real estate by the City to CREAMERY for \$850,000.00, including a deed and to accept the financing documents to be given to the Sellers and to execute such other documents to allow any extension of closing as necessary, including the Release of Easements.

BE IT FURTHER RESOLVED that this Resolution shall be effective immediately.

ADOPTED by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mary Schamehorn, Mayor

Attest:

\_\_\_\_\_  
Denise Russell, City Recorder



## PROMISSORY NOTE

FOR VALUE RECEIVED, FRC, INC., Promisor, ("CREAMERY"), promises to pay to CITY OF BANDON/CITY OF BANDON URBAN RENEWAL AGENCY/DISTRICT NO. 1, Holder, ("AGENCY"), the sum of SEVEN HUNDRED SIXTY-FIVE THOUSAND (\$765,000.00) DOLLARS, with an annual interest rate at 3% per annum, to be paid as follows:

- a. in monthly principle and interest payments, based on 25-year amortization, of not less than \$3,000.00, including interest at a rate of 3% per annum, the first payment due within eighteen (18) months from the date execution of this Note. Interest will be readjusted every three (3) years. Interest will not be less than 3%, and will increase no more than 1.5% above the prime rate for long term rates. The total balance of the note, principle and interest shall be paid on or before seven (7) years from the date of this note, including balloon payment.
- b. CREAMERY may prepay any or all of the Note without any pre-payment penalty, charge or additional cost or interest demand.

If any installment is not so paid, the whole sum of principal and interest shall become immediately due and collectible at the option of the holder of this note. The payment stipulated is a minimum payment. Maker may make any additional payment without penalty, provided, however, that additional payments unless identified as advance payments shall not excuse the Maker from making future payments in full as they fall due. If any payment, including the final payment of principal and interest, is not paid when due, the whole sum of principal and interest shall become immediately due and collectible at the option of the holder of this note. If any installment or the final payment is more than twenty days late, there shall be a late fee of \$10.00 per day assessed. The minimum payment stipulated is the full payment. CREAMERY may make any prepayments in any amount or in full without penalty, provided, however, that additional payments unless identified as advance payments shall not excuse CREAMERY from making the final payment in full on the due date.

This obligation is secured by a Trust Deed executed this same date and to be recorded in Coos County, and is subject to all of the terms and conditions of such Trust Deed. Time is of the essence in the performance of the obligations contained herein.

The loan is personal to CREAMERY and is not assignable. Should AGENCY allow assignment, it is in its sole discretion to do so and under such conditions as the Common Council of the City of Bandon shall determine. In making it, AGENCY has relied on CREAMERY's credit, CREAMERY's interest in the mortgage property, and the financial market conditions at the time the loan is made. If CREAMERY enters into an earnest money agreement, transfers or contracts to transfer title to or possession of all or part of the mortgage property that secures this

note by deed, contract of sale, or leases the property, AGENCY may declare the entire balance of this loan immediately due and payable.

All persons liable either now or hereafter for the payment of this note severally waive presentment demand for payment and notice of nonpayment thereof.

Failure to exercise any option to declare a default or accelerate the balance due hereon shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Modification of the terms of payment of this note made at the request of any person liable thereof shall not impair such person's liability or the liability of any other person now or hereafter liable for the payment hereof.

In case suit or action is instituted to collect this note, CREAMERY promises to pay such additional sum as the trial court may adjudge reasonable as attorney fees in said suit or action, and any appellate court upon appeal of such suit or action. If this note is placed in the hands of an attorney for collection, CREAMERY agrees to pay the reasonable fee and expenses of such attorney even though no suit or action is instituted or no sale of the property has been directed under the terms of the real estate mortgage securing this obligation. Such fees and costs may, at the option of AGENCY, be added to the principal balance of this note.

Dated: \_\_\_\_\_, 2020.

IN WITNESS WHEREOF, FRC, INC. "CREAMERY" has executed this instrument the day and year first above written.

By: \_\_\_\_\_  
By: Authorized Representative for FRC, Inc.

STATE OF OREGON ) ss.)  
County of Coos )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before appeared \_\_\_\_\_, an authorized representative with authority to sign for FRC, INC. (Promisor), personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that they executed it.

WITNESS my hand and official seal the day and year last above written.

\_\_\_\_\_  
Notary Public for Oregon

**AFTER RECORDING RETURN TO:**

Carleton Law Office  
P.O. Box 38  
Bandon, OR 97411

**MAIL ALL TAX STATEMENTS TO:**

FRC, Inc.  
P.O. Box 1902  
Bandon, OR 97411

**TRUST DEED**

THIS TRUST DEED, made this \_\_\_\_ day of \_\_\_\_\_, 2020, FRC, INC., as Grantor, Ticor Title Company, as Trustee, and CITY OF BANDON URBAN RENEWAL DISTRICT NO. 1, aka: CITY OF BANDON URBAN RENEWAL AGENCY, as Beneficiary.

**WITNESSETH:**

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property in Coos County, Oregon, legally described as:

**See attached Exhibit "A"**

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise now or hereafter appertaining, and the rents, issues and profits thereof and all fixtures now or hereafter attached to or used in connection with the property.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantors herein contained and payment of the sum of SEVEN HUNDRED SIXTY-FIVE THOUSAND (\$765,000.00) DOLLARS, the total balance of the note, principle and interest shall be paid on or before seven (7) years from the date of closing. FRC, INC. may prepay any or the entire note without any pre-payment penalty, charge or additional cost or interest demand.

The date of maturity of the debt secured by this instrument is the date, stated above, on which the final installment of the note becomes due and payable. Should the grantor either agree to, attempt to, or actually sell, convey, or assign all (or any part) of the property or all (or any part) of grantor's interest in it without first obtaining the written consent or approval of the beneficiary, then, at the beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable. The execution by grantor of an earnest money agreement does not constitute a sale, conveyance or assignment.

To protect the security of this trust deed, grantor agrees:

1. To protect, preserve and maintain the property in good condition and repair; not to remove or demolish any building or improvement thereon; not to commit or permit any waste of the property; no timber may be cut or harvested until the obligation is paid in full.
2. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property; if the beneficiary so requests, to join in executing such financing statements pursuant to the Uniform Commercial Code as the beneficiary may require

and to pay for filing same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or searching agencies as may be deemed desirable by the beneficiary.

3. To keep the property free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against the property before any part of such taxes, assessments and other charges become past due or delinquent and promptly deliver receipts therefor to beneficiary; annual real estate taxes must be paid, in full by the 1<sup>st</sup> installment due date.

4. To pay all costs, fees and expenses of this trust including the cost of title search as well as the other costs and expenses of the trustee incurred in connection with or in enforcing this obligation and trustee's and attorney's fees actually incurred.

5. To appear in and defend any action or proceeding purporting to affect the security rights or powers of beneficiary or trustee; and in any suit, action or proceeding in which the beneficiary or trustee may appear, including any suit for the foreclosure of this deed, to pay all costs and expenses, including evidence of title and the beneficiary's or trustee's attorney's fees; the amount of attorney's fees mentioned in this paragraph 6 and paragraph 7 in all cases shall be fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, grantor further agrees to pay such sum as the appellate court shall adjudge reasonable as the beneficiary's or trustee's attorney's fees on such appeal.

It is mutually agreed that:

6. In the event that any portion or all of the property shall be taken under the right of eminent domain or condemnation, beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorney's fees necessarily paid or incurred by grantor in such proceedings, shall be paid to beneficiary and applied by it first upon any reasonable costs and expenses and attorney's fees, both in the trial and appellate courts, necessarily paid or incurred by beneficiary in such proceedings, and the balance applied upon the indebtedness secured hereby; and grantor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon beneficiary's request.

7. At any time and from time to time upon written request of beneficiary, payment of its fees and presentation of this deed and the note for endorsement (in case of full reconveyances, for cancellation), without affecting the liability of any person for the payment of the indebtedness, trustee may (a) consent to the making of any map or plat of the property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the property. The Beneficiary in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee's fees for any of the services mentioned in this paragraph shall be not less than \$5.

8. Upon any default by grantor hereunder, beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the property or any part thereof, in its own name sue or otherwise collect the rents, issues and profits, including those past due and unpaid, and apply the same, less costs and

expenses of operation and collection, including reasonable attorney's fees upon any indebtedness secured hereby, and in such order as beneficiary may determine.

9. The entering upon and taking possession of the property, the collection of such rents, issues and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

10. Upon default by grantor in payment of any indebtedness secured hereby or in grantor's performance of any agreement hereunder, time being of the essence with respect to such payment and/or performance, the beneficiary may declare all sums secured hereby immediately due and payable. In such an event the beneficiary may elect to proceed to foreclose this trust deed in equity as a mortgage or direct the trustee to foreclose this trust deed by advertisement and sale, or may direct the trustee to pursue any other right or remedy, either at law or in equity, which the beneficiary may have. In the event the beneficiary elects to foreclose by advertisement and sale, the beneficiary or the trustee shall execute and cause to be recorded a written notice of default and election to sell the property to satisfy the obligation secured hereby whereupon the trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.726 to 86.815.

11. After the trustee has commenced foreclosure by advertisement and sale, and at any time prior to 5 days before the date the trustee conducts the sale, the grantor or any other person so privileged by ORS 86.778, may cure the default or defaults. If the default consists of a failure to pay, when due, sums secured by the trust deed, the default may be cured by paying the entire amount due at the time of the cure other than such portion as would not then be due had no default occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the obligation or trust deed. In any case, in addition to curing the default or defaults, the person effecting the cure shall pay to the beneficiary all costs and expenses actually incurred in enforcing the obligation of the trust deed together with trustee's and attorney's fees not exceeding the amounts provided by law.

12. Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which the sale may be postponed as provided by law. The trustee may sell the property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the trustee, but including the grantor and beneficiary, may purchase at the sale.

13. When trustee sells pursuant to the powers provided herein, trustee shall apply the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the trustee and a reasonable charge by trustee's attorney, (2) to the obligation secured by the trust deed, (3) to all persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear in the order of their priority and (4) the surplus, if any, to the grantor or to any successor in interest entitled to such surplus.

14. Beneficiary may from time to time appoint a successor or successors to any trustee named herein or to any successor trustee appointed hereunder. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any trustee herein named or appointed hereunder. Each such



URBAN RENEWAL AGENCY, does hereby accept the foregoing Trust Deed pursuant to ORS 92.014.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**BENEFICIARY:**

\_\_\_\_\_  
Dan Chandler, Manager for the BANDON  
URBAN RENEWAL DISTRICT NO. 1 and  
CITY OF BANDON, URBAN RENEWAL AGENCY

STATE OF OREGON            )  
  )ss  
County of Coos             )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2020, DAN CHANDLER, Manager for the BANDON URBAN RENEWAL DISTRICT NO. 1 and CITY OF BANDON, URBAN RENEWAL AGENCY personally appeared before me, who is personally known to me to be the signer of the above document, and he acknowledged that he signed it.

\_\_\_\_\_  
Notary Public for Oregon





**SALE AGREEMENT  
AND  
RECEIPT OF EARNEST MONEY**

This agreement is made and entered into by and between CITY OF BANDON URBAN RENEWAL DISTRICT NO. 1, aka: CITY OF BANDON URBAN RENEWAL AGENCY, Seller, hereinafter referred to as "CITY", and FRC, INC., Buyer, hereinafter referred to as "CREAMERY". It is effective upon the signing by both parties.

**RECITALS:**

1. Seller desires to sell to Buyer and Buyer desires to purchase from Seller the real property in Bandon, Oregon, Map 28S14W30CA, Tax Lots 2800, 2900, 3000, 3200, 3300, 3600 and 3900 and to be legally described as set out in the preliminary title report. Exhibit "5" attached hereto is a map illustrating the boundaries of this transaction.

2. It is the purpose of this document to set forth in writing the agreement of the parties.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. **Sale and Purchase.** Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer for the sum of \$850,000.00 (the "Purchase Price").

2. **Earnest Money.** Seller hereby acknowledges receipt of the sum of \$1,000.00 paid by Buyer as earnest money (which will be transferred to Ticor Title Company, Bandon, Oregon). The earnest money will be applied to the Purchase Price on the Closing Date, as that term is defined below. Countersigned originals constitute one original.

3. **Payment of Purchase Price.** The Purchase Price must be paid as follows:

3.1 At closing, the earnest money will be credited to the Purchase Price.

3.2 At closing, Buyer must pay \$84,000.00 for a total down of \$85,000.00. The balance shall be paid as follows: Buyer shall execute a Promissory Note for \$765,000.00 (\$850,000.00 minus \$85,000.00) at 3% Annual Interest Rate with monthly principle & interest payments, calculated on a 25 year amortization, resulting in not less than \$3,000.00 per month, the first payment due within eighteen (18) months from the date of closing and execution of the Note. Interest will be readjusted every three (3) years. Interest will not be less than 3% and will increase no more than 1.5% above the prime rate for long term rates. The total balance of the note, principle and interest shall be paid on or before seven (7) years from

the date of closing, with balloon payment. There will be no penalty for pre-payment.

4. **Closing.** Time is of the essence. Closing must take place on a mutually agreed on date. In any event, closing will occur on or before March 6, 2020. The terms *closed*, *closing* or *closing date* mean when the deed is recorded and funds are available to Seller. Buyer and Seller will share, equally, all closing escrow fees.

4.1 **SDC Credits.** Attached hereto and incorporated herein, and made a part hereof as Exhibit "1" is an email including the overall SDC credit calculations. Further, as SDC credits, there will be due from Buyer, upon completion of the anticipated developments with SDC credits due (per the ordinance provisions allowing for consideration of job generation), improvements to benefit the public. The developer and the CITY will reconsider the analysis of credits contained in Exhibit "1" upon showing that the historical development of the properties warrants further credits.

It is anticipated that, if the conceptual development of the developer is built according to these plans, SDC's will be negligible if combined with this development if the developer maintains the parking lot that will be developed in the future for the wider public use, including designation of spaces for other properties in the area.

4.2 **Documents.** At closing, in addition to the normal title company provided and required escrow instructions, the Parties will execute and deliver the appropriate documents needed to accomplish this transaction: namely, (a) The form Warranty Deed from Seller to Buyer substantially like Exhibit "2" of this agreement, (b) The form of Promissory Note substantially like Exhibit "3" of this agreement, and (c) The form of Trust Deed substantially like Exhibit "4" of this agreement.

4.3 **Buyer's Conditions.** Buyer's obligation to close this transaction is subject to the satisfaction of each of the following conditions:

4.3.1 **Seller's Compliance.** Seller's fulfillment of each of its obligations under this Agreement.

4.4 **Seller's Conditions.** Seller's obligation to close this transaction is subject to the satisfaction of each of the following conditions:

4.4.1 **Purchaser's Compliance.** Purchaser's fulfillment of each of its obligations under this Agreement.

5. **Preliminary Title Report.** Within 25 days after full execution of this Agreement, Seller will furnish to Buyer a preliminary title report showing the condition of title to the Property, together with copies of all exceptions listed therein (the "Title Report"). Buyer will have 20 days from receipt of the Title Report to review the Title Report and to notify Seller, in writing, of Buyer's disapproval of any special exceptions shown in the Title Report. Those exceptions the Buyer does not object to are referred to below as the "Permitted Exceptions." Zoning ordinances, building restrictions, taxes that are not yet paid for the current tax year, and reservations in federal patents and state deeds will be deemed Permitted Exceptions. If Buyer notifies Seller in writing of disapproval of any exceptions, Sellers will have 15 days after receiving the disapproval notice to either remove the exceptions or provide Buyer with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes (the "Sellers Assurance Period"). If Seller does not remove the exceptions or provide Buyer with such assurances, Buyer may terminate this Agreement by written notice to Seller given within 15 days after expiration of the Sellers Assurance Period, in which event the earnest money will be refunded to Buyer and, when applicable, this Agreement will be of no further binding effect.

6. **Marketable Title; Deed.** On the Closing Date, unless agreed otherwise herein, Seller will convey marketable title to the property by statutory Bargain and Sale Deed, free and clear of all liens of record, excepting property taxes that are not yet payable, zoning ordinances, building and use restrictions, reservations in federal patents, and the Permitted Exceptions. Seller agrees to subordinate lien to any banks, or lending institutions that have pre-existing or senior debt, including new senior debt that might be initiated after this sale agreement.

7. **Title Insurance.** Within 15 days after closing, Seller must furnish Buyer, at Seller's cost, with an Owner's policy of title insurance in the amount of the purchase price, insuring Buyer as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions.

8. **Possession.** Buyer will be entitled to possession at closing.

9. **Representations.** Buyer acknowledges that Buyer has accepted and executed this Agreement on the basis of Buyer's own examination and personal knowledge of the Property; that Seller and Seller's agents have made no representations, warranties, or other agreements concerning matters relating to the Property and upon environmental examinations to its satisfaction; that Sellers and Seller's agents have made no agreement or promise to alter, repair, or improve the Property; and that Buyer takes the Property in its present condition "AS IS" and does not and will not hold Seller responsible for anything relating to the condition of the Property.

**10. Conditions.**

- 10.1. Both the CITY and the CREAMERY will give the other nonexclusive easement over those portions of their properties as necessary. The CREAMERY will maintain the existing and new parking lot and sidewalks on its property for reasonable public use, as long as it does not interfere with its operation. The parking lot shall be open to the public with reasonable restrictions. Additional easements for existing or future utility and infrastructure installations shall be agreed to by the parties as needed.
- 10.2. The CITY reserves the right to consent to or deny any future use of the subject property, other than as a commercial cheese factory related and complementary facility and operations. The CITY agrees to not reasonably withhold approval for other uses that are allowed under CITY Ordinances, taking into consideration the proposed use's compatibility with the other immediate area uses; including anticipated commercial plans for development for the surrounding properties, all in order to keep the area in an enhanced, higher end commercial setting that the current cheese factory anchors for the area. Examples of what would not be compatible, notwithstanding the possibility that they otherwise would be permitted or conditionally allowed in the zone, include but are not limited to commercial uses such as strip clubs, adult fun/bookstores, marijuana facilities, medical or otherwise, non-retail uses, which have no retail component, uses which include retail but have offending noises or odors, such as coffee manufacturing, or would otherwise compromise the integrity of the City of Bandon or the [Financial Institution.]
- 10.3. An environmental analysis should not be a condition of sale or closing as this is an AS IS purchase. Seller acknowledges that the Buyer's lender will require an environmental analysis upon the beginning of development.
- 10.4. Notwithstanding Section 10.2. above, Buyer will not sell any portion of the property without Seller's consent while the Note remains unpaid in full. Further, Buyer shall make certain warehouse and related improvements planned for now on the portion of the property so designated within thirty (30) months after closing. These conditions, as appropriate, shall be covenants running with the land and/or additional covenants of the Trust Deed.

11. **Binding Effect/Assignment Restricted.** This Agreement is binding on, and will inure to the benefit of Sellers, Buyer, and their respective heirs, legal representatives, successors, and assigns.

12. **Remedies.** TIME IS OF THE ESSENCE REGARDING THIS AGREEMENT. If the Buyer's conditions described in this agreement above are satisfied or waived by Buyer and Buyer fails or refuses to close this transaction, through no fault of Seller, before the close of business on the Closing Date, Seller will have the right to retain all earnest money but this will not constitute a waiver of other remedies available to Seller, it being the intention of the parties that Seller will retain all available remedies for breach of contract, including but not limited to the right of specific performance. If the Seller's conditions described in this agreement are satisfied or waived by Seller and Seller fails to deliver the deed described in Section 4 above on the Closing Date or otherwise fails to consummate this transaction, through no fault of Buyer, all earnest money must be refunded to Buyer.

13. **Notices.** All notices and communications in connection with this Agreement must be given in writing and will be transmitted by certified or registered mail, return receipt requested, to the appropriate parties at the following addresses:

CITY OF BANDON  
P.O. Box 67  
Bandon, OR 97411

FRC, Inc.  
P.O. Box 1902  
Bandon, OR 97411

Any notice so transmitted will be deemed effective on the date it is placed in the United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

14. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

15. **Applicable Law.** This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon.

16. **Statutory Warning.** BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE

PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010

**SELLER:**

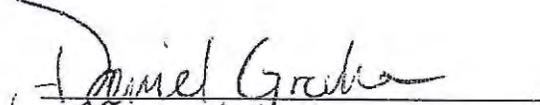
CITY OF BANDON URBAN RENEWAL  
DISTRICT NO. 1, AKA: CITY OF  
BANDON URBAN RENEWAL AGENCY

  
By: Dan Chandler, City Manager  
District Manager

Dated: 2/24, 2020

**BUYER:**

FRC, INC.

  
By: Daniel Graham RP  
Authorized Representative for FRC, Inc.

Dated: 2/24, 2020

**Carleton Law Office**

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**From:** Robert Mawson <citymanager@ci.bandon.or.us>  
**Sent:** Thursday, June 27, 2019 12:20 PM  
**To:** Daniel Graham  
**Cc:** Carleton Law Office.  
**Subject:** RE: SDC Calculations for the Woolen Mill Property

Hi Daniel

I am sending the **REVISED** SDC calculations, noting remaining credits associated with the Woolen Mill Property, as we discussed.

**BOLD** print notes the amendments from the first email.

Methodology:

Overall SDC credits were calculated based on the original cheese factory development.

Water	34,694
Stormwater	29,198
Transportation	90,061
Wastewater	<u>109,334</u>
	263,287

When the new cheese factory was developed no SDC's were charged because it was determined at that time there were sufficient credits to cover the new development. To date we have been unable to locate any documentation explaining how these credits were applied, so SDCs were re-calculated for the new development. The **REVISION** removes the City-owned restrooms and parking lot from the calculations, per your request.

Water	34,694	34,694
Stormwater	<del>20,390</del>	<b>8,162</b>
Transportation	<del>63,548</del>	<b>25,311</b>
Wastewater	<u>37,874</u>	<u>37,874</u>
	<del>156,506</del>	<b>106,041</b>

Taking the credits associated with the original cheese factory development and subtracting the SDCs that would have applied to the new cheese factory development the following credits remain:

Water	0	0
Stormwater	<del>8,808</del>	<b>21,036</b>
Transportation	<del>26,513</del>	<b>64,750</b>
Wastewater	<u>71,460</u>	<u>71,460</u>
	<del>106,781</del>	<b>157,246</b>

With your concurrence, Fred can incorporate these **NEW** numbers into the sales agreement so they will be documented for posterity along with language explaining the potential for additional credits as outlined in the City's SDC Manual. We will also prepare a separate letter outlining the City's position on future SDC considerations and potential credit opportunities for your use in discussing your future development plans with your financial institution.

Let me know if you have any questions.

Robert J Mawson  
City Manager



City of Bandon  
P.O. Box 67  
555 Highway 101  
Bandon, OR 97411  
Phone: (541) 347-2437  
Fax: (541) 347-1415  
[citymanager@cityofbandon.org](mailto:citymanager@cityofbandon.org)

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***PUBLIC RECORDS LAW DISCLOSURE***

This email is considered a public document, and as such, it is subject to the State of Oregon Retention Schedule and may be made available to the public upon request.

**ADDENDUM TO  
SALE AGREEMENT  
AND  
RECEIPT FOR EARNEST MONEY**

**SELLER:** CITY OF BANDON URBAN RENEWAL DISTRICT NO. 1, aka: CITY OF BANDON URBAN RENEWAL AGENCY

**BUYER:** FRC, INC.

The parties agreed to and are bound by the Sale Agreement and Receipt for Earnest Money (hereinafter referred to as "original offer and acceptance") that was signed by the parties on February 24, 2020 and has been placed into escrow with Ticor Title Co. in Bandon, Oregon.

This Addendum incorporated herein as though fully set forth except for the following changes and clarifications that are set forth below:

1. The new closing date will be no later than April 30, 2020, or earlier as the parties and title company can get all the paperwork accomplished.

**SELLER:**

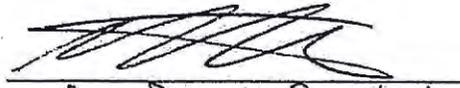
**BUYER:**

CITY OF BANDON URBAN RENEWAL  
DISTRICT NO. 1, AKA: CITY OF  
BANDON URBAN RENEWAL AGENCY

FRC, INC.



By: Dan Chandler, City Manager  
District Manager



By: Gregory Drobot, President,  
Authorized Representative for FRC, Inc.

Dated: March 16, 2020

Dated: March 16<sup>th</sup>, 2020