



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, JULY 27, 2022

Barnes Sawyer Rooms - Deschutes Services Bldg - 1300 NW Wall St – Bend

(541) 388-6570 | www.deschutes.org

AGENDA

MEETING FORMAT: The Oregon legislature passed House Bill (HB) 2560, which requires that public meetings be accessible remotely, effective on January 1, 2022, with the exception of executive sessions. Public bodies must provide the public an opportunity to access and attend public meetings by phone, video, or other virtual means. Additionally, when in-person testimony, either oral or written is allowed at the meeting, then testimony must also be allowed electronically via, phone, video, email, or other electronic/virtual means.

Attendance/Participation options are described above. Members of the public may still view the BOCC meetings/hearings in real time via the Public Meeting Portal at www.deschutes.org/meetings

Citizen Input: Citizen Input is invited in order to provide the public with an opportunity to comment on any meeting topic that is not on the current agenda. Citizen Input is provided by submitting an email to: citizeninput@deschutes.org or by leaving a voice message at 541-385-1734. Citizen input received by noon on Tuesday will be included in the Citizen Input meeting record for topics that are not included on the Wednesday agenda.

Zoom Meeting Information: Staff and citizens that are presenting agenda items to the Board for consideration or who are planning to testify in a scheduled public hearing may participate via Zoom meeting. The Zoom meeting id and password will be included in either the public hearing materials or through a meeting invite once your agenda item has been included on the agenda. Upon entering the Zoom meeting, you will automatically be placed on hold and in the waiting room. Once you are ready to present your agenda item, you will be unmuted and placed in the spotlight for your presentation. If you are providing testimony during a hearing, you will be placed in the waiting room until the time of testimony, staff will announce your name and unmute your connection to be invited for testimony. Detailed instructions will be included in the public hearing materials and will be announced at the outset of the public hearing.

For Public Hearings, the link to the Zoom meeting will be posted in the Public Hearing Notice as well as posted on the Deschutes County website at <https://www.deschutes.org/bcc/page/public-hearing-notices>.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

CITIZEN INPUT: Citizen Input may be provided as comment on any topic that is not on the agenda.

***Note:** In addition to the option of providing in-person comments at the meeting, citizen input comments may be emailed to citizeninput@deschutes.org or you may leave a brief voicemail at 541.385.1734. To be timely, citizen input must be received by noon on Tuesday in order to be included in the meeting record.*

CONSENT AGENDA

- [1.](#) Consideration of Resolution No. 2022-055 Increasing FTE within the 2022-23 Deschutes County Budget.
- [2.](#) Consideration of Board Signature of Order No. 2022-036, Authorizing the Deschutes County Property Manager to Execute Documents
- [3.](#) Approval of Contracts for Sheriff's Office FY 23 Vehicle Purchases
- [4.](#) Consideration Chair signature of Document No. 2022-653, an Oregon Health Authority Grant Agreement for Community Mental Health Programs
- [5.](#) Consideration of Chair signature of Document No 2022-655, an Oregon Health Authority Grant Agreement for Harm Reduction Program
6. Approval of Minutes of the June 29 2022 BOCC Meeting
7. Approval of Minutes of the July 6 2022 BOCC Meeting
8. Approval of Minutes of the July 11 2022 BOCC Meeting
9. Approval of Minutes of the July 13 2022 BOCC Meeting

ACTION ITEMS

- [10.](#) **9:05 AM** Consideration of Second Reading of Ordinance 2022-010: Remand of Deschutes Junction Plan Amendment and Zone Change application, and Consideration of Adoption
- [11.](#) **9:15 AM** Authorize applying for a \$100,000 Solid Waste Orphan Site grant administrated by the Oregon Department of Environmental Quality to complete pre-work associated with the +/- 300-acres reserved for the CORE3 project.
- [12.](#) **9:35 AM** MOU for Domestic Well Assistance

[13.](#) **9:55 AM** Department Performance Measure Updates for Q4

[14.](#) **10:25 AM** Discussion of Measure 109 / Psilocybin / Time, Place, and Manner Amendments

OTHER ITEMS

These can be any items not included on the agenda that the Commissioners wish to discuss as part of the meeting, pursuant to ORS 192.640.

EXECUTIVE SESSION

At any time during the meeting, an executive session could be called to address issues relating to ORS 192.660(2)(e), real property negotiations; ORS 192.660(2)(h), litigation; ORS 192.660(2)(d), labor negotiations; ORS 192.660(2)(b), personnel issues; or other executive session categories.

Executive sessions are closed to the public; however, with few exceptions and under specific guidelines, are open to the media.

ADJOURN



Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, please call (541) 617-4747.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 27, 2022

SUBJECT: Consideration of Resolution No. 2022-055 Increasing FTE within the 2022-23 Deschutes County Budget.

RECOMMENDED MOTION:

Move Approval of Resolution No. 2022-055 Increasing 0.5 limited duration FTE within the Health Fund in the 2022-23 Deschutes County Budget.

BACKGROUND AND POLICY IMPLICATIONS:

On July 13, 2022, the Health Services department presented to the Board of County Commissioners with regards to increasing 0.5 limited duration Administrative Support Specialist FTE in support of the Promoting Integrated Primary and Behavioral Health Care (PIPBHC) grant.

BUDGET IMPACTS:

The PIPBHC grant is currently underspent and the available funds will cover the cost of the 0.5 limited duration FTE increase through 12/31/2023.

ATTENDANCE:

Dan Emerson, Budget Manager

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY,
OREGON

A Resolution Increasing *
FTE Within the 2022-23 * RESOLUTION NO. 2022-055
Deschutes County Budget *

WHEREAS, Deschutes County Health Services presented to the Board of County Commissioners on 7/13/2022, with regards to increasing 0.5 Admin Support Specialist limited duration FTE in support of the Promoting Integrated Primary and Behavioral Health Care (PIPBHC) grant, and

WHEREAS, Deschutes County Policy HR-1 requires that the creation of or increase in FTE outside the adopted budget be approved by the Board of County Commissioners; now, therefore,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, as follows:

Section 1. That the following FTE be increased..:

Job Class	Type	Duration if Limited Duration	FTE
Admin Support Specialist (3033)	LTD (increase from 0.5 to 1.0 FTE)	12/31/2023	0.5
Total FTE			0.5

Section 2. That the Human Resources Director make the appropriate entries in the Deschutes County FTE Authorized Positions Roster to reflect the above FTE changes.

DATED this _____ day of July 2022.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ATTEST:

ANTHONY DEBONE, Vice-Chair

Recording Secretary

PHIL CHANG, Commissioner



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, July 27, 2022

SUBJECT: Authorize a Road and Access Easement over County-owned property known as Map and Tax Lot 211033B001700, authorize dedicating two County-owned properties known as Map and Tax Lots 211033A000098 and 21033A001800 to public right-of-way, and approve Board Order 2022-036 to authorize the Deschutes County Property Manager to execute the associated documents

RECOMMENDED MOTION:

Move approval of Board Order 2022-036, authorizing the Deschutes County Property Manager to execute documents associated with a Road and Access Easement over County-owned property, and dedicating County-owned property to public right-of-way.

BACKGROUND AND POLICY IMPLICATIONS:

In 2016, Deschutes County acquired a 0.45-acre property through the tax foreclosure process due to nonpayment of property taxes. The County-owned unimproved "road" segment known as Map and TaxLot 211033B001700 is located on Ranch Place, La Pine. The property is neither public right-of-way nor a local access road. The Real Market Value is \$500 as determined by the Deschutes County Assessor's Office.

The Lloyd Gilbertson Trust (Trust) owns the adjacent south property known as Map and Tax Lot 211033B001800. The Trust needs to acquire legal access to their parcel before it can be listed for sale. There are five privately-owned properties between the Trust property and the nearest public right-of-way, Ranch Drive. Property Management in collaboration with the Road Department, outlined a path for the Trust to achieve desired legal access to their property.

- 1. Trust to acquire a Road and Access Easement over two privately owned properties known as Map and Tax Lots 211033B001000 and 211033A001802; this step has been completed.

Note: Two additional properties are also County-owned and would require either a Road and Access Easement or be dedicated to public right-of-way. Due to the adjacency

of the two properties to existing public right-of-way and after further review by the Road Department, it was determined that these two properties are candidates for public right-of-way dedication:

- 1) Map and Tax Lot 211033A000098 – In 2016, the County acquired a 0.86-acre property through the tax foreclosure process due to nonpayment of property taxes. The Real Market Value is \$1,000 as determined by the Deschutes County Assessor’s Office.
 - 2) Map and Tax Lot 211033A001800 – In 1988, the County acquired a 0.02-acre property through the tax foreclosure process due to nonpayment of property taxes. The Real Market Value is \$500 as determined by the Deschutes County Assessor’s Office
2. At the sole cost and expense of the Trust, provide title reports for the two County-owned properties to be dedicated to right-of-way; this step has been completed.
 3. At the sole cost and expense of the Trust, engage a professional land surveyor to complete the following work for the two County-owned properties to be dedicated to right-of-way:
 - a. Create legal descriptions; this step has been completed
 - b. Set property corner monuments; this step has been completed.
 - c. Draft a Record of Survey to ultimately file with the County Surveyor’s Office; this step is pending.
 4. At the sole cost and expense of the Trust, record the following documents in the official records at the Deschutes County Clerk’s Office:
 - a. Dedication Deeds; this step is pending.
 - b. Road and Access Easement; this step is pending.
 5. At the sole cost and expense of the Trust, file the Record of Survey at the Deschutes County Surveyor’s Office; this step is pending.

BUDGET IMPACTS:

None.

ATTENDANCE:

Kristie Bollinger, Property Manager

REVIEWED

LEGAL COUNSEL

07/27/2022 Item #2.

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Designating the Deschutes County Property Manager, Kristie Bollinger as the Deschutes County Representative to Execute a Road and Access Easement Over Deschutes County Owned Property Known as Map and Tax Lot 211033B001700, and Execute Dedication Deeds to Dedicate County Owned Property to Public Right-of-Way Known as Map and Tax Lots 211033A000098 and 211033A001800; La Pine, Oregon 97739

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ORDER NO. 2022-036

WHEREAS, the Board of County Commissioners of Deschutes County has authorized granting a Road and Access Easement over County-owned property known as Map and Tax Map 211033B001700, and authorized dedicating County-owned property known as Map and Tax Lots 211033A000098 and 211033A001800 to public right-of-way; and

WHEREAS, a private property owner, Lloyd Gilbertson Trust (Trust) who currently owns property known as Map and Tax Lot 21103B001800 has requested Deschutes County to grant a perpetual Road and Access Easement over County-owned property known as Map and Tax Lot 211033B001700 for the purpose of ingress/egress and road construction/maintenance; and

WHEREAS, Deschutes County agrees to grant said Easement in exchange for the Trust completing requirements at its sole cost and expense to dedicate County-owned property known as Map and Tax Lots 211033A000098 and 211033A001800 to public right-of-way. Requirements include engaging a professional land surveyor to complete legal descriptions, set property corner monuments, and draft a record of survey –these requirements have been met; and

WHEREAS, upon the issuance of this Order, Deschutes County Road Department staff will prepare and finalize the dedication deeds for recording in the official records at the Deschutes County Clerk’s Office at the sole cost and expense of the Trust; and

WHEREAS, upon recording the dedication deeds, Deschutes County Property Management staff will finalize the Road and Access Easement for recording in the official records at the Deschutes County Clerk’s Office at the sole cost and expense of the Trust; now, THEREFORE,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS as follows:

Section 1. The Deschutes County Property Manager, Kristie Bollinger is designated as the Deschutes County representative to execute a Road and Access Easement over Deschutes County-owned property known as Map and Tax Lot 211033B001700, and execute Dedication Deeds to dedicate County-owned property known as Map and Tax Lots 211033A000098 and 211033A001800 to public right-of-way.

Dated this _____ of _____, 2022

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice Chair

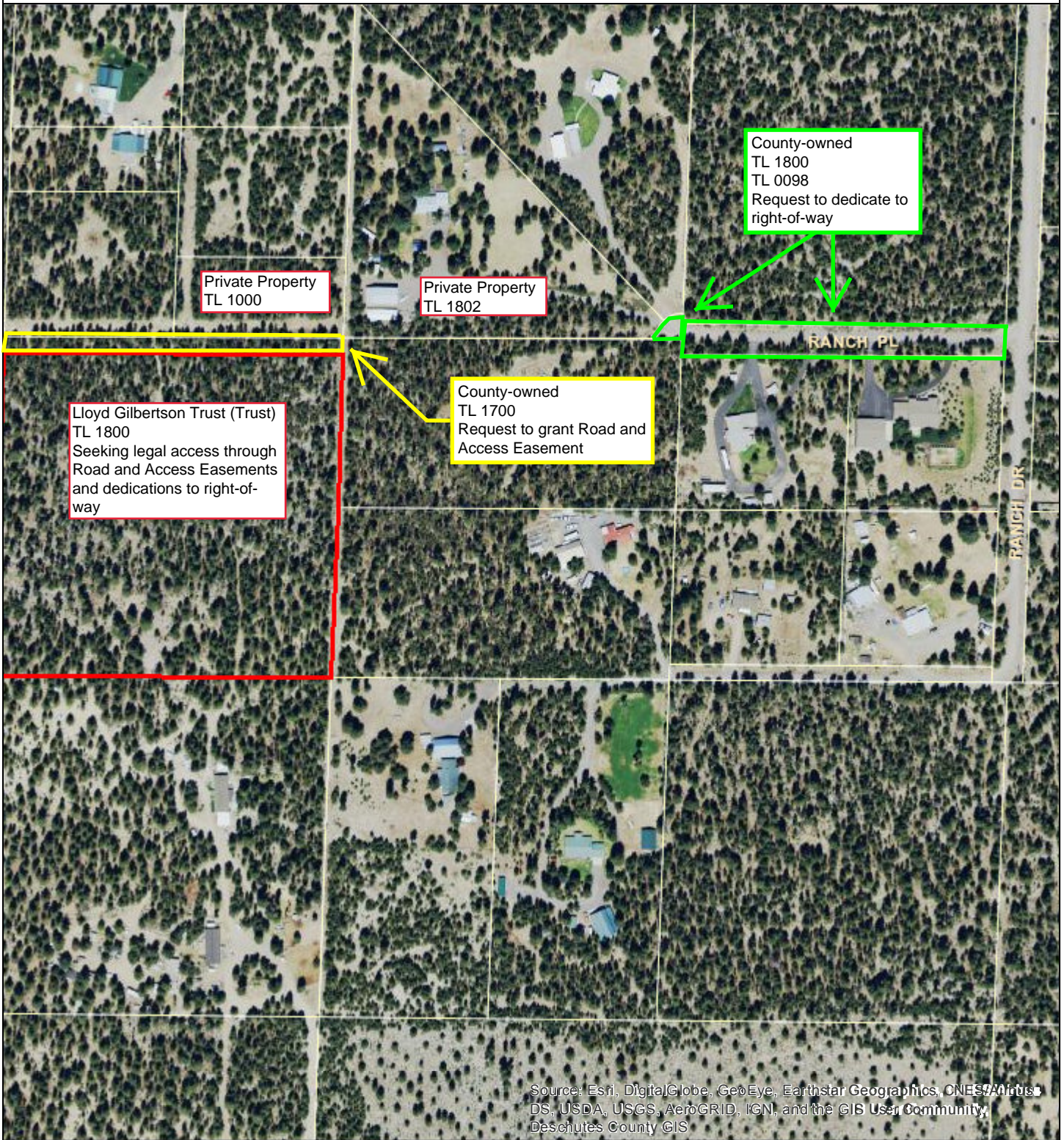
ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

Deschutes County Property Information - Dial

Overview Map





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 27, 2022

SUBJECT: Approval of Contracts for Sheriff's Office FY 23 Vehicle Purchases

RECOMMENDED MOTION:

Move for approval of Munis contracts 42200298 and 42200315.

BACKGROUND AND POLICY IMPLICATIONS:

All vehicles are purchased at government-pricing rates. We have placed the majority of our FY23 vehicles into two Munis Contracts in order to expedite payments. These vehicles were ordered in March and November of 2021. The first vehicles began to arrive in June and more have arrived in July.

BUDGET IMPACTS:

All items were included and had been approved in the adopted budget.

ATTENDANCE:

Captain Paul Garrison, if necessary.

State of Oregon



**PRICE AGREEMENT
WITH**

**Gee Automotive Portland VII, LLC (dba Ron Tonkin
Chrysler Jeep Dodge Ram Fiat)**

FOR

**Chrysler, Jeep, Dodge and Ram Brand Vehicles
Price Agreement # 1652**

Price Agreement # 1652
Gee Automotive Portland VII, LLC (dba Ron Tonkin Chrysler Jeep Dodge Ram
Fiat)

This Price Agreement (“Agreement”) is between the State of Oregon (the “State”), acting by and through its Department of Administrative Services Procurement Services (“DAS PS” or “Agency”) and Gee Automotive Portland VII, LLC (dba Ron Tonkin Chrysler Jeep Dodge Ram Fiat), a Washington Limited Liability Company (“Contractor”).

Section 1 –Agreement

1.1 Parties

- 1.1.1 The only parties to this Agreement are Contractor and DAS PS.
- 1.1.2 Authorized Purchasers may purchase goods and related services specified in Exhibit A (“Goods”) by issuing ordering instruments that create and become part of separate contracts (“Contracts”). The only parties to Contracts created by ordering instruments are the applicable Authorized Purchaser and Contractor. DAS PS is an intended beneficiary of each Contract created by an ordering instrument.
- 1.1.3 As used in this Agreement, “Authorized Purchaser” means: State agencies of Oregon, Oregon Cooperative Procurement Program (“ORCPP”) participants and authorized members to the State of Washington Master Contracts Usage Agreement (MCUA). Contractor may be required to obtain manufacturer authorization prior to an MCUA member’s purchase of Goods under this Agreement.

1.2 Ordering Instrument

- 1.2.1 Authorized Purchasers may order Goods during the Term of this Agreement using an ordering instrument:
 - a) Authorized Purchasers who are agencies of the State of Oregon under DAS procurement authority may issue ordering instruments under this Price Agreement for any dollar amount without further delegation of procurement authority from DAS. Notwithstanding the foregoing DAS delegation, Authorized Purchasers who are agencies of the State of Oregon must obtain all other necessary approvals, including but not limited to legal sufficiency approval as required.
 - b) Authorized Purchasers that are agencies of the State of Oregon may use either of the following as ordering instruments: i) the DAS PS approved purchase order form. Exhibit B is a sample DAS PS approved purchase order form; or ii) an electronic ordering method when the Authorized Purchaser is using a Small Purchase

Order Transaction System (SPOTS) card. Unless expressly authorized by DAS PS in writing, Contractor shall not accept a different type of ordering instrument from a State agency.

- c) Authorized Purchasers that are not agencies of the State of Oregon may use their own purchase order forms as ordering instruments.
- d) To be effective, the ordering instrument must specify all of the following:
 - i) Language stating that the ordering instrument is submitted under this Agreement (and include the Agreement reference number from the Agreement coversheet).
 - ii) The specific Goods and quantity of each item ordered.
 - iii) The net price.
 - iv) The requested delivery schedule.
 - v) The delivery location(s).
 - vi) The invoicing address.
 - vii) The Authorized Purchaser’s authorized representative and relevant contact information, including an e-mail address or fax number.

1.2.2 A Contract created by an ordering instrument consists only of the terms specified or required by this Agreement. Additional, different or conflicting terms and conditions in any purchase order or any other form of either an Authorized Purchaser or the Contractor may not vary the terms of a Contract. Additional, different or conflicting terms and conditions on a purchase order or other form are of no effect.

1.2.3 Contractor shall accept ordering instruments from Authorized Purchasers that comply with the provisions of this Agreement until this Agreement terminates.

1.2.4 An ordering instrument is deemed accepted by Contractor unless Contractor rejects an ordering instrument within three (3) business days after it is received. Contractor may reject an ordering instrument: i) using the same means as were used to deliver the ordering instrument, or ii) by e-mail if the email address is evident on the ordering instrument. Contractor shall specify the reason(s) for rejection.

1.2.5 Accepted ordering instruments establish separate Contracts between the Authorized Purchaser and Contractor and include the terms set forth in Sections 2 and 3. As used in the Contracts, “Price Agreement” means this Agreement.

1.2.6 DAS PS is not obligated or liable under an ordering instrument unless DAS PS is purchasing Goods as the Authorized Purchaser.

- 1.2.7 Nothing in this Agreement obligates any Authorized Purchaser to place any ordering instrument or to purchase any Goods.
- 1.2.8 Contractor shall reject an ordering instrument from any entity that is not an Authorized Purchaser under this Agreement. Contractor may verify that Authorized Purchasers are ORCPP participants at the following address:
<https://www.oregon.gov/das/Procurement/Pages/Orcppmember.aspx>
- Contractor may verify that Authorized Purchasers are MCUA members at the following address:
<https://apps.des.wa.gov/DESContracts/Home/MCUAListing>
- 1.2.9 Contractor shall reject an ordering instrument that does not meet the requirements of this Agreement.

1.3 Prices

- 1.3.1 Except as provided in this Section, during the Term of this Agreement, Contractor shall offer Goods to Authorized Purchasers at prices that do not exceed the prices listed in Exhibit A. The pricing for this Agreement is in U.S. dollars.
- 1.3.2 Contractor and an Authorized Purchaser may agree to lower prices for Goods. Those lower prices apply only to applicable Contracts between Contractor and Authorized Purchaser.
- 1.3.3 Contractor shall subtract from percentages or prices charged to Authorized Purchasers any unit price decrease that has been achieved or gained by the Contractor, whether through the manufacturer or otherwise. Contractor shall give Authorized Purchasers the immediate benefit of the decrease. Contractor shall promptly notify the DAS-PS Contract Administrator (“Contract Administrator”) of the amount and effective date of the decrease.
- 1.3.4 Either party to this Agreement may request a price adjustment, or an adjustment to the discount percentage, for some or all of the Goods, subject to Section 1.3.5 below.
- 1.3.5 Contractor may request unit price increases from DAS PS following the first year of the term of the Contract, but no more than once in any 12-month period. Contractor must submit a request to the Contract Administrator in writing at least 60 days before the proposed effective date of the increase, or at such other time as specified by the Contract Administrator for submittal of the request. The request must show all proposed increases by line item and include supporting

documentation acceptable to DAS PS. DAS PS may require Contractor to provide U.S. Bureau of Labor Statistics Producer Price Index or Consumer Price Index data, published MSRP or any other relevant manufacturer or industry data substantiating the increase.

1.3.6 Discontinued Goods may be subtracted and new Goods meeting or exceeding the RFP specifications may be added throughout the term of this Agreement. Goods may be adjusted upon both parties' approval in writing, without a signed amendment to this Agreement. All adjustments will be included on a revised Exhibit A.

1.4 Contractor Reporting and Payment Requirements

Contractor will be required to submit Volume Sales Reports and Vendor Collected Administrative Fees.

1.4.1. Volume Sales Reports

Pursuant to the process defined by DAS PS found at: <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx>, Contractor shall submit a Volume Sales Report ("VSR") to DAS PS on a quarterly basis; the quarterly report is due no later than thirty (30) calendar days from the end of the applicable quarter. (For purposes of this Agreement, quarters end March 31, June 30, September 30 and December 31.) Upon written notice from DAS PS, **Contractor shall submit the VSR on a monthly basis, VSR due date to be determined by DAS PS.**

The VSR will contain:

- Complete and accurate details of all receipts (sales and refunds) for the reported period; and
- Such other information as DAS PS may reasonably request.

Contractor is responsible for timely reporting and shall submit a VSR whether or not there are sales. When no sales have been recorded for the reporting period, a report must be submitted stating "**No Sales for the Reporting Period**".

1.4.2. Vendor Collected Administrative Fee

Pursuant to the process defined by DAS PS and published at <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx>, Contractor shall submit a Vendor Collected Administrative Fee ("VCAF"), as directed by DAS PS. The VCAF is a charge equal to one percent (1%), not to exceed a total of \$325 per vehicle, of Contractor's gross total sales, less any credits, made to Authorized Purchasers during the reporting period.

1.5 Term of Agreement

- 1.5.1 The initial term of this Agreement begins on the later of May 1, 2021 or the date this Agreement has been signed by DAS PS and Contractor and all required approvals have been obtained (the "Effective Date") and expires two (2) years after the Effective Date unless sooner terminated or extended as provided in this Agreement. DAS PS has the option to extend this Agreement for one or more additional 1-year terms, provided that the initial term, together with all extensions, shall not exceed a total of five (5) years. DAS PS may exercise these options to extend by giving Contractor written notice of such exercise no later than 30 calendar days before the expiration of the then current term. The initial term, together with all extension terms are collectively referred to herein as the "Term" of this Agreement.
- 1.5.2 Notwithstanding the foregoing, DAS PS reserves the right in its sole discretion to extend the Agreement for a maximum of one (1) calendar month beyond the end of any term. DAS PS shall notify Contractor in writing of the one (1) month extension. Consecutive one (1) month extensions obtained under this Section 1.5.2 are not allowed.
- 1.5.3 After termination or expiration of this Agreement, Contractor shall not accept new ordering instruments.
- 1.5.4 Termination of this Agreement also terminates "blanket" ordering instruments in which the Contractor is not required to deliver specific quantities of Goods at specific times. The intent of this paragraph is to terminate what is commonly known as blanket purchase orders (orders that may contain details of the Goods, but under which actual sales of Goods are made by periodic releases that specify a date for delivery of specific Goods).
- 1.5.5 Except as provided in Section 1.5.4, termination of this Agreement does not terminate any right or obligation of a party to a Contract that is based on an ordering instrument that was accepted before termination of this Agreement, for non-recurring deliveries of Goods.
- 1.5.6 DAS PS may, in its sole discretion, terminate this Agreement upon 30 calendar days' written notice to Contractor for any or no reason.

1.6 Insurance

Contractor shall obtain insurance specified in Exhibit C and shall maintain the insurance until all Contracts under this Agreement are terminated.

1.7 Miscellaneous

- 1.7.1 Choice of Law. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
- 1.7.2 Designation of Forum and Consent to Jurisdiction. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- 1.7.3 Amendments. Unless otherwise defined in this Agreement, no amendment of this Agreement is valid unless it is in writing and signed by the parties.
- 1.7.4 Transfer. Contractor shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without first obtaining the written consent of DAS PS. DAS PS' consent to any subcontract (or other delegation of duties) does not relieve Contractor of any of its duties or obligations under this Agreement. This Agreement is binding upon and inures to the benefit of each of the parties, and, except as otherwise provided, their permitted legal successors and assigns.
- 1.7.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same instrument, notwithstanding that all parties are not signatories to the same counterpart.
- 1.7.6 Force Majeure. Neither party is responsible for delay or default caused by an unallocated risk such as fire, riot, and acts of God or war, or by any other cause not within the control of the party whose performance is interfered with, and, which by the exercise of reasonable diligence, the party is unable to prevent. DAS PS may terminate this Agreement upon written notice after determining such delay or default will reasonably prevent successful performance of this Agreement within an acceptable time period. In the event of any such delay, Contractor's obligations are suspended to the extent of

and for the duration of such causes. However, Contractor shall take all good faith efforts to eliminate the cause of any such delay, and upon the cessation of such cause, shall resume performance of Contractor's obligations with all reasonable diligence. DAS PS, in its sole discretion, may extend the period for performance under this Agreement to enable Contractor, once such causes have been removed, to fulfill its obligations hereunder.

1.7.7 Entire Agreement. This Agreement, together with the attached exhibits, constitutes the entire agreement between the parties and merges all prior and contemporaneous communications with respect to the subject matter.

1.7.8 Notices. Except as otherwise expressly provided in this Price Agreement, any communications between the parties, or notices to be given under this Price Agreement, are effective only if given in writing or by personal delivery, email or United States Postal Service, postage prepaid, to the Contract Administrator for Contractor or DAS-PS, as applicable, or to such other addresses or numbers as either party may later indicate pursuant to this Section. Any communication or notice via the United States Postal Service is deemed given five (5) days after mailing. Any communication or notice by personal delivery is deemed given immediately upon such delivery. Any communication or notice by email is deemed given when the recipient, by an email sent to the email address for the sender or by a notice given by another method in accordance with this Section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this Section.

1.7.9 No Third Party Beneficiaries. DAS PS and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

1.7.10 Waiver. The failure of DAS PS to enforce any provision of this Agreement or the waiver of any violation or nonperformance of this Agreement in one instance does not constitute a waiver by DAS PS of that or any other provision nor is it a waiver of any subsequent violation or nonperformance. Such a failure to enforce waiver, if made, is effective only in the specific instance and for the specific purpose given.

1.7.11 Certification of Compliance with Tax Laws. Contractor has complied with the tax laws of this State and all applicable tax laws of political

subdivisions of this State. Contractor shall, throughout the duration of this Agreement and any Contract and any extensions thereof, comply with all tax laws of this State and all applicable tax laws of any political subdivision of this State. For the purposes of this Section, "tax laws" includes: (i) All tax laws of this State, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this State that applied to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions. Any failure to comply with the provisions of this subsection 1.7.11 constitutes a material default of this Agreement and any Contract. Any failure to comply entitles DAS PS or Authorized Purchaser to terminate this Agreement or any Contract, as applicable and to pursue and recover any and all damages that arise from the default and the termination of this Agreement or any Contract, and to pursue any or all of the remedies available under this Agreement or any Contract, at law, or in equity, including but not limited to:

- Termination of this Agreement or any Contract, as applicable, in whole or in part;
- Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's or Authorized Purchaser's setoff right, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DAS PS or Authorized Purchaser may recover any and all damages suffered as the result of Contractor's default of this Agreement or any Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods, services and applications.

1.7.12 Recycled Products. DAS PS' performance under this Agreement is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Agreement), 279B.230 and 279B.235 (if applicable to this Agreement), which are incorporated into this Agreement by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

- 1.7.13 Records Archiving. Contractor shall retain, maintain and keep accessible all records relevant to this Price Agreement (the “Records”) for a minimum of six (6) years, or such longer period as may be required by applicable law following termination of this Agreement. Such period shall be further extended until the conclusion of any audit, controversy or litigation commenced during such period and arising out of or related to this Agreement or any Contract. Financial Records must be kept in accordance with Generally Accepted Accounting Principles. During the record-retention period established in this Section, Contractor shall permit DAS-PS, the State of Oregon and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.
- 1.7.14 Performance Evaluations. DAS PS may conduct evaluations of Contractor’s performance during the term of this Agreement. DAS PS will compile and maintain completed evaluations, which will become a written record of Contractor’s performance. DAS PS may also maintain as part of that written record information obtained from Contractor during an exit interview following Contract termination. DAS PS may provide copies of any documents in the written record to the Contractor and third parties upon request. DAS PS may use performance evaluations in any way it deems necessary, in its sole discretion, including but not limited to making responsibility determinations and decisions to award contracts.
- 1.7.15 Reporting. This Agreement and Contract(s) of Authorized Purchasers who are State agencies will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing the Contractor’s compensation under this Agreement or any Contract or (ii) exercising a right of setoff against Contractor’s compensation under this Agreement or any Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.
- 1.7.16 Survival: All rights and obligations cease upon termination or expiration of this Price Agreement, except for the rights and obligations and declarations which expressly or by their nature survive termination, including without limitation this Section 1.7.16, and provisions regarding warranties and liabilities, independent Contractor status and taxes and withholding, compensation, Contractor’s representations and warranties, control of defense and settlement, remedies, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors

and assigns, third party beneficiaries, waiver, headings, and integration.

Section 2 – Standard Terms for Contracts Under This Agreement

2.1 CONTRACT DOCUMENTS; ORDER OF PRECEDENCE: The Contract consists of the ordering instrument and the provisions in Sections 2 and 3 of the Price Agreement. In the event of a conflict between the ordering instrument and provisions in Sections 2 and 3, the provisions in Sections 2 and 3 take precedence.

2.2 PAYMENT: Contractor shall look solely to Authorized Purchaser for payment of all amounts that may be due under this Contract. **AUTHORIZED PURCHASER IS SOLELY RESPONSIBLE FOR PAYMENT UNDER THIS CONTRACT.** Subject to Authorized Purchaser’s acceptance of Goods, payment is due from Authorized Purchaser within 45 calendar days after the date of the invoice.

2.3 OVERDUE CHARGES: At Contractor’s option, it may assess overdue account charges to Authorized Purchaser up to a maximum rate of two-thirds of one percent per month (8% per annum).

2.4 PAYMENT ADDRESS: Payments must be sent to the address specified in the Contractor’s invoice.

2.5 INVOICES: Contractor shall invoice Authorized Purchaser only after delivery of all Goods ordered. Invoices shall be sent to the address provided by Authorized Purchaser for that purpose. Contractor shall include all of the following in its invoice:

- 2.5.1. Price Agreement number.
- 2.5.2. Ordering instrument number.
- 2.5.3. Goods ordered.
- 2.5.4. Date delivered.
- 2.5.5. Volume or quantity of Goods delivered.
- 2.5.6. The price per item.
- 2.5.7. The total amount invoiced.
- 2.5.8. The address to which payment is to be sent.
- 2.5.9. Additional Taxes (e.g. privilege or vehicle use tax and corporate activity tax) (determined based on the state of purchase)

2.6 PRICES: Contractor represents that all prices for Goods under this Contract are equal to or better than the prices listed in the Price Agreement.

2.7 CANCELLATION; INSPECTIONS AND ACCEPTANCE: The Authorized Purchaser may cancel an order in whole or in part before Goods described in the cancelled whole or part are delivered. The Authorized Purchaser has ten

(10) calendar days from date of delivery of the entire order within which to inspect and accept or reject the Goods. If the Goods are rejected, the Authorized Purchaser shall provide Contractor with written notice of rejection. Notice of rejection must include itemization of apparent defects, including but not limited to (i) discrepancies between the Goods and the applicable specifications or warranties (including variance from demonstrations or sample characteristics where demonstrations or samples have been provided), or (ii) otherwise nonconforming Goods (including late delivery). If the Authorized Purchaser elects to provide Contractor an opportunity to cure the defects, notice of rejection must also specify such opportunity to cure, and the time period in which such cure must be completed.

2.7.1. The Authorized Purchaser may elect to have Contractor deliver substitute conforming Goods at no additional cost to the Authorized Purchaser. In such an event, Contractor shall deliver substitute conforming Goods within ten (10) calendar days of receipt of notice of rejection.

2.7.2. If the Goods are rejected or acceptance is revoked, Contractor shall refund any Contract payments that have been made with regard to the rejected Goods, and shall (at Contractor's sole cost and expense) remove the Goods within seven (7) calendar days of receiving notice of rejection or revocation of acceptance.

2.7.3. Nothing contained in Section 2.7 precludes Authorized Purchaser from other remedies to which it may be entitled upon rejection or revocation of acceptance.

2.8 REPRESENTATIONS AND WARRANTIES:

2.8.1. **OFFICER STATUS, INSURANCE:** Contractor represents and warrants that it is not an "officer," "employee," or "agent" of the Authorized Purchaser, as those terms are used in ORS 30.265. Contractor represents and warrants that Contractor has obtained and will maintain during the term of this Contract all insurance required by the Price Agreement.

2.8.2. **WARRANTY ON MATERIALS, DESIGN AND MANUFACTURE:** Unless otherwise approved, in writing, by the Authorized Purchaser, Contractor represents and warrants that all Goods are new, unused, current production models, and are free from defects in materials, design and manufacture. Contractor further represents and warrants that all Goods are in compliance with and meet or exceed all specifications in Exhibit D to the Price Agreement.

2.8.3. **WARRANTY ON SERVICE STANDARDS:** Contractor warrants that all services required to be performed, if any, shall be performed in a good and workmanlike manner in accordance with the highest standards prevalent in the industry.

2.8.4. **WARRANTY OF TITLE:** Contractor represents and warrants that all Goods are free and clear of any liens or encumbrances, that Contractor has full legal title to the Goods, and that no other person or entity has any right, title or interest in the Goods that is superior to or infringes upon the rights granted to the Authorized Purchaser under this Contract.

2.8.5. **WARRANTY ON SAFETY AND HEALTH REQUIREMENTS:** Contractor represents and warrants that Goods provided under this Contract comply with all applicable federal health and safety standards, including but not limited to, Occupational Safety and Health Administration (“OSHA”), and all Oregon safety and health requirements, including, but not limited to, those of the Oregon Consumer and Business Services Department.

2.8.6. **MANUFACTURER WARRANTIES:** Contractor shall have all manufacturer warranties covering the Goods and component parts, if any, transferred to the Authorized Purchaser, and provide warranty documents to the Authorized Purchaser, at time of delivery at no charge.

2.8.7. **WARRANTIES CUMULATIVE:** The warranties set forth in this Section 2.8 are in addition to, and not in lieu of, any other warranties provided in this Contract. All warranties provided in this Contract are cumulative, and are intended to afford the Authorized Purchaser the broadest warranty protection available.

2.9 COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS:

2.9.1 **LAWS AND REGULATIONS:** Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract as they may be adopted or amended from time to time.

2.9.2 **STATUTORY TERMS:** Authorized Purchaser’s performance under this Contract is conditioned upon Contractor’s compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated into this Contract by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and

recycled products (as “recycled product” is defined in ORS 279A.010(1)(ii)).

2.9.3 NONCOMPLIANT GOODS: In the event of a conflict between the specifications in this Contract and applicable federal or State law, the law will prevail. Contractor shall make any modifications required to achieve compliance with law. When Contractor is notified or becomes aware of any required modifications, Contractor shall immediately notify DAS PS and Authorized Purchaser.

2.9.4 RECALLED GOODS OR COMPONENTS: In the event any Goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to be in compliance with the applicable specifications, Contractor shall immediately notify DAS PS, and the Authorized Purchaser of the recall or non-compliance, and shall provide copies of the notice or other documentation. Upon notification, Authorized Purchaser may elect to do any of the following:

- a) Reject the Goods.
- b) Revoke its acceptance of the Goods.
- c) Require Contractor to complete necessary modifications, where applicable, in a timely manner, at no charge to the Authorized Purchaser.
- d) Terminate the Contract in its entirety or with respect to the recalled or noncompliant Goods.

In the event of rejection or revocation of acceptance under this subsection, Contractor shall promptly remove the Goods at its sole cost and expense, and shall reimburse Authorized Purchaser for any payments made.

2.10 FOREIGN CONTRACTOR: If the amount of the Contract exceeds ten thousand dollars (\$10,000), and if Contractor is not domiciled in or registered to do business in the State, Contractor shall promptly provide to the Oregon Department of Revenue (“ODR”) all information required by the ODR relative to the Contract. Authorized Purchaser may withhold final payment under the Contract until Contractor has met this requirement.

2.11 SAFETY DATA SHEET: Contractor shall provide the Authorized Purchaser at time of delivery with a Material Safety Data Sheet (“SDS”) as defined by the OSHA for any Goods provided under the Price Agreement that may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must properly label, tag or mark such Goods. Additionally, Contractor shall deliver EPA labels and MSDS information if available and as requested by Authorized Purchasers.

- 2.12 TIME IS OF THE ESSENCE:** Time is of the essence for performance of Contractor's performance obligations under this Contract.
- 2.13 FORCE MAJEURE:** Neither Authorized Purchaser nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. Authorized Purchaser may terminate this Contract upon written notice to Contractor after reasonably determining that such delay or default will likely prevent successful performance of the Contract within an acceptable time period.
- 2.14 RESERVED**
- 2.15 FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS:** If Authorized Purchaser is an agency of the State of Oregon or another governmental body, payment obligations under this Contract are conditioned upon Authorized Purchaser's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract. At the time the ordering instrument was issued, Authorized Purchaser had sufficient funds available and authorized to make payments under this Contract.
- 2.16 INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING:**
- 2.16.1 Contractor is an independent contractor. Although the Authorized Purchaser reserves the right (i) to determine (and modify) the delivery schedule for the Goods and (ii) to evaluate the quality of completed performance, Authorized Purchaser cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any obligations required by this Contract.
- 2.16.2 Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Authorized Purchaser will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

2.17 INDEMNIFICATION:

2.17.1 Contractor shall defend, save, hold harmless, and indemnify the Authorized Purchaser, the State of Oregon and its officers, employees and agents from and against all claims, suits, actions, proceedings, losses, damages, liabilities, awards and costs of every kind and description (including reasonable attorney’s fees and expenses at trial, on appeal and in connection with any petition for review) (collectively, “claim”) which may be brought or made against any Authorized Purchaser, the State, or their agents, officials, employees and arising out of or related to (i) any personal injury, death or property damage caused by any alleged act, omission, error, fault, mistake or negligence of Contractor, its employees or agents, (ii) any act or omission by Contractor that constitutes a material default of this Contract, including without limitation any breach of warranty, or (iii) the infringement of any patent, copyright, trade secret or other proprietary right of any third party by delivery or use of the Goods. Authorized Purchaser or the State shall promptly notify Contractor in writing of any claim of which Authorized Purchaser or State becomes aware. Contractor’s obligation under this Section shall not extend to any claim solely caused by (i) the negligent or willful misconduct of Authorized Purchaser, or (ii) Authorized Purchaser’s modification of Goods without Contractor’s approval and in a manner inconsistent with the purpose and proper usage of such Goods.

2.17.2 The Oregon attorney general must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, the State or its officers, employees and agents prior to such action or representation. Further, the State, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State’s sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending or able to defend the interests of the State, its officers, employees or agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State are served thereby. Contractor’s obligation to pay for all costs and expenses shall include those incurred by the State in assuming its own defense and that of its officers, employees, or agents under clauses (i) and (ii) above.

2.18 DEFAULT:

2.18.1 **BY CONTRACTOR:** Contractor is in default under this Contract if:

- a) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- b) Contractor no longer holds a license or certificate that is required for Contractor to perform Contractor’s obligations under this Contract; or
- c) Contractor commits any default of any covenant, representation, warranty, obligation or certification under this Contract, provided

however that Contractor may cure the default within the period specified in Authorized Purchaser’s notice of default when Authorized Purchaser determines the default is curable by Contractor within an acceptable time period.

2.18.2 BY AUTHORIZED PURCHASER: Authorized Purchaser is in default of this Contract if:

- a) Authorized Purchaser fails to pay Contractor any amount pursuant to the terms of this Contract, and Authorized Purchaser fails to cure such failure within ten (10) business days after delivery of Contractor’s notice of such failure or such longer period as Contractor may specify in such notice; or
- b) Authorized Purchaser commits any default of any covenant, warranty, or obligation under this Contract and such default is not cured within ten (10) business days after delivery of Contractor’s notice of default or such longer period as Contractor may specify in such notice.

2.19 REMEDIES:

2.19.1 AUTHORIZED PURCHASER’S REMEDIES: If Contractor is in default under Section 2.18.1, in addition to the remedies afforded elsewhere in this Contract, the Authorized Purchaser may recover any and all damages suffered as the result of Contractor’s default, including but not limited to direct, indirect, incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. Authorized Purchaser may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- a) Termination of the Contract as provided in Section 2.20.2;
- b) Withholding all monies due for invoiced Goods or services that Contractor has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
- c) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; and
- d) Exercise of its right of setoff, and withholding of monies otherwise due and owing in an amount equal to Authorized Purchaser’s setoff without penalty to Authorized Purchaser.

These remedies are cumulative to the extent the remedies are not inconsistent, and Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

2.19.2 CONTRACTOR’S REMEDIES: If Authorized Purchaser terminates this Contract, or if Authorized Purchaser is in default under Section 2.18.2 and whether or not Contractor elects to exercise its right to terminate

this Contract under Section 2.20.3, Contractor’s sole remedy is: (a) A claim against Authorized Purchaser for the unpaid purchase price for Goods delivered and accepted by Authorized Purchaser, (b) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked but not yet billed and authorized expenses for services completed and accepted by Authorized Purchaser, and (c) with respect to deliverable-based services, a claim for the sum designated for completing the deliverable multiplied by the percentage of services completed and accepted by Authorized Purchaser, less previous amounts paid and any claim(s) which Authorized Purchaser has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to Authorized Purchaser upon written demand.

2.20 TERMINATION:

2.20.1 BY MUTUAL CONSENT: This Contract may be terminated at any time by mutual written consent of Authorized Purchaser and Contractor.

2.20.2 RIGHTS OF AUTHORIZED PURCHASER. Authorized Purchaser may, at its sole discretion, terminate this Contract or other ordering instrument for convenience with thirty (30) days’ written notice. Authorized Purchaser may terminate this Contract immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events: (a) Authorized Purchaser fails to receive funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract; (b) federal or state laws, regulations, or guidelines are modified or interpreted in such a way so as to prohibit either the purchase of the Goods by Authorized Purchasers under the Price Agreement or Authorized Purchaser’s payment for such Goods from the planned funding sources; or (c) Contractor is in default of this Contract under Section 2.18.1. Upon receipt of written notice of termination, Contractor shall stop performance under this Contract if and as directed by Authorized Purchaser.

2.20.3 RIGHTS OF THE CONTRACTOR: Contractor may terminate this Contract with ten (10) days’ written notice to Authorized Purchaser, if Authorized Purchaser is in default of this Contract as described in Section 2.18.2.

2.21 ACCESS TO RECORDS: Contractor shall retain, maintain, and keep accessible all records relevant to this Contract (the “Records”) for a minimum of six (6) years, or such longer period as may be required by applicable law following expiration or termination of the Contract, or until the conclusion of any audit,

controversy or litigation arising out of or related to the Contract, whichever date is later. Financial Records will also be kept in accordance with Generally Accepted Accounting Principles (“GAAP”). During the record-retention period established in this Section, Contractor shall permit DAS PS, the Authorized Purchaser, their duly authorized representatives, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

2.22 NOTICES: Except as otherwise expressly provided in this Contract, any communications between the parties, or notices to be given under this Contract, are effective only if given in writing by personal delivery, email or United States Postal Service, postage prepaid, to the party’s authorized representative. For Authorized Purchaser, the authorized representative and the address or number for notices or communications to be given to that authorized representative are as identified in the ordering instrument or as later indicated by Authorized Purchaser pursuant to this Section. For Contractor, the authorized representative and the address or number for notices or communications to be given to that authorized representative are as identified in the Price Agreement or as later indicated by Contractor pursuant to this Section. Any communication or notice via the United States Postal Service is deemed given five (5) days after mailing. Any communication or notice by personal delivery is deemed given immediately upon such delivery. Any communication or notice by email is deemed given when the recipient, by an email sent to the email address for the sender or by a notice given by another method in accordance with this Section, acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this Section.

2.23 ORDERING INSTRUMENTS; ACKNOWLEDGEMENTS: The parties acknowledge and agree that other than designation of order quantities, types of Goods, delivery destination, dates of order, and scheduled delivery of other performance, any purchase orders or acknowledgement documents are simply for the convenience of the parties to initiate or confirm an order of Goods under this Contract and that no other terms or conditions contained in those documents are of any force or effect or are binding upon the parties.

2.24 GOVERNING LAW: This Contract is governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

2.25 VENUE; CONSENT TO JURISDICTION:

2.25.1 STATE OF OREGON CONTRACT VENUE; CONSENT TO JURISDICTION: Any claim, action, suit or proceeding (collectively, “Claim”) between an Authorized Purchaser that is an agency of the State of Oregon and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within

the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the State’s sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

2.25.2 NON STATE OF OREGON CONTRACT VENUE; CONSENT TO JURISDICTION: Any Claims between Contractor and an Authorized Purchaser other than an agency of the State of Oregon that arise from or relate to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of the county in which such Authorized Purchaser resides, or at the Authorized Purchaser’s option, within such other county as the Authorized Purchaser is entitled under the laws of the relevant jurisdiction to bring or defend Claims. If any such Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District in which such Authorized Purchaser resides. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of Authorized Purchaser’s sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

2.26 SURVIVAL: The following provisions survive termination or expiration of this Contract: Sections 2.8, 2.9.1, 2.9.4, 2.16, 2.17, 2.18, 2.19, 2.21, 2.23, 2.24, 2.25, 2.26; the paragraph in Exhibit C bearing the caption “TAIL COVERAGE”; and any other provision that by its nature would reasonably be expected to survive termination or expiration.

2.27 SEVERABILITY: If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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 Contract did not contain the particular provision held to be invalid.

- 2.28 ASSIGNMENTS, SUBCONTRACTS, AND SUCCESSORS:** Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Authorized Purchaser. Further, no such written approval shall relieve Contractor of any obligations under the Contract, and any assignee, transferee, or delegate shall be considered the agent of Contractor. The provisions of this Contract are binding upon, and shall inure to the benefit of the parties and their respective successors and permitted assigns.

- 2.29 MERGER CLAUSE; AMENDMENT; WAIVER:** This Contract constitutes the entire agreement between Contractor and Authorized Purchaser on the subject matter of this Contract. There are no understandings, agreements, or representations, oral or written, not specified in this Contract on the subject matter of this Contract. No amendment of this Contract is valid unless it is in writing and signed by the parties. No waiver or consent is effective unless in writing and signed by the party against whom it is asserted. Waivers and consents are effective only in the specific instance and for the specific purpose given. The failure of the Authorized Purchaser to enforce any provision of this Contract is not a waiver by Authorized Purchaser of that or any other provision.

- 2.30 INTENDED BENEFICIARY.** DAS PS is an intended beneficiary of this Contract. However, the parties to this Contract may modify the ordering instrument or terminate this Contract without the consent of DAS PS.

- 2.31 ASSIGNMENT OF ANTITRUST RIGHTS.** Contractor irrevocably assigns to the State Of Oregon any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's duties under this Agreement to irrevocably assign to the State of Oregon, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Agreement, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

Section 3 – Special Terms for Contracts under this Agreement

3.1 CONTRACTOR CERTIFICATIONS: If Contractor offers Goods under the Price Agreement, Contractor shall maintain its status as a manufacturer-authorized product reseller for the Goods throughout the Term of the Price Agreement. If Contractor offers installation and/or maintenance services under this Price Agreement, Contractor shall maintain its status as a manufacturer-authorized service provider. If any required status is discontinued, this Contract may be terminated.

3.2 SELECTION PROCESS: This is not an exclusive agreement. DAS PS intends to award multiple Price Agreements and Participating Addenda for the Goods and services offered under this solicitation. Authorized Purchasers who are State of Oregon Agencies must follow the selection process outlined below. Authorized Purchasers who are **not** State of Oregon Agencies may select the Contractor of Authorized Purchaser’s choice in compliance with applicable statute and rules.

3.2.1 For purchases under \$10,000, Authorized Purchasers who are State Agencies may select the Contractor of their choice in compliance with applicable statute and rule.

3.2.2 For purchases over \$10,000 Authorized Purchasers who are State Agencies shall use one of the following selection processes:

- a) **Brand Name Justification** - A documented brand name justification in compliance with applicable statutes and rules.
- b) **Best Value Analysis** - Authorized Purchaser may conduct a comparison of the offers based upon the following best value analysis process;
 - i. Determine category of need, if more than 3 Contractors offer Goods and services in the category of need, contact at least 3 Contractors and request a quote for the anticipated Goods and services. If 3 or less Contractors offer Goods and Services in category of need, contact all Contractors that provide Goods and services in the category of need and request a quote for anticipated Goods and services. Quoted rates must not exceed the most competitive rates and discounts set forth in this Price Agreement. Authorized Purchaser may provide a deadline for quote response to Contractor.
 - ii. Determine which Contractor and Authorized Dealer provides the best value for Authorized Purchaser. Some or all of the following factors

may be used in the Authorized Purchaser’s determination of best value (additional factors not listed may also be used) :

- Applicable discounts and incremental pricing options;
- Shipping costs;
- Manufacture timelines;
- Delivery process;
- Maintenance and repair service levels;
- Applicable warranties;
- Contractor’s past performance record through reference checks;
- Contractor’s service area;
- Price comparison
- Life cycle costing including expected life, salvage value and discounted total cost of ownership.

- iii. Negotiate with one or more Contractors to gain the best value for the desired Goods and services.
- iv. Authorized Purchasers may make award decisions based on price alone, or may also take value and technical and past performance considerations into account.
- c) Document Authorized Purchasers procurement files describing the process, considerations, findings, and decisions used for determining the Contractor selected through the Best Value Analysis.

3.3 DELIVERY CHARGES: For all orders, FOB destination delivery costs up to 60 miles from dealership shall be paid by the Contractor. Additional delivery charges for delivery beyond 60 miles must be based on delivery cost outlined in Exhibit A.

3.4 ADVANCE PAYMENT PROHIBITED: No advance payment shall be made for the Goods or services furnished by Contractor pursuant to this Contract.

3.5 NOTICE OF ORDER SHORTAGES: Contractor shall notify Authorized Purchaser within twenty-four (24) hours of receiving notice that ordered Goods or services will not be available for shipment or scheduling on the scheduled delivery day. This includes a notice to Authorized Purchaser whenever a particular Good will be short-shipped. Notice of unavailability for services or projected short-shipment of Goods will not eliminate Authorized Purchaser’s right to pursue all available remedies.

3.6 UNAUTHORIZED WORK: Goods or services provided without or prior to receipt of written authority (i.e. without a Purchase Order duly issued under the Price Agreement) will be considered unauthorized and may not be paid for by Authorized Purchaser.

3.7 PRICE QUOTES: Contractor price quotes will be considered a firm offer (or maximum price) for a set time period of 90 days after issuance. Upon any negotiations with an Authorized Purchaser, Contractor will update the quote, or provide a new “not-to-exceed” final price quote for desired Goods and Services prior to Authorized Purchaser placing an order. Price Quotes must

include all costs, including but not limited to, additional options, taxes (including privilege tax and corporate activity or vehicle use tax for State of Oregon), fees, and delivery and registration costs.

Section 4 – Signature of Contractor’s Duly Authorized Representative

4.1 The undersigned represents:

- (a) Signee is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Contractor;
- (b) Contractor is bound by and will comply with all requirements, specifications, and terms contained in this Agreement;
- (c) Contractor will furnish the Goods in accordance with Contracts under this Agreement; and
- (d) Contractor shall furnish federal identification number or social security number under a separate document.
- (e) All Contractor affirmations contained in its bid or proposal related to this Agreement are true and correct.
- (f) Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontracts, and that Contractor is not in violation of any nondiscrimination laws.
- (g) Contractor has a written policy and practice that meets the requirements, described in ORS279A.112, of preventing sexual harassment, sexual assault, and discriminating against employees who are members of a protected class. Contractor agrees, as a material term of the Price Agreement, to maintain the policy and practiced in force during the entire Price Agreement term.
- (h) Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.
- (i) Contractor shall comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor’s employees in the payment of wages or other compensation for work of comparable character on the basis of an employee’s membership in a protected class. “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Contractor’s compliance with this Section constitutes a material element of this Price Agreement and a failure to comply constitutes a default that entitles Agency to terminate this Price Agreement for cause.
- (j) Contractor may not prohibit any of Contractor’s employees from discussing the employee’s rate of wage, salary, benefits, or other

Agreed:

Contractor's Name: Gee Automotive Portland VII, LLC (dba Ron Tonkin Chrysler Jeep Dodge Ram Fiat)

Authorized Signature: 

Printed Name of Authorized Signature: Chuck Baggs

Title of Authorized Signature: Fleet Manager

Date: 04/27/2021

Contractor Administrative Contact (also referred to as Contract Administrator):

Name	<u>Chuck Baggs</u>
Address	<u>16800 SE McLoughlin Blvd, Milwaukie, Or 97267</u>
Telephone	<u>503-258-5800 ext 4950 or 503-781-8128/cell</u>
E-mail	<u>cbaggs@tonkin.com</u>

Section 5 – Signature of DAS PS

Agreed:

Authorized Signature: Darwin Kumpula Digitally signed by Darwin Kumpula
Date: 2021.04.28 08:10:19 -07'00'

Date: 28 April 2021

DAS PS Contract Administrator (Type or Print):

Name	Brent Lutz
Address	1225 SE Ferry Street, Salem, OR 97301
Telephone	(971) 719-3436
E-mail	brent.l.lutz@oregon.gov

Legal Review:

Approved pursuant to ORS 291.047

Approved by Marc S. Bocci, Senior Assistant Attorney General

Per email dated March 23, 2021

Price Agreement # 1652
Gee Automotive Portland VII, LLC (dba Ron Tonkin Chrysler Jeep Dodge Ram Fiat)

Exhibit B


	STATE OF OREGON	PURCHASE ORDER (PO) NO.	PAGE #		
Authorized Purchaser's Authorized Representative		Purchase Order Date	Requisition No.		
Contractor Name and Address		Authorized Purchaser's Invoicing Address			
Contractor FEIN	Price Agreement number	Authorized Purchaser's Authorized Representative Email Address			
Deliver to Address		Authorized Purchaser's Authorized Representative Phone and Fax Number			
		Delivery Schedule or Delivery Date			
Item	Description	Quantity	U/M	Unit Price	Net Price
				Sub Total	
				Freight	
				Total	
<p>This Purchase Order, in addition to any exhibits or addenda attached, is placed against State of Oregon Solicitation # DASPS-2295-20 and Price Agreement #1652. The terms and conditions contained in the Price Agreement apply to this purchase and take precedence over all other conflicting terms and conditions, express or implied. There are no understandings, agreements or representations, oral or written, not specified herein.</p>					
Agency's Authorized Representative to Make Purchase				Date	

Exhibit C INSURANCE REQUIREMENTS

Contractor shall obtain at Contractor’s expense the insurance specified in this Exhibit C prior to performing under this Price Agreement and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers’ Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

WORKERS’ COMPENSATION & EMPLOYERS’ LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers’ compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers’ liability insurance coverage with limits not less than \$500,000 each accident. If Contractor is an employer subject to any other state’s workers’ compensation law, Contractor shall provide workers’ compensation insurance coverage for its employees as required by applicable workers’ compensation laws including employers’ liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than **\$2,000,000** per occurrence. Annual aggregate limit shall not be less than **\$4,000,000**.

AUTOMOBILE LIABILITY INSURANCE:

Required **Not required**

Automobile Liability Insurance covering Contractor’s business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than **\$2,000,000** for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

EXCESS/UMBRELLA INSURANCE:

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED:

All liability insurance, except for Workers’ Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Price Agreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor’s activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) Agency or Contractor termination of contract, or, iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by Agency under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

STATE ACCEPTANCE:

All insurance providers are subject to Agency acceptance. If requested by Agency, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Exhibit C.

Exhibit D

SPECIFICATIONS

1. GENERAL PROVISIONS:

- 1.1 **SILENCE OF SPECIFICATIONS:** The apparent silence of the specifications as to any detail, or the apparent omission of a detailed description concerning any point, shall be interpreted as requiring that Contractor shall perform to only the best commercial practice and that Contractor shall supply and incorporate into Goods only materials and workmanship of first quality. However, if any omitted specification results in ambiguity as to material characteristics of the Goods, and inclusion is necessary to enable a reasonable person in the particular industry to properly identify such characteristics, and Contractor failed to seek a formal request for change during the solicitation process for the Agreement, then Contractor shall be required to provide Goods meeting the Authorized Purchaser's needs with regard to any omitted specification.
- 1.2 **ADHERENCE TO THE SPECIFICATIONS:** Deviations from specifications discovered after purchase shall be corrected by Contractor at no cost to the Authorized Purchaser.

2. SPECIFICATIONS:

Specifications below provide a minimum requirement.

- 2.1 All Base Model Vehicles must include all OEM standard features, equipment, and components, Manufacturer or Dealer installed according to the Manufacturer's standard procedures, requirements, and specifications. All Vehicle Base Models must include two (2) sets of keys and all user manuals.
- 2.2 Additional equipment packages, factory installed options and aftermarket options may also be offered. Cab and Chassis optional Body Upfit may also be offered. Contractor shall provide all sub-contractors for Body Upfits to DAS PS.
- 2.3 All required installation services must be completed by the manufacturer or a manufacturer authorized installer and Contractor must certify completed vehicle conforms to all Federal Motor Vehicle Safety Standards ("FMVSS") and all body modifications must have National Highway Traffic Safety Administration ("NHTSA") certification.
- 2.4 Unless otherwise DAS PS approved, all Vehicles must be no older than 1 year beyond the current Manufacturer's model year, new and unused, free of damage, rust and other defects that may affect appearance or serviceability.
- 2.5 All Vehicles must comply with all federal and State laws, requirements, and regulations applicable to the type and class of Vehicles and contractual services. This includes, but is not limited to, FMVSS, Occupational Safety and Health Administration ("OSHA"), Environmental Protection Agency ("EPA") Standards, and State laws, requirements, and regulations. In addition, if any applicable federal or State legislation becomes effective during the term of the Contract regarding the Goods and related services, including but not limited to requirements concerning specifications and safety, and environmental requirements, those requirements shall immediately become a part of the Agreement and each Contract. The Contractor shall meet or exceed any such requirements of the laws and regulations. If an apparent conflict exists, the Contractor shall contact the Contract Administrator immediately.
- 2.6 Vehicles must not contain Dealer's advertising or identification (name, logos, etc.) including all Base Equipment; OEM Options, Accessories, & Implements; OEM & Replacement Parts; and their components. Manufacturer's advertising or identification (name, model, logos, etc.) will be permitted on the respective Vehicles if such

advertising or identification is a Manufacturer's standard on the specific Vehicle.

07/27/2022 Item #3.

- 2.7 Acceptable Vehicle fuel and alternative fuel options include gasoline (E-10), diesel, bio-diesel, natural gas (compressed or liquefied), ethanol flex fuel (E-85), liquefied petroleum gas, Hydrogen Fuel Cell Electric Hybrid, Plug-in Hybrid Electric and Plug-in Electric Vehicle. Additional fuel options may be accepted upon DAS PS approval.

Contract 42200298

Vehicle #	Description	Purchase amount	Ordered	Dealer	Contract #
22-20	Patrol- 2021 Ram 1500	\$40,577.74	3/10/2021	Tonkin	
22-21	Patrol- 2021 Ram 1500	\$40,577.74	3/10/2021	Tonkin	
22-22	Patrol- 2021 Ram 1500	\$40,577.74	3/10/2021	Tonkin	
22-23	Patrol- 2021 Ram 1500	\$40,577.74	3/10/2021	Tonkin	
22-24	Patrol- 2021 Ram 1500	\$40,577.74	3/10/2021	Tonkin	
23-20	Patrol- 2021 Ram 1500- K9	\$40,577.74	11/30/2021	Tonkin	
23-21	Patrol- 2021 Ram 1500- K9	\$40,577.74	11/30/2021	Tonkin	42200298
23-22	Patrol- 2021 Ram 1500	\$40,577.74	11/30/2021	Tonkin	42200298
23-23	Patrol- 2021 Ram 1500	\$40,577.74	11/30/2021	Tonkin	42200298
23-24	Patrol- 2021 Ram 1500	\$40,577.74	11/30/2021	Tonkin	42200298
23-25	Patrol- 2021 Ram 1500	\$40,577.74	11/30/2021	Tonkin	42200298
23-26	Patrol- 2021 Ram 1500	\$40,577.74	11/30/2021	Tonkin	42200298
23-13	Patrol- 2021 Charger	\$35,529.61	11/30/2021	Tonkin	
23-14	Patrol- 2021 Charger	\$35,529.61	11/30/2021	Tonkin	
23-15	Patrol- 2021 Charger	\$35,529.61	11/30/2021	Tonkin	42200298
23-16	Patrol- 2021 Charger	\$35,529.61	11/30/2021	Tonkin	42200298
23-17	Patrol- 2021 Charger	\$35,529.61	11/30/2021	Tonkin	42200298
23-18	Patrol- 2021 Charger	\$35,529.61	11/30/2021	Tonkin	42200298
23-19	Patrol- 2021 Charger	\$35,529.61	11/30/2021	Tonkin	42200298

\$243,466.44

\$177,648.05

Vehicles already paid for

Vehicles on contract #42200298 \$421,114.49

Contract #42200315

23-01	Patrol- 2021 Durango	\$38,822.00	12/2/2021	Tonkin	42200315
23-02	Patrol- 2021 Durango	\$38,822.00	12/2/2021	Tonkin	42200315
23-03	Patrol- 2021 Durango	\$38,822.00	12/2/2021	Tonkin	42200315
23-04	Patrol- 2021 Durango	\$38,822.00	12/2/2021	Tonkin	42200315
23-05	Patrol- 2021 Durango	\$38,822.00	12/2/2021	Tonkin	42200315
23-06	Patrol- 2021 Durango	\$38,822.00	12/2/2021	Tonkin	42200315
23-07	Patrol- 2021 Durango	\$38,822.00	12/2/2021	Tonkin	42200315
23-08	Patrol- 2021 Durango	\$38,822.00	12/2/2021	Tonkin	42200315
23-09	Patrol- 2021 Durango	\$38,822.00	12/2/2021	Tonkin	42200315
23-10	Patrol- 2021 Durango	\$38,822.00	12/2/2021	Tonkin	42200315
23-11	Patrol- 2021 Durango	\$38,822.00	12/2/2021	Tonkin	42200315
23-12	Patrol- 2021 Durango	\$38,822.00	12/2/2021	Tonkin	42200315
23-30	Jail Transports- Durango	\$38,317.00	12/2/2021	Tonkin	42200315

\$504,181.00

(6) 2022 Ram 1500 trucks Each: \$40,577.74
Subtotal: \$243,466.44

(5) 2022 Dodge Chargers Each: \$35,529.61
Subtotal: \$177,648.05

Total: \$421,114.49

Vehicle #	Description	Purchase amount	Budget amount	Ordered	Dealer	Contract #
23-01	Patrol- 2021 Durango	\$38,822.00		12/2/2021	Tonkin	42200315
23-02	Patrol- 2021 Durango	\$38,822.00		12/2/2021	Tonkin	42200315
23-03	Patrol- 2021 Durango	\$38,822.00		12/2/2021	Tonkin	42200315
23-04	Patrol- 2021 Durango	\$38,822.00		12/2/2021	Tonkin	42200315
23-05	Patrol- 2021 Durango	\$38,822.00		12/2/2021	Tonkin	42200315
23-06	Patrol- 2021 Durango	\$38,822.00		12/2/2021	Tonkin	42200315
23-07	Patrol- 2021 Durango	\$38,822.00		12/2/2021	Tonkin	42200315
23-08	Patrol- 2021 Durango	\$38,822.00		12/2/2021	Tonkin	42200315
23-09	Patrol- 2021 Durango	\$38,822.00		12/2/2021	Tonkin	42200315
23-10	Patrol- 2021 Durango	\$38,822.00		12/2/2021	Tonkin	42200315
23-11	Patrol- 2021 Durango	\$38,822.00		12/2/2021	Tonkin	42200315
23-12	Patrol- 2021 Durango	\$38,822.00		12/2/2021	Tonkin	42200315
23-13	Patrol- 2021 Charger	\$35,350.00		11/30/2021	Tonkin	42200298
23-14	Patrol- 2021 Charger	\$35,350.00		11/30/2021	Tonkin	42200298
23-15	Patrol- 2021 Charger	\$35,350.00		11/30/2021	Tonkin	42200298
23-16	Patrol- 2021 Charger	\$35,350.00		11/30/2021	Tonkin	42200298
23-17	Patrol- 2021 Charger	\$35,350.00		11/30/2021	Tonkin	42200298
23-18	Patrol- 2021 Charger	\$35,350.00		11/30/2021	Tonkin	42200298
23-19	Patrol- 2021 Charger	\$35,350.00		11/30/2021	Tonkin	42200298
23-20	Patrol- 2021 Ram 1500- K9	\$40,578.00		11/30/2021	Tonkin	42200298
23-21	Patrol- 2021 Ram 1500- K9	\$40,578.00		11/30/2021	Tonkin	42200298
23-22	Patrol- 2021 Ram 1500	\$40,578.00		11/30/2021	Tonkin	42200298
23-23	Patrol- 2021 Ram 1500	\$40,578.00		11/30/2021	Tonkin	42200298
23-24	Patrol- 2021 Ram 1500	\$40,578.00		11/30/2021	Tonkin	42200298
23-25	Patrol- 2021 Ram 1500	\$40,578.00		11/30/2021	Tonkin	42200298
23-26	Patrol- 2021 Ram 1500	\$40,578.00		11/30/2021	Tonkin	42200298
23-27	SAR- Ford F250 diesel	\$47,777.30		11/9/2021	Kendall Ford	42200141
23-28	Detectives- 2022 Ford Transit					
23-29	Detectives- 2022 Ford F150	\$38,982.42		11/9/2021	Kendall Ford	42200141
23-30	Jail Transports- Durango	\$38,317.00		12/2/2021	Tonkin	42200315
23-31	Automotive- Travel Durango	\$35,661.00			Tonkin	
23-32	Forensics/CNT Command		\$50,000.00			
23-33	2023 Terradyne Gurkha	\$363,900.00	\$82416/yr			Lease vehicle

Contract Entry [Production]



- Back
- Search
- Browse
- Add
- Delete
- Print
- Display
- PDF
- Save
- Excel
- Word
- Email
- Schedule
- Attach (0)
- Reminder Alert
- Comments
- Release

Contract Standing

Contract * 42200298 #1

Method * Encumbered Accounts

Line Items * None

Customer * To Be Rolled

Vendor * 23791 ... RON TONKIN DODGE INC Hold Payments

Address 0 ... Require PO for Payment

Status
Original REJECTED
Change Order NONE

- MAIN
- RETAINAGE
- USER DEFINED
- ACCOUNTS
- SUBCONTRACTORS
- INSURANCE

Main Information

Dept/Loc * 1729 ... SO AUTOMOTIVE & COMMUNICATIONS

Bid/RFP

Requisition Year/Number /

Project

Description (6)Ram 1500 SSV trucks and (5) Chargers for patrol

Year * 2022 Period 12

Type * MATR

Subtype

Review code

Percent complete 0.00 as of

Administrator PeterM ... Peter Martin

Workflow None Notification Percentage 0.00

Dates

- Estimated start
- Estimated completion
- Bid awarded
- Approved
- Initial expiration
- Renewal action
- Extended through
- Days
- Original
- Modified
- Revised

Totals

Original	243,466.44	Open Req	0.00	0.00 %	
Revised	243,466.44	Open PO	0.00	0.00 %	Requisitions (0)
Liquidated amt	0.00	Expended	0.00	0.00 %	Purchase Orders (0)
Encumb balance	243,466.44	Available	243,466.44	100.00 %	Invoices (0)

Addition

- Milestone:
- Performan
- Term

Workflow

- My Approvals
- Approve
- Reject
- Forward
- Hold
- Approvers



Contract Entry [Production]

- Back
- Search
- Browse
- Add
- Update
- Delete
- Print
- Display
- PDF
- Save
- Excel
- Word
- Email
- Schedule
- Attach
- Reminder Alert
- Comments

Contract Standing

Contract * 42200315 To Be Rolled

Method * Encumbered Accounts Hold Payments >> Original Require PO for Payment Status

Line Items * None Change Order RELEASED

Customer * NONE

Vendor * 23791 ... RON TONKIN DODGE INC

Address 0 ...

