

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LEWIS COUNTY, WASHINGTON**

IN RE:

APPROVING A MEMORANDUM OF UNDERSTANDING)
BETWEEN LEWIS COUNTY AND CARDINAL FG FOR) **RESOLUTION NO. 04 - 057**
THE PURPOSE OF REVIEW AND PROCESSING THE)
MASTER PLANNED INDUSTRIAL DEVELOPMENT)
APPLICATION SUBMITTED BY CARDINAL FG)
AND AUTHORIZING SIGNATURES THEREUPON)

WHEREAS, the Board of County Commissioners has reviewed and authorized a Memorandum of Understanding between Lewis County and the Cardinal FG Company in consideration of mutual promises and undertakings for processing the application and environmental review documents in conjunction with a Master Planned Industrial Development application submitted by Cardinal Glass; and


WHEREAS, the Board has determined that it would be prudent for the County and Cardinal FG to enter into said mutual agreement; and

WHEREAS, it is in the best interests of the public to enter into the Memorandum of Understanding between Lewis County and Cardinal Glass; NOW THEREFORE


BE IT RESOLVED by the Board of County Commissioners of Lewis County, Washington that the aforesaid personal services contract is hereby approved, and the Chief of Staff is authorized to sign the same.

DONE IN OPEN SESSION this 9th day of February, 2004.

**BOARD OF COUNTY
COMMISSIONERS
LEWIS COUNTY, WASHINGTON**


Chairman


Member

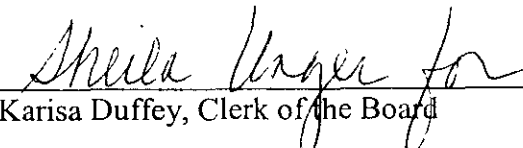

Member

APPROVED AS TO FORM:
JEREMY RANDOLPH Prosecuting Attorney

By: 

Deputy Prosecuting Attorney

ATTEST:


Karisa Duffey, Clerk of the Board

- seal -

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT is made the 9th day of February, 2004, between, CARDINAL FG COMPANY, a Wisconsin corporation ("Cardinal") and LEWIS COUNTY ("Lewis County" or "County").

RECITALS

WHEREAS, Cardinal has filed an application dated November 4, 2003 for a Major Industrial Development site under the provisions of RCW 36.70A.365 located between the Town of Napavine and the Town of Winlock (the "Application").

WHEREAS, Lewis County has the authority to consider and site Major Industrial Developments under the provisions of RCW 36.70A.365 and has provided for the consideration of such projects through the provisions of Chapter 17.20 Lewis County Code.

WHEREAS, Lewis County has represented and Cardinal has acknowledged that no public funding for County review and processing of their proposal has been budgeted by the County for 2003 or year-2004, nor has the County received any commitment by the State for public funding of County review and processing of this project.

WHEREAS, the project is a complex application, addressing a number of issues as spelled out in the referenced RCW and County Code sections. Proceedings are anticipated before the Planning Commission, the County Environmental Review Officer (SEPA), the County Hearings Examiner, and ultimately the Board of County Commissioners. The Application, if approved, would result in an amendment of the Lewis County Comprehensive Plan and development regulations as provided in Chapter 17.20 LCC.

WHEREAS, Cardinal has, in its Application, requested Lewis County act under the State Environmental Policy Act ("SEPA") to proceed directly to issuance of a determination of significance and scoping for an Environmental Impact Statement as authorized by WAC 197-11-232.

NOW THEREFORE, in consideration of the mutual promises and undertakings in this Memorandum of Understanding, the parties agree as follows:

REVIEW AND PROCESSING OF APPLICATION

The steps anticipated for review are as follows:

1. A meeting between Cardinal and Lewis County to discuss preliminary program review and review process and timing was held on October 20, 2003.
2. Cardinal filed its Application, including attachments, on November 4, 2003.

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3. Lewis County shall provide a letter of completeness or identification of additional information necessary for a complete application within 28 days after receipt of a complete Application, as identified in Section 2 above.

4. Cardinal and Lewis County desire to maximize public participation in the review processes of the Application. Thus, the County will issue a preliminary scoping notice within 30 days after notice of completion of application. (The County, as lead agency, anticipates retaining Mr. Don Largen to assist in the SEPA portion of the program review. Don wrote the EIS for the County Comprehensive Plan and has a great deal of the base environmental data at hand. The project is of a size and scope beyond the reasonable expectations and time availability of current staff.) SEPA will then proceed on the time frame set for environmental review. The applicant voluntarily agrees to reimburse all costs of County SEPA scoping and review pursuant to WAC 197-11-914.

5. Hearings for the Hearings Examiner review process under Chapter 17.20 LCC will not be scheduled before the Hearings Examiner until the EIS is complete. Once the Hearings Examiner makes his recommendation, the matter shall be considered by the Planning Commission and the Board of County Commissioners in a joint meeting, and, within two weeks of that joint meeting, the Planning Commission will prepare a recommendation to the Council for a project-specific Comprehensive Plan amendment. The processing of a project-specific Comprehensive Plan amendment need not coincide with the general annual review process for Comprehensive Plan updates.

6. The County will address, in consultation with Cardinal and consistent with the County public participation program, a public participation plan consistent with the size, nature, and location of this project to assure adequate public participation under GMA.

7. Cardinal will provide accurate, complete, and timely information so as to enable the County to process the Application in a timely and adequate manner. In the event of delays in processing of the applications resulting from Cardinal failure(s) to provide accurate, complete, or timely information to the County, Cardinal agrees to waive any and all rights, claims, damages, or actions arising from or associated with any Application processing and approval delays.

8. The County has committed to processing the Application or causing another to process the Application in a manner and to standards comparable to processing of applications for master plan projects previously undertaken by the County with wholly public funding. Mr. Bob Johnson is the County Lead Planner and the responsible planner for County actions on this case. As this is a major project requiring additional resources by the County to ensure timely and adequate processing, the County may retain one or more of the following consultants: Alexander W. Mackie of Perkins Coie LLP to advise the County on matters associated with the applications and their review; Mr. Mike McCormick, FAICP to advise the County on planning-related matters and to assist Mr. Bob Johnson in preparing and presenting staff reports and related materials as the matter proceeds through staff review; Mr. Perry Shea and The Shea Group to address engineering and particularly traffic engineering issues that may affect or be affected by the project; and Mr. Don Largen to assist in reviewing environmental submissions and aiding the Environmental Review Officer in making final determinations. All of the mentioned consultants

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to the County are recently familiar with and personally participated in County GMA proceedings and documents. The County reserves the right to retain additional consulting services to address specific issues or topics raised in the course of the Application and review process and may change County staff as circumstances warrant.

9. The project is a major project review under the provisions of the Lewis County Code, which provides a mechanism for the County to request from an applicant reimbursement of certain costs incurred by the County under such review. To this end Cardinal agrees to reimburse the County for costs incurred by its consultants in the processing and review of this project, as follows:

A. Lewis County shall bill Cardinal for the costs incurred in connection with the project to the date of this agreement, plus \$7,500, which the County shall hold as the reserve account. Cardinal shall pay all bills promptly.

B. After the first bill, and through the first benchmarks of the project identified in paragraph 10 below, consulting services and County costs shall be charged against the reserve account as follows: Each month the County shall bill Cardinal a sum sufficient to restore the reserve account to a maximum of \$7,500. The County may carry over costs exceeding \$7,500 from month to month, or may bill those costs through to Cardinal. In the event Lewis County anticipates costs in excess of \$7,500 per month as set forth above, they shall notify Cardinal prior to incurring any liability in excess of \$7,500 per month cost to Cardinal. Cardinal shall have five (5) business days to disapprove such additional costs pursuant to the stopwork authority discussed below.

C. The purpose of this section is to permit Cardinal and its agents to initiate contact with the County consultants at the earliest possible time to discuss the approach to the program and identify issues and highlights during the EIS draft preparation, and anticipate costs associated therewith.

D. The first benchmark shall be draft EIS review. At this time, County consultants shall estimate anticipated costs for the EIS review program, which estimate shall be subject to approval by Cardinal and the County monthly billing modified in accordance with the cost-approved program for the final EIS portion of the project. At each of the benchmark meetings, the issue of costs and tasks shall be discussed and fee billings modified accordingly.

E. Cardinal shall have the right to notify the County to stop work and shall owe the County only those costs incurred through the stop work order. The County may stop work at any time Cardinal fails to pay invoices in accordance with the agreed schedule as set forth above, and as may be modified during the benchmark process.

F. Consultants and fees are as follows:

i. Alexander W. Mackie, of Perkins Coie LLP, in accordance with his rates and charges for services to Lewis County: presently \$250 to \$300 per hour for planning and procedural consultations; and his assistant, Doreen Milward, at \$100 per hour for all services,

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together with costs and fees identified within an existing agreement with Lewis County for the same or similar services. These rates and charges will be in effect for 2003 and may be adjusted in 2004 in concert with any overall adjustment of the contract between Lewis County and Mr. Mackie.

ii. Mr. Mike McCormick in accordance with his rates and charges for services to Lewis County: Presently \$125 per hour, travel at \$35 per hour, mileage at \$0.32 per mile, and all other costs at actual cost.

iii. Mr. Don Largen, in accordance with a contract to be negotiated with Mr. Largen at the time of the pre-scoping meetings, but estimated to be \$80.00 per hour.

iv. Mr. Perry Shea and The Shea Group – As needed in accordance with The Shea Group contract with the Lewis County Public Works Department at the time services are requested.

10. All consultant services provided under paragraph 9 above are services to the County for which the County is the client, and nothing in this Agreement shall be construed to change or to authorize impairment of any consultant relationship or duty, or confidentiality with the County, or in any way or create any professional, fiduciary, or attorney-client relationship with Cardinal by any consultant retained by the County. The County reserves the right to change consultants for cause or without cause, and to retain new or additional consultants should the County deem such changes are warranted to ensure timely and adequate processing of the application. The County shall provide Cardinal with prior notice in the event of such a change; PROVIDED, that such a change shall not constitute a breach of this Agreement nor allow for avoidance of any duty or responsibility by Cardinal under this Agreement. At the following key benchmarks Cardinal and the County will meet to address anticipated budget and participation issues. Cardinal may comment, but Lewis County will have the final say on participation, key dates, and topics, including draft EIS review (discuss EIS costs), final EIS issuance (discuss staff report, hearing support, and public notice), two weeks before public hearing (discuss attendance at hearing), one week after hearing (discuss final report), one week before final report released for public comment (discuss BOCC public hearing support and final decision).

11. Fees paid to the County by Cardinal are reimbursements for costs incurred. Cardinal and the County may discuss means of cost control and containment to assure that costs of processing the Application are reasonable. However, Cardinal acknowledges that the County has legally-prescribed duties and standards in processing and reviewing its application, and that the County shall be the final arbiter of what constitutes reasonable costs incurred in a timely and adequate review. Once services are incurred, Cardinal shall reimburse the County for services rendered at the rates agreed, and agrees that reimbursement is to be provided within 30 days of billing and that any late payment shall bear interest at the rate of 1% per month.

12. Cardinal has provided as an attachment to its Application the name of the owner, address, and property description of the property included within this application. Attached as Exhibit A is a legal description and map of the property to be included in the application. In addition, Cardinal has filed with the County a list showing the owners of record as of the date of

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the Application of all property within 1,000 feet of the exterior boundary of the property included within the application.

13. Cardinal's legal interest in the property subject to the Application is based on an Option Agreement between Cardinal and Sovran LLC. Sovran has an Option with the Carlson Family for the subject property and other property and has agreed to sell the subject property to Cardinal. The property owner, Carlson, has approved the Cardinal Application and Carlson's attorney has signed a Permission to Enter form that was submitted with the Application.

14. This Agreement may not be assigned without the express written consent of Lewis County, which will not be unreasonably withheld; PROVIDED, however, that Cardinal shall nonetheless continue to fully guarantee any financing obligations entered into between the County and Cardinal, as above described. Consent may be withheld at any time the Agreement is in default. Assignment is not required do to investment reorganization so long as the principals of Cardinal retain not less than 51% control of the successor organization.

REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS

15. Representations, warranties and disclaimers of the parties are as follows:

A. The County has the authority to process the requested Application. The County can make no representation as to the outcome of the review, only to process the Application in accordance with the requirements of the Growth Management Act and other applicable federal, state, and local laws and regulations.

B. Cardinal recognizes that in processing this Agreement and the subsequent application, the County has made no representation, warranty, or assurance as to a particular outcome for the proceeding. The decision will be made by the Board of County Commissioners, applying the laws of the state and the County and, as this is a proceeding for a discretionary zone and comprehensive plan change, the County will make a decision, based upon legislative discretion, as to the public interest of the County, based upon all materials in the appropriate record or records.

C. Even if the request is approved, or approved in a modified or amended form, there can be no warranty as to the effectiveness of the result. As no county in Washington state has yet to process a Major Industrial Development, the County can make no guarantee as to the success of any particular outcome. Both the County and Cardinal will use their resources in a best effort attempt to meet all GMA requirements, but in as much as there is very little case law on this point, and the existing case law was negative to a Lewis County prior effort, no particular result can be assured.

D. Cardinal represents and warrants that it has the legal interest in the property described in paragraph 13 above, and has the resources to complete the undertaking. If at any time, Cardinal is more than 30 days late in the payment of any fee or reimbursement due under the agreements above, the County may suspend proceedings and need not recommence

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proceedings until all fees are paid (even fees which the applicant may protest). In the event delinquent fees are more than 90 days delinquent, the County may terminate all proceedings and may consider all applications and permit requests as abandoned, and this Agreement terminated with no further legal duty to proceed.

E. In addition to any other remedies to the County herein described or implied, in the event the applicant has failed to provide needed information within the time frame set forth in the schedule attached, the County shall ask for a status report. In the event the applicant fails to respond with the required information, or identify a new agreed schedule with the County, the County may terminate all its processing and proceedings, may consider all applications and permit requests as abandoned, and send a final bill for all outstanding costs.

F. In the event of breach of this Agreement, all parties stipulate to venue in Lewis County Superior Court. In the event Lewis County is held in breach of its obligations under this Agreement, Cardinal agrees that any claims, costs, and damages shall be limited to engineering and planning costs incurred by Cardinal as a result of the default, and at no time shall damages include the costs or value of real property, interest on the real property, or any anticipated profits on the development, lease, servicing or sale of any real property.

G. Unless extended by Cardinal and Lewis County, this Agreement shall terminate upon issuance of a final decision by Lewis County following project processing and Application review. Nothing in this Agreement commits the County to defend the project approval or denial in administrative, Superior Court, or appellate Court of Appeal proceedings. In any event, Cardinal's obligations under this Section, and its obligations as to payment and reimbursements to the County shall continue until fully satisfied. Cardinal acknowledges that the County does not warrant nor guarantee to defend project approval in litigation or under appeal. Cardinal may defend the project approval in litigation or under appeal and the County agrees to support such a defense to the extent required by law or court rules.

H. If any of the terms or provisions of this Agreement are determined to be invalid, such invalid term or provision shall not affect or impair the remainder of this Agreement, but such remainder shall continue in full force and effect to the same extent as though the invalid term or provision were not contained.

I. Cardinal hereby grants and conveys to the County an unconditional right of entry upon all land under Exhibit A, subject to the Access Agreement between Cardinal and Carlson, controlled by Cardinal for purposes of processing and reviewing its application, and hereby warrants that it possesses legal authority for such grant. Cardinal agrees to coordinate requests for site visits to properties not controlled by Cardinal, recognizing that complete information is essential to timely process the application.

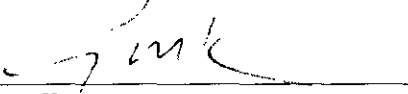
J. Cardinal and the County acknowledge that the property subject to the Application is a part of a larger property ownership subject to an application by Sovran LLC for approval of a master planned industrial land bank site pursuant to RCW 36.70A.367. Cardinal supports the Sovran application. The County has determined that the two applications are compatible and has agreed to process both applications contemporaneously.

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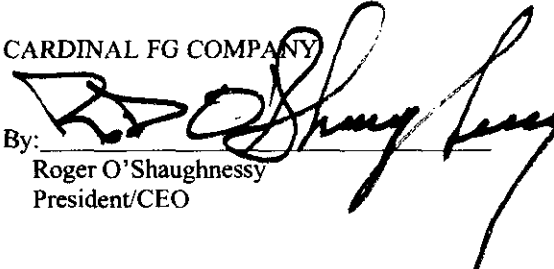
K. This Agreement represents the entire agreement of the parties with respect to all matters referenced herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first written above.

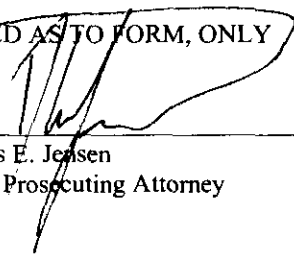
LEWIS COUNTY

By: 
Larry Keeton
Chief of Staff

CARDINAL FG COMPANY

By: 
Roger O'Shaughnessy
President/CEO

APPROVED AS TO FORM, ONLY

By: 
Douglas E. Jensen
Deputy Prosecuting Attorney

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**Cardinal FG Manufacturing Plant
Winlock, WA**

Legal Description of Subject Property

West 1400' of the north 2830 feet:

That portion west half of Section 10, Township 12 North, Range 2 West of the Willamette Meridian, Lewis County, Washington, described as follows:

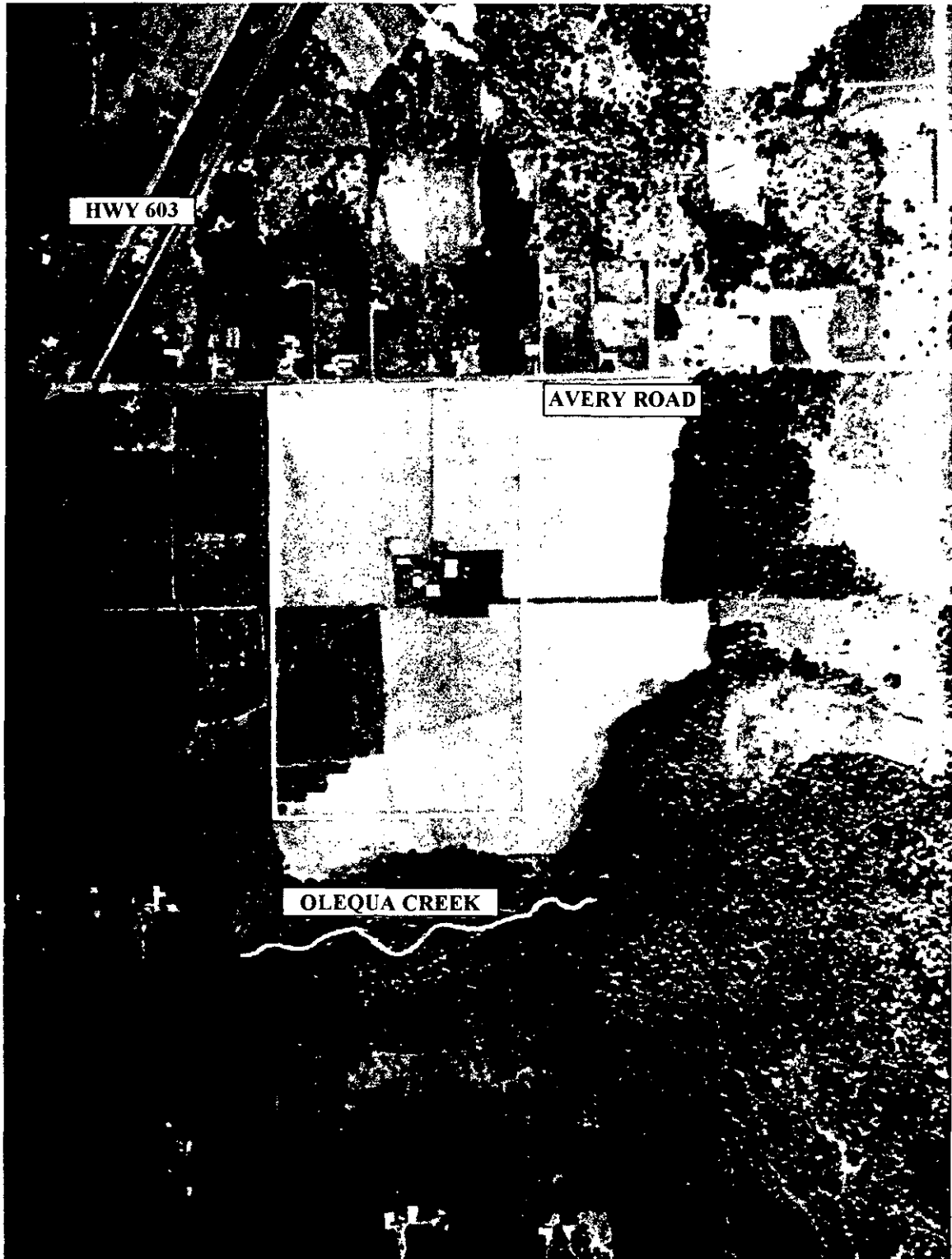
Beginning at the northwest corner of said Section 10; thence South $1^{\circ}45'24''$ West 30.00 along the west line thereof, to the south right of way line of Avery Road, and the Point of Beginning; thence South $1^{\circ}45'24''$ West 2622.40 feet along the west line of the northwest quarter of said Section 10, to the southwest corner thereof; thence South $1^{\circ}48'04''$ West 132.00 feet (8 rods) along the west line of the southwest quarter of said Section 10; thence South $88^{\circ}11'56''$ East 33.00 feet (2 rods) as measured perpendicular with said west line; thence South $1^{\circ}48'04''$ West 45.45 feet parallel with said west line, to a point 2830 feet south of the north line of the northwest quarter of said Section 10; thence $88^{\circ}30'10''$ East 1367.15 feet, to the east line of the west 1400 feet of the northwest quarter and said east line projected southerly; thence North $1^{\circ}45'24''$ East 2800.03 feet along said east line, to the south right of way line of Avery Road; thence North $88^{\circ}30'10''$ West 1400.01 feet along said south right of way line, to the Point of Beginning. Subject to an easement over the west 33 feet of the northwest quarter of the northwest quarter of Section 10, Township 12 North, Range 2 West of the Willamette Meridian, Lewis County, Washington, as described and recorded under Lewis County Auditor's File No. 648469.

Containing 89.958 Acres

Easement (33 feet by 1296.2 feet) 42,775 square feet

Cardinal

Glass Industries®



LEWIS COUNTY COMMISSIONERS



LEWIS COUNTY COURTHOUSE
351 NW NORTH STREET
CHEHALIS, WA 98532-1900
(360) 740-1120 • FAX: (360) 740-1475
TDD: (360) 740-1480

ERIC JOHNSON
First District

RICHARD GRAHAM
Second District

DENNIS HADALLER
Third District

Lewis County, WA • Since 1845

Connie Robins, CPA
Chief Administrative Officer

Sheila Unger
Administrative Coordinator

MEMORANDUM

To: Robert Johnson, Community Development Director

From: Karisa Duffey, Clerk of the Board *Karisa*

Date: February 13, 2004

Subject: Resolution #04-057, MOU with Cardinal

The following documents are enclosed for your records:

- A copy of Resolution #04-057
- A copy of the Memorandum of Understanding between Lewis County and Cardinal FG Company

Please provide a copy of the above-mentioned resolution and agreement to Cardinal FG Company. If you have any questions, feel free to contact me at extension 1419.

BOCC EXECUTIVE SUMMARY

Proposed Action(s): Approval of a Memorandum of Understanding between Lewis County and Cardinal FG for processing the Cardinal Master Planned Industrial Development application and environmental review documents.

Summary prepared by: Bob Johnson, Community Development Director

Date: February 3, 2004

Date of Board action: February 9, 2004

Summary of proposal(s):

Cardinal Glass has a pending Master Planned Industrial Development Application. An Environmental Impact Statement is required. The County does not have the necessary expertise to properly review the application and draft and final Environmental Impact Statements. In order to facilitate such review, the County will assemble a technical team for that purpose. This Memorandum constitutes an agreement between the County and Cardinal Glass regarding specific matters concerning the review and processing of the application, including the means by which costs associated with said review and processing shall be reimbursed to the County. Cardinal, in this MOU, has agreed to reimburse the County for any and all costs associated with processing the permit and reviewing the environmental documents. There will be no costs incurred by the County; all costs will be paid by Cardinal consistent with the MOU. Individual outside contactors, retained by the County, will be paid consistent with terms of the MOU.

Result of disapproval: In the event the Board does not approve the above action, the County will not be able to adequately review the environmental documents submitted as a part of the Cardinal application.

Staff recommendation: Approve the resolution and sign the MOU so that the contractors can be hired and begin the necessary processing and environmental review necessary for the Cardinal application.

BOCC AGENDA ITEM SUMMARY

(revised 02/24/99)

AGENDA ITEM #: _____ RESOLUTION #: _____ 04 - _____ BOCC MEETING DATE: _____ Feb. 9, 2004

SUGGESTED WORDING FOR AGENDA ITEM: ☐ Notice ☒ Consent ☐ Discussion ☐ HearingApproval of a Memorandum of Understanding between Lewis County and Cardinal FG Company for review and processing
the Master Planned Industrial Development application and environmental documents submitted by Cardinal FG.BRIEF REASON FOR BOCC ACTION: Approval of the resolution will adopt the Memorandum of Understanding between
Cardinal FG and Lewis County, including conditions for reimbursement of costs associated with said review and processing.
Terms of this Memorandum will assure that all costs incurred by the County in conjunction with review and processing to the
application will be paid by Cardinal FG. The Memorandum establishes the mechanism for payment and other considerations.SUBMITTED BY: _____ Bob Johnson _____ PHONE: _____ x 2606 _____ DATE _____ Feb. 3, 2004
SUBMITTED: _____CONTACT PERSON WHO WILL ATTEND BOCC MEETING: _____ Bob Johnson _____

TYPE OF ACTION NEEDED:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Approve Resolution | <input type="checkbox"/> Call for Bids / Proposals |
| <input type="checkbox"/> Approve Ordinance (Traffic or other) | <input type="checkbox"/> Bid Opening |
| <input type="checkbox"/> Execute Contract / Agreement | <input type="checkbox"/> Notice for Public Hearing <i>*(see Publication Requirements)</i> |
| <input type="checkbox"/> Other <i>(please describe):</i> _____ | |

*PUBLICATION REQUIREMENTS: ☐ Resolution e-mailed to Clerk ☒ Not applicableHearing Date: _____ *(Must be at least 10 days after first publication date)*
Publication Date(s): _____ *(2 weeks for routine budget, property disposal / auction or vacations)*
(3 weeks for property lease)
Publication(s): ☐ EAST COUNTY JOURNAL ☐ CHRONICLE ☐ OTHER: _____ALL AGENDA ITEMS:Department Director / Head: _____
Prosecuting Attorney: _____RA
ZEMPLOYEE ITEMS: (relating to employment,
salary, position, reclassification, union, etc.)
Personnel Director: _____**APPROVALS MUST
BE OBTAINED
BEFORE
SUBMITTING ITEM
TO BOCC CLERK**

BANKING OR REVENUE ITEMS:

Treasurer: _____

BUDGET AND PAYROLL ITEMS:

Budget Officer: _____
Chief Accountant: _____Fund: _____
Department: _____
Total Amount: \$ _____

CLERK'S DISTRIBUTION OF SIGNED DOCUMENTS:

Send cover letter: _____
(city/state/zip)
File originals: _____
File copy: _____
File copy: _____BOCC mtg folder
hearing/bid folder
working fileAdditional copies: _____
Bob Johnson _____
Doug Jensen _____
Larry Keeton _____