- MAIN**
- RETAINAGE
- USER DEFINED
- ACCOUNTS
- SUBCONTRACTORS
- INSURANCE

Main Information

Dept/Loc * 1729 ... SO AUTOMOTIVE & COMMUNICATIONS

Bid/RFP

Requisition Year/Number

Project

Description 2022 Dodge Durango's for Patrol and Jail Transport

Year * 2023 Period 1

Type * MATR

Subtype

Review code

Percent complete 0.00 as of

Administrator PeterM ... Peter Martin

Workflow None Notification Percentage 0.00

Dates

- Estimated start
- Estimated completion
- Bid awarded
- Approved
- Initial expiration
- Renewal action
- Extended through

Days

- Original
- Modified
- Revised

Totals

Original	504,181.00	Open Req	0.00	0.00 %
Revised	504,181.00	Open PO	0.00	0.00 %
Liquidated amt	0.00	Expended	0.00	0.00 %
Encumb balance	504,181.00	Available	504,181.00	100.00 %

- Requisitions (0)
- Purchase Orders (0)
- Invoices (0)
- Term
- Milestone:
- Performan

Workflow

- My Approvals
- Approve
- Reject
- Forward
- Hold
- Approvers



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 27, 2022

SUBJECT: Consideration Chair signature of Document No. 2022-653, an Oregon Health Authority Grant Agreement for Community Mental Health Programs

RECOMMENDED MOTION: Move approval of chair signature of Document No. 2022-653

BACKGROUND AND POLICY IMPLICATIONS:

Senate Bill 295 (SB295) calls for Community Mental Health Programs (CMHPs) to utilize community restoration options for defendants not needing a hospital level of care, whether determined directly from court or as a step-down from Oregon State Hospital (OSH). The number of individuals being admitted to the OSH, after being found unfit to proceed, is at an unsustainable level, and it is becoming increasingly challenging for Community Mental Health Programs (CMHPs) to find the appropriate and available services outside of the hospital setting.

Oregon Health Authority (OHA) is providing funding to CMHPs to increase capacity for community restoration for those found unfit to proceed. The funds can be used to create or enhance programs and services that support individuals to remain in the community and out of the hospital. The goals of this agreement are to:

- 1. Reduce the number of individuals found unfit to proceed via diversion efforts;
2. If unable to divert, decrease the number of those who are referred and admitted to Oregon State Hospital (OSH) for restoration services (i.e., increase capacity for effective community restoration services directly from custody and as step-down from OSH);
3. For those ultimately admitted to OSH, reduce the lengths of stay.

Deschutes County Behavioral Health (DCBH) is the Community Mental Health Program providing safety net and core clinical services for community members in Deschutes County dealing with mental health and substance use conditions. DCBH provides specific and sustainable programming to address the specific needs of the Aid to Assist population (those found unfit to proceed) and is able to streamline access to culturally appropriate services for this marginalized group. Strategies and preferred practices for community restoration services, outlined by Oregon Health Authority (OHA), will be followed.

OHA is providing funding in the amount of \$430,778 for the term of July 1, 2022 to June 30, 2023. This funding will help to cover current costs of services that were expanded to address this population. \$320,262 of funding will be used to cover three Intensive Forensic Services Team positions, a Behavioral Health Specialist I, Behavioral Health Specialist II, and a Peer Support Specialist, \$71,354 will support a contract agreement with Bethlehem Inn to reserve shelter beds for Aid to Assist discharges and community restoration clients, and \$39,162 (10%) will be used for indirect administration costs.

OHA will make quarterly payments of \$107,694.50 contingent upon receipt and approval of Deschutes County's invoice and reporting submissions.

BUDGET IMPACTS: \$430,778 revenue for the period July 1, 2022 to June 30, 2023.

ATTENDANCE:
Kara Cronin, Behavioral Health Program Manager

DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections **above** the Official Review line.

Date: July 7, 2022

Department: Health Services, Behavioral Health

Contractor/Supplier/Consultant Name: Oregon Health Authority

Contractor Contact: Arlenia Broadwell

Type of Document: Intergovernmental Agreement #176904

Goods and/or Services: OHA #176904 provides \$430,788 of funding for the period July 1, 2022 through June 30, 2023. The purpose of these funds is to increase capacity for community restoration for those found unfit to proceed.

Background & History: The Oregon Health Authority (OHA) was created by the 2009 Oregon legislature to bring most health-related programs in the state into a single agency to maximize its purchasing power. OHA is at the forefront of lowering and containing costs, improving quality and increasing access to health care in order to improve the lifelong health of Oregonians.

Deschutes County Behavioral Health helps County residents facing serious mental health and addiction issues. Priority populations include Oregon Health Plan members, uninsured County residents with nowhere else to turn and people in crisis, who are often in unstable situations or are a danger to themselves or others. The department also coordinates services for County residents in care at the State Hospital or served through other agencies or facilities. These services assist people in need, alleviate community problems, promote client health and prevent more costly care and intervention.

Senate Bill 295 (SB295) calls for Community Mental Health Programs (CMHPs) to utilize community restoration options for defendants not needing a hospital level of care, whether determined directly from court or as a step-down from OSH. The number of individuals being admitted to the Oregon State Hospital (OSH), after being found unfit to proceed, is at an unsustainable level. It has become increasingly challenging for CMHPs to find the appropriate and available services outside of the hospital setting.

The goals of this agreement are to:

1. Reduce the number of individuals found unfit to proceed via diversion efforts;
2. If unable to divert, decrease the number of those who are referred and admitted to Oregon State Hospital (OSH) for restoration services (i.e., increase capacity for effective community restoration services directly from custody and as step-down from OSH);
3. For those ultimately admitted to OSH, reduce the lengths of stay.

Funding will be used to support the Intensive Forensic Services Team, provide case management, maintain contract agreement with Bethlehem Inn to reserve four shelter beds for Aid to Assist discharges and community restoration clients, and provide client stabilization supports. OHA will make quarterly payments of \$107,694.50 contingent upon receipt and approval of Deschutes County's invoice and reporting submission. Funding includes 10% of indirect administration costs.

Agreement Starting Date: July 01, 2022

Ending Date: June 30, 2023

Total Payment: \$430,778.

Insurance Certificate Received (check box)
Insurance Expiration Date: N/A County is Contractor

Check all that apply:

- Not Applicable
RFP, Solicitation or Bid Process
Informal quotes (<\$150K)
Exempt from RFP, Solicitation or Bid Process (specify - see DCC §2.37)

Funding Source: (Included in current budget? Yes No)

If No, has budget amendment been submitted? Yes No

Is this a Grant Agreement providing revenue to the County? Yes No

Special conditions attached to this grant:

Deadlines for reporting to the grantor: Quarterly Reporting via email

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: Yes No

Contact information for the person responsible for grant compliance: Name: Phone #:

Departmental Contact and Title: Kara Cronin, Program Manager
Phone #: 541-322-7526

Director Approval:

Signature: Erik Kropp
Email: erik.kropp@deschutes.org
Title: Interim Health Services Director
Company: Deschutes County

Distribution of Document: Grace Justice Evans at Health Services.

Official Review:

County Signature Required (check one): BOCC Director (if <\$50K)
Administrator (if >\$50K but <\$150K; if >\$150K, BOCC Order No.)

Document Number: 2022-653

DOCUMENT RETURN STATEMENT

Please complete the following statement and return with the completed signature page and the Contractor Data and Certification page and/or Contractor Tax Identification Information (CTII) form, if applicable.

If you have any questions or find errors in the above referenced Document, please contact the contract specialist.

Document number: 176904 , hereinafter referred to as "Document."

I, _____
Name Title

received a copy of the above referenced Document, between the State of Oregon, acting by and through the Department of Human Services, the Oregon Health Authority, and

Deschutes County Health Services by email.

Contractor's name

On _____ ,
Date

I signed the electronically transmitted Document without change. I am returning the completed signature page, Contractor Data and Certification page and/or Contractor Tax Identification Information (CTII) form, if applicable, with this Document Return Statement.

Authorizing signature Date

Please attach this completed form with your signed document(s) and return to the contract specialist via email.



Agreement Number 176904

**STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@state.or.us or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This Agreement is between the State of Oregon, acting by and through its Oregon Health Authority, hereinafter referred to as "OHA," and

**Deschutes County Behavioral Health
2577 NE Courtney Drive
Bend, OR 97701
Attn: Janice Garceau, Program Manager
Telephone: 541-322-7500
Facsimile: 541-322-7566
E-mail address: janice.garceau@deschutes.org**

hereinafter referred to as "County."

Work to be performed under this Agreement relates principally to OHA's

**Health Systems Division
500 Summer St NE
Salem, OR 97301-1118
Contract Administrator: Blanca Fernandez or delegate
Telephone: 503-799-9050
E-mail address: blanca.fernandez@dhsaha.state.or.us**

1. Effective Date and Duration.

This Agreement shall become effective on the later of: (I) **July 1, 2022** provided it is (i) approved in writing by the Oregon Department of Justice on or before such date, and (ii) when required, approved in writing by the Oregon Department of Administrative Services, and (iii) is signed by all parties, regardless of the date of the parties' signatures; or (II) the date this Agreement is approved in writing by the Oregon Department of Justice, provided it is (i) when required, approved in writing by the Oregon Department of Administrative Services, and (ii) is signed by all parties, regardless of the date of the parties' signatures. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **June 30, 2023**. Contract termination shall not extinguish or prejudice OHA'S right to enforce this Agreement with respect to any default by Recipient that has not been cured.

2. Agreement Documents.

a. This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

- (1) Exhibit A, Part 1: Statement of Work
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Terms and Conditions
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Subcontractor Insurance Requirements

This Agreement constitutes the entire agreement between the parties on the subject matter in it; there are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified herein.

- b.** In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibits D, B, A and C.
- c.** For purposes of this Agreement, "Work" means specific work to be performed or services to be delivered by County as set forth in Exhibit A.

3. Consideration.

- a.** The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is **\$430,778.00**. OHA will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.
- b.** OHA will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

4. Contractor or Subrecipient Determination.

In accordance with the State Controller’s Oregon Accounting Manual, policy 30.40.00.104, OHA’s determination is that:

- County is a subrecipient County is a contractor Not applicable

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: NA

5. County Data and Certification.

a. County Information. This information is requested pursuant to ORS 305.385.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

County Name (exactly as filed with the IRS): Deschutes County Oregon

Street address: 2577 NE Courtney Drive

City, state, zip code: Bend, OR 97701

Email address: kara.cronin@deschutes.org; grace.evans@deschutes.org

Telephone: () 541-322-7526 Facsimile: () 541-322-7565

Proof of Insurance: County shall provide the following information upon submission of the signed Agreement, all insurance listed herein and required by Exhibit C, must be in effect prior to Agreement execution.

Workers' Compensation Insurance Company: Self-Insured

Policy #: Not Applicable Expiration Date: Not Applicable

b. Certification. Without limiting the generality of the foregoing, by signature on this Agreement, the County hereby certifies under penalty of perjury that:

- (1) The County is in compliance with all insurance requirements of this Agreement and notwithstanding any provision to the contrary, County shall deliver to the OHA Agreement Administrator (see page 1 of this Agreement) the required Certificate(s) of Insurance within 30 days of execution of this Agreement. By certifying compliance with all insurance as required by this Agreement, County acknowledges it may be found in breach of the Agreement for failure to obtain required insurance. County may also be in breach of the Agreement for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Agreement;
- (2) The County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) the County and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the County;

- (3) The information shown in this Section 5a. "County Information", is County's true, accurate and correct information;
- (4) To the best of the undersigned's knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- (5) County and County's employees and agents are not included on the list titled "Specially Designated Nationals" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
- (6) County is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Non-procurement Programs" found at: <https://www.sam.gov/portal/public/SAM/>;
- (7) County is not subject to backup withholding because:
 - (a) County is exempt from backup withholding;
 - (b) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified County that County is no longer subject to backup withholding; and
- (8) County Federal Employer Identification Number (FEIN) provided to OHA is true and accurate. If this information changes, County is required to provide OHA with the new FEIN within 10 days.

EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

COUNTY: YOU WILL NOT BE PAID FOR WORK PERFORMED PRIOR TO NECESSARY STATE APPROVALS

6. Signatures. This Agreement and any subsequent amendments 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 the Agreement and any amendments so executed shall constitute an original.

Deschutes County Behavioral Health

By:

Authorized Signature

Printed Name

Title

Date

State of Oregon, acting by and through its Oregon Health Authority pursuant to ORS 190

By:

Authorized Signature

Printed Name

Title

Date

Approved by: Director, OHA Health Systems Division

By:

Authorized Signature

Printed Name

Title

Date

Approved for Legal Sufficiency:

Via e-mail by Jeffrey J. Wahl, Assistant Attorney General
Department of Justice

7/6/2022
Date

EXHIBIT A

Part 1 Statement of Work

1. Background and Purpose.

The number of individuals being admitted to the Oregon State Hospital (OSH) after being found unfit to proceed is at an unsustainable level. While Senate Bill 295 (SB 295) calls for Community Mental Health Programs (CMHP's) to utilize community restoration options for defendants not needing a hospital level of care, whether determined directly from court or as a step-down from OSH, it is increasingly challenging for CMHP's to find the appropriate and available services outside of the hospital setting. The purpose of these funds is to increase capacity for community restoration (CR) for those found unfit to proceed. CMHP's can use these funds to create or enhance programs and services that support individuals to remain in the community and out of the hospital.

2. Goals.

- a. Reduce number of individuals found unfit to proceed via diversion efforts;
- b. If unable to divert, decrease the number of those who are referred and admitted to OSH for restoration services (i.e., increase capacity for effective community restoration services directly from custody and as step-down from OSH);
- c. For those ultimately admitted to OSH, reduce lengths of stay (LOS).

3. Standards.

- a. OHA requires that County meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services.

4. Definitions.

As used in this Section 4 and elsewhere in this Agreement, the following terms have the meanings set forth:

- a. **"370 Aid and Assist"** refers to statute is accused of a crime, and they are unable to participate in their trial because of a qualifying mental illness; or otherwise referred to as being Unfit to Proceed. In these cases, the court may issue an order under ORS 161.370 for the defendant to be sent for Restoration Services, either taking place in the community or at the Oregon State Hospital, so he or she can become well enough to "aid and assist" in their own defense.
- b. **"CADC"** means a Certified Alcohol and Drug Counselor.
- c. **"Community Mental Health Program"** means the organization of all services for persons with mental or emotional disturbances, drug abuse problems, mental

- retardation or other developmental disabilities, and alcoholism and alcohol abuse problems, operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division as defined in 309-039-0510(1).
- d. **“Crisis Respite”** means alternatives to psychiatric hospitalization.
- e. **“OSH”** means the Oregon State Hospital.
- f. **“QMHA”** means a Qualified Mental Health Associate as defined in 309-039-0510(9).
- g. **“QMHP”** means a Qualified Mental Health Professional as defined in 309-039-0510(10).
- h. **“Ready to Place (RTP)”** means the superintendent or director at OSH has determined that a defendant committed under ORS 161.370 is no longer dangerous to self or others as a result of a qualifying mental disorder, or that the services and supervision necessary to restore the defendant’s Fitness to Proceed are available in the community. Upon such determination, the superintendent or director files notice of that determination with the court.
- i. **“Restoration Services”** means at a minimum, a collection of services as defined in OAR 309-088-0115 that may assist in gaining or regaining an Individual’s Fitness to Proceed. Services include, but are not limited to:
- (1) Behavioral Health Treatment;
 - (2) Medication Management;
 - (3) Care Coordination;
 - (4) Community Consultation;
 - (5) Case Management;
 - (6) Peer-Delivered Services;
 - (7) Crisis Services;
 - (8) Medical Treatment;
 - (9) Legal Skills Training;
 - (10) Housing;
 - (11) Supervision;
 - (12) Transportation;
 - (13) Incidental Supports; and
 - (14) Linkages to Benefits.

5. Tasks.**a.** For the purposes of this Agreement, County shall:

- (1) Utilize funding to support the following FTE's from the Intensive Forensic Services Team to serve the Aid and Assist population:
 - (a) 1.00 FTE Behavioral Health Specialist II
 - (b) 1.00 FTE Peer Support Specialist
 - (c) 1.00 FTE Behavioral Health Specialist I
 - (d) 0.25 FTE Supervisor
 - (e) And hire for a .75 FTE Public Health Nurse II
- (2) Provide the following services:
 - (a) Case management;
 - (b) Placement for permanent/supportive/transitional housing;
 - (c) Skills training, crisis de-escalation, and referral to other community resources as needed.
- (3) Utilize funding to maintain contract agreement with Bethlehem Inn to reserve four shelter beds specifically for OSH .370 Aid to Assist discharges and community restoration clients.
- (4) Provide Incidental Supports to fund client stabilization to help support clients in meeting their basic needs (e.g. food, clothing, motel vouchers, housing support, gas cards, and prescriptions) and maintain appropriate documentation of expenditures as needed and approved by program manager.
- (5) Screen and assess individuals for the presence of mental and substance use disorders and/or co-occurring disorders, and use the information obtained from the screening and assessment to develop appropriate treatment approaches.
- (6) Provide evidence-based and population appropriate treatment services.
- (7) Ensure access to crisis mental health services. i.e., mental health services for individuals in crisis, provided by mental health practitioners who respond to behavioral health crises onsite at the location in the community where the crisis arises and who provide a face-to-face therapeutic response. Crisis services are to help an individual resolve a psychiatric crisis or emergency in the most integrated setting possible, and to avoid unnecessary emergency room visits, hospitalization, inpatient psychiatric treatment, child welfare involvement, placement disruption, houselessness, involuntary commitment, and arrest or incarceration.
- (8) Collect and provide data in a method as outlined in Section 7. below.
- (9) Adhere to reporting requirements, timelines, and check ins with Contract Administrator as agreed upon or requested.

b. For the purposes of this agreement, OHA will:

- (1) Coordinate and schedule monthly meetings with Contractor to provide technical assistance and to check-in on barriers, challenges, and successes in completing tasks and meeting deliverables. Meetings may happen by phone, videoconference,

or in-person.

6. Deliverables.

- a. Provide intensive community restoration services to more acute and complex clients under aid to assist orders through enrollment with the Intensive Forensic Service Team.
- b. Increase placement options to serve houseless individuals ready to discharge from OSH and community restoration clients. Renew and expand contract with shelter bed partner, Bethlehem Inn, to create additional placement options for a total of 4 reserved beds by July 30, 2022.
- c. Placing an FTE to coordinate with OSH on discharges requiring community restoration services who will attend Multidisciplinary Team (MDT) meetings and support referrals to secure residential treatment facility (SRTF) and other residential beds (as needed) in Deschutes County.
- d. Decrease OSH .370 admissions by 5% serving 53% of new aid and assist cases in community restoration by June 30, 2023.
- e. Support individuals under aid to assist orders with Incidental Supports to meet basic needs and to remain engaged in treatment.

7. Reporting Requirements.

- a. County shall electronically submit a quarterly status report using a format provided by the assigned contract administrator. Submit quarterly reports via email to amhcontract.administrator@dhsosha.state.or.us.
- b. Reports are due no later than 15 calendar days following the last month of each quarter during the term of this Agreement.
- c. Reports shall describe the status of the County's progress toward completing tasks and meeting deliverables in a timely manner. These reports shall include:
 - (1) Demographics, insurance, diagnoses, services received, and substance use, county of responsibility, out of county placements, housing supports.
 - (2) Length of stay at OHS, length of time on RTP list prior to discharge into the community, prior hospitalizations, diverted from OSH.
 - (3) Length of stay in jail prior to being release into community restoration, prior contact with legal system.
 - (4) Program engagement: intensive forensic services team, peer support, connected to benefits, bed placement with Bethlehem Inn partnership, bed placement after hospital discharge or jail release, and length of stay in bed placement.
 - (5) Incidental supports, amount provided for each individual under each category: housing and incidental funds.
 - (6) Patient hospital readmission after OSH discharge within 30, 90, 180, 360 days,

and/or lost to follow up (moved out of county/state, violated conditional release, etc).

- (7) One summary of a success story per quarter the County would like to share.

EXHIBIT A
Part 2
Payment and Financial Reporting

1. Payment Calculation, Disbursement, and Monitoring of Performance and Reporting Requirements.

a. Payment Calculation:

- (1) Payments made by OHA under this Agreement are contingent upon County's compliance with the terms and conditions of this Agreement, including without limitation all representations and warranties of County, as set forth in Exhibit B, "Standard Terms and Conditions," are true to the best of County's knowledge at the time of Agreement execution.
- (2) County understands and agrees that OHA's payments are contingent upon OHA receiving appropriations, limitations, allotments, or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to continue to pay County.
- (3) Nothing in this Agreement is to be construed as permitting any violation of Articles XI, Section 7, of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

b. Disbursement of Payments:

For the period beginning **July 1, 2022 through June 30, 2023** the following shall apply:

- (1) The total not-to-exceed (NTE) amount paid under this Agreement is \$430,778.00 This NTE amount includes 10% of indirect administration costs.
- (2) Payments will be made on a quarterly basis. Following execution of this Agreement and contingent upon OHA's receipt and approval of County's properly prepared invoice and ongoing timely receipt of monthly status reports approved by OHA, OHA will make payment in 4 equal quarterly payments in the amount of \$107,694.50 each, per the table below.

Invoicing Period	Invoice Due Date	Invoice Amount
July 1, 2022 – September 30, 2022	October 15, 2022	\$107,694.50
October 1, 2022 – December 31, 2022	January 15, 2023	\$107,694.50
January 1, 2023 – March 31, 2023	April 15, 2023	\$107,694.50
April 1, 2023 – June 30, 2023	July 15, 2023	\$107,694.50

c. Monitoring of Tasks, Deliverables, and Reporting:

- (1) County shall demonstrate, through the provisions contained in this Agreement, how payments were utilized consistent with the terms and limitations herein to meet the tasks and deliverables of the Agreement.
- (2) County shall be subject to monitoring, performance review, and quality measures – as related to tasks and deliverables, and reporting – by Contract Administrator for the Program, subject to Agreement terms and limitations.

d. Travel and Other Expenses:

OHA will not reimburse County separately for any travel or additional expenses under this Agreement.

e. Additional Payment Provisions:

- (1) County shall prepare and electronically submit invoices in a format approved by OHA, to amhcontract.administrator@dhsoha.state.or.us or to any other address as OHA may indicate in writing to County, for services provided in each calendar quarter, in the amounts reflected in the invoice chart, by the dates shown.
- (2) Agreement number and Invoicing Period shall be included on County's invoice and all supporting documentation.
- (3) OHA is not obligated to pay for any services that are not properly reported in accordance with the Reporting Requirements section above and where the invoice is received more than 60 calendar days after the expiration or termination date of this Agreement, whichever is earlier.
- (4) Funding provided through this Agreement may only be used for the project in the manner prescribed herein. Funding may not be used to reimburse expenses incurred prior to the effective date of this Agreement.

EXHIBIT A

Part 3 Special Terms and Conditions

1. Confidentiality of Client Information.

- a. All information as to personal facts and circumstances obtained by the County on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, his or her guardian, or the responsible parent when the client is a minor child, or except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.
- b. The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources.
- c. OHA, County and any subcontractor will share information as necessary to effectively serve OHA clients.

2. Amendments.

- a. OHA reserves the right to amend or extend the Agreement under the following general circumstances:
 - (1) OHA may extend the Agreement for additional periods of time up to a total Agreement period of 4 years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on OHA's satisfaction with performance of the work or services provided by the County under this Agreement.
 - (2) OHA may periodically amend any payment rates throughout the life of the Agreement proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if OHA so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.
- b. OHA further reserves the right to amend the Statement of Work based on the original scope of work of RFA # **5389** for the following:
 - (1) Programmatic changes/additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Agreement or previous amendments to the Agreement;
 - (2) Implement additional phases of the Work; or
 - (3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules which, in part or in combination, govern the provision of services provided under this Agreement.

- c. Upon identification, by any party to this Agreement, of any circumstance which may require an amendment to this Agreement, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Agreement before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, Section 22 “Amendments” of this Agreement.

3. County Requirements to Report Abuse of Certain Classes of Persons.

- a. County shall comply with, and cause all employees to comply with, the applicable laws for mandatory reporting of abuse for certain classes of persons in Oregon, including:
 - (1) Children (ORS 419B.005 through 419B.045);
 - (2) Elderly Persons (ORS 124.055 through 124.065);
 - (3) Residents of Long Term Care Facilities (ORS 441.630 through 441.645);
 - (4) Adults with Mental Illness or Developmental Disabilities (ORS 430.735 through 430.743).
 - (5) Abuse of Individuals Living in State Hospitals (OAR 943-045-0400 through 945-045-0520)
- b. County shall make reports of suspected abuse of persons who are members of the classes established in Section 3.a. above to Oregon’s Statewide Abuse Reporting Hotline: 1-855-503-SAFE (7233), as a requirement of this Agreement.
- c. County shall immediately report suspected child abuse, neglect or threat of harm to DHS’ Child Protective Services or law enforcement officials in full accordance with the mandatory Child Abuse Reporting law (ORS 419B.005 through 419B.045). If law enforcement is notified, the County shall notify the referring DHS caseworker within 24 hours. County shall immediately contact the local DHS Child Protective Services office if questions arise as to whether or not an incident meets the definition of child abuse or neglect.
- d. County shall report suspected abuse of the elderly or abuse of patients in a medical or care facility immediately to DHS’ Aging and People with Disabilities office or to a law enforcement agency.
- e. If known, the abuse report should contain the following:
 - (1) The name and address of the abused person and any people responsible for their care;
 - (2) The abused person’s age;
 - (3) The nature and the extent of the abuse, including any evidence of previous abuse;
 - (4) The explanation given for the abuse;
 - (5) The date of the incident; and
 - (6) Any other information that might be helpful in establishing the cause of

the abuse and the identity of the abuser.

- f. County who witnesses or has information about an alleged abusive act that has occurred at Oregon State Hospital (OSH) must immediately report the incident directly to the Office of Adult Abuse Prevention and Investigations:
- (1) Weekdays 8 a.m. – 5 p.m. at 503-945-9495.
 - (2) Weekdays 5 p.m. – 10:00 pm or weekends from noon – 10 p.m. at 503-559-1201.
- g. County who witnesses or has information about an alleged abusive act that has occurred at Oregon State must also notify OSH's Superintendent by one of the methods listed below:
- (1) In person;
 - (2) Hand delivered memorandum;
 - (3) Email; or
 - (4) Telephone call;
 - (a) Superintendent - Weekdays 8 a.m. – 5 p.m. at 503-945-2870
 - (b) Assistant to Superintendent – Weekdays 8 a.m. – 5 p.m. at 503-945-2852.
 - (c) After hours including weekends and holidays, to Superintendent via the Oregon State Hospital Communication Center at 503-945-2800

Regardless of the manner of reporting, a written report also must be submitted which includes details of the incident, date of the report, and name of the reporter.

4. Background Checks for Employees and Volunteers.

- a. The Contractor shall ensure that all employees, volunteers and subcontractors who perform services under this Contract, or who have access to any information about clients served under this Contract, are approved by the Agency's Background Check Unit in accordance with Oregon Administrative Rules (OAR) 407-007-0200 through 407-007-0370.
- b. In addition to potentially disqualifying conditions under OAR 407-007-0290, all employees, volunteers, and subcontractors who perform services under this Contract are subject to OAR 407-007-0290(11)(b).
- c. An employee, volunteer, or subcontractor may be hired on a preliminary basis, in accordance with the requirements and limits described in OAR 407-007-0315, prior to final approval by the Agency's Background Check Unit. An employee, volunteer, or subcontractor hired on a preliminary basis shall not have unsupervised contact with individuals receiving services under this Contract and shall only participate in the limited activities described in OAR 407-007-0315. An employee, volunteer, or subcontractor hired on a preliminary basis must be actively supervised at all times as described in OAR 407-007-0315.

- d. Any current employee hired for a new position with the Contractor to perform services under this Contract, or any current employee, volunteer, or subcontractor who will have access to any information about clients served under this Contract must be approved by the Agency's Background Check Unit at the time the employee, volunteer, or subcontractor accepts the new position or Work. Notwithstanding the requirements of paragraph c. of this Section, a current employee or volunteer who accepts a new position with the Contractor to perform services under this Contract, may be hired for the new position on a preliminary basis without active supervision in accordance with the limits and requirements described in OAR 407-007-0315.
- e. There are only two possible fitness determination outcomes of a background check: approval or denial. If the employee, volunteer, or subcontractor is denied, she or he may not have contact with Agency clients under this Contract and may not have access to information about Agency clients. Employees, volunteers, or subcontractors who are denied do have the right to contest the denial. The process for contesting a denial is described in OAR 407-007-0330.
- f. For purposes of compliance with OAR 407-007-0200 through 407-007-0370, the Contractor is a "Qualified Entity", as that term is defined in OAR 407-007-0210, and must comply with all the provisions pertaining to Qualified Entities contained in OAR 407-007-0200 through 407-007-0370.
- g. The criminal records check procedures listed above also apply to Contractor, its owners, managers, and board members regardless if any individual has access to Agency clients, client information or client funds. Contractor shall establish a personal personnel file and place each criminal records check in named file for possibility of future Agency review and shall be maintained pursuant to Exhibit B, "Standard Terms and Conditions", Section 14, "Records, Maintenance, Access."
5. **Equal Access to Services.** County shall provide equal access to covered services for both males and females under 18 years of age, including access to appropriate facilities, services and treatment, to achieve the policy in ORS 417.270.
6. **Media Disclosure.** The County will not provide information to the media regarding a recipient of services purchased under this Agreement without first consulting the OHA office that referred the child or family. The County will make immediate contact with the OHA office when media contact occurs. The OHA office will assist the County with an appropriate follow-up response for the media.
7. **Nondiscrimination.** The County must provide services to OHA clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language and other special needs of clients.

EXHIBIT B

Standard Terms and Conditions

- 1. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, “Claim”) between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
- 2. Compliance with Law.** Both parties shall comply with laws, regulations and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and OHA, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers’ Compensation coverage, unless such employers are exempt under ORS 656.126. Nothing in this Agreement shall require County or OHA to act in violation of state or federal law or the Constitution of the State of Oregon.
- 3. Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
- 4. Representations and Warranties.**

 - a.** County represents and warrants as follows:

 - (1) **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
 - (2) **Due Authorization.** The making and performance by County of this

Agreement (a) have been duly authorized by all necessary action by County and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is a party or by which County may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement.

- (3) Binding Obligation. This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- (4) County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in County's industry, trade or profession;
- (5) County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
- (6) County prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. OHA represents and warrants as follows:

- (1) Organization and Authority. OHA has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
- (2) Due Authorization. The making and performance by OHA of this Agreement (a) have been duly authorized by all necessary action by OHA and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which OHA is a party or by which OHA may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by OHA of this Agreement, other than approval by the Department of Justice if required by law.
- (3) Binding Obligation. This Agreement has been duly executed and delivered

by OHA and constitutes a legal, valid and binding obligation of OHA, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

- c. **Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

5. Funds Available and Authorized Clause.

- a. The State of Oregon's payment obligations under this Agreement are conditioned upon OHA receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. County is not entitled to receive payment under this Agreement from any part of Oregon state government other than OHA. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. OHA represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.
- b. **Payment Method.** Payments under this Agreement will be made by Electronic Funds Transfer (EFT) and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Agreement. County shall provide this designation and information on a form provided by OHA. In the event that EFT information changes or the County elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the County shall provide the changed information or designation to OHA on a OHA-approved form. OHA is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from the County.
6. **Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and OHA, result in payments to County to which County is not entitled, OHA, after giving to County written notification and an opportunity to object, may withhold from payments due to County such amounts, over such periods of time, as are necessary to recover the amount of the overpayment. Prior to withholding, if County objects to the withholding or the amount proposed to be withheld, County shall notify OHA that it wishes to engage in dispute resolution in accordance with Section 19 of this Agreement.

7. Reserved.

8. Ownership of Intellectual Property.

- a. Definitions.** As used in this Section 8 and elsewhere in this Agreement, the following terms have the meanings set forth below:
- (1) "County Intellectual Property" means any intellectual property owned by County and developed independently from the Work.
 - (2) "Third Party Intellectual Property" means any intellectual property owned by parties other than OHA or County.
- b.** Except as otherwise expressly provided herein, or as otherwise required by state or federal law, OHA will not own the right, title and interest in any intellectual property created or delivered by County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the County owns, County grants to OHA a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 8.b.(1) on OHA's behalf, and (3) sublicense to third parties the rights set forth in Section 8.b.(1).
- c.** If state or federal law requires that OHA or County grant to the United States a license to any intellectual property, or if state or federal law requires that OHA or the United States own the intellectual property, then County shall execute such further documents and instruments as OHA may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or OHA. To the extent that OHA becomes the owner of any intellectual property created or delivered by County in connection with the Work, OHA will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.
- d.** County shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as OHA may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

9. County Default. County shall be in default under this Agreement upon the occurrence of any of the following events:

- a.** County fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
- b.** Any representation, warranty or statement made by County herein or in any documents or reports relied upon by OHA to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;

- c. County (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or
 - d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (3) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).
- 10. OHA Default.** OHA shall be in default under this Agreement upon the occurrence of any of the following events:
- a. OHA fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
 - b. Any representation, warranty or statement made by OHA herein or in any documents or reports relied upon by County to measure performance by OHA is untrue in any material respect when made.
- 11. Termination.**
- a. **County Termination.** County may terminate this Agreement:
 - (1) For its convenience, upon at least 30 days advance written notice to OHA;
 - (2) Upon 45 days advance written notice to OHA, if County does not obtain funding, appropriations and other expenditure authorizations from County's governing body, federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in the reasonable exercise of its administrative discretion;
 - (3) Upon 30 days advance written notice to OHA, if OHA is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as County may specify in the notice; or

- (4) Immediately upon written notice to OHA, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.

b. OHA Termination. OHA may terminate this Agreement:

- (1) For its convenience, upon at least 30 days advance written notice to County;
- (2) Upon 45 days advance written notice to County, if OHA does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of OHA under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, OHA may terminate this Agreement, immediately upon written notice to County or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces OHA's legislative authorization for expenditure of funds to such a degree that OHA will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;
- (3) Immediately upon written notice to County if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that OHA no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;
- (4) Upon 30 days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as OHA may specify in the notice;
- (5) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a subcontractor to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County or a subcontractor no longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification; or
- (6) Immediately upon written notice to County, if OHA determines that County or any of its subcontractors have endangered or are endangering the health or safety of a client or others in performing work covered by this Agreement.

- c. **Mutual Termination.** The Agreement may be terminated immediately upon mutual written consent of the parties or at such time as the parties may agree in the written consent.
- d. **Notwithstanding the expiration date set forth in paragraph 1 on p. 2 of this Agreement,** OHA and County agree that this Agreement extends to August 15, 2023, but only for the purpose of submission of invoices to be paid for Services performed by County during the 2021-2023 biennial period and prior to June 30, 2023. In no event is the County authorized to provide any Services under this Agreement, and County is not required to provide any Services under this Agreement, after June 30, 2023.
- 12. Effect of Termination.**
- a. **Entire Agreement.**
- (1) Upon termination of this Agreement, OHA shall have no further obligation to pay County under this Agreement.
- (2) Upon termination of this Agreement, County shall have no further obligation to perform Work under this Agreement.
- b. **Obligations and Liabilities.** Notwithstanding Section 12.a., any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.
- 13. Limitation of Liabilities.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.
- 14. Insurance.** County shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.
- 15. Records Maintenance; Access.** County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." County acknowledges and agrees that OHA and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

- 16. Information Privacy/Security/Access.** If the Work performed under this Agreement requires County or its subcontractor(s) to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants County or its subcontractor(s) access to such OHA Information Assets or Network and Information Systems, County shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 943-014-0300 through OAR 943-014-0320, as such rules may be revised from time to time. For purposes of this section, “Information Asset” and “Network and Information System” have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.
- 17. Force Majeure.** Neither OHA nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of OHA or County, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. OHA may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.
- 18. Assignment of Agreement, Successors in Interest.**
- a. County shall not assign or transfer its interest in this Agreement without prior written approval of OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as OHA may deem necessary. No approval by OHA of any assignment or transfer of interest shall be deemed to create any obligation of OHA in addition to those set forth in the Agreement.
 - b. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
- 19. Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- 20. Subcontracts.** County shall not enter into any subcontracts for any of the Work required by this Agreement without OHA’s prior written consent. In addition to any other provisions OHA may require, County shall include in any permitted subcontract under this Agreement provisions to require that OHA will receive the benefit of subcontractor performance as if the subcontractor were the County with respect to Sections 1, 2, 3, 4, 8, 15, 16, 18, 21, and 23 of this Exhibit B. OHA’s consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.
- 21. No Third Party Beneficiaries.** OHA and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County’s performance under this Agreement is solely for the benefit of OHA to assist and enable OHA to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly,

indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

- 22. Amendments.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and, when required, the Department of Justice. Such amendment, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.
- 23. 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.
- 24. Survival.** Sections 1, 4, 5, 6, 8, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
- 25. Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to County or OHA at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day if transmission was outside normal business hours of the recipient. Notwithstanding the forgoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

OHA: Office of Contracts & Procurement
635 Capitol Street NE, Suite 350
Salem, OR 97301
Telephone: 503-945-5818
Facsimile: 503-378-4324

- 26. Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
- 27. Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.
- 28. Reserved.**

- 29. Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the County (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the County on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

- 30. Indemnification by Subcontractors.** County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's contractor or any of the

officers, agents, employees or subcontractors of the contractor (“Claims”). It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all Claims.

- 31. Stop-Work Order.** OHA may, at any time, by written notice to the County, require the County to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, County shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, OHA shall either:
- a.** Cancel or modify the stop work order by a supplementary written notice; or
 - b.** Terminate the work as permitted by either the Default or the Convenience provisions of Section 11. Termination.

If the Stop Work Order is canceled, OHA may, after receiving and evaluating a request by the County, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

EXHIBIT C

Subcontractor Insurance Requirements

Local Government shall require its first tier contractor(s) (Contractor) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, CONTINUOUS CLAIMS MADE COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between Local Government and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Local Government shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Local Government shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Local Government shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall Local Government permit a contractor to work under a Subcontract when the Local Government is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the county directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

TYPES AND AMOUNTS

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than **\$1,000,000.00** per occurrence. Annual aggregate limit shall not be less than **\$2,000,000.00**.

PROFESSIONAL LIABILITY: **Required** **Not required**

Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract by the Contractor and Contractor's subcontractors, agents, officers or employees in an amount not less than **\$1,000,000.00** per claim. Annual aggregate limit shall not be less than **\$2,000,000.00**. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Contractor and Subcontractors shall provide continuous claims made coverage as stated below.

EXCESS/UMBRELLA INSURANCE:

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL COVERAGE REQUIREMENTS:

Contractor's insurance shall be primary and non-contributory with any other insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Subcontract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

CONTINUOUS CLAIMS MADE COVERAGE:

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Contractor shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of the Contract, for a minimum of 24 months following the later of:

- (i) Contractor's completion and Agency's acceptance of all Services required under the Contract, or
- (ii) Agency or Contractor termination of this Contract, or
- (iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Local Government shall obtain from the Contractor a Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The

Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days' written notice to Local Government before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by Agency under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

STATE ACCEPTANCE:

All insurance providers are subject to Agency acceptance. If requested by Agency, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Exhibit C.

Confidential
CONTRACTOR TAX IDENTIFICATION INFORMATION
For Accounting Purposes Only

The State of Oregon requires contractors to provide their Federal Employer Identification Number (FEIN) or Social Security Number (SSN). This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(2). Social Security numbers provided pursuant to this section will be used for the administration of state, federal and local tax laws. The State of Oregon may report this information to the Internal Revenue Service (IRS). Contractors must keep this information current at all times. Contractors are required to notify the State of Oregon contract administrator within 10 business days if this information changes. The State of Oregon reserves the right to ask contractors to update this information at any time during the document term.

Document number: 176904

Legal name *(tax filing)*: Deschutes County Oregon

DBA name *(if applicable)*: Deschutes County Health Services

Billing address: 2577 NE Courtney Drive

City: Bend State: OR Zip: 97701

Phone: 541-322-7500

FEIN: 93-6002292

- OR -

SSN:

Certificate Of Completion

Envelope Id: 580D4D6C0F32430E897DBA151DDE47A6	Status: Sent
Subject: Please DocuSign: 176904-0	
Source Envelope:	
Document Pages: 34	Signatures: 0
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Enabled	Arlenia Broadwell
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	Arlenia.broadwell@dhsosha.state.or.us
	IP Address: 159.121.202.141

Record Tracking

Status: Original	Holder: Arlenia Broadwell	Location: DocuSign
7/6/2022 4:27:28 PM	Arlenia.broadwell@dhsosha.state.or.us	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: Carahsoft OBO Oregon Health Authority - CLM	Location: DocuSign

Signer Events**Signature****Timestamp**

BOCC		Sent: 7/7/2022 10:41:30 AM
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grace.evans@deschutes.org
Deschutes County Health Services
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 9/22/2021 9:13:25 AM
ID: 1c2f1b1a-bce9-4e77-a9ac-00927d21eb03

Mick Mitchell
MICK.J.MITCHELL@dhsosha.state.or.us
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Blanca Fernandez
blanca.fernandez@dhsosha.state.or.us
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Margie Stanton
MARGIE.C.STANTON@dhsosha.state.or.us
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 5/26/2020 8:11:14 AM
ID: 20e5e982-b92b-49ae-b319-83ecdb2ac0b5

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp**

Agent Delivery Events	Status	Timestamp
Grace Evans grace.evans@deschutes.org Contract Specialist Deschutes County Health Services Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 9/22/2021 9:13:25 AM ID: 1c2f1b1a-bce9-4e77-a9ac-00927d21eb03	<div style="border: 2px solid blue; padding: 5px; display: inline-block; color: blue; font-weight: bold; font-size: 1.2em;">VIEWED</div> Using IP Address: 97.120.45.172	Sent: 7/6/2022 4:40:58 PM Viewed: 7/7/2022 10:07:09 AM Completed: 7/7/2022 10:41:30 AM
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Janice Garceau janice.garceau@deschutes.org Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign AMH Contract Administrator AMHcontract.Administrator@dhsoha.state.or.us Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div style="border: 2px solid blue; padding: 5px; display: inline-block; color: blue; font-weight: bold; font-size: 1.2em;">COPIED</div>	Sent: 7/6/2022 4:40:58 PM Viewed: 7/6/2022 4:46:54 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/6/2022 4:40:58 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Carahsoft OBO Oregon Health Authority - CLM (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Carahsoft OBO Oregon Health Authority - CLM:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: mick.j.mitchell@dhsoha.state.or.us

To advise Carahsoft OBO Oregon Health Authority - CLM of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at mick.j.mitchell@dhsoha.state.or.us and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Carahsoft OBO Oregon Health Authority - CLM

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to mick.j.mitchell@dhsoha.state.or.us and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Carahsoft OBO Oregon Health Authority - CLM

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to mick.j.mitchell@dhsoha.state.or.us and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Carahsoft OBO Oregon Health Authority - CLM as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Carahsoft OBO Oregon Health Authority - CLM during the course of your relationship with Carahsoft OBO Oregon Health Authority - CLM.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 27, 2022

SUBJECT: Consideration of Chair signature of Document No 2022-655, an Oregon Health Authority Grant Agreement for Harm Reduction Program

RECOMMENDED MOTION: Move approval of Chair signature of Document No. 2022-655

BACKGROUND AND POLICY IMPLICATIONS:

In November 2020, Oregon voters passed Measure 110, the Drug Addiction Treatment and Recovery Act of 2020, which became effective on December 4, 2020, to better serve individuals actively using substances, engaging in substance misuse, or having a substance use disorder. People who provide drug treatment and recovery services and advocates for criminal justice reform wrote Measure 110 in response to the high rate of drug addiction and overdoses in Oregon, and the disproportionate impact of those outcomes on Oregon's communities of color. Their goal was to establish a more equitable and effective approach to substance use disorder.

Oregon Health Authority (OHA) is providing funding to expand the county's Harm Reduction Program (HRP) by increasing access to harm reduction supplies, and basic living supplies as well as ongoing temporary staffing support. Goals of this program include:

- a. Expand available reach of services and supports by mobilizing HRP efforts throughout Deschutes County.
- b. Reduce overdose death, and prevent viral infection/transmission and bacterial disease by distributing Narcan and sterile/safe supplies.
- c. Improve living environments or access to warm and safe locations for people who live outside by providing camping equipment and/or transportation vouchers.

Deschutes County Board of County Commissioners approved OHA #170856 in June of 2021. This amendment #170856-2 extends that agreement through September 30, 2022

and provides additional funding in the amount of \$148,225, increasing the total not-to-exceed amount to \$444,675.

Funding will be used for the following: \$52,250 to purchase Narcan nasal spray, \$42,500 to purchase harm reduction supplies, and \$23,000 for client basic need supports, such as housing/transportation vouchers, tents and hygiene supplies. Additionally, \$7,500 of funding will support two temporary Health Educator II for three months, and \$10,000 will be used to cover the increased cost of a vehicle ordered last fiscal year. \$12,975 (9.6%) of indirect administration costs will also be covered.

Funds must be obligated by September 30, 2022. An attestation of obligated funds must be sent to OHA no later than October 5, 2022.

If approved, a budget resolution will be forthcoming.

BUDGET IMPACTS: \$148,225 revenue

ATTENDANCE:

Kara Cronin, Program Manager
Colleen Thomas, Supervisor

DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections **above** the Official Review line.

Date:

Department:

Contractor/Supplier/Consultant Name:

Contractor Contact:

Type of Document: Grant Agreement 170856-2

Goods and/or Services: Intergovernmental agreement #170856 provides funding to increase access to care and improve outcomes for individuals with substance use disorders to support obligations outlined in Measure 110. This amendment #2 reinstates the grant agreement, extends the expiration date to September 30, 2022, and increases the maximum compensation by \$148,225, for a total of \$444,675.

Background & History: In November 2020, Oregon voters passed Measure 110, the Drug Addiction Treatment and Recovery Act of 2020, which became effective on December 4, 2020, to better serve people actively using substances, engaging in substance misuse, or having a substance use disorder. People who provide drug treatment and recovery services and advocates for criminal justice reform wrote Measure 110 in response to the high rate of drug addiction and overdoses in Oregon, and the disproportionate impact of those outcomes on Oregon's communities of color. Their goal was to establish a more equitable and effective approach to substance use disorder. Oregon Health Authority (OHA) agrees with the advocates and voters that a holistic, health-based approach to addressing addiction and overdoses is more helpful, caring and cost-effective than punishing and criminalizing people who need help.

Grant goals specific to this award: Recipient will expand county Harm Reduction Program (HRP) by increasing access to harm reduction supplies, viral testing, and basic living supplies as well as increased available peer support.

- a. Expand available reach of services and supports by mobilizing efforts throughout Deschutes County and bolster peer support engagement.
- b. Reduce overdose death, and prevent viral infection/transmission and bacterial disease by distributing Narcan and sterile/safe supplies.
- c. Improve living environments or access to warm and safe locations for people who live outside by providing camping equipment and/or transportation vouchers.

Funds must be obligated by September 30, 2022. An attestation of obligated funds must be sent to OHA no later than October 5, 2022.

Agreement Starting Date:

Ending Date:

Total Payment:

Insurance Certificate Received (check box)
Insurance Expiration Date:

Check all that apply:
 RFP, Solicitation or Bid Process

- Informal quotes (<\$150K)
- Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

Funding Source: (Included in current budget? Yes No
 If **No**, has budget amendment been submitted? Yes No

Is this a Grant Agreement providing revenue to the County? Yes No

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: Yes N/A

Contact information for the person responsible for grant compliance:

Name:

Phone #:

Departmental Contact and Title:

Acting Director Approval:

Signature: *Erik Kropp*
Erik Kropp (Jul 15, 2022 12:07 PDT)

Email: erik.kropp@deschutes.org

Title: Interim Health Services Director

Company: Deschutes County

Distribution of Document: Grace Justice Evans at Health Services.

Official Review:

County Signature Required (check one): BOCC Director (if <\$50K)

✓ Administrator (if >\$50K but <\$150K; if >\$150K, BOCC Order No. _____)

Document Number: 2022-655

Grant Agreement Number 170856

**REINSTATEMENT AMENDMENT TO
STATE OF OREGON
INTERGOVERNMENTAL GRANT AGREEMENT**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@state.or.us or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This Reinstatement and Amendment of Agreement is made and entered into as of the date of the last signature below by and between the State of Oregon, acting by and through its Oregon Health Authority, hereinafter referred to as "OHA" and

Deschutes County
2577 NE Courtney Drive
Bend, Oregon 97701
Contact Person: Laurie Hubbard, Barrett Flesh
Telephone: (458) 292-6716, (458) 292-7272
Email address: laurie.hubbard@deschutes.org
barrett.flesh@deschutes.org

hereinafter referred to as "Recipient".

RECITALS

WHEREAS, OHA and Recipient entered into that certain Agreement number **170856** effective on **June 11, 2021** incorporated herein by this reference (the Agreement);

WHEREAS, OHA and Recipient intended to amend the Agreement to extend its effectiveness through **September 30, 2022**;

WHEREAS, the proposed amendment number **2** to extend the effectiveness of the Agreement and otherwise modify it was not executed by the parties prior to the Agreement's expiration date;

WHEREAS, the Agreement expired on **June 30, 2022** in accordance with its terms; and

WHEREAS, OHA and Recipient desire to reinstate the Agreement in its entirety as of **June 30, 2022**, and to amend the Agreement (once reinstated) to extend its effectiveness through **September 30, 2022** as set forth herein.

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AMENDMENT

1. **Reinstatement.** OHA and Recipient hereby reinstate the Agreement in its entirety as of **June 30, 2022** and agree that the Agreement was and is in full force and effect from its effective date through the date of this Reinstatement and Amendment. OHA and Recipient further agree that, upon the amendment of **Section 1. “Effective Date and Duration”** of the Agreement pursuant to Paragraph 2 below, the Agreement was, is and will be in full force and effect from the effective date through the expiration date set forth in **Section 1. “Effective Date and Duration”**, as amended, subject to the termination provisions otherwise set forth in the Agreement.

2. **Amendment.** OHA and Recipient hereby amend the Agreement as follows:
 - a. **Section 1. “Effective Date and Duration”** expiration date is extended from “June 30, 2022 to **September 30, 2022**”.

 - b. **Section 3 “Grant Disbursement Generally”** is hereby amended to increase by \$148,225.00 the current maximum not-to-exceed amount of “\$296,450.00” to a new maximum not-to-exceed amount of “**\$444,675.00.**”

 - c. **Exhibit A Part 2 “Payment and Financial Reporting” Section 1.b.** only is hereby amended as follows: language to be deleted or replaced is ~~struck through~~; new language is **underlined and bold**:
 - b. OHA will grant funds on the following schedule:
 - i. Upon execution of this Grant Agreement, OHA will initiate the direct deposit of \$183,975.00 to Recipient for the Grant Activities listed in Exhibit A, Part 1.
 - ii. Upon execution of Amendment 1, OHA will initiate the direct deposit of \$112,475.00 to Recipient for the expansion of Grant Activities listed in Exhibit A, Part 1.
 - iii. Upon execution of Amendment 2, OHA will initiate the direct deposit of \$148,225.00 to Recipient for the expansion of Grant Activities listed in Exhibit A, Part 1.**

 - d. **Exhibit A Part 2 “Payment and Financial Reporting” Section 1.c.** only is hereby amended as follows: language to be deleted or replaced is ~~struck through~~; new language is **underlined and bold**:
 - a. Recipient shall require that all funding provided under this Agreement is obligated by ~~December 31, 2021~~**September 30, 2022**. An attestation of obligated funds must be sent to the OHA email box at amhcontract.administrator@dhsosha.state.or.us **amhcontract.administrator@odhsosha.oregon.gov** by January 5, 2022**October 5, 2022**, or to any other address as OHA may indicate in writing to Recipient, in a format prescribed by OHA.

- 3. Except as expressly amended above, all other terms and conditions of the original Agreement and any previous amendments are still in full force and effect.
- 4. **Recipient Data and Certification.** Recipient shall provide the information set forth below.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

Recipient Name (exactly as filed with the IRS): Deschutes County Oregon

Street address: 1300 NW Wall Street

City, state, zip code: Bend, OR 97703

Email address: kara.cronin@deschutes.org; cc: grace.evans@deschutes.org

Telephone: () 541-322-7500 Facsimile: () 541-322-7565

Is Recipient a nonresident alien, as defined in 26 USC § 7701(b)(1)?
(Check one box): YES NO

Business Designation: (Check one box):

- | | | |
|--|--|--|
| <input type="checkbox"/> Professional Corporation | <input type="checkbox"/> Nonprofit Corporation | <input type="checkbox"/> Limited Partnership |
| <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Limited Liability Partnership | <input type="checkbox"/> Sole Proprietorship |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Partnership | <input type="checkbox"/> Other |

Recipient Proof of Insurance, Recipient shall provide the following information upon submission of the signed Agreement Amendment. All insurance listed herein and required by Exhibit C of the original Agreement, must be in effect prior to Agreement execution.

Professional Liability Insurance Company: Self-insured
Policy #: N/A Expiration Date: N/A

Commercial General Liability Insurance Company: Self-insured
Policy #: N/A Expiration Date: N/A

Workers' Compensation: Does Recipient have any subject workers, as defined in ORS 656.027? (Check one box): YES NO *If YES, provide the following information:*

Workers' Compensation Insurance Company: Self-Insured
Policy #: N/A Expiration Date: N/A

RECIPIENT, BY EXECUTION OF THIS AMENDMENT, HEREBY ACKNOWLEDGES THAT RECIPIENT HAS READ THIS AMENDMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

5. Signatures.

Deschutes County
By:

Authorized Signature

Printed Name

Title

Date

State of Oregon acting by and through its Oregon Health Authority
By:

Authorized Signature

Printed Name

Title

Date

Approved by: Director, OHA Health Systems Division
By:

Authorized Signature

Printed Name

Title

Date

Approved for Legal Sufficiency:

Via e-mail by _____
Department of Justice _____ Date

Confidential
CONTRACTOR TAX IDENTIFICATION INFORMATION
For Accounting Purposes Only

The State of Oregon requires contractors to provide their Federal Employer Identification Number (FEIN) or Social Security Number (SSN). This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(2). Social Security numbers provided pursuant to this section will be used for the administration of state, federal and local tax laws. The State of Oregon may report this information to the Internal Revenue Service (IRS). Contractors must keep this information current at all times. Contractors are required to notify the State of Oregon contract administrator within 10 business days if this information changes. The State of Oregon reserves the right to ask contractors to update this information at any time during the document term.

Document number: 170856-2

Legal name (tax filing): Deschutes County Oregon

DBA name: Deschutes County Health Services

Billing address: 2577 NE Courtney Drive

City: Bend **State:** OR **Zip:** 97701

Phone: 541-322-7500

FEIN: 93-6002292

- OR -

SSN:

Please attach this completed form with your signed document(s) and return to the contract specialist via email.

Certificate Of Completion

Envelope Id: 654EDA446EF24FC5B3756393E3E93AFB

Status: Sent

Subject: 170856-2 Deschutes County

Source Envelope:

Document Pages: 5

Signatures: 0

Envelope Originator:

Certificate Pages: 5

Initials: 0

Larry Briggs

AutoNav: Enabled

LARRY.O.BRIGGS@dhsoba.state.or.us

Envelopeld Stamping: Enabled

IP Address: 209.112.106.2

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Record Tracking

Status: Original

Holder: Larry Briggs

Location: DocuSign

7/8/2022 6:46:00 PM

LARRY.O.BRIGGS@dhsoba.state.or.us

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: Carahsoft OBO Oregon Health Authority - CLM Location: DocuSign

Signer Events**Signature****Timestamp**

Laurie Hubbard

Sent: 7/8/2022 6:50:28 PM

laurie.hubbard@deschutes.org

Viewed: 7/11/2022 8:21:04 AM

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Accepted: 7/11/2022 8:21:04 AM

ID: 32f5b7ed-4afe-41e7-b0bf-df557abf5117

Mick Mitchell

mick.j.mitchell@dhsoba.state.or.us

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Margie Stanton

MARGIE.C.STANTON@dhsoba.state.or.us

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Barrett Flesh

barrett.flesh@deschutes.org

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(None)**COPIED**

Sent: 7/8/2022 6:50:28 PM

Electronic Record and Signature Disclosure:

Accepted: 7/19/2021 7:35:05 AM

ID: 5172fac4-1818-46a6-bc1d-7bf5ba256300

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Carahsoft OBO Oregon Health Authority - CLM (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Carahsoft OBO Oregon Health Authority - CLM:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: mick.j.mitchell@dhsoha.state.or.us

To advise Carahsoft OBO Oregon Health Authority - CLM of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at mick.j.mitchell@dhsoha.state.or.us and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Carahsoft OBO Oregon Health Authority - CLM

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to mick.j.mitchell@dhsoha.state.or.us and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Carahsoft OBO Oregon Health Authority - CLM

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to mick.j.mitchell@dhsoha.state.or.us and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Carahsoft OBO Oregon Health Authority - CLM as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Carahsoft OBO Oregon Health Authority - CLM during the course of your relationship with Carahsoft OBO Oregon Health Authority - CLM.



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

FROM: Nicole Mardell, Senior Planner – Long Range
Will Groves, Planning Manager

DATE: July 27, 2022

SUBJECT: Consideration of Second Reading of Ordinance 2022-010: Remand of Deschutes Junction Plan Amendment and Zone Change (file nos. 247-20-000438-PA/439-ZC (247-22-000287-A))

The Board of County Commissioners (Board) will consider second reading of Ordinance 2022-010 on July 27, 2022, approving file nos. 247-20-000438-PA/439-ZC (247-22-000287-A). The application is requesting approval of Plan Amendment and Zone Change applications remanded by the Oregon Land Use Board of Appeals.

I. BACKGROUND

The applicant, Tony Aceti, is requesting a Comprehensive Plan Amendment to redesignate the subject property from Agriculture to Rural Industrial and a Zoning Map Amendment to rezone the property from Exclusive Farm Use (EFU) to Rural Industrial. The property is 21.59-acres in size and is located at 21235 Tumalo Place, Bend (Taxlot ID 161226C000201 and 161227D000104).

The application was originally submitted on June 30, 2020 and approved by the Board on January 27, 2021. Following Board approval, the application was appealed to the Oregon Land Use Board of Appeals (LUBA) and was remanded back to the County for additional review due to insufficient findings regarding the potential number of workers on site resulting from the requested plan amendment and zone change. The applicant appealed the remand decision to the Court of Appeals who affirmed LUBA's decision. The remand was then initiated by the applicant for County review on April 7, 2022. The final day in which the County must issue a final decision is August 5, 2022.

The board held *limited de novo* public hearings on May 18, 2022 and June 8, 2022, and the written record period closed on June 22, 2022. On July 6, 2022, the Board deliberated on the application and voted unanimously to approve the requests. On July 13, staff returned with a draft decision through Ordinance 2022-010, and the Board conducted first reading of the ordinance by title only.

II. NEXT STEPS / SECOND READING

The Board will conduct the second reading of Ordinance 2022-010 on July 27, 2022.

ATTACHMENTS:

1. Draft Ordinance 2022-010 and Exhibits

Exhibit A: Legal Description

Exhibit B: Proposed Comprehensive Plan Amendment Map

Exhibit C: Proposed Zone Change Map

Exhibit D: Comprehensive Plan Section 23.01.010, Introduction

Exhibit E: Comprehensive Plan Section 5.12, Legislative History

Exhibit F: Decision of the Board of County Commissioners

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 23, the Deschutes County Comprehensive Plan, * ORDINANCE NO. 2022-010
to Change the Comprehensive Plan Map Designation *
for Certain Property From Agriculture to Rural *
Industrial, and Amending Deschutes County Code *
Title 18, the Deschutes County Zoning Map, to *
Change the Zone Designation for Certain Property *
From Exclusive Farm Use to Rural Industrial.

WHEREAS, Anthony Aceti, applied for changes to both the Deschutes County Comprehensive Plan Map (247-20-000438-PA) and the Deschutes County Zoning Map (247-20-000439-ZC), to change comprehensive plan designation of the subject property from an Agricultural (AG) to Rural Industrial (RI) and a corresponding zone change from Exclusive Farm Use (EFU) to Rural Industrial (RI); and

WHEREAS, the Board of County Commissioners issued a decision approving the subject application on January 27, 2021, and the decision was thereby appealed to the Oregon Land Use Board of Appeals and remanded back to the County for further review; and

WHEREAS, the applicant initiated review of the remand application on April 7, 2022 through file no. 247-22-000287-A; and

WHEREAS, after notice was given in accordance with applicable law, a *limited de novo* public hearing was held on May 18, 2022, before the Board of County Commissioners (Board); with oral and written testimony continued to June 8, 2022; and an open record period ending on June 22, 2022; and

WHEREAS, the Board, after review conducted in accordance with applicable law, approved the application on remand, both plan amendment to change the Comprehensive Plan Map designation from AG to RI, and approved the Zoning Map amendment to change from EFU to RI via oral motion and directed staff to prepare this ordinance consistent with that motion; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC Title 23, Deschutes County Comprehensive Plan Map, is amended to change the plan designation for certain property described in Exhibit “A” and depicted on the map set forth as Exhibit “B”, with both exhibits attached and incorporated by reference herein, from AG to RI.

Section 2. AMENDMENT. DCC Title 18, Zoning Map, is amended to change the zone designation from EFU to RI for certain property described in Exhibit "A" and depicted on the map set forth as Exhibit "C."

Section 3. AMENDMENT. DCC Section 23.01.010, Introduction, is amended to read as described in Exhibit "D" attached and incorporated by reference herein, with new language underlined.

Section 4. AMENDMENT. Deschutes County Comprehensive Plan Section 5.12, Legislative History, is amended to read as described in Exhibit "E" attached and incorporated by reference herein, with new language underlined.

Section 5. FINDINGS. The Board adopts as its findings in support of this Ordinance the Decision of the Board of County Commissioners as set forth in Exhibit "F" and incorporated by reference herein.

Dated this _____ of _____, 2022

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

Date of 1st Reading: ____ day of _____, 2022.

Date of 2nd Reading: ____ day of _____, 2022.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Patti Adair	___	___	___	___
Anthony DeBone	___	___	___	___
Phil Chang	___	___	___	___

Effective date: ____ day of _____, 2022.

EXHIBIT A

LEGAL DESCRIPTIONS
TAX LOTS 16-12-26-C-00201 & 16-12-27-D-00104

A parcel of land located in the Southwest one-quarter of Section 26 and the Southeast one-quarter of Section 27, Township 16 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, more fully described as follows:

TAX LOTS 16-12-26-C-00201:

Commencing at a brass disk at the 1/4 corner between said Sections 26 and 27; thence along the east-west centerline of said Section 27, North 89°49'46" West 20.00 feet; thence leaving said east-west centerline, South 00°03'15" East, parallel to and 20 feet westerly of the line common to said Sections 26 and 27, 40.35 feet to a point on the southerly line of the 15.00 foot dedication to the southerly 30.00 foot right-of-way of Tumalo Road per Deed No. 98-29504, and the **Point of Beginning** for this description; thence along said 15-foot dedication line, 67.90 feet along the arc of a 12818.89 foot radius curve right (the long chord of which bears South 89°35'07" East 67.90 feet); thence South 89°26'01" East 997.75 feet to the westerly right-of-way of the Dalles-California Highway per Deed recorded March 22, 1991, in Book 231, Page 81, Deschutes County Records; thence leaving said 15-foot dedication line and along said westerly right-of-way, South 37°03'52" East 23.10 feet, said point being 85.00 feet from the centerline of said Dalles-California Highway; thence continuing along said 85-foot right-of-way line, South 26°22'14" West 1419.88 feet to a point on the south line of the property described in Deed No. 97-45542; thence leaving said 85-foot right-of-way line and along said south line, South 89°56'45" West 447.62 feet to the southwest corner of said 97-45542 property, said point lying 20.00 feet westerly of the line common to Sections 26 and 27; thence leaving said south line, North 00°03'15" West 1301.34 feet to the point of beginning;

EXCEPTING THEREFROM: the new alignment of Tumalo Road per Deed No. 98-32048, further modified for turn lanes per Deed No. 2001-22023, fully described as follows:

Commencing at a brass disk at the 1/4 corner between said Sections 26 and 27; thence along the east-west centerline of said Section 27, North 89°49'46" West 20.00 feet; thence leaving said east-west centerline, South 00°03'15" East, parallel to and 20 feet westerly of the line common to said Sections 26 and 27, 357.34 feet to the northerly right-of-way of the new road alignment, and the **Point of Beginning** for this description; thence leaving said parallel line and along the new right-of-way line, South 59°39'01" East 50.46 feet; thence South 62°39'40" East 442.65 feet; thence South 63°56'22" East 250.70 feet; thence South 59°39'01" East 95.51 feet to the westerly 85 foot right-of-way line of the Dalles-California Highway; thence leaving said new road right-of-way and along said westerly 85 foot right-of-way line, South 26°22'14" West 170.41 feet to the southerly right-of-way line of the new road; thence leaving said westerly 85 foot right-of-way line and along said southerly right-of-way line, North 59°39'01" West 107.34 feet; thence North 55°21'40" West 250.70 feet; thence North 56°38'22" West 442.65 feet, said point lying 20.00 feet westerly of the line common to Sections 26 and 27; thence North 00°03'15" East 99.71 feet to the point of beginning.

Net area for this property is 20.46 acres.

October 14, 2015
Prepared by Baxter Land Surveying, Inc.
P.O. Box 7022, Bend, OR 97708 (541) 382-1962

2015186-Desc.doc

D

EXHIBIT A

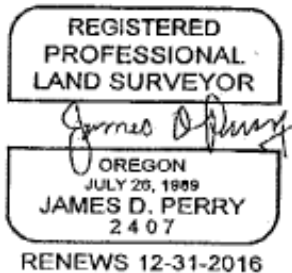
TAX LOTS 16-12-27-D-00104:

That portion of Deed No. 97-40139 described as "Parcel 3," further modified by the excepting of Tract 1 and Tract 2 of Deed No. 98-32049, and more fully described as follows:

Beginning at the Point of Beginning for the previous description of TAX LOT 16-12-27-C- 00201, said point being on the southerly 45 foot right-of-way of Tumalo Road and lying 20.00 feet westerly of the line common to Sections 26 and 27; thence along said 20 foot westerly line, North 00°03'15" West 5.00 feet to a point on a 40.00 foot right-of-way of Tumalo Road, per said 98-32049 Deed; thence leaving said 20 foot line, 31.74 feet along the arc of a 12823.89 foot radius curve left (the long chord of which bears North 89°48'29" West 31.74 feet); thence North 89°52'44" West 26.42 feet; thence 219.07 feet along the arc of a 210.00 foot radius curve left (the long chord of which bears South 60°14'07" West 209.27 feet); thence South 30°20'59" West 40.03 feet; thence 47.12 feet along the arc of a 30.00 foot radius curve left (the long chord of which bears South 14°39'01" East 42.43 feet); thence South 59°39'01" East 145.00 feet; thence South 60°51'23" East 142.53 feet to a point lying 20.00 feet westerly of the line common to said Sections 26 and 27; thence North 00°03'15" West 317.00 feet to the point of beginning for this description;

Contains 1.30 acres.

Note: All corners are marked with monuments per recorded survey No. CS14491 by Michael Berry.



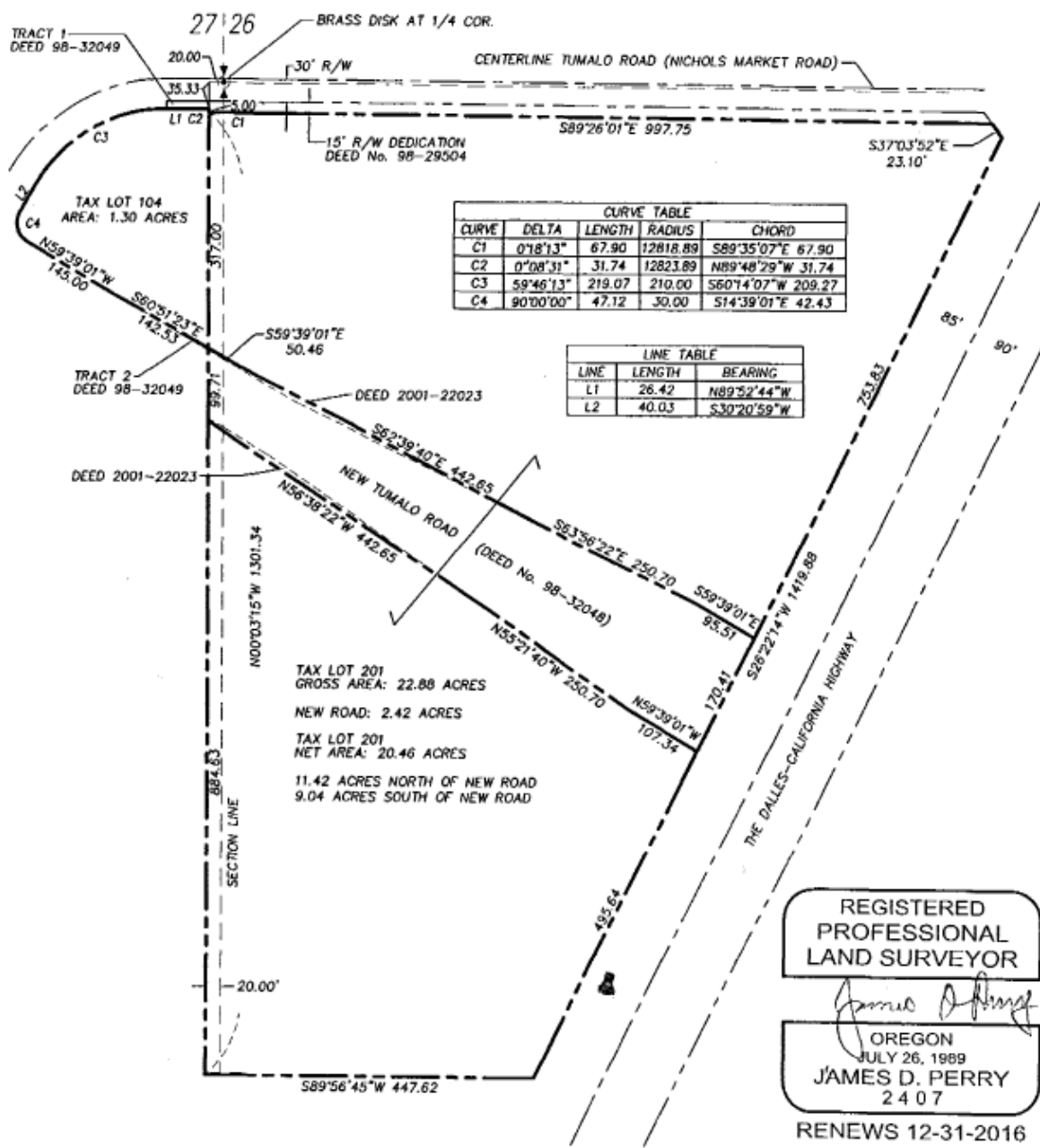
October 14, 2015
Prepared by Baxter Land Surveying, Inc.
P.O. Box 7022, Bend, OR 97708 (541) 382-1962

2015186-Desc.doc



EXHIBIT A

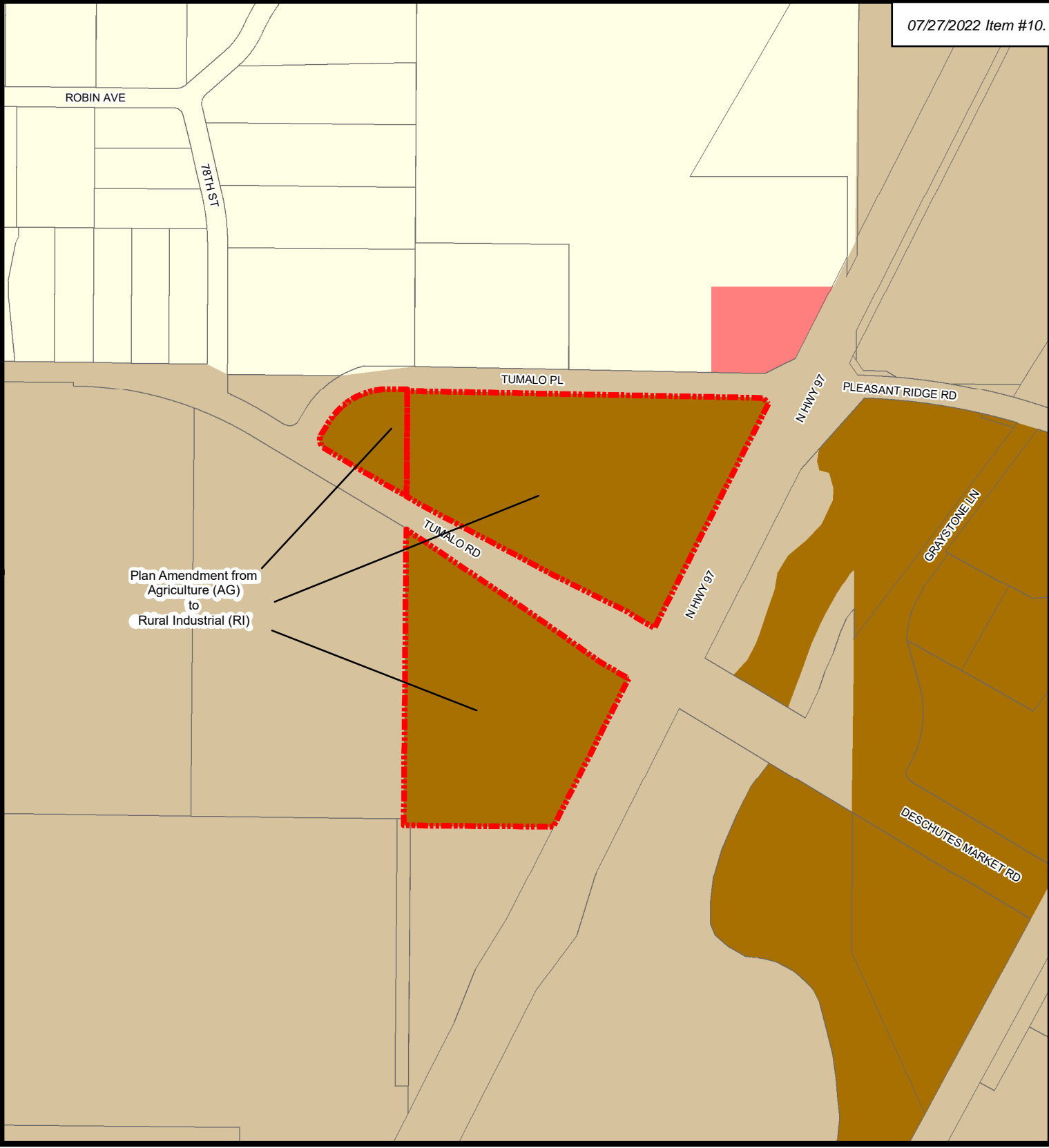
EXHIBIT MAP
TAX LOTS 16-12-26-C-00201
AND 16-12-27-D-00104
 Located in the SW1/4 Sec. 26 and the SE1/4 Sec. 27,
 T.16S., R.12E., W.M.,
DESCHUTES COUNTY, OREGON



REGISTERED
 PROFESSIONAL
 LAND SURVEYOR
James D. Perry
 OREGON
 JULY 26, 1989
 JAMES D. PERRY
 2407
 RENEWS 12-31-2016

PREPARED BY BAXTER LAND SURVEYING, INC. P.O. BOX 7022 BEND, OR 97708
 20370 EMPIRE AVE. SUITE C-3, BEND, OR 97701 (541) 382-1962

3



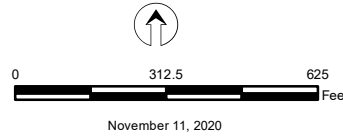
Plan Amendment from
Agriculture (AG)
to
Rural Industrial (RI)

Legend

-  Subject Properties
- Comprehensive Plan**
-  AG - Agriculture
-  RC - Rural Commercial
-  RI - Rural Industrial
-  RREA - Rural Residential Exception Area

**PROPOSED
PLAN AMENDMENT MAP**

Exhibit "B" to
Ordinance 2022-010



BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

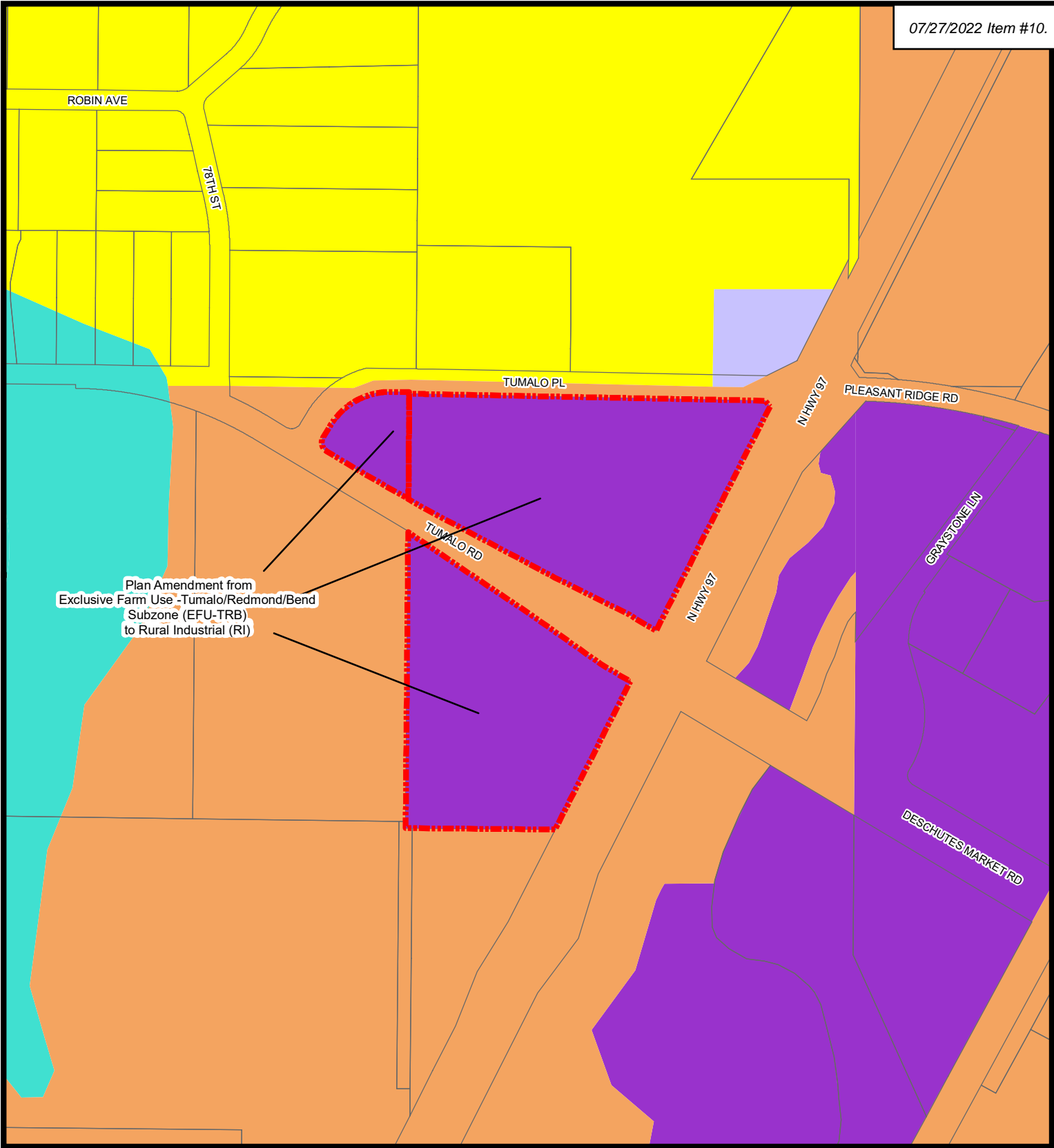
Tony DeBone, Chair

Phil Chang, Vice Chair

Patti Adair, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of _____, 20____
Effective Date: _____, 20____



Legend

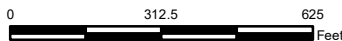
Subject Properties

Zoning

- EFU - TUMALO/REDMOND/BEND SUBZONE
- FLOOD PLAIN
- MULTIPLE USE AGRICULTURAL
- RURAL COMMERCIAL
- RURAL INDUSTRIAL

PROPOSED ZONING MAP

Exhibit "C" to Ordinance 2022-010



November 11, 2020

BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

Tony DeBone, Chair

Phil Chang, Vice Chair

Patti Adair, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of _____, 20____
Effective Date: _____, 20____

Chapter 23.01 COMPREHENSIVE PLAN

Chapter 23.01 COMPREHENSIVE PLAN

23.01.010. Introduction.

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
- Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
- R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
- S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-001, are incorporated by reference herein.
- T. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.
- U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.

- V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.
- W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.
- X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.
- Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.
- Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.
- AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.
- BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-005, are incorporated by reference herein.
- CC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.
- DD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.
- EE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.
- FF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.
- GG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.
- HH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.
- II. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.
- JJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.
- KK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.
- LL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.
- MM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.
- NN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.
- OO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.
- PP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.
- QQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.
- RR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.
- SS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.

TT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-02, are incorporated by reference herein.

UU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-005, are incorporated by reference herein.

VV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-008, are incorporated by reference herein.

WW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-001, are incorporated by reference herein.

XX. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-003, are incorporated by reference herein.

YY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.

[ZZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-0010, are incorporated by reference herein.](#)

[\(Ord. 2022-0010 §2, 2022;](#) [Ord. 2022-006 §2, 2022;](#) [Ord. 2022-003 §2, 2022;](#) [Ord. 2022-001 §1, 2022;](#) [Ord. 2021-008 §1;](#) [Ord. 2021-005 §1, 2021;](#) [Ord. 2021-002§3, 2020;](#) [Ord. 2020-013§1, 2020;](#) [Ord. 2020-009§1, 2020;](#) [Ord. 2020-006§1, 2020;](#) [Ord. 2020-007§1, 2020;](#) [Ord. 2020-008§1, 2020;](#) [Ord. 2020-003 §1, 2020;](#) [Ord. 2020-002 §1, 2020;](#) [Ord. 2020-001 §26, 2020;](#) [Ord. 2019-019 §2, 2019;](#) [Ord. 2019-016 §3, 2019;](#) [Ord. 2019-006 § 1, 2019;](#) [Ord. 2019-011 § 1, 2019;](#) [Ord. 2019-004 §1, 2019;](#) [Ord. 2019-003 §1, 2019;](#) [Ord. 2019-001 §1, 2019;](#) [Ord. 2019-002 §1, 2019;](#) [Ord. 2018-008 §1, 2018;](#) [Ord. 2018-005 §2, 2018;](#) [Ord. 2018-011 §1, 2018;](#) [Ord. 2018-006 §1, 2018;](#) [Ord. 2018-002 §1, 2018;](#) [Ord. 2017-007 §1, 2017;](#) [Ord. 2016-029 §1, 2016;](#) [Ord. 2016-027 §1, 2016;](#) [Ord. 2016-005 §1, 2016;](#) [Ord. 2016-022 §1, 2016;](#) [Ord. 2016-001 §1, 2016;](#) [Ord. 2015-010 §1, 2015;](#) [Ord. 2015-018 § 1, 2015;](#) [Ord. 2015-029 § 1, 2015;](#) [Ord. 2015-021 § 1, 2015;](#) [Ord. 2014-027 § 1, 2014;](#) [Ord. 2014-021 §1, 2014;](#) [Ord. 2014-12 §1, 2014;](#) [Ord. 2014-006 §2, 2014;](#) [Ord. 2014-005 §2, 2014;](#) [Ord. 2013-012 §2, 2013;](#) [Ord. 2013-009 §2, 2013;](#) [Ord. 2013-007 §1, 2013;](#) [Ord. 2013-002 §1, 2013;](#) [Ord. 2013-001 §1, 2013;](#) [Ord. 2012-016 §1, 2012;](#) [Ord. 2012-013 §1, 2012;](#) [Ord. 2012-005 §1, 2012;](#) [Ord. 2011-027 §1 through 12, 2011;](#) [Ord. 2011-017 repealed;](#) [Ord.2011-003 §3, 2011\)](#)

Click here to be directed to the Comprehensive Plan (<http://www.deschutes.org/complan>)

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.12.1 Comprehensive Plan Ordinance History

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
2011-003	8-10-11/11-9-11	All, except Transportation, Tumalo and Terrebonne Community Plans, Deschutes Junction, Destination Resorts and ordinances adopted in 2011	Comprehensive Plan update
2011-027	10-31-11/11-9-11	2.5, 2.6, 3.4, 3.10, 3.5, 4.6, 5.3, 5.8, 5.11, 23.40A, 23.40B, 23.40.065, 23.01.010	Housekeeping amendments to ensure a smooth transition to the updated Plan
2012-005	8-20-12/11-19-12	23.60, 23.64 (repealed), 3.7 (revised), Appendix C (added)	Updated Transportation System Plan
2012-012	8-20-12/8-20-12	4.1, 4.2	La Pine Urban Growth Boundary
2012-016	12-3-12/3-4-13	3.9	Housekeeping amendments to Destination Resort Chapter
2013-002	1-7-13/1-7-13	4.2	Central Oregon Regional Large-lot Employment Land Need Analysis
2013-009	2-6-13/5-8-13	1.3	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2013-012	5-8-13/8-6-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2013-007	5-29-13/8-27-13	3.10, 3.11	Newberry Country: A Plan for Southern Deschutes County

2013-016	10-21-13/10-21-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Sisters Urban Growth Boundary
2014-005	2-26-14/2-26-14	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2014-012	4-2-14/7-1-14	3.10, 3.11	Housekeeping amendments to Title 23.
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-027	12-15-14/3-31-15	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Industrial
2015-021	11-9-15/2-22-16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Surface Mining.
2015-029	11-23-15/11-30-15	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial
2015-018	12-9-15/3-27-16	23.01.010, 2.2, 4.3	Housekeeping Amendments to Title 23.

2015-010	12-2-15/12-2-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories
2016-001	12-21-15/04-5-16	23.01.010; 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)
2016-007	2-10-16/5-10-16	23.01.010; 5.10	Comprehensive Plan Amendment to add an exception to Statewide Planning Goal II to allow sewers in unincorporated lands in Southern Deschutes County
2016-005	11-28-16/2-16-17	23.01.010, 2.2, 3.3	Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning
2016-022	9-28-16/11-14-16	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
2016-029	12-14-16/12/28/16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial
2017-007	10-30-17/10-30-17	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-002	1-3-18/1-25-18	23.01, 2.6	Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone

2018-006	8-22-18/11-20-18	23.01.010, 5.8, 5.9	Housekeeping Amendments correcting tax lot numbers in Non-Significant Mining Mineral and Aggregate Inventory; modifying Goal 5 Inventory of Cultural and Historic Resources
2018-011	9-12-18/12-11-18	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-005	9-19-18/10-10-18	23.01.010, 2.5, Tumalo Community Plan, Newberry Country Plan	Comprehensive Plan Map Amendment, removing Flood Plain Comprehensive Plan Designation; Comprehensive Plan Amendment adding Flood Plain Combining Zone purpose statement.
2018-008	9-26-18/10-26-18	23.01.010, 3.4	Comprehensive Plan Amendment allowing for the potential of new properties to be designated as Rural Commercial or Rural Industrial
2019-002	1-2-19/4-2-19	23.01.010, 5.8	Comprehensive Plan Map Amendment changing designation of certain property from Surface Mining to Rural Residential Exception Area; Modifying Goal 5 Mineral and Aggregate Inventory; Modifying Non-Significant Mining Mineral and Aggregate Inventory
2019-001	1-16-19/4-16-19	1.3, 3.3, 4.2, 5.10, 23.01	Comprehensive Plan and Text Amendment to add a new zone to Title 19: Westside Transect Zone.

2019-003	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the Large Lot Industrial Program
2019-004	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the expansion of the Deschutes County Fairgrounds and relocation of Oregon Military Department National Guard Armory.
2019-011	05-01-19/05-16/19	23.01.010, 4.2	Comprehensive Plan Map Amendment to adjust the Bend Urban Growth Boundary to accommodate the refinement of the Skyline Ranch Road alignment and the refinement of the West Area Master Plan Area I boundary. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2019-006	03-13-19/06-11-19	23.01.010,	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2019-016	11-25-19/02-24-20	23.01.01, 2.5	Comprehensive Plan and Text amendments incorporating language from DLCD's 2014 Model Flood Ordinance and Establishing a purpose statement for the Flood Plain Zone.

2019-019	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-001	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-002	2-26-20/5-26-20	23.01.01, 4.2, 5.2	Comprehensive Plan Map Amendment to adjust the Redmond Urban Growth Boundary through an equal exchange of land to/from the Redmond UGB. The exchange property is being offered to better achieve land needs that were detailed in the 2012 SB 1544 by providing more development ready land within the Redmond UGB. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2020-003	02-26-20/05-26-20	23.01.01, 5.10	Comprehensive Plan Amendment with exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow sewer on rural lands to serve the City of Bend Outback Water Facility.

2020-008	06-24-20/09-22-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add roundabouts at US 20/Cook-O.B. Riley and US 20/Old Bend-Redmond Hwy intersections; amend Tables 5.3.T1 and 5.3.T2 and amend TSP text.
2020-007	07-29-20/10-27-20	23.01.010, 2.6	Housekeeping Amendments correcting references to two Sage Grouse ordinances.
2020-006	08-12-20/11-10-20	23.01.01, 2.11, 5.9	Comprehensive Plan and Text amendments to update the County's Resource List and Historic Preservation Ordinance to comply with the State Historic Preservation Rule.
2020-009	08-19-20/11-17-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add reference to J turns on US 97 raised median between Bend and Redmond; delete language about disconnecting Vandevent Road from US 97.
2020-013	08-26-20/11/24/20	23.01.01, 5.8	Comprehensive Plan Text And Map Designation for Certain Properties from Surface Mine (SM) and Agriculture (AG) To Rural Residential Exception Area (RREA) and Remove Surface Mining Site 461 from the County's Goal 5 Inventory of Significant Mineral and Aggregate Resource Sites.
2021-002	01-27-21/04-27-21	23.01.01	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)

2021-005	06-16-21/06-16-21	23.01.01, 4.2	Comprehensive Plan Map Amendment Designation for Certain Property from Agriculture (AG) To Redmond Urban Growth Area (RUGA) and text amendment
2021-008	06-30-21/09-28-21	23.01.01	Comprehensive Plan Map Amendment Designation for Certain Property Adding Redmond Urban Growth Area (RUGA) and Fixing Scrivener’s Error in Ord. 2020-022
2022-001	04-13-22/07-12-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-003	04-20-22/07-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-006	06-22-22/08-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
<u>2022-010</u>	<u>07-27-22/10-25-22</u>	<u>23.01.010</u>	<u>Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)</u>

**BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON
FINDINGS OF FACT AND CONCLUSIONS OF LAW ON REMAND**

FILE NUMBERS: 247-20-000438-PA, 247-20-000439-ZC, 247-22-000287-A

**APPLICANT/
OWNER:** Anthony J. Aceti
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Bend, OR 97703

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**APPLICANT'S
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Bend, OR 97702

STAFF PLANNER: Nicole Mardell, Senior Planner – Long Range
Nicole.mardell@deschutes.org, 541-317-3157

REQUEST: The applicant requests proceedings on remand from *Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No 2021-028, June 18, 2021) *aff'd* 315 Or App 673 (2021) of the Board of County Commissioner's approval of original application file numbers 247-20-000438-PA and 247-20-000439-ZC, and original Ordinance No. 2021-002.

PROPOSAL: Comprehensive Plan Amendment to re-designate the subject property from Agriculture to Rural Industrial and a corresponding Zone Change to change the zoning from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Rural Industrial Zone (RI).

LOCATION: 21235 Tumalo Place, Bend, OR 97703;
Taxlots: 161226C000201 and 161227D000104

I. FINDINGS OF FACT:

A. Incorporated Findings of Fact: The Findings of Fact from the Hearings Officer's decision dated October 7, 2020, adopted as Exhibit F to Ordinance No. 2021-002, are hereby incorporated as part of this decision.

B. Procedural History: The Deschutes County Board of County Commissioners adopted Ordinance No. 2021-002, approving the requested Comprehensive Plan Amendment and Zone Change of the subject property to Rural Industrial, on January 27, 2021. Central Oregon Landwatch (COLW) appealed Ordinance No. 2021-002 to the Land Use Board of Appeals. LUBA remanded the decision on June 18, 2021 denying all of COLW's arguments except for one. COLW appealed to the Court of Appeals and Applicant filed a cross-petition. The Court of Appeals affirmed on the petition and cross-petition. The Applicant requested in writing on April 7, 2022 that the County Board proceed with the application on remand pursuant to ORS 215.435.

The Board of County Commissioners limited the remand proceeding to the issue remanded by LUBA and permitted new evidence and testimony to address the remand issue. A public hearing on remand was held on May 18, 2022 following public notice. At the hearing the applicant and Central Oregon Landwatch submitted written and oral argument. Because COLW filed a procedural objection that there had not been 20 days between notice of the public hearing and the public hearing, the Board of County Commissioners continued the public hearing to June 8, 2022. On May 18, 2022, twenty-one days before the continued hearing date, the County mailed public notice of the continued hearing. The Board of County Commissioners held a continued public hearing on June 8, 2022, then closed the hearing but left the record open until June 15, 2022 for additional written evidence, a rebuttal period ending June 22, 2022, and applicant's final argument on June 29, 2022. Both parties submitted materials for the June 15 written evidence period. COLW did not submit rebuttal materials for the period ending June 22, 2022. Applicant submitted final written argument with his rebuttal on June 22, 2022 and waived the right to submit additional materials on June 29, 2022. The record closed on June 22, 2022.

The County Board deliberated and voted unanimously to approve the decision on July 6, 2022.

C. LUBA Decision and Guidance: LUBA's Final Opinion and Order for LUBA No. 2021-028, issued on June 18, 2022, provides the basis for the remand. Given that other components of LUBA's final opinion are relevant to the Board of County Commissioners' reasoning and decision on remand, these findings quote extensively from that opinion.

The relevant passage from LUBA's opinion that explains the basis for the remand states:

"The challenged decision does not establish that the county concluded that compliance with the use and dimensional standards for the RI

zone will obviously or inevitably limit the number of employees employed by the most intensive potential industrial use of the property, or that the county relied on the TIA as evidence to support that conclusion. We decline to reach that conclusion under ORS 197.835(11)(b). It is not obvious to us that the RI zone regulations will necessarily result in a small number of workers. Accordingly, we agree with petitioner that remand is required for the county to explain why it concluded that the potential uses would employ a small number of workers." Slip Op at 35.

On remand, the Board of County Commissioners must address the last sentence in the above passage.

The Board of County Commissioners also finds that LUBA's opinion accurately explained the County's approach to demonstrating compliance with Goals 11 and 14 during the acknowledgment process implemented under Ordinances 2002-126 and 2002-127 and the effect of the acknowledgment of those provisions to this and similar type decisions. LUBA correctly explained:

"To bring RI zoning into compliance with Goals 11 and 14, instead of taking exceptions to those goals, the county elected to amend the DCCP and DCC to limit the uses authorized in the RI zone to rural uses. * * *. To comply with Work Task 14 and Goal 14, the county amended the DCCP and DCC to restrict the types and intensity of uses permitted in the RI zone.

"The county relied on the building size limitation in the Unincorporated Communities Rule as the primary reasons of ensuring that industrial uses in the RI zone would remain rural, consistent with Goal 14. * * *. The 2002 Ordinances restrict new rural industrial uses, except primary processing of raw materials produced in rural areas to a maximum of 7,500 square feet of floor space within a building. That floor area limitation is codified in DCC 18.100.040(H)(1).

"Ordinance 2002-126 adopted what is now DCCP Policy 3.4.23, which applies to land designated and zoned RI and provides: 'To assure that urban uses are not permitted on rural industrial lands, land use regulations in the [RI] zones shall ensure that the uses allowed are less intensive than those allowed for unincorporated communities in OAR 660-22 or any successor. Ordinance 2002-127 amended DCC chapter 18.100, the RI zone regulations. On January 23, 2003, DLCD issued Order No. 001456, acknowledging the 2002 Ordinances as consistent with Goal 14.'" Slip Op at 18-19. *See also*, Slip Op 28

(repeating DLCD acknowledged the 2002 RI zone regulations as consistent with Goal 14).

Likewise, LUBA's opinion repeatedly and correctly recognizes that the Board of County Commissioners' position, as stated in the original adopted findings for this proceeding, is "that even the most intensive industrial use that could be approved on the subject property under the RI regulations and use limitations would not constitute an urban use." Slip Op at 24. LUBA quoted further from the findings that "found that the RI zone 'effectively prevent[s] urban use of rural land' by subjecting all development in the RI zone to the requirements of DCC chapter 18.100[.]" Slip Op at 27. And LUBA correctly noted that "the county agreed with intervenor that 'the policies of the DCCP, implemented by DCC Chapter 18.100, which is an acknowledged land use regulation, do not allow urban uses on RI designated and zoned land.'" Slip Op at 29. LUBA further noted that, "Petitioner does not assign error to that finding on appeal." Finally on this point, LUBA correctly stated,

"The county determined that the DCCP RI policies and implementing DCC RI use and dimensional limitations will limit the scope and intensity of industrial development to rural use. In particular, the county references limitations on maximum floor area and requirements for on-site sewage disposal and on-site wells or public water systems." Slip Op at 31.

Despite that correct understanding of the County's position, LUBA concluded that, because the findings included the second-step *Shaffer v. Jackson County* analysis, the County must have concluded that the acknowledged zoning regulations were not sufficient to ensure only rural uses of the property would take place. As LUBA framed it,

"Accordingly, we assume for purposes of this decision, as the county did and the parties do, that the fact that the RI zone regulations have been acknowledged by DLCD to comply with Goal 14 is not independently sufficient to demonstrate the challenged post-acknowledgment plan amendment applying their plan designation and zone to the subject property also complies with Goal 14." Slip Op 29 (emphasis supplied).

The Board of County Commissioners explicitly disagrees with LUBA's "assumption" and statement about the position taken. Neither the Board of County Commissioners nor the Applicant took the position that the acknowledged RI zone regulations are not independently sufficient to ensure that only rural uses of land can be approved under those regulations. In fact, LUBA's assumption is contrary to the explicit position taken by both parties in this proceeding as plainly expressed in the above-quoted passages from the findings as stated in the LUBA opinion.

Furthermore, LUBA's "assumption" reverses the reasoning behind why both the County and the Applicant did not oppose proceeding to the second-step of the *Shaffer* analysis. *Shaffer* expressly states that if a party challenges whether a proposal would result in an urban use of rural land (which Central Oregon Landwatch did), the local government is required to ask four initial questions. Furthermore, if any one or more of those questions is not answered in the affirmative (i.e., potentially not indicating a rural use), *Shaffer* states that the decision maker must proceed to the next step. *Shaffer* is silent about whether a County with a comprehensive plan and code acknowledged as consistent with Goal 14 is allowed to skip that second step if there is even a single non-affirmative response, nonetheless two as was the case in the initial decision. The Board of County Commissioners does not have the authority to ignore the express directives of LUBA's *Shaffer* opinion, particularly since the other case cited in the findings and by LUBA, *Columbia Riverkeeper v. Columbia County*, was decided in 2014, well after most counties' codes, to include the DCC, have been acknowledged as consistent with Goal 14. The Board of County Commissioners proceeded to the second step of that analysis because the case law said the Board of County Commissioners was required to, not for the reason LUBA assumed.

If, as LUBA suggests in its footnote 9, the *Shaffer* analysis has been superseded by the Unincorporated Communities Rule or acknowledgment of a land use code as consistent with Goal 14, LUBA should expressly state so, because its subsequently-dated rulings suggest that is not the case.

Furthermore, the Board of County Commissioners now expressly finds that the policies and provisions of the DCCP and DCC are independently sufficient to both demonstrate that post-acknowledgment plan amendments that apply the Rural Industrial (RI) plan designation and zoning to rural land are consistent with Goal 14 and that uses and development permitted pursuant to those acknowledged provisions constitute rural uses, do not constitute urban uses, and maintain the land as rural land. Given that finding, any further analysis under *Shaffer* is redundant and precautionary only.

However, given that LUBA remanded the decision for us to address our response to one of the initial *Shaffer* inquiries, these findings now discuss *Shaffer* further.

One of the four *Shaffer* questions is, as the adopted findings explain, whether the industrial use, "Is significantly dependent on a site-specific resource and there is a practical necessity to site the use near the resource." Rec-73. As the County Board of Commissioners understands, under *Shaffer*, any industrial use that is not a mining, logging or another use that utilizes an on-site resource would necessarily result in a non-affirmative answer and would require the decision maker to proceed

to the second-step, which is to take one of the three options set forth in *Shaffer* and subsequent opinions. Under *Shaffer*, as the Applicant and the County understand it, that sole non-affirmative answer requires proceeding to the second step of the analysis. *Shaffer* doesn't even require a local government to address all 4 first-step questions at the first step if one of the questions is not answered in the affirmative; the county is simply required to proceed to the second step, which Deschutes County then did in the original findings.

Relatedly, any general application for the RI designation and zoning that does not include a specific development proposal, as is the case here, cannot answer that "site-specific resource" question in the affirmative because the ultimate use of the property is unknown. In these situations, under *Shaffer*, the decisionmaker must always proceed to the second step. The County's undertaking of that second step in this proceeding, contrary to LUBA's erroneous assumption, had nothing to do with a belief that the acknowledged DCC provisions were not independently sufficient to ensure that development would, in fact, be consistent with Goal 14. The County's undertaking of the second step analysis had to do with the fact that at least one of the first-step questions could not be answered in the affirmative and *Shaffer* requires proceeding to the second step in such instances. In fact, the Applicant's answer for the second-step analysis, despite non-affirmative responses to two of the first-step questions in those findings, was that the DCCP and DCC provisions were sufficient to ensure that development would be consistent with Goal 14 and that those provisions, "[l]imit[ed] the allowed uses to effectively prevent urban use of rural land[]" as stated in the original findings. The Board of County Commissioners again concurs with that response. That conclusion is reached, in large part, because DCC chapter 18.100 has been acknowledged by LCDC as consistent with and fully implementing Goal 14 as LUBA recognized in its final opinion and order. LUBA misconstrued the Board of County Commissioners' reasoning. LUBA's "assumption" to the contrary was wrong.

The Board of County Commissioners finds nothing in *Shaffer*, *Columbia Riverkeeper*, or any other case that applies the *Shaffer* analysis that has been cited by the parties or LUBA, that requires the second step of the *Shaffer* analysis to disprove any of the non-affirmative responses to any of the four first-step *Shaffer* questions. All a non-affirmative first-step response requires is that the county proceed to the requirements stated under *Shaffer's* second step. Furthermore, the cases state that none of those first-step questions is dispositive regarding whether a proposal is consistent with Goal 14. A non-affirmative response simply requires additional analysis and findings via the second step. The County's obligation in that second-step response is to do one of the following:

- "(1) limit allowed uses to effectively prevent urban use of rural land,
- (2) take an exception to Goal 14, or (3) adequately explain why the

proposed use, notwithstanding the presence of one or more factors pointing toward an urban nature, should be viewed as a rural use." *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171 *aff'd without opinion*, 267 Or App 673, 342 P3d 181 (2014); *See also, Shaffer v. Jackson County*, 17 Or LUBA 922, 925 (1989) (*Shaffer II*) (citing *Shaffer I*, 16 Or LUBA 871, 875 (1988), using different wording).

The purpose of *Shaffer's* second step is not to necessarily further analyze the response(s) to the first-step questions; it is to make the demonstration that a proposal is consistent with Goal 14 despite the non-affirmative responses or for the local government to take an exception to Goal 14 or include the property within a UGB.

In written testimony on remand, COLW suggested that *Shaffer* stands for the proposition that a finding only of a lack of need for urban services must lead to a conclusion that the use is not rural. *Shaffer* states that such a finding alone, without further explanation, is insufficient to support a conclusion that a proposed use (in that case an asphalt batch plant) will be rural. This proceeding is unlike the one in *Shaffer*. In this instance, there is more in the original record and on remand to support the conclusion that there will be a small number of workers and that the uses permitted by the DCC under the development requirements imposed by the RI-zone will allow only rural uses to be developed on the property. The supporting evidence includes the numbers of employees derived from the TIA related materials, the potential limitations on septic capacity on the property as well as the application of the acknowledged DCC use and dimensional limitations for the RI zone.

Also, in written testimony on remand, COLW mischaracterized our original *Shaffer* findings and LUBA's resolution of those findings. Namely, COLW contended that our initial decision found that no findings are possible for two of the four factors and "the fourth factor indicates the proposal is not for a rural use." The County Board of Commissioners finds that description to be incorrect. The initial findings concluded that two of the factors indicated the proposed uses would be rural (the number of workers and the public facilities and services factors) and that for the other two, there was insufficient evidence to support an affirmative finding. LUBA Record page 189. LUBA remanded only on the number of workers finding, thereby also affirming our finding that the proposal does not require public facilities or services.

LUBA correctly noted that the original findings conclude that compliance with the use limitations, dimensional requirements, parking and loading requirements, site plan review requirements and review, and additional DCC requirements will limit permissible RI uses on the property to rural uses and ensure that development is consistent with Goal 14. Slip Op at 24; *see also*, Rec-190. The Board of County

Commissioners finds that COLW failed to successfully challenge that ultimate conclusion.

LUBA remanded the decision for the Board of County Commissioners to adopt adequate findings related to one of the *Shaffer* first-step questions. Those findings and related conclusions on remand are provided under Section II below.

- D. Deschutes County Land Use Regulations:** As noted in LUBA's opinion, the Deschutes County Comprehensive Plan and Title 18 of the Deschutes County Code have been acknowledged by LCDC as consistent with every statewide planning goal, to include Goal 14.

The Comprehensive Plan states that the Rural Industrial plan designation and zoning are applied to specific properties to provide compliance with state rules by adopting zoning *to ensure that those properties remain rural* and that the uses allowed there are less intensive than those allowed in unincorporated communities as defined in OAR 660-022. Comprehensive Plan, Ch. 3, p. 11 (emphasis supplied).

Specific Comprehensive Plan Policies implement this statement. These include:

Policy 3.4.23 To assure that urban uses are not permitted on rural industrial lands, land use regulations in the Rural Industrial zones shall ensure that the uses allowed are less intensive than those allowed for unincorporated communities in OAR 660-22 or any successor.

Policy 3.4.27 Land use regulations shall ensure that new uses authorized within the Rural Industrial sites do not adversely affect agricultural and forest uses in the surrounding area.

Policy 3.4.28 New industrial uses shall be limited in size to a maximum floor area of 7,500 square feet per use within a building, except for the primary processing of raw materials produced in rural areas, for which there is no floor area per use limitation.

Policy 3.4.31 Residential and industrial uses shall be served by DEQ approved on-site sewage disposal systems.

Policy 3.4.32 Residential and industrial uses shall be served by on-site wells or public water systems.

Policy 3.4.33 Community sewer systems shall not be allowed in Rural Industrial zones.

The Deschutes County Code Chapter 18.100 RURAL INDUSTRIAL ZONE – R-I, implements the above Comprehensive Plan policies. It limits the types of industrial uses, whether permitted outright or through conditional approval, to rural industrial uses at levels less intensive than for those allowed for in unincorporated communities. DCC 18.100.010 and .020. The DCC further restricts those industrial uses through use limitations, dimensional standards, off-street parking and loading standards, site design, additional requirements, and solar setback restrictions. DCC 18.100.030 through .080.

The Board of County Commissioners expressly finds, as did DLCD in its acknowledgment order, that rural industrial development of uses, permitted outright by DCC 18.100.010 and conditionally under DCC.100.020, that is consistent with the development limitations imposed by the DCCP and DCC is consistent with Goal 14, constitutes rural use of rural land and does not constitute urban uses or development.

- E. Issues on Remand:** The issue on remand concerns adequate findings regarding the *Shaffer* inquiry whether the uses allowed under the proposal would employ a small number of workers and, relatedly, how that may affect the second-step Goal 14 analysis and conclusion that the approved comprehensive plan and zone change to RI will allow only rural use and not urban use of the subject property such that no Goal 14 exception is required. LUBA succinctly framed the action to be taken on remand:

“(R)emand is required for the county to explain why it concluded that the potential uses would employ a small number of workers.” Slip Op at 35.

All other issues in this proceeding have either been resolved by LUBA or are otherwise precluded because they were waived, not raised or otherwise not preserved in the appeal to LUBA. These resolved and waived issues include, but are not limited to:

- Whether the applicant’s TIA evidence provided the ‘worst case’ development scenario that assumes the most intensive level of development that could be allowed under RI zoning on the property given that the uses are subject to zone, site plan review and conditional use criteria that apply not only as a result of any specific use, but also as a result of the property’s location and relationships to adjacent residential uses.
- Challenges to the accuracy or credibility of the traffic-related evidence and analysis including but not limited to traffic counts, whether it represents a reasonable worst-case scenario, or is otherwise valid.

- Whether the Deschutes County Comprehensive Plan limits the RI plan designation to existing rural industrial development and cannot be applied to the subject property.
- That the proposal fails to comply with Goals 6 and/or 11.
- That industrial development is a *per se* urban use that requires a Goal 14 exception if on rural land.
- That the County misconstrued the *Curry County* decision as it applies to Goal 14.
- Whether the County deferred its determination of Goal 14 compliance.
- That the County is prohibited as a matter of law from analyzing Goal 14 compliance in the context of RI zoning in the absence of a specific proposed industrial use.
- Challenges to the finding that the RI zone “effectively prevent[s] urban use of rural land” by subjecting all development in the RI zone to the requirements of DCC chapter 18.100, which allow development that is less intense than that allowed under the Unincorporated Communities Rule.”
- Challenges to the finding that “the policies of the DCCP, implemented by DCC Chapter 18.100, which is an acknowledged land use regulation, do not allow urban uses on RI designated and zoned land.”
- Challenges to the finding that “[t]he property is located about 3.25 miles north of Bend and 6.5 miles south of Redmond via US 97.”
- Challenges to the finding that the subject property is served with existing private water service.

II. **CONCLUSIONS OF LAW:**

Summarizing the analysis and conclusions below, the Board of County Commissioners concludes that the evidence in the record establishes that development on the subject property under the requested plan designation and zone change to RI will employ a small number of workers. That conclusion is consistent with the Board’s original decision, which LUBA has otherwise affirmed. The Board of County Commissioners concludes that approval of the application and the reasonable worst case scenario of approximately 90 employees, will continue to allow only rural use of rural land on the subject property. The Board of County Commissioners again approves the requested plan designation and zone change applications.

In the alternative and as a precaution only, in the event that LUBA disagrees with our conclusion that the proposal will only allow development that will employ a small number of workers, the Board of County Commissioners concludes that, even if there is the potential that the uses allowed could employ more than a small number of workers, the RI zone regulations have been acknowledged by DLCD to comply with Goal 14 and the application of those regulations is independently

sufficient to demonstrate that this post-acknowledgment plan amendment, which applies the RI plan designation and zone to the subject property, also complies with Goal 14. The adopted and acknowledged use limitations, dimensional standards, off-street parking and loading standards, site design, additional requirements, solar setbacks, and restrictions imposed under DCC 18.100.030 through .080 and other invoked DCC provisions so limit the scale, scope and intensity of allowed uses and development on the subject property to effectively prevent urban use of rural land. The Board of County Commissioners' conclusion now, as it was originally, is that the DCC 18.100 provisions that will apply to all development on the property will ensure that any allowed uses and development will constitute rural use of rural land consistent with Goal 14 and related comprehensive plan rural and urbanization policies even if one or more uses does not necessarily employ a small number of workers. Consequently, an exception to Goal 14 is not required to approve the applications. Under this precautionary alternative analysis, the Board of County Commissioners approves the requested plan designation and zone change applications.

Development allowed under the proposed plan designation and zone change will employ a small number of workers and constitutes a rural use of rural land.

Given that there is not a specific development proposal for the subject property, it is difficult to make a precise determination on the number of employees resulting from the proposed application. That does not mean, however, that the analysis of this factor is mere supposition or is not based on evidence a reasonable decision maker would rely upon. Three pillars underly the Board of County Commissioner's analysis: (1) the site context; (2) the applicable DCC 18.100 requirements and other relevant standards; and (3) the evidence and analysis in the record, to include the Transportation Impact Analysis (TIA) and supplemental analysis provided during the remand proceedings by Transight Consulting and evidence concerning the suitability of the site's soils for septic systems. Based upon this evidence in the record the Board of County Commissioners concludes that approval of the applications and the development it will permit under a reasonable worst-case scenario will result in 90 workers, which is thereby recognized as a "small" number of workers.

As an initial matter, the Board of County Commissioners notes that neither LUBA nor any party has identified any regulations or case law that establish, as a matter of law, what constitutes a "small" number of employees. The record shows that Central Oregon Landwatch has argued that "small" means 1 to 3 workers per property, but cites to no statute, rule, code provision or case that mandates that as the standard. The Board of County Commissioners accepts that 1 to 3 workers per property would be small, but rejects the idea that more than 3 workers per property

cannot constitute a small number of workers. It is common for commercial and industrial uses, even in rural areas, to have more than 3 numbers of workers and still constitute a rural use.

During the remand proceedings, COLW submitted an analysis of the City of Bend's economy that indicates the average "firm" size had eight employees. Based on that evidence, COLW asserts that eight (8) workers is an "urban" number of workers. Applicant responds that the inquiry remanded by LUBA concerns whether the uses will employ a "small number of workers" not an "urban" or "rural" number of workers and that in order to characterize the number of workers as "urban" or "rural" requires the analysis of a number of other factors. The Board of County Commissioners agrees with Applicant and that the focus of this remand proceeding is to determine whether the uses allowed will employ a small number of workers.

The Board of County Commissioners finds that the site context limits the development potential of the subject property. The Applicant's extensive evidence regarding surrounding land uses establishes that there are adjacent residential dwellings located to the north, west and south of the subject property. The proximity of those residential uses trigger RI-zone development limitations that further restrict the type and intensity of development that can occur on the property. The adjacent residential dwellings, in addition to the location of major roads adjacent to and through the subject property, also trigger greater setbacks than otherwise would be required, which further limits the amount and intensity of development that can occur on the subject property. That in turn limits the number of workers that can be employed on the subject property as it is developed with RI permitted uses under the RI-zone development standards.

Given the location and number of those residential uses, much of the property is within 600 feet of a residential dwelling and consequently, pursuant to DCC 18.100.010 and 18.100.020(A), all of the uses permitted outright under DCC 18.100.010 in those areas are subject to conditional use review. Given the property's location adjacent to and bisected by major roadways and residential uses, the footprint available for development is further reduced pursuant to DCC 18.100.040(C) and (D), which impose greater set-back standards than normally apply. The TIA provided by the applicant, at Rec-1267 noted by the applicant, contains a diagram showing the existing parcel sizes, setbacks, and easements on the subject property. The TIA explains that approximately 15.5 acres of the property is developable, with one acre presently developed. Within that buildable area, DCC 18.100.040(B) further limits any lot within 600 feet of a residence to 70 or less percent lot coverage, to include buildings, storage areas or facilities, and required off-street parking and loading areas. Last, DCC 18.100.040(H)(1) limits the maximum size of a building anywhere on the RI-zoned site to 7,500 square feet of developed floor space per lot, whether as a single building or combined buildings per lot.

While it may seem that none of the above standards expressly speak to the number of workers that may use a site, the above affects the amount of floor space that can be reasonably built on the subject property. As Transight Consulting's letter on remand and the TIA plainly establishes, vehicle trips that include worker trips is based on the size of the building for permitted uses. Contrary to COLW's assertion that there is no way to determine the number of workers that might be employed by an unidentified factory, the ITE Trip Generation manual is based on just that type of general use analysis and is not dependent on a specific development proposal. As Transight Consulting explains, the TIA process yields a total daily number of trips per use category based on building size(s). The evidence submitted on remand supports that statement. The Goal 12 rule relies on that very ability to estimate the traffic flow from different possible use scenarios and requires the analysis to use a reasonable "worst case" development scenario. These ITE-based daily trip counts incorporate all types of trips, to include worker trips, deliveries, customers and business clients. Transight Consulting's letter and TIA, and its reliance on ITE best practices, constitutes credible and reliable evidence that takes into account the development restrictions the code imposes on the subject property, the maximum building sizes allowed under the code, and the number of workers associated with various uses and permitted building sizes.

The Transight Consulting TIA included in the record, as summarized by the Transight Consulting letter submitted for the remand proceedings, sets forth a reasonable "worst case" scenario about how the subject property could be developed under the proposed RI plan designation and zoning at applicant's noted record item Rec-1269 and Table 2. The Board of County Commissioners notes that County Transportation staff expressly agreed with the assumptions, methodology and conclusion of the TIA, although staff did not fully agree with its initial proposed mitigation measures. ODOT likewise did not challenge the TIA's assumptions, methodology or conclusions other than posing several questions regarding the underlying basis and growth rates used in the calculations and requesting additional safety analysis not relevant here. ODOT did not object to or otherwise challenge Transight Consulting's responses to ODOT's questions.

At the remand public hearing, COLW claimed that the TIA analysis is irrelevant to the number of workers issue and that the worst-case scenario for Goal 12 purposes is irrelevant to the number of workers issue. The Board of County Commissioners disagrees. The TIA analysis methodology takes into consideration the types of uses the zoning code permits for the property, the size of development that can be authorized, and the traffic flow that is generated from the number of workers for those uses in those sized buildings, as well as the traffic volumes that deliveries and customers to those uses and permitted development would bring under a worst-case development scenario. In short, embedded in the TIA analysis is the number of

workers that will result from the most intensive development of the property permissible under the code.

The Board further notes that COLW did not directly challenge the accuracy or credibility of the Transight Consulting TIA. Significantly, COLW did not in any way challenge during the prior local appeal proceeding or at LUBA whether the TIA's development scenario represented a reasonable "worst case" development scenario as is required by Goal 12. The Board also notes that COLW made no effort to submit evidence during the original proceeding or on remand regarding development of the property consistent with the constraints imposed by the DCC and the subject property's characteristics. During testimony on remand, COLW alleged that "thousands" of workers could be employed under RI development of the subject property, but provided no evidence that would support that claim. That unsubstantiated claim is contradicted by the daily trip count data provided in the TIA, which County Transportation Staff concurred and ODOT did not object to. The Board of County Commissioners find the TIA to be credible and that it provides a "worst case" development scenario for the subject property.

The Board of County Commissioners note that, as found in the original adopted findings, the Applicant will be able to partition or subdivide the subject property, and such subdivision may remove some, but not all, of the limitations on development imposed by DCC standards. Furthermore, the Board notes that it is possible to discern from TIA Table 2, in record item Rec-1269 per the applicant, based on the maximum permitted building size of 7,500 square feet, that the property could be subdivided into 10 lots in a reasonable "worst case" scenario. *See also*, Transight Consulting remand letter, Table 1 (indicating similar data).

On remand, Transight Consulting submitted a letter that explains what the 63,160 square feet of building uses that could be developed on the property on those 10 lots could represent in terms of the numbers of workers employed by the uses described in the TIA. The Transight Consulting remand letter states that the "worst case" scenario would employ 90 workers. Table 2 of the remand letter shows the breakdown of total employees based upon the various land uses. Transight Consulting further testified at the hearing and provided additional background material to substantiate its conclusions. The Board of County Commissioners finds that evidence credible and agrees that 90 workers is a "worst case" scenario regarding the potential number of workers for the subject property given the fact that the ITE use data is based on suburban employment levels and, as the Transight consulting letter explains, rural uses "tend to result in more land-intensive uses as is evident by the surrounding development patterns of similarly zoned industrial lands." Despite that aspect of the ITE data, the Board of County Commissioners bases its conclusion on the figure shown by the ITE analysis – 90 workers. The

Board of County Commissioners concludes that for a property of this size, 21.54 acres, 90 workers is a small number of workers.

In addition, Transight Consulting's analysis further explains that this does not mean that 90 employees will be on the property at any given time. Rather, Transight Consulting states that approximately half of the employees are likely to be at work and present on the property at any given time.

An examination of the above evidence is revealing. The most intensive of the remand letter Table 2 "worst case" scenario listed uses is specialty trade contractor. With 12,000 square feet of building, under the DCC's development standards the total employees (34) would be spread over two different lots. That makes 17 workers each for those two lots. At any given time, half, or 9 employees would be on each lot. The Board of County Commissioners finds that to be a low number of workers per industrial use – at either the 17 or 9 number of workers. Each of the other "worst case" scenario uses have an even lower number of workers per lot. Worth noting is that the mini-storage facility example posited by COLW has among the lowest number of workers of any permitted use on the subject property as demonstrated by the Transight Consulting responding evidence.

During the remand hearing, the Board of County Commissioners inquired whether there were any other site-specific considerations that might limit the number of workers that could be permitted on the subject property. In response to an inquiry regarding the septic capacity of the subject property's soils, the Applicant submitted the detailed soils study for the property ("Borine study") and an email exchange between the Applicant and Todd Cleveland, the County's Environmental Soils Supervisor. The analysis and conclusions reached by the County's expert regarding the number of workers that could be employed on the property are similar to those noted above.

Mr. Cleveland explained that the soil mapping shows that at least 60% of the subject property is not suitable for any type of onsite treatment system and that none of the property is suitable for a standard septic system. Mr. Cleveland further explains that any system, whether an absorption or holding tank system, will only operate with constraints that ensure very low total water usage. DEQ's rules will have the direct effect of limiting the types of industrial uses and the total number of persons at any of the facilities. Mr. Cleveland concluded that, even with multiple holding tank facilities, the total number of workers that could be employed on the site would number in the dozens, not hundreds, because of the site limitations. The Board of County Commissioners recognizes that this information is preliminary and serves informational purposes, not providing any specific approvals, and provides adequate general guidance regarding the impacts of septic feasibility and its impacts on the potential number of employees. The Board finds the Borine study

and Mr. Cleveland's analysis and conclusions from that study to be credible, albeit general in nature. The analysis and conclusions are based on site-specific evidence and are consistent with what Mr. Cleveland states is typical elsewhere in the county.

COLW argues that Mr. Cleveland's testimony is not probative and should be rejected because: the soils data does not satisfy all the requirements for a DEQ septic site evaluation; the evidence does not provide an exact number of workers that could be employed on the site; and that the analysis fails to consider potential use of a composting or combustion waste disposal facility or use of surrounding lands for septic drainfields. The Board of County Commissioners disagrees for the following reasons.

Whether the soils study Mr. Cleveland bases his opinion on satisfies DEQ septic site evaluation regulations does not go to the probative value of Mr. Cleveland's analysis, it goes to the scope of the underlying evidence. The Board of County Commissioners finds that Mr. Cleveland appropriately qualified his analysis, indicating both the soil study's value and its limitations and explaining where additional information would be required in order to make more precise conclusions. The Board finds the evidence both probative and credible for the professional opinion being expressed within the limitations explained by Mr. Cleveland. The Board also notes that this information is solely for the purpose of anticipating the potential number of employees, and that further analysis would be required prior to any use operating on the property.

As noted above, although Mr. Cleveland does not offer an exact number of workers that on-site DEQ approved systems could support, the "dozens and not hundreds" conclusion is consistent with the Transight Consulting analysis and rebuts COLW's claim that it could mean 180 or 250 (i.e., hundreds) workers. The lack of exactness does not make Mr. Cleveland's analysis not probative.

Regarding potential alternative means of disposal, Mr. Cleveland's analysis is directed to the suitability of the site to on-site septic systems and is probative as to the suitability of such systems. That Mr. Cleveland's analysis does not consider other system types or off-site drainfield locations goes to the scope of the analysis, not its probative value.

With respect to the cited sewage disposal systems, the Board of County Commissioners notes that COLW submitted no evidence that such systems could be utilized on the property, which is relevant because neither composting nor combustion waste facilities is a permitted use in the RI zone. Likewise, COLW's claims that an "off-site" septic drainfield could be used is contrary to the express requirements of DCC 18.100.030(K) which requires industrial uses to "be served by DEQ approved on-site sewage disposal systems."

Mr. Cleveland's conclusion, that an on-site septic system may act as a further restriction on the level of development and, consequently, further limit the number of workers on the property to that less than what could otherwise be permitted under a DCC worst-case development scenario, is credible and probative to the issue on remand. COLW's arguments do not demonstrate otherwise.

COLW also contends that the Board of County Commissioners' acceptance of and reliance on Mr. Cleveland's analysis opens the decision up to charges of prejudice and prejudgment and claims of bias. The County Commissioners expressly state that they are not biased or prejudiced in either their review of Mr. Cleveland's statements or with respect to this proceeding. Mr. Cleveland's review of the study presented to him is no different than the County or ODOT analysis of the Applicant's TIA. The Board of County Commissioners reaches this decision on remand by applying the relevant standards based on the evidence and arguments presented in this remand proceeding and the original proceeding. The Board of County Commissioners has not prejudged the evidence or the final decision in this remand proceeding.

The Board of County Commissioners also notes that sewer services cannot be provided to the subject property and that any approval for development will require DEQ approval for the proposed septic system. If a normal on-site septic system is used, this site-specific soil condition will likely further ensure that employment on the subject property under RI zoning is limited to a small number of workers.

The Board of County Commissioners concludes that, given the number of lots and the types of industrial uses that could be developed on the subject property even under a "worst case" scenario, as well as the limitations on development imposed by the soil conditions for the property, the industrial uses that could be approved under the DCC will employ a small number of workers. The Board of County Commissioners reaches this conclusion whether one looks at the subject property as a whole, employing 90 workers, or as individual subdivided/partitioned lots with the smaller numbers of workers per lot that would be permitted under the DCC restrictions, as explained in the Transight Consulting materials.

During the original local appeal proceedings, COLW argued that the number of employees "could number into the hundreds per factory." As noted above, at the hearing on remand COLW raised that generalized amount to "thousands." The Board of County Commissioners notes that COLW did not submit any evidence to support such allegations. As the Applicant rightly explained, attorney assertions do not constitute evidence. The Board further notes that COLW submitted no evidence regarding the number of workers typically employed by rural industrial uses, nor did COLW attempt to explain in any way, how the number of workers it claimed could

be employed on the subject property is possible under the scale of development consistent with the limitations imposed on uses and development by DCC Chapter 18.100.

It is difficult to imagine “hundreds” of workers in a 7,500 square foot building. Furthermore, for example, COLW’s claim that 300 workers or more could be employed at a single factory would likely result in an average daily trip count approaching 600 (assuming some workers carpool) for that factory for only the workers. That trip count would not include deliveries to or from the factory, or visits by clients. That daily trip count number is refuted by the ITE-based daily trip count evidence in the record, which COLW made no effort to challenge in the previous proceeding. Simply put, the claim of hundreds of employees per lot or thousands for the entire site cannot be reconciled with the TIA analysis, to which County Transportation staff concurred. That analysis establishes much lower daily trip counts for the entire subject property under a reasonable “worst case” development scenario than COLW contends could be allowed under the DCC standards for a single factory. Furthermore, such claims are refuted by the soils evidence and analysis provided by Todd Cleveland, the County’s Environmental Soils Supervisor. Mr. Cleveland concluded that, given the poor soils on the property and the unusual septic systems that would be required to serve rural industrial uses, at best “dozens” of workers could be employed on the subject property not “hundreds.” Mr. Cleveland also indicated that the soils conditions would limit the types of rural industrial uses to those that produce a low volume of waste water.

Given the above evidence regarding a worst case development scenario under the DCC and further limitations on development posed by the soil conditions on the property, the Board of County Commissioners rejects COLW’s assertion that the Applicant must submit evidence or the Board must make findings regarding every type of possible use or factory – be it a cellophane, cork or feathers factory or a mini-storage unit. Nothing COLW has entered into the record undermines the Applicant’s evidence. Likewise, none of the potential development scenarios described by COLW, such as 122 factories each 7,500 square feet in size, could be developed on the subject property. Approval of such scenarios are not possible under the DCC. The Board of County Commissioners hereby adopts Applicant’s responses to each of the posited scenarios as to the unfeasibility of those proposals under the DCC Chapter 18.100 development standards as its own. Consequently, the Board of County Commissioners finds as not credible COLW’s various unsubstantiated claims regarding possible numbers of workers that could be employed on the property.

One final comparison is worth noting. The unincorporated communities rule at OAR 660-022-0030(3)(c) limits new industrial uses to “small-scale, low impact uses[.]” As discussed above, the purpose for RI zoning is to ensure that the uses allowed are

less intensive than those allowed for unincorporated communities. OAR 660-022-0030(11) goes on to state that the size of such a “small-scale” industrial building shall not exceed 40,000 square feet of floor space for unincorporated communities and 60,000 square feet of floor space for urban unincorporated communities. By comparison, DCC 18.100.040(H)(1) limits the maximum size of a building in the RI zone to 7,500 square feet of floor space, which is less than one-fifth the size of a “small-scale” unincorporated community industrial building. As the Transight Consulting TIA plainly demonstrates, trip counts, to include employee vehicle trips, are dependent on building sizes in association with a given use. It is reasonable to deduce that, at one-fifth the permissible building size of a “small-scale” unincorporated community industrial use, there will be a corresponding reduction in vehicle trips, to include numbers of workers and their vehicle trips, under the DCC RI development limitations. If only “small-scale” industrial uses are permitted in rural unincorporated communities, it stands to reason that one-fifth of “small-scale” is even smaller scale, with a correspondingly small number of workers.

For the reasons provided above, the Board of County Commissioners conclude that the evidence in the record demonstrates that industrial uses and development that could be approved under the proposed RI plan designation and zone change under a reasonable worst case scenario would employ a small number of workers. Because this conclusion is consistent with our previous determination and LUBA denied each of COLW’s other assignments of error regarding all other portions of the Board of County Commissioners’ Goal 14 and the *Shaffer* analysis in the original decision, the Board of County Commissioners again approves the requested plan designation and zone change applications.

Alternatively, even if the plan designation and zone change will employ more than a small number of workers as a matter of law, the provisions of DCC Chapter 18.100 will ensure that any allowed uses and development will constitute rural use of rural land.

In the alternative and as a precaution only, if LUBA concludes that the above determination that the proposal will employ a small number of workers is in error the Board of County Commissioners adopts the following findings based on the presumption that approval of the applications will allow “more” than a “small number of workers” on the property.

The Board of County Commissioners reiterate, as LUBA’s opinion recognizes, that DLCDC’s acknowledgment of the DCCP and DCC as consistent with Goal 14 was not based on measures that limited the number of employees permitted on land zoned rural industrial. Rather, during acknowledgment the County took a different approach and adopted DCCP and DCC provisions that operate to limit the types and intensity of the uses allowed and its related development. Framed differently,

DLCD's acknowledgement of the DCCP and DCC as consistent with Goal 14 and allowing only the rural use of rural land is independent of the number of workers that may be ultimately employed by permitted uses developed consistent with the DCC limitations. In short, *Shaffer's* "small number of workers" inquiry has little significance regarding whether the DCC is consistent with Goal 14 and adequately imposes limits on allowed uses to ensure they constitute rural use of land. Even if there may be more than a "small" number of employees, that fact alone does not categorically mean that the uses allowed under the adopted and acknowledged DCC standards do not constitute a rural use of rural land. Consequently, the potential number of workers alone is not a basis to conclude that the DCC limitations do not ensure that only rural uses are approved on rural land. There is no County or State standard or approval criteria for this application that make the number of workers a determining factor for approval of the application.

Nothing in state statutes, administrative rules, *Shaffer* or any other case law cited to the Board of County Commissioners stands for the proposition that a use can only constitute a rural use on rural land if it employs a small number of workers. Such a contention would be contrary to DLCD's acknowledgement of the DCCP and DCC as well as with express statements in *Shaffer* and other caselaw that says the "small number of workers" and other first-step *Shaffer* questions are not determinative of whether rural use of rural land will flow from the decision, they are only indicators that further inquiry and possible actions are required. In this instance, the evidence in the record shows what a "worst case" development scenario would look like on the subject property under the adopted and acknowledged DCC provisions. Development under the DCC is not unlimited as COLW's testimony suggests. The evidence in the record establishes that the types of uses and levels of activity permitted under the DCC are consistent with Goal 14's mandate to allow only rural use of rural land. Indeed, LUBA affirmed our Goal 14 conclusions, rejecting COLW's Goal 14 challenges.

As discussed above, the TIA demonstrates that, even if LUBA determines that the evidence does not support the conclusion that the allowed uses will employ a "small" number of workers, that number is not substantial, particularly given the total number of vehicle trips development of the site could produce in a "worst case" scenario. As discussed above, that relatively low number of vehicle trips is the direct result of acknowledged DCC standards, such as the DCC 18.100.040(H)(1) dimensional standard that imposes a 7,500 square foot maximum for a building or buildings in a single use on an individual lot, and other standards that apply in this instance such as the applicable 70 percent lot coverage limitation and setback requirements. Those restrictions limit the scope and intensity of the allowed development on the property. That analysis is just as valid here as it is above, even if LUBA reaches a different conclusion regarding whether the possible number of employees that the daily trip totals suggest is "small." That possible characterization

for the number of workers does not change the fact that DLCD has acknowledged that development of the allowed uses under the development restrictions imposed by the DCC will constitute rural use of rural land consistent with Goal 14.

COLW contends that the issue of whether the RI zone has been determined to be in compliance with Goal 14 by prior acknowledgement was waived by the Applicant, claiming that the Court of Appeals so held. The Board of County Commissioners rejects the argument that the issue of DLCD's acknowledgment of the RI zone's consistency with the Statewide Planning Goals, to include Goal 14, has been waived. The Court of Appeals statement quoted by Appellant concerned whether the argument, "that LUBA should not have applied the *Shaffer* test at all" had been waived. *Central Oregon Landwatch v. Deschutes County*, 315 Or App 673, 680, 501 P3d 1121 (2021). That is not the same as saying that the issue of whether the DCC is acknowledged as consistent with Goal 14 and the other Statewide Planning Goals has been waived. The goal compliance issue has not been waived. As quoted extensively above in Section C of these findings, LUBA recognized that the DCC has been acknowledged as consistent with Goal 14 and that our original findings repeatedly asserted that the DCC is consistent with Goal 14 such that "that even the most intensive industrial use that could be approved on the subject property under the RI regulations and use limitations would not constitute an urban use." *Central Oregon Landwatch v. Deschutes County*, __ Or LUBA __ (LUBA No 2021-028, June 18, 2021) (Slip Op at 24). The Board of County Commissioners also notes, as discussed in Section C above, that LUBA "assumed" we did not believe the application of our RI zone regulations was not sufficient to ensure development would comply with Goal 14. *Id.*, Slip Op at 29. As explained above, LUBA's "assumption" was incorrect. LUBA did not conclusively resolve that issue and it has not been waived.

At the remand hearing and in written materials, COLW made various claims about potential impacts from different development scenarios. The Board of County Commissioners find none of those scenarios to be credible. The most specific of the COLW development scenario claims is that 122 buildings, each 7,500 square feet in size, could be built on the property if the RI plan designation and zoning were approved. As the Applicant explained, that figure represents 915,000 square feet of building space, which is equivalent to the entire 21-acre subject property. The Board of County Commissioners finds that such a development scenario could not be approved for the subject property because it disregards the limitations imposed by the DCC setback standards, 70 percent lot coverage on large portions of the property and all other development standards discussed in these findings. COLW's claim that a mini-storage facility could be developed on the property that has 18,000 units is not based on any evidence that such a facility could be designed in a manner that complies with the DCC development standards noted above. Furthermore, COLW's mini-storage vehicle trip and employee claims are refuted by Transight Consulting evidence that addresses vehicle trips and numbers of

employees for mini-storage facility uses. Similarly, COLW's allegations about cellophane, cork and feather factories are not supported by any evidence in the record and represent mere allegations. The Board of County Commissioners finds that such extreme claims so undermine COLW's credibility as to make any statement or assertion by COLW, not supported by explicit, detailed factual evidence, highly suspect and not credible. The Applicant carried his burden of proof with credible evidence. Rejecting arguments and scenarios that are not based on any evidence in the record or that represents development that cannot be approved under the acknowledged DCC development standards does not shift the burden of proof as COLW has argued.

The Board of County Commissioners further note that the original decision that concluded the proposal will prevent the urban use of rural land was based, in part, upon transportation considerations. Those considerations necessarily included the TIA. The Board of County Commissioners' analysis of the TIA and the conclusions reached were based on the daily trips generated under that "reasonable worst-case" development scenario and are valid regardless of whether the number of worker trips within those traffic volumes is properly classified as a "small" or "more than small" number of workers. The Board of County Commissioner's conclusion is the same here as with the initial decision – the development of uses represented by a "worst case" rural industrial development of the site under the DCC maintains the land as rural land consistent with Goal 14. Whether the 90 workers represents a "small number or workers" or not, does not change our ultimate Goal 14 conclusion or the second-step of our *Shaffer* analysis. Our conclusion remains that the DCCP and DCC so limit the allowed uses as to effectively prevent urban use of rural land, and the evidence supports that conclusion. Again, COLW presented no evidence that challenges, nonetheless refutes, that underlying evidence, nor did COLW challenge on appeal to LUBA any of the other findings from our original decision that support the Board's ultimate conclusion.

Other acknowledged DCC standards similarly restrict the scope and intensity of permissible RI uses such that approval of development proposals under the acknowledged standards ensure that only rural uses will occur on rural land. For example, DCC 18.100.030(B) limits uses on lots adjacent to residential dwellings to no more than 30 truck trailer or other heavy equipment trips per day. That is not an urban level of activity. More importantly, this is the first time that a vehicle trip cap by type – to include employee, customer and delivery vehicle trips – has been assigned to an acknowledged DLCD RI approval standard within the county code to ensure approved uses remain rural and compatible with surrounding uses. That standard demonstrates that there exists a relationship between vehicle trips and the intensity of approved rural industrial uses, to include the number of employees (who may be driving such vehicles to and from the property during the course of business). That limitation applies to portions of the subject property given the

relationship of the property to surrounding residential lots and imposes strict limits on activities that can be approved for the subject property.

Likewise, DCC 18.100.030(K) and (L) limit industrial uses to those that can be served by DEQ approved on-site sewage disposal systems and on-site wells or public water systems respectively. Again, those two provisions operate to ensure only rural uses are permitted and developed on rural industrial land by greatly limiting the services that could facilitate larger more intensive services, much like limiting building size. Such limitations are significant for the subject property. The soil suitability evidence submitted during the remand proceeding establishes that 60% of the property is not suitable for any type of onsite treatment system and that none of the property is suitable for a standard system. The costs of utilizing a holding tank system as well as the extreme volume limitations of such systems means that uses that involve the use and disposal of high volumes of water, or that employ a high number of workers that will have sewer needs will not be able to satisfy the DCC requirements for DEQ permits and ultimately cannot be approved for the subject property.

Continuing with the DCC's development limitations, other provisions restrict allowed uses on the subject property due to the fact that most of the property is within 600 feet of a residential dwelling. DCC 18.100.030(D) prohibits uses that emit odors, dust, fumes, glare, flashing lights, noise or similar disturbances perceptible without instruments more than 200 feet in the direction of an affected residential use. That limitation greatly reduces the intensity of permissible development. Also, DCC 18.100.020(A) mandates that even permitted uses within 600 feet of a residential dwelling be subject to conditional use review. The general standards governing conditional uses under DCC 18.125.015(A) and (B) require that the site be suitable for the proposed use, to include the "operating characteristics of the use," and that the proposed use be compatible with existing and projected uses on surrounding properties, which are rural uses. An industrial use that has excessive disturbances or is not consistent with the rural designation and zoning of the subject property or the surrounding rural designated and zoned properties cannot be approved on the subject property under the above standards.

While COLW argued during the initial proceedings that giant lumber and pulp mills or plastic manufacturing factories could be approved on the subject property and that such uses could employ hundreds of employees, COLW made no effort to demonstrate through evidence or argument that any such proposal could satisfy any, nonetheless all, of the limiting standards or physical site conditions discussed above on the subject property. COLW's evidence and testimony, whether during the initial proceedings or on remand, totally ignore the DCC use limitations and dimensional standards that were the basis for LCDC acknowledging the DCC as consistent with the Statewide Planning Goals. The Board of County Commissioners find that the purpose of the DCC use limitation and dimensional standards is to

prevent the very types of intensive industrial development that COLW bases its arguments upon. Uses of that scale and intensity could never be approved for the subject property under the DCC restrictions acknowledged by DLCD.

The Board of County Commissioners expressly reiterates the following findings drawn from the original decision that the DCC so limits allowed uses as to effectively prevent urban use of rural land and that a Goal 14 exception is not required for approval of the applications.

- “DCC Chapter 18.100 implements DCCP Policies 3.4.9 and 3.4.23, which together direct land use regulations for the Rural Commercial and Rural Industrial zones to ‘allow uses less intense than those allowed in unincorporated communities as defined by Oregon Administrative Rule 660-022 or its successor[.]’”
- “[T]he application of DCC Title 18 to any development proposed on Rural Commercial or Rural Industrial designated land will ensure that the development approved is consistent with the requirements set forth in DCCP Policies 3.4.12 and 3.4.27 to not adversely affect surrounding area agricultural or forest land, or the development policies limiting building size (DCCP Policies 3.4.14 and 2.4.28), sewers (DCCP Policies 3.4.18 and 3.4.31) and water (DCCP Policies 3.4.19 and 3.4.32) intended to limit the scope and intensity of development on rural land.”

COLW did not challenge those findings in its appeal to LUBA.

The analysis and conclusion, that development permitted and authorized consistent with the applicable DCC RI-zone approval standards will not authorize urban uses on rural land and will ensure rural use of rural land on the subject property, is based on the DCC’s limitation of uses authorized in the RI zone and imposition of building size and other development restrictions on permissible development. It is entirely independent of whether permissible development on the property will employ only a small number of workers. With acknowledgment, DLCD concluded that the approach taken by the County and the measures adopted to implement that approach ensure that industrial uses approved in the RI zone under the acknowledged standards would remain rural, consistent with Goal 14. Furthermore, evidence submitted during the remand proceedings demonstrates that the soil conditions on the property will likely act to further limit the intensity of development that can be placed on the property. Nothing in the evidence or argument submitted by COLW demonstrates that to not be the case.

Shaffer expressly allows, in response to a non-affirmative answer to whether a proposed use will employ a small number of workers, a local government to limit the allowed uses to effectively prevent urban use of rural land. That is what the

acknowledged DCC RI Zone standards do. *Shaffer* does not require a local government to prove that only a small number of workers could be employed in the second-step analysis before it approves a proposal as consistent with Goal 14; *Shaffer* only requires that a local government explain why allowed uses will constitute rural use of rural land despite such a finding, or to take an exception or include the property within a UGB.

The Board of County Commissioners hereby reiterates what must not have been clear from the original findings. The adopted and acknowledged rural industrial DCCP policies and DCC development standards for permitted rural industrial uses operate to ensure that any allowed uses and development on the subject property that is consistent with the applicable DCC standards will constitute rural use of rural land as required by Goal 14. That conclusion is valid even if those uses will employ more than a "small" number of workers because, in part, the County's approach to acknowledgement was not dependent upon the number of workers employed by industrial uses, but upon other factors that DLCD acknowledged as consistent with and that fully implement Goal 14 without the use of limitations on the number of workers. Furthermore, site limitations may act as a further restrictive measure to limit the development potential of the subject property so that only rural uses will be allowed on rural land.

For the above reasons, the Board of County Commissioners approves the requested plan designation and zone change applications.

III. FINDINGS, ANALYSIS AND CONCLUSIONS IN RESPONSE TO ARGUMENTS SUBMITTED ON REMAND

This section addresses some of the issues and arguments raised by parties to the remand proceeding that are not expressly addressed above. The fact that an issue or argument is addressed in this section does not mean it necessarily falls within the scope of the remand proceeding and is not intended to preclude the County or any other party from arguing on subsequent appeal that the issue lies outside the scope of the remand or has otherwise been previously resolved or waived.

Scope of the Remand Proceeding

The Board of County Commissioners limited the scope of the remand proceeding to the issue remanded by LUBA and parties were permitted to submit new evidence directed towards that issue as part of the *de novo* hearing on remand. DCC 22.34.040.A directs the Board of County Commissioners to review remanded issues and provides the Board the discretion to open the record in instance which it deems it to be appropriate. DCC 22.34.040.C authorizes the Board of County Commissioners to limit new testimony to the remanded issues or to issues raised by

new evidence that was directed towards the issue on remand. That provision also states that issues resolved by LUBA or that were not appealed to LUBA are deemed to be waived and may not be reopened. The Board of County Commissioners has so limited the remand proceeding. Furthermore, the Board of County Commissioners interprets the above provisions to implicitly mean that only the standards and criteria that expressly relate to LUBA's remand are live on remand and that issues related to standards and criteria that were resolved by LUBA or that could have been resolved by LUBA in an earlier proceeding are deemed resolved or waived and that compliance of the proposal with those standards and applicable criteria may not be challenged on remand. The Board of County Commissioners also notes that caselaw supports the above principles.

In an email submitted before the public hearing, COLW argued that the standards and applicable criteria for the upcoming hearing are not limited to those that formed the basis of the LUBA and Court of Appeals remand decisions, but also include the Standards and Applicable Criteria that formed the basis for the decisions appealed to LUBA. The Board of County Commissioners disagrees with that broad statement. The Board of County Commissioners has not exercised its discretion to expand the scope of the remand hearing, the issues that may be raised or the standards that may be visited. The only standards and applicable criteria that are live on remand are those that directly relate to the issue remanded by LUBA.

During the remand proceedings, both parties addressed the *Shaffer* factors not remanded by LUBA. COLW at one point argued that because of our resolution of the other three factors in the original decision, we could not conclude that rural use of the land would result from approval of the application. The Board of County Commissioners disagrees with that conclusion, in part because if that were the case, LUBA would not have remanded for the Board to adopt findings for the remaining factor. Also, the findings above correct a COLW misstatement regarding our response to one of the *Shaffer* factors. In written comments, the Applicant posited that the Board could now conclude that the *Shaffer* inquiry regarding whether the use "is a type of use typically located in rural areas" could now be answered in the affirmative because of the additional evidence submitted after our initial findings, particularly that DLCD acknowledged that the RI permitted uses are rural uses. If that were a live issue on remand, the Board of County Commissioners would conclude that the uses allowed in the RI zone are types of uses typically located in rural areas for the reasons provided by the Applicant. However, the Board of County Commissioners has limited this remand proceeding to the sole issue of adopting findings regarding the number of workers and whether that alters our conclusion that approval of the applications will allow only rural use of rural land. Consequently, Applicant's raising of the "type of use inquiry" plays no part of our decision on remand.

Statewide Planning Goals

In written testimony submitted at the public hearing, COLW argued that, under ORS 197.175(2)(a), the proposal must be in compliance with the statewide planning goals and that the findings cannot rely on a “prior amendment.” The main point of COLW’s argument, which refers to an unidentified prior amendment, is not sufficiently clear for the Board of County Commissioners to directly address and therefore the Board of County Commissioners finds that whatever issue COLW sought to present was insufficiently raised.

That said, the Board of County Commissioners notes that the original decision had findings that concluded the proposal was consistent with each of the statewide planning goals. On appeal to LUBA, COLW only challenged the findings and conclusions related to Goals 6, 11 and 14. All of COLW’s goal-based arguments were denied by LUBA. And while LUBA stated that the appeal’s first assignment of error concerned Goal 14, the remand did not concern the challenge to the Goal 14 finding of consistency, but rather the findings regarding the number of workers under the *Shaffer* analysis. Compliance with the Statewide Planning Goals is a resolved issue. If it is not, at most, the only Goal that may be live, is compliance with Goal 14.

Misstatements About Previous Findings

During the remand proceedings, COLW has made several misstatements about the findings the Board of County Commissioners adopted in the initial decision to approve the applications. Those misstatements should not go uncorrected.

First, as discussed above, COLW contended that our initial findings concluded that the response to the *Shaffer* “does not require public facilities or services” inquiry indicated the proposal is not for a rural use. That characterization is incorrect. The board of County Commissioners, as did the Hearings Officer, concluded that the response to that inquiry indicated the proposal is a rural use. LUBA did not remand on that issue.

Second, COLW suggests that it is law of the case that there is insufficient evidence to base a determination that the type of uses that will occur on the property are of a type typically located in rural areas. The Board of County Commissioners notes the previous findings found, as LUBA plainly explained in its decision, that all of the uses and conditional uses, as limited by the development and other approval standards contained in the DCC, were acknowledged by DLCD as complying with Goal 14 to not constitute urban uses.

Reasonable Worst-Case Scenario

COLW challenged the worst-case scenario approach used in this proceeding arguing that it provides only an “estimate” of workers, which is inadequate to demonstrate compliance with Goal 14, and attempted to distinguish between the use of the terms “reasonable worst-case” and “worst-case.”

Applicant addressed the worst-case development scenario analysis process in his rebuttal material, pointing to recent examples where LUBA used the term “reasonable worst-case” scenario and explaining when findings using that approach are inadequate. The Board of County Commissioners finds that when applied properly, the reasonable worst-case development scenario approach is an appropriate methodology to evaluate potential impacts for plan designation and zone change applications that do not propose specific development. In support of this finding, the Board of County Commissioners adopts Applicant’s rebuttal response as its own.

The Board of County Commissioners also notes that COLW failed to challenge the use of the reasonable worst-case scenario approach for the Goal 12 findings in the initial appeal, or to challenge that the development scenario represented in the original TIA, a scenario approved by County Transportation Staff and ODOT, represented a worst-case development scenario of the subject property. Last, the Board of County Commissioners finds, as explained above, that Petitioner failed to provide any development scenario that could, in fact, be developed on the subject property. Had COLW done so, these findings would be required to either base its analysis and conclusions on that development scenario or to provide an adequate justification as to why that development scenario does not constitute a worst-case scenario. Nothing requires the County to consider development scenarios that could not be approved under acknowledged development standards.

IV. DECISION:

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** on remand the Applicant’s applications for a Comprehensive Plan Map amendment to re-designate the subject property from Agriculture to Rural Industrial and a corresponding Zone Map Amendment (Zone Change) to reassign the zoning from Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) to Rural Industrial Zone (RI) subject to the following conditions of approval:

1. The Applicant shall submit to the Planning division a metes-and-bounds description of the subject site to be re-designated and rezoned.

2. The applicant shall submit a certification regarding the purpose of the application, consistent with DCC 22.20.025(B)(2).
3. The Applicant shall enter into a Voluntary Compliance Agreement ("VCA") with the Deschutes County Code Enforcement division of the Community Development Department to resolve alleged code violations in file no. 247-19-00064-CE
4. As part of any development of the subject property, the developer shall be subject to assessment of transportation system development charges (SDCs) on that development at the current SDC rate then applicable. Additionally, further traffic analysis may be required, depending on whether a proposed development triggers the traffic analysis thresholds of DCC 18.116.310(C)(3). The County may also consider imposition of non-infrastructure mitigations under OAR 660-012-0060(11).

Dated this ____ day of July, 2022



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, July 27, 2022

SUBJECT: Consideration of Second Reading of Ordinance 2022-010: Remand of Deschutes Junction Plan Amendment and Zone Change application, and Consideration of Adoption

RECOMMENDED MOTION:

The board conducts second reading by title only moves to adopt Ordinance No. 2022-010 remand of Deschutes Junction Plan Amendment and Zone Change application

BACKGROUND AND POLICY IMPLICATIONS:

The Board will conduct second reading of Ordinance 2022-010, approving a decision on remand from the Land Use Board of Appeals. The application concerns a request to rezone and redesignate property from Exclusive Farm Use (EFU) / Agriculture (AG) to Rural Industrial (RI). The entirety of the record can be found on the project website at

<https://www.deschutes.org/cd/page/remand-deschutes-junction-plan-amendment-zone-change>

As stated previously, remand applications are subject to a 120-day review timeline per ORS 227.181. The final day in which a decision must be issued is August 5, 2022.

BUDGET IMPACTS:

None.

ATTENDANCE:

*Nicole Mardell, Senior Planner – Long Range
Will Groves, Planning Manager*



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: Wednesday, July 20, 2022

SUBJECT: Authorize applying for a \$100,000 Solid Waste Orphan Site grant administrated by the Oregon Department of Environmental Quality to complete pre-work associated with the +/- 300-acres reserved for the CORE3 project.

RECOMMENDED MOTION:

Move approval of applying for a \$100,000 Solid Waste Orphan Site grant administrated by the Oregon Department of Environmental Quality.

BACKGROUND AND POLICY IMPLICATIONS:

In March 2022, the Board of County Commissioners executed a memorandum of understanding (MOU) acknowledging the collaborative project known as CORE3, which is a tri-County multi-agency project with the objective to develop a regional emergency services and training coordination center. The MOU also included reserving +/- 300-acres of County-owned property for the CORE3 project, which is located in east Redmond within Map and Tax Lot 1513000000103.

In years past, portions of the property were occupied by the Redmond Old Rod & Gun Club, Sheriff's Office shooting range and an orphaned solid waste site that includes office and consumer items. It is estimated these solid waste materials were deposited at the current location when the airport was transferred from the military to the City of Redmond in the 1950s.

In 2019-2020, an environmental consulting firm, APEX Companies, LLC, completed a feasibility study related to the described uses, which included possible remediation options. In 2020, the Oregon Department of Environmental Quality issued a notice of decision that outlines the remediation path for the affected areas.

Though it is anticipated a large amount of remediation will be completed during CORE3 project development and contained at the site, the affected solid waste area does not provide a stable foundation for development, so that particular area will be required to be

removed. Prior to removal, additional pre-work will be required, including a cultural resource survey, disposal area survey and treatability study.

DEQ is currently accepting grant applications through July 31, 2022 for its Solid Waste Orphan Site program, which could provide up to \$100,000 in funding to complete the necessary pre-work. Note that a pre-application was submitted to DEQ in June 2022 to demonstrate possible interest in submitting a full application.

BUDGET IMPACTS:

If the Solid Waste Orphan Site grant is awarded, the County will receive \$100,000 in funding for the pre-work described.

ATTENDANCE:

Kristie Bollinger, Property Manager



State of Oregon Department of Environmental Quality

Solid Waste Orphan Site Account Application Form

DEQ's Solid Waste Orphan Site Account Program provides funding and low-interest loans for investigation and cleanup of hazardous substance releases from solid waste disposal facilities (OAR 340-122-0510) owned or operated by a local government and private orphan sites (OAR 340-122-0530). For local governments the first \$100,000 requested for eligible site expenses does not require repayment and can be provided under a funding agreement with DEQ (OAR 340-122-0570). All of the state's remedial action costs, penalties and punitive damages for which a person is liable to the state under ORS 465.255, 465.260 or 465.00 shall constitute a lien upon any real and personal property owned by the person (ORS 465.335).

Please fill out a separate statement of interest form for each local government solid waste disposal site and solid waste orphan site that may be eligible for funding. Applicants may provide answers on a separate piece of paper or by attaching documents. Please provide DEQ with copies of any documents used. DEQ will use information from this form to prioritize solid waste orphan site account funding and loan requests made by local governments. After reviewing the information on this form, DEQ may request additional information.

Please contact your State SWOSA Project Manager for guidance on this form:

James Heintz

700 NE Multnomah Street, Suite 600
Portland, OR 97232
james.heintz@state.or.us
503-229-5860

Required questions (1-9)

1. Provide local government or responsible party contact information

(Telephone, fax, email, mailing address)

Kristie Bollinger | Property Manager
DESCHUTES COUNTY PROPERTY MANAGEMENT
Physical: 14 NW Kearney Ave | Bend, Oregon 97703
Mailing: P.O. Box 6005 | Bend, Oregon 97708-6005
Tel: (541) 385-1414 | Fax: (541) 317-3168

2. Provide Identification information for the solid waste disposal or solid waste orphan site.

(Address, Latitude/Longitude, ECSI number, etc.)

The north side of East Highway 126 in Redmond, Oregon (Figure 1), Township 15 South, Range 13 East, Section 14, Deschutes County. The Site latitude is 44.2673° North, longitude is 121.1399° West.

The site includes ECSI files 4710 and 5054. Note that this application applies only to the former disposal area. The Site location is shown of Figure 1. The Site is shown on Figure 2, including the disposal area, former Sheriff's Range, and former Redmond Rod & Gun Club.

SWOSA Statement of Interest Form

3. List hazardous substances and other waste present at the disposal site.

Note: A hazardous substance must be present or suspected to be present to qualify for SWOSA funds.
OAR 340-122-0530

Arsenic, lead, polychlorinated biphenyls, and polyaromatic hydrocarbons. Remedial investigation results for ecological and human health risks are summarized on Figures 4 and 5, respectively.

4. Describe the site's risk to public health and the environment.

Include reasons, if any, why there is a need for immediate removal or remedial action to protect public health or the environment. Please provide any applicable reports, documentation, or information with the application. The most recent Master Plan for the proposed facility is shown on Figure 3.

The site is planned for redevelopment as an emergency preparedness facility for Central Oregon. The complete regulatory file for the site including the 2020 Feasibility Study and Record of Decision is available on ECSI 5054 page.

<https://www.deq.state.or.us/Webdocs/Forms/Output/FPController.ashx?SourceId=5054&SourceIdType=11>

5. Why are you interested in solid waste orphan site funding?

Please provide a brief overview of what the future goals are for the site.

Master planning for the emergency preparedness facility is currently being initiated. Grant funds would be used for cultural resources survey, treatability study and remedial design for the disposal area.

6. Describe investigation or cleanup work already performed at the site.

Please provide any applicable reports, documentation, or information with the application.

A Feasibility Study (FS) for the site includes a recommended remedial alternative that includes excavation and on-site containment.

SWOSA Statement of Interest Form

7. Provide information on the sort of investigation or cleanup needed at the site.

Describe the anticipated work, associated costs, and the basis of the cost estimates. Specify any indirect costs (such as administration and overhead associated with the investigation or cleanup activities), and legal costs included in the cost estimates.

a. Investigation and evaluation of cleanup alternatives:

Cleanup alternative evaluation is included in the 2020 FS and approved in the 2020 ROD. Investigation and evaluation of cleanup alternatives is complete.

b. Cleanup:

Cleanup includes excavation of disposal debris and on-site containment. Grant resources would be used to move the disposal area to a point where it is "shovel ready". The approximate breakdown for use of the grant resources includes:

- Cultural resources survey - \$10,000
- Disposal area topographic and geophysical survey - \$15,000
- Treatability study - \$75,000

8. Describe other sources of funding:

a. From owners or operators of the site and other parties who may be responsible for site contamination. What efforts have been made to seek their contribution to site costs?

Parties responsible for the contamination have not been definitively identified. It is understood these waste materials were dumped at the site when the airfield was transferred from the military to the City of Redmond in the 1950s.

b. Insurance or accounts established for funding site closure?

None identified.

c. Are there opportunities to partner with other entities on this site?

To be determined.

9. Are you interested in using DEQ contractors for the proposed work?

If your local government would like DEQ to perform the investigation and/or cleanup activities, the local government and DEQ can enter into an Intergovernmental Agreement (IGA). Local governments can also chose to perform the contracting themselves.

To be determined.

SWOSA Statement of Interest Form

Optional questions (10 – 17)

Note: Any additional information on the site will help DEQ score the site in our prioritization process.

10. What are the current and proposed land uses for the disposal site?

Regional emergency services and training coordination center.

11. What are the current and proposed ground water uses near the disposal site?

a. How many drinking water wells are nearby?

One, closed.

b. How far is the closest drinking water well?

On-site.

c. How many people draw from these wells?

This well is capped and the pump has been removed. It could be brought back into service if needed.

12. What are the current and proposed surface water beneficial uses near the disposal site?

There are no surface water resources on site.

13. Please describe the quantity of waste disposed of at the site?

Please list cubic yards of domestic solid waste, number and type of vehicles (sedan, van, truck, bus, etc), number and type of tires (passenger, SUV, commercial), number of drums.

The disposal area includes containers, remnants of old equipment, miscellaneous refuse dumped at the location over the years. Preliminary estimates indicate approximately 77,325 cubic yards of waste are present at the site as shown on Figure 6.

14. What is the area that the waste is stored in or the area of the property?

Please give number of acres that is contaminated with solid waste.

The debris is present approximately 7.5 acres.

15. Describe the sites historic management and how many years the site has been closed.

Does the landfill have a liner? Was there open burning? Did the disposal site accept "wet" waste? Was waste placed directly into surface water?

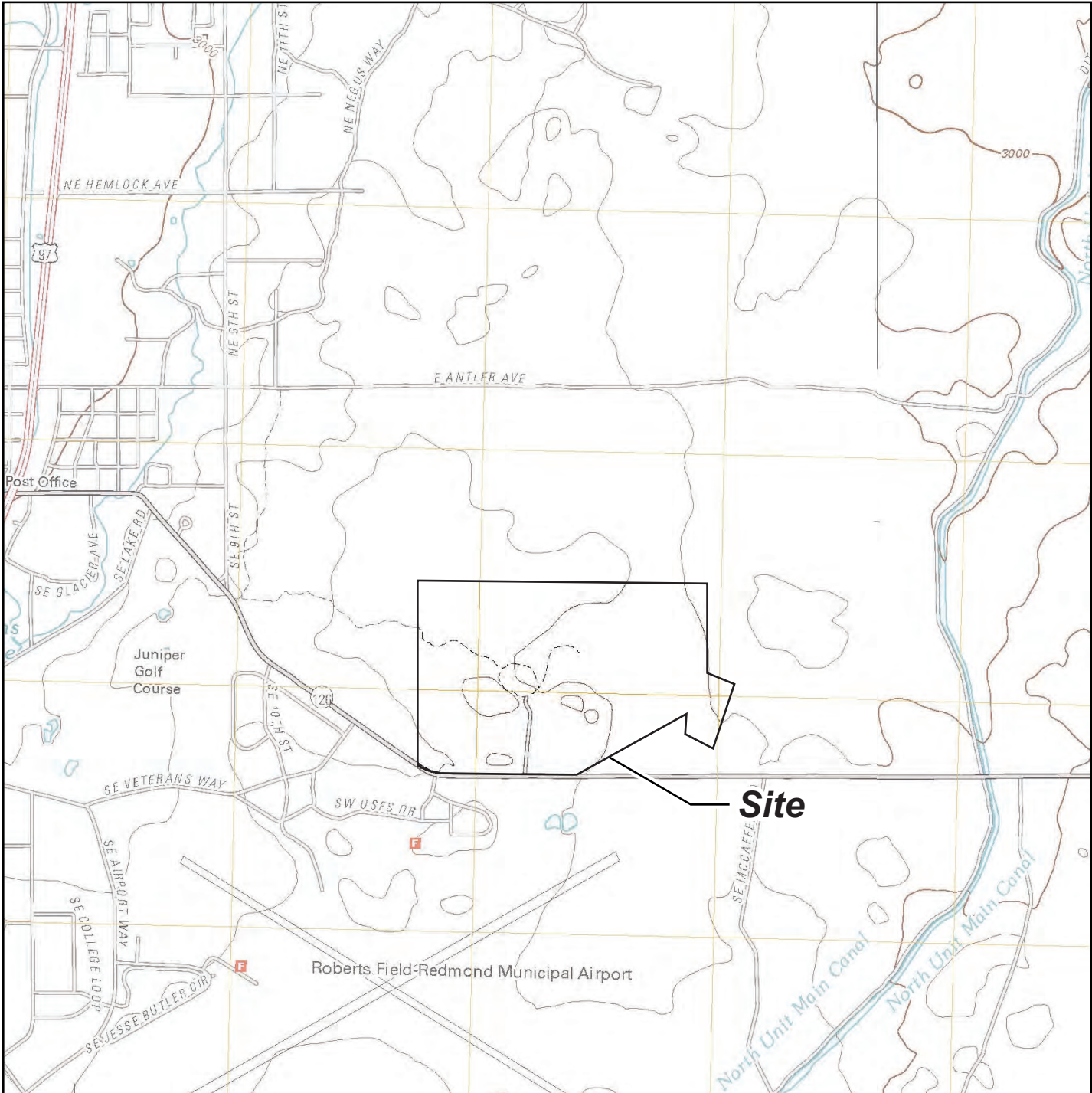
No liner is present. There is no record of burning or receipt of wet wastes. There are no surface waters present at the site.

16. Describe the hazardous substance containment.

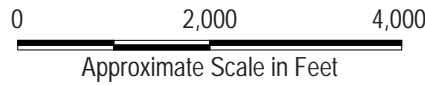
There is no containment present at the disposal area.


17. Please describe community attitude over the cleanup of the site.

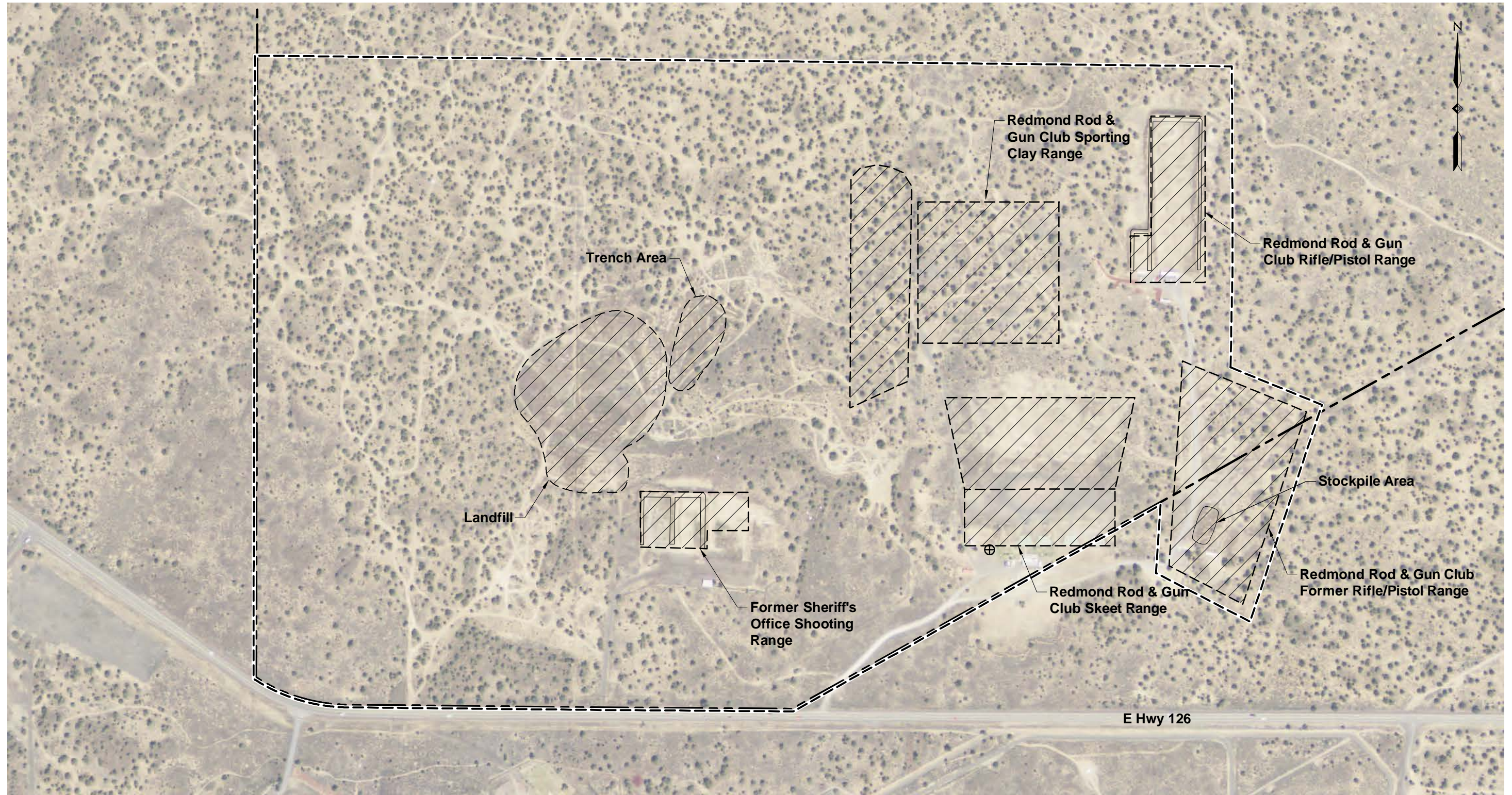
The site is not well known to the community. Negative attitudes towards the cleanup are not expected.



Note: Base map prepared from USGS 7.5-minute quadrangles of Redmond and O'Neil, OR, dated 2011 as provided by USGS.gov.



<h2 style="margin: 0;">Site Location Map</h2> <p style="margin: 0;">Feasibility Study Deschutes County Shooting Range Property Deschutes County, Oregon</p>			
 <p style="margin: 0;">Apex Companies, LLC 3015 SW First Avenue Portland, Oregon 97201</p>	Project Number	2112-05	Figure 1
	November 2018		

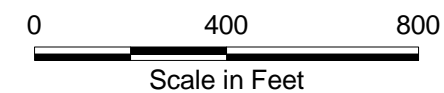


Legend:

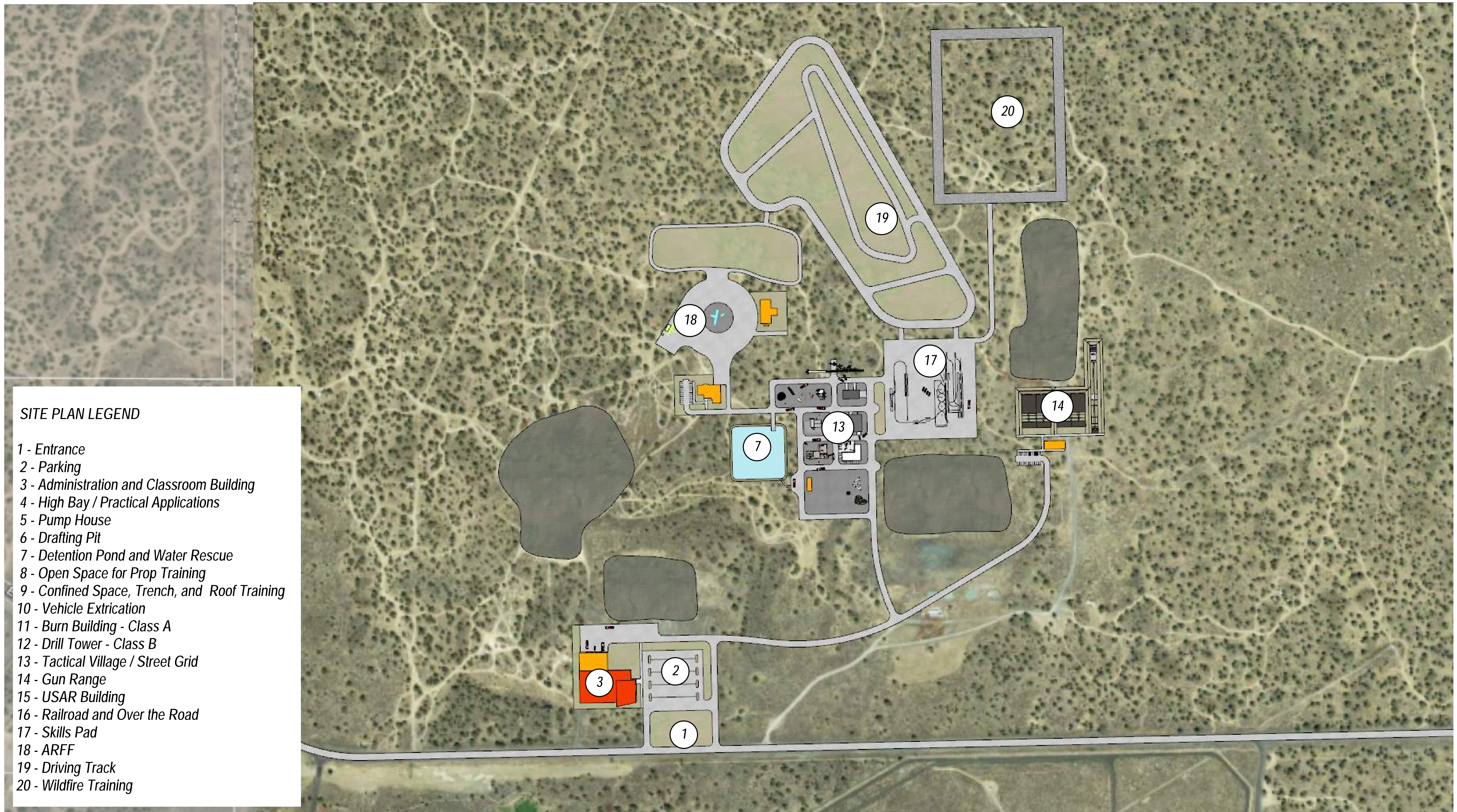
- Site Feature
- Taxlot Boundary
- Site Boundary
- ⊕ Production Well (Not in Use)

Sources:

- 1) Tax Lots from Deschutes County.
- 2) Aerial from Nationalmap.gov. Aerial dated 6-10-2012.



Site Vicinity Plan		
Feasibility Study		
Deschutes County Shooting Range Property		
Deschutes County, Oregon		
 Apex Companies, LLC 3015 SW First Avenue Portland, Oregon 97201	Project Number 2112-05 May 2020	Figure 2



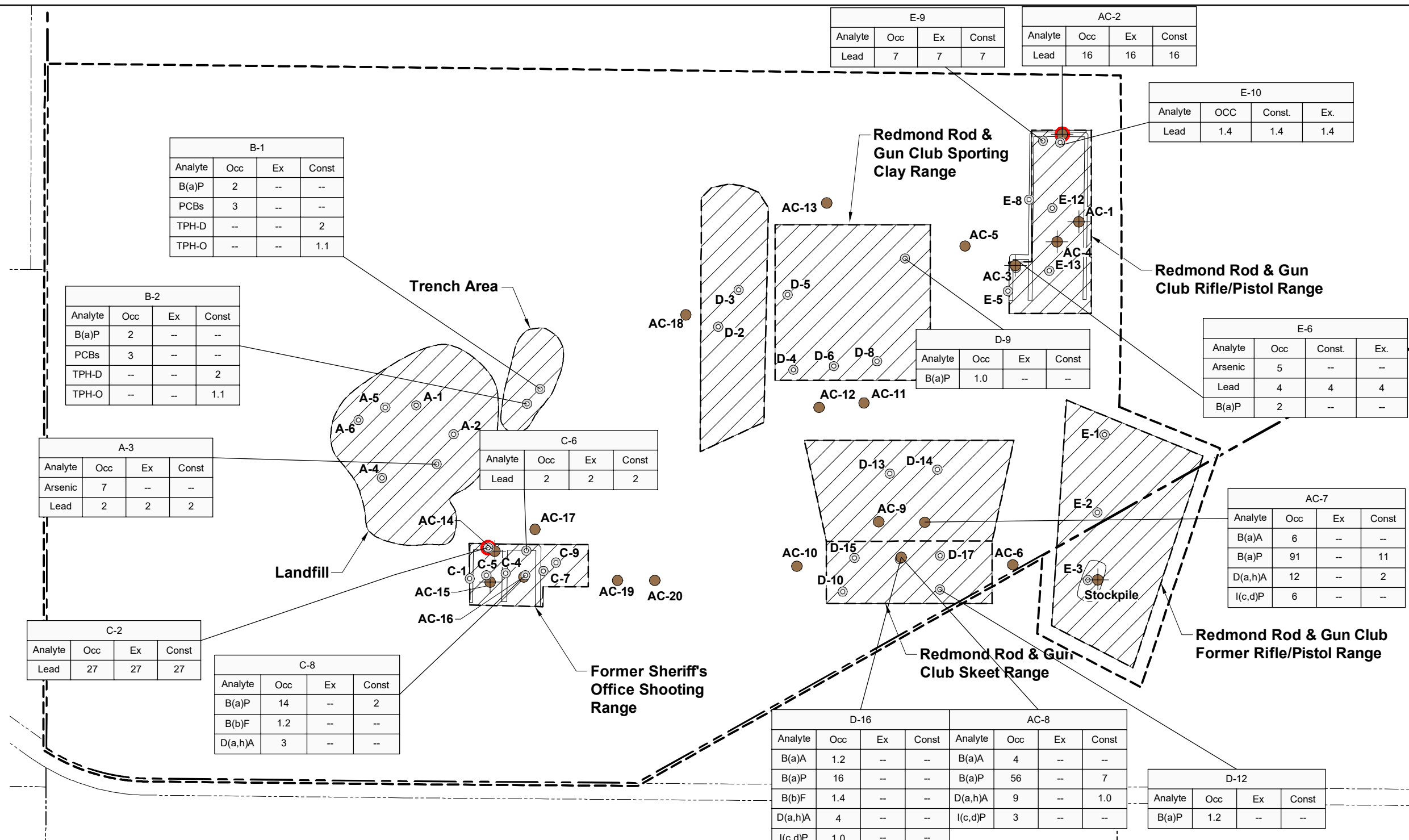
Site Master Plan

Central Oregon Public Safety Training Center

2021-06-08 3003.430.00



Figure 3 - Site Master Plan



Source:
1) Tax Lots from Deschutes County.

- Legend:**
- MW-9 (Targeted Brownfield Assessment, 2009)
 - AC-5 (Soil Sample Location (Data Gap Assessment, 2014))
 - AC-1 (Leachability Evaluation Soil Sample Location (Data Gap Assessment, 2014))

Analyte	Occ	Const	Ex
Lead	6	--	--
B(a)P	1	--	--

--- Taxlot Boundary
- - - Site Boundary
▨ Site Feature

Exceedance Ratio (ER)
 -- = Does Not Exceed this Screening Level
 PCBs = Polychlorinated Biphenyls
 TPH-D = Total Petroleum Hydrocarbons - Diesel-Range
 TPH-O = Total Petroleum Hydrocarbons - Oil-Range
 B(a)A = Benzo(a)anthracene
 B(a)P = Benzo(a)pyrene
 B(b)F = Benzo(a)fluoranthene
 D(a,h)A = Dibenzo(a,h)anthracene
 I(c,d)P = Indeno(1,2,3-c,d)pyrene
 Occ = Occupational Risk-Based Concentration
 Ex = Excavation Worker - Risk-Based Concentration
 Const = Construction Worker - Risk-Based Concentration
 ER = Calculated as Concentration + RBC

● Exceeds DEQ Hot Spot Level For Human Health Risk (Hot Spot Level Equals an Exceedance Factor of 100 for Carcinogens and 10 for Non-Carcinogens)

0 400 800
Scale in Feet

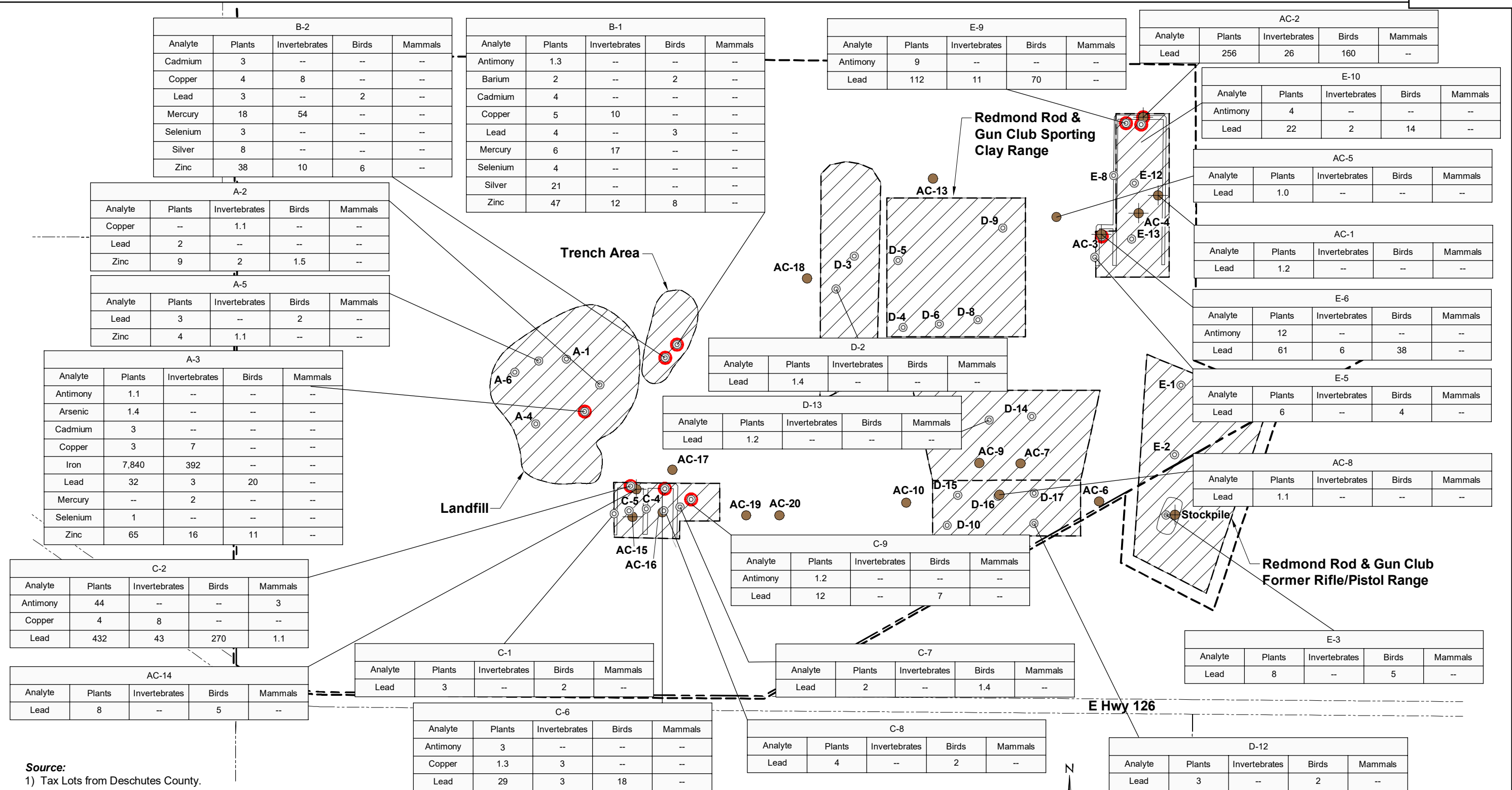
Human Health RBC Exceedances in Soil

Feasibility Study
Deschutes County Shooting Range Property
Deschutes County, Oregon

Apex Companies, LLC
3015 SW First Avenue
Portland, Oregon 97201

Project Number: 2112-05
November 2018

Figure 4



Source:
1) Tax Lots from Deschutes County.

Legend:

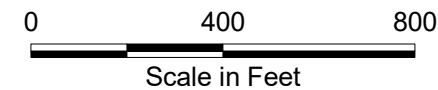
- MW-9 ⊙ Sample Location (Targeted Brownfield Assessment, 2009)
- AC-5 ● Soil Sample Location (Data Gap Assessment, 2014)
- AC-1 ⊕ Leachability Evaluation Soil Sample Location (Data Gap Assessment, 2014)

Analyte	Plants	Invertebrates	Birds	Mammals
Lead	29	3	18	--

- Taxlot Boundary
- Site Boundary
- ▨ Site Feature

● Exceeds DEQ Hot Spot Level for Ecological Endpoints (Hot Spot Level Equals an ER of 10 for Invertebrates and Plants and 50 for Birds and Mammals)

Exceedance Ratio (ER)
 -- = Does Not Exceed This Screening Level
 ER = Calculated as Maximum Concentration ÷ SLV
 Screening Level Values (SLVs) for Birds and Mammals are Increased by a Factor of 5 Because Threatened and Endangered Species are Not Present



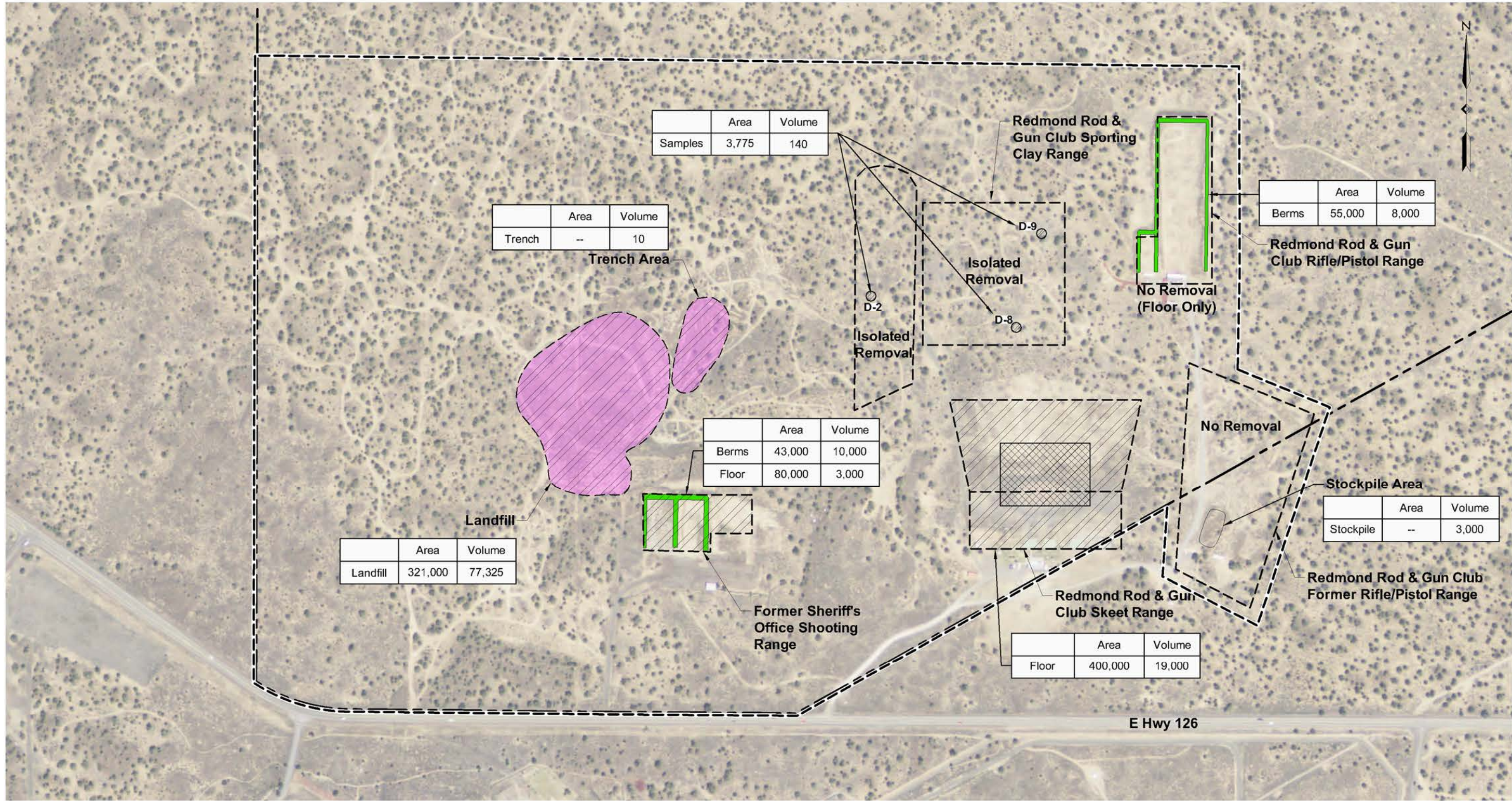
Level II SLV Exceedances in Soil

Feasibility Study
Deschutes County Shooting Range Property
Deschutes County, Oregon

APEX Apex Companies, LLC
3015 SW First Avenue
Portland, Oregon 97201

Project Number 2112-05
November 2018

Figure 5

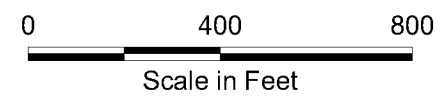


Legend:

- Site Feature
- Taxlot Boundary
- Site Boundary
- Solid Waste Disposal and Trench Removal Area
- Berm Removal Areas
- Range Floor Removal Area (1 ft Depth)
- Range Floor Removal Area (2 ft Depth)

	Area	Volume
Floor		

Area in Square Feet
Volume in Cubic Yards



Sources:
 1) Tax Lots from Deschutes County.
 2) Aerial from Nationalmap.gov. Aerial dated 6-10-2012.

Removal Areas and Volumes

Feasibility Study
 Deschutes County Shooting Range Property
 Deschutes County, Oregon

APEX
 Apex Companies, LLC
 3015 SW First Avenue
 Portland, Oregon 97201

Project Number **2112-05**
 November 2018



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 27, 2022

SUBJECT: MOU for Domestic Well Assistance

RECOMMENDED MOTION:

Move County Administrator Signature of Document #2022-640, An MOU Between Deschutes County and NeighborImpact for Domestic Well Assistance Grant and Loan Program

BACKGROUND AND POLICY IMPLICATIONS:

In the most recent legislative session, the state passed SB 5561 which provides funding for housing, drought, cannabis enforcement, and other services/programs. Section 10 of the bill identifies \$585,200 to Deschutes County out of the State's General Fund to provide "domestic and community well assistance."

Staff has worked with NeighborImpact on a proposal to transfer the funds to NeighborImpact's home preservation program. The Board directed staff to work with NeighborImpact on a draft MOU to transfer the funds and implement a domestic well assistance grant and loan program.

Listed below are a key elements from the MOU:

1. Administrative Costs - NeighborImpact will allocate an amount not to exceed 10% (\$58,000) for program administration. (Section 3 of the MOU).
2. Loan Program - \$400,200 will be allocated to the loan program. Borrowers must be at or below 100% of the area median income. Borrowers are eligible to borrow up to \$50,000. (Exhibit A).
3. Rebate Program - \$185,000 will be allocated to the rebate program. Rebates shall not exceed \$2,000. Projects that incurred costs beginning on January 1, 2021 are eligible. Costs incurred prior to January 1, 2021 are ineligible. Rebates will be made on a "first come-first served" bases. (Exhibit A).

BUDGET IMPACTS:

The state has provided the funding for the program. After the Board approves the MOU, staff will return to the Board with a budget adjustment for the State revenue and expenditures associated with the program.

ATTENDANCE:

Erik Kropp, Deputy County Administrator
NeighborImpact staff



**MEMORANDUM OF UNDERSTANDING
BETWEEN DESCHUTES COUNTY AND NEIGHBORIMPACT
DOMESTIC WELL ASSISTANCE GRANT AND LOAN PROGRAM
Document # 2022-640**

PARTIES:

NeighborImpact
2303 SW First
Redmond, Oregon, 977056 ("NI")

Deschutes County, Oregon
1300 NW Wall St.
Suite 206
Bend, OR 97703 ("County")

This MOU (this "agreement") is dated July ____, 2022, but made effective for all purposes as of the effective date (as defined below), and is entered into between Deschutes County ("County"), a political subdivision of the State of Oregon, and NeighborImpact ("NI"), an Oregon nonprofit corporation.

RECITALS:

- A.** NI operates a housing rehabilitation loan program for the benefit of low- and moderate-income homeowners in Crook, Deschutes and Jefferson counties and the Confederated Tribes of Warm Springs.
- B.** County has been allocated \$585,200 in state general funds through SB5561. The intent of the funding is to provide drought relief to Deschutes County residents through domestic and community well assistance.

- C. County is allocating the \$585,200 to NI to manage a well repair and replacement grants and loan program for the benefit of Deschutes County homeowners.

IT IS, THEREFORE AGREED:

1. Term.

This agreement will be effective as of July __, 2022. This is known as the Effective Agreement Date. No services shall be performed prior to the Effective Agreement date. This agreement will continue until all grant monies under the program have been paid out or returned.

2. Statement of work.

The County shall contribute \$585,200 thousand to NI. The well repair and replacement program is detailed further in Exhibit A, Statement of Work, attached hereto and incorporated herein by reference. County staff shall periodically communicate with NI on administration of the grant program.

3. Compensation

NI will allocate an amount not to exceed 10% of the program funding (\$58,000) for NI administration and program delivery costs.

4. Invoicing and Payment Schedule

County will contribute funds into this program at the onset of the agreement. If for any reason, monies are not all utilized (in whole or part), they will be returned to the County.

5. Execution of Work.

NI shall at all times perform the work diligently, without delay, and punctually fulfill all requirements herein.

This Agreement outlines the entire relationship between NI and County for purposes stated in statement of work. This Agreement constitutes the entire Agreement between the parties concerning the subject matter

hereof, and supersedes any and all prior or contemporaneous agreements or understandings between the parties, if any, whether written or oral, concerning the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be modified or amended except by a writing signed by all parties.

6. Books and Records.

NI shall keep proper and complete books of record and account and maintain all fiscal records related to this Agreement and the project in accordance with generally accepted accounting principles. NI shall provide a report to the County after the grants have been made, detailing the amounts of types of loans and grants made in Deschutes County.

NI acknowledges and agrees that County and its duly authorized representatives shall have access to the books, documents, papers, and records of NI which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after the Agreement expiration date. Copies of applicable records shall be made available upon request. Payment for reasonable costs of copies is reimbursable by County. If for any reason any part of this Agreement is involved in litigation, NI shall retain all pertinent records for not less than three years after the grant has been made, until all litigation is resolved, or in accordance with applicable ORS County record retention requirements whichever is longer. Full access will be provided to County and to its duly authorized representatives in preparation for and during litigation.

7. Termination.

This Agreement may be terminated for convenience by either party at any time prior to the expiration date upon 30 day written notice. If one party believes the other party to be in violation of this Agreement, that party shall notify the second party in writing of the circumstances leading to this conclusion. The party alleged to be in violation shall have 15 days to remedy the violation after which, if the violation continues to exist, the agreement will automatically terminate. In the event of early termination by either party, loans and rebates extended or obligated by NI shall remain with NI. Any balance remaining shall be returned to County within

15 days of termination, including a proportionate refund of the administration fee.

8. Litigation.

All claims, counterclaims, disputes and other matters in question between NI and County arising out of, or relating to, this Agreement or the breach of it will be decided, if the parties mutually agree, by arbitration, mediation, or other alternative dispute resolution mechanism, or, if not so agreed, in a court of competent jurisdiction within the State of Oregon and Deschutes County. In the event of any dispute arising from this Agreement each party shall be required to pay its own separately incurred attorney's fees, expenses, and court costs, including arbitration, trial and appeal.

9. Notification.

NI and County will include the following statements on any and all reports related to funding distributed through this program: 1) "The Deschutes County Well Repair and Replacement program is funded by the State of Oregon and Deschutes County".

10. Indemnity and Insurance.

10.1 County and NI agree to indemnify, defend, and hold harmless each other from all claims, lawsuits and actions of whatever nature brought against it which arise from NI and/or County's performance or omissions under this Agreement. No party shall be required to defend or indemnify the other for any claim or liability arising out of wrongful, or negligent acts or omissions of its own employees or representatives. Failure to supervise on the part of NI and/or County shall not constitute a defense to the indemnity obligation imposed by this provision. This provision is subject to the limitations, if applicable, set forth in Article XI, Section 10 of the Oregon Constitution and in the Oregon Tort Claims Act, ORS 30.260 to 30.300.

10.2 NI and County will obtain and maintain insurance policies that provide for adequate coverage for all risks normally insured against by a

person carrying on a similar business in a similar location, and for any other risks to which either is normally exposed. Minimum coverage limits of \$1,000,000 / \$2,000,000 are required. NI and County will have workers' compensation insurance in form and amount sufficient to satisfy the requirements of applicable Oregon law. Insurance requirements may be satisfied by existing program of self-insurance.

11. Successors & Assigns.

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns. After this Agreement is executed, County and/or NI shall not enter into any new sub agreements for any work scheduled under this Agreement or assign or transfer any of its interest in this agreement without the prior written consent of NI and/or County.

12. No Partnership.

NI will act as an independent contractor for this project. This agreement is not intended to create a partnership, employment status or joint venture.

13. Compliance with Applicable Laws.

13.1 NI agrees to comply with all federal, state, and local laws, ordinances, and regulations applicable to this agreement. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Both parties hereby consent to the personal jurisdiction of all state courts within Deschutes County, and all federal courts within the State of Oregon.

13.2 NI shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

14. Tax Compliance.

By signature on this agreement, NI hereby certifies that it is not, to the best of its knowledge, in violation of any Oregon Tax Laws. For the purpose of this certification, "Oregon Tax Laws" are ORS Chapter 118, 119,

314, 316, 317, 318, 320, 321, and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the Homeowner's and Renters Property Tax Relief Program under ORS 310.630 to 310.690; and any local tax laws administered by the Oregon Owner of Revenue under ORS 305.620.

15. 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.

16. Force Majeure.

No party shall be held responsible for delay or default caused by fire, riot, public health emergencies and orders of federal, state, county and/or city jurisdictions, acts of God, and war which is beyond such party's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligation under the agreement.

17. Waiver.

The failure of NI and/or County to enforce any provision of this agreement shall not constitute a waiver by NI and/or County of that or any other provision.

18. Ownership.

NI and County will have full access to, and rights to use, all documents prepared under this agreement.

19. Other Provisions.

NI and County shall protect and indemnify each other against any payroll taxes or contributions imposed with respect to any employees of NI and County by any applicable law dealing with pensions, unemployment compensation, accident compensation, health insurance, and related subjects. NI shall at NI's own cost and expense insure each person employed by NI the compensation provided for by law with respect to worker's compensation and employer's liability insurance.

20. Signatures

This Agreement may be signed in counterparts. A fax or email transmission of a signature page will be considered an original signature page. At the request of a party, the other party will confirm a fax or email transmitted signature page by delivering an original signature page to the requesting party.

21. Attachments

The following attachments are part of and applicable to this Agreement:

Exhibit A – Statement of Work

THIS AGREEMENT, WHICH INCLUDES ALL ATTACHED EXHIBITS, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THE TERMS OF THIS AGREEMENT SHALL NOT BE WAIVED, ALTERED, MODIFIED, SUPPLEMENTED, OR AMENDED, IN ANY MANNER WHATSOEVER, EXCEPT BY WRITTEN INSTRUMENT. SUCH WAIVER, ALTERATION, MODIFICATION, SUPPLEMENTATION, OR AMENDMENT, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN, AND SHALL BE VALID AND BINDING ONLY IF IT IS SIGNED BY ALL PARTIES TO THIS AGREEMENT. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, REGARDING THIS AGREEMENT EXCEPT AS SPECIFIED OR REFERENCED HEREIN. NI AND CITY, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

NEIGHBORIMPACT

By _____
Scott Cooper, Executive Director

Date _____

Deschutes County

By _____
Nick Lelack, County Administrator

Date _____

EXHIBIT A

STATEMENT OF WORK

The County shall contribute \$585,200 to NI to fund the Deschutes County Well Repair and Replacement program. NI will serve as the overall project manager and fiscal administrator for this program.

The grant funds are intended to partially or fully fund well repairs or replacement costs for owner-occupied housing units impacted by the drought conditions. Funds will be distributed through two NI-operated programs:

1. Home Preservation Loan program
2. Well Repair/Replacement Rebate program

Funds shall be fully obligated by June 30, 2023, and expended by September 30, 2023.

NI and County shall collaborate on communicating the availability of funding to Deschutes County residents.

Home Preservation Loan Program

A total of \$400,200 in funding will be allocated to the NI Home Preservation Loan program, including up to 10% (\$40,000) for administration and program delivery.

NI will manage these funds in alignment with NI’s existing Home Preservation loan program policies and procedures.

Loan Program eligibility:

- Loan eligibility limited to owner-occupied housing units (stick-built and/or manufactured homes).
- Property must be located in Deschutes County.
- Homes must be primary residence of the applicant.
- Borrowers must have annual household incomes at or below 100% of the area median income (AMI) by family size for the current year, based on HUD’s AMI calculations.
- Borrowers must meet Home Preservation program underwriting terms, including adequate credit history and the borrower’s demonstrated ability to secure the loan through property equity.

- Borrowers are eligible for up to \$50,000 in County funds. Loan amounts will be based upon estimated project costs.
- Loan interest rates applicable to these funds will be those set by NI as of the date of this agreement, and will not be reviewed/adjusted during the term of this agreement.
- Loans may be structured as amortizing loans, deferred loans, or partial/interest-only loans depending on the borrower financial circumstances and ability to repay, at the discretion of the NI Lending Director and NI Lending Committee.
- All proposed loans will be reviewed and approved by the NI Lending Committee, which contains both NI board members and appointed community members.

Interest and Capital Repayment:

All principal and interest payments received by NI from borrowers funded through this program shall be retained by NI and allocated to the regional Home Preservation program for re-lending purposes to qualified borrowers in Crook, Deschutes and Jefferson counties and at the Confederated Tribes of Warm Springs. NI will manage the funds in perpetuity consistent with the NI bylaws, NI Home Preservation program policies and procedures, NI fiscal policies, and generally accepted accounting principles.

Rebate Program

A total of \$185,000 in funding will be allocated to fund domestic well assistance rebates, including up to 10% (\$18,500) for administration and program delivery.

These one-time rebates are intended to offset or rebate costs incurred by homeowners in Deschutes County related to well replacement or repair costs resulting from drought conditions.

Approved rebate amounts shall be the lesser of the full cost of well repair/replacement or \$2,000. An individual rebate shall not exceed \$2,000 under any circumstances.

A grant application will be made available on NI's website.

Rebate program eligibility and terms:

- Property must be located in Deschutes County.
- Homes must be primary residence of the applicant.
- Applicants must have incurred well replacement or repair costs due to loss of use of the well to provide domestic water during the period beginning on January 1, 2021. Costs incurred prior to January 1, 2021, are ineligible for this rebate program.
- Applicants must provide documentation of actual costs incurred. Documentation may include (but not be limited to) invoices and receipts for repair/replacement costs.
- Rebates will be conditioned upon NI receipt of a complete and accurate application, and upon documentation that the applicant meets the grant criteria and sufficient documentation has been provided to verify the well repair/replacement costs.
- Rebates will be made on a “first come-first served” basis, based upon full and complete applications received and ability to meet criteria.
- There are no income eligibility requirements associated with this rebate program.
- Well costs for new construction shall not be eligible for this rebate program.
- No individual or entity may receive more than one rebate from these funds.
- All recipients must provide a W-9 prior to receiving a rebate.
- Businesses, including agricultural operations, are not eligible for a rebate.
- NI will provide a 1099 to all recipients of rebates. Rebates are potentially taxable income.

Reporting

NI will provide a report to the County upon completion of the program, or upon request by the County. The report will include details and summaries of loans and grants funded under this agreement.



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 27, 2022

SUBJECT: Department Performance Measure Updates for Q4

BACKGROUND AND POLICY IMPLICATIONS:

At the July 27 Board meeting, departments will provide updates on progress made during Q4 on selected performance measures that fall under the County goal of Service Delivery: Provide solution-oriented service that is cost-effective and efficient. Additional information is available in the attached staff report.

A full list of performance measures and outcomes are available at performance.deschutes.org. This new dashboard provides more information about the ways departments and County staff are working to help achieve the Board's goals.

BUDGET IMPACTS:

None

ATTENDANCE:

Laura Skundrick, Administrative Analyst

Keith Macnamara, Veterans Services Manager

Steve Dennison, County Clerk

Lee Randall, Facilities Director

Kathleen Hinman, Human Resources Director

Scot Langton, County Assessor

Kevin Furlong, IT Operations Manager

Judge Fadeley, Justice Court Justice of the Peace



Date: July 27, 2022
To: Board of County Commissioners
From: Laura Skundrick, Administrative Analyst
Re: Department Performance Measure Updates for Q4

Departments have completed their Q4 performance measure updates.

At the July 27 Board meeting, departments will provide updates on progress made during Q4 on selected performance measures that fall under the County goal of **Service Delivery: Provide solution-oriented service that is cost-effective and efficient.**

Objective: Support and promote Deschutes County Customer Service “Every Time” standards.

Department: Veterans Services

Performance Measure: See customers within 10 days.

Q4 Update: 100%

Department: Clerk’s Office

Performance Measure: Election personnel cost comparison per 1,000 ballots tallied for countywide elections. Cost to remain within 10% of similar-type election.

Target: \$419

Q4 Update: Personnel costs for the May 17, 2022 Primary Election was \$202.00 per 1,000 ballots tallied.

Objective: Preserve, expand, and enhance capital assets, to sufficient space for operational needs.

Department: Facilities

Performance Measure: Refine and expand space planning efforts and capital project execution through facility master planning, capital improvement budgeting, and capital project management. Complete the year-4 update to the Public Safety Campus Master Plan and initiate master planning for the downtown campus.

Target: 3 Projects

Q4 Update: 2.5 Projects

Objective: Maintain strong fiscal practices to support short and long term county needs.

Department: Human Resources

Performance Measure: Maintain health care cost inflation at or below national average of 5-7% for self-funded plans.

Q4 Update: The DC health plan is running at +22.5% for the most recent months reporting period (Mar-May 2022). The plan continues to run higher than average due to excessive claims in previous months (Dec 21 – Feb 22) and continued increased utilization due to backed up demand from COVID. Prescription cost continue to remain higher than average due to several expensive prescriptions currently being dispensed. This is 4.6% higher than the same period last year.

Objective: Ensure quality service delivery through the use of innovative technology and systems.

Department: Assessor's Office

Performance Measure: Written certification from the Department of Revenue approving the County Assessment Function Assistance (CAFFA) program.

Q4 Update: Met

Department: Information Technology

Performance Measure: Improve cybersecurity profile through the development of an automated networked device asset inventory connected to the employee owner of the asset.

Q4 Update: Evaluation of software systems to assist in the tracking of technology assets is under way.

Objective: Promote community participation and engagement with County government.

Department: Justice Court

Performance Measure: 90% resolution of small claim cases before trial. Trials generally result in a lose/lose outcome for all parties involved. Mediation programs and other forms of settlement create a positive end to issues and save hours of court time and associated costs.

Q4 Update: 95%

Objective: Provide collaborative internal support for County operations.

Department: Justice Court

Performance Measure: Rate of collections on fines 50% or above within 90 days of judgement. Enforcing payment of fines and fees holds defendants accountable and promotes compliance with traffic laws. Timely collection and distribution of fines and fees supports law enforcement programs and court functions.

Q4 Update: 92%



**BOARD OF
COMMISSIONERS**

AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 27, 2022

SUBJECT: Measure 109 / Psilocybin / Time, Place, and Manner Amendments

BACKGROUND AND POLICY IMPLICATIONS:

Staff seeks Board of County Commissioners' (Board) direction for the Community Development Department (CDD) to:

- Develop Time, Place, and Manner (TPM) amendments for psilocybin manufacturers and psilocybin service centers; and if so,
- Postpone until winter 2023 implementing either the Mule Deer Winter Range Inventory Update or Senate Bill (SB) 391, Rural Accessory Dwelling Units.

BUDGET IMPACTS:

None.

ATTENDANCE:

Peter Gutowsky, CDD Director

Tanya Saltzman, Senior Planner



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners
FROM: Peter Gutowsky, AICP, Director
Will Groves, Planning Manager
Tanya Saltzman, AICP, Senior Planner
DATE: July 20, 2022
SUBJECT: Measure 109 / Psilocybin / Time, Place, and Manner Amendments

Staff seeks Board of County Commissioners' (Board) direction for the Community Development Department (CDD) to:

- Develop Time, Place, and Manner (TPM) amendments for psilocybin manufacturers and psilocybin service centers; and if so,
Postpone until winter 2023 implementing either the Mule Deer Winter Range Inventory Update or Senate Bill (SB) 391, Rural Accessory Dwelling Units.

I. BACKGROUND

On July 13, 2022, the Board conducted an afternoon and evening hearing to consider Ordinance No. 2022-009, Referring a Measure to the Electors to Prohibit Product Manufacturers and Psilocybin Service Center Operators within Unincorporated Deschutes County. The Board left the written record open until Monday, July 18, at 8:00 a.m. and on July 20, deliberated and adopted a first reading of Ordinance No. 2022-009. Second reading will occur on August 8. Upon second reading, it will be subject to Deschutes County voters for the November 8, 2022 General Election.

During deliberation the Board expressed interest in developing TPM amendments in the event voters reject prohibiting psilocybin manufacturing and psilocybin service centers in the unincorporated county. Amendments could be adopted by the end of the calendar year, prior to the Oregon Health Authority (OHA) accepting applications for licensure on January 2, 2023.

II. EXISTING ZONING

With no Psilocybin TPM regulations in place, existing zoning codes (DCC) would apply to psilocybin starting on January 2, 2023. As shown in Table 1 below, psilocybin production would be permitted

1 https://mccmeetings.blob.core.usgovcloudapi.net/deschutes-pubu/MEET-Packet-6f352a4da40540c29c242c177aeb419e.pdf. Action Item #7.

outright as a farm or agricultural use in eleven zones. Processing/manufacturing would be limited to three zones: Exclusive Farm Use (EFU), Rural Industrial and a Tumalo Industrial District and be subject to an administrative determination or site plan review. Psilocybin Service Centers would be limited to four zones, subject to a conditional use permit and site plan review.

Table 1- Existing Code / Psilocybin Program

Use	Zoning	Code
Psilocybin Production	EFU Zones	DCC 18.16.020 - Farm use is permitted outright.
	Multiple Use Agriculture	DCC 18.32.020 - Agricultural use is permitted outright.
	Forest Use Zone 1	DCC 18.36.020 - Farm use is permitted outright.
	Forest Use Zone 2	DCC 18.40.020 - Farm use is permitted outright.
	Open Space and Conservation Zone	DCC 18.48.020 - Farm use is permitted outright.
	Surface Mining Zone	DCC 18.52.030, - Farm use is permitted outright.
	Rural Residential	DCC 18.60.020 - Agricultural use is permitted outright.
	Rural Service Centers ²	DCC 18.65.020, DCC 18.65.021, and 18.65.022 - Agricultural uses is permitted outright.
	Rural Commercial Zone ³	DCC 18.74.020 & 18.74.027- Agricultural use is permitted outright.
	Urban Area Reserve	DCC 19.12.020 - Farm use is permitted outright.
Suburban Low Density Residential	DCC 19.20.020 - Agriculture is permitted outright.	
Psilocybin Processing / Manufacturing	Exclusive Farm Use Zones	DCC 18.16.025 - A facility for the processing of farm crops, is subject to an administrative determination and following standards: <ul style="list-style-type: none"> The facility uses less than 10,000 square feet for its processing area and complies with all applicable siting standards. or Exception: A facility which uses less than 2,500 square feet for its processing area is exempt from any applicable siting standards.
	Tumalo Industrial District	DCC 18.67.060 - Primary processing, packaging, treatment, bulk storage and distribution of agricultural products are permitted uses subject to site plan review.
	Rural Industrial Zone	DCC 18.100.010 - Primary processing, packaging, treatment, bulk storage and distribution of agricultural products are permitted uses, unless located within 600 feet from a residential dwelling, a lot within a platted subdivision, or a residential zone, subject to site plan review.
Psilocybin Service Centers⁴	Rural Service Centers ⁵	DCC 18.65.020, DCC 18.65.021, and 18.65.022 - Medical clinic is a conditional use.
	Terrebonne Commercial District	DCC 18.66.040 - Medical center in a building or buildings not to exceed 4,000 square feet or a conditional use.
	Sunriver Commercial District	DCC 18.108.050 - Medical clinic is a permitted use subject to site plan review.
	Sunriver Town Center District	DCC 18.108.055 - Medical clinic is a permitted use subject to site plan review.

² Rural Service Centers include: Brothers, Hampton, Millican, Whistlestop, Wildhunt, and Alfalfa.

³ Rural Commercial Zones include: Deschutes Junction, Deschutes River Store, Pine Forest and Roseland.

⁴ Psilocybin Service Centers⁴ are not expressly identified in DCC. Applicants would be required to request a similar use authorization. DCC 18.116.010, Authorization of Similar Uses.

https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=18.116.010_Authorization_Of_Similar_Uses

⁵ See footnote 2.

III. PSILOCYBIN TPM AMENDMENTS

Developing Psilocybin TPM amendments are not on CDD’s FY 2022-23 Work Plan.⁶ CDD recently initiated the Comprehensive Plan Update and a Transportation Growth Management (TGM) grant. The grant updates the Tumalo Community Plan and creates a Sisters Country Trails Plan. Two other high priority projects, the Mule Deer Winter Range Inventory Update and SB 391, Rural Accessory Dwelling Units (ADUs) involve amending the Comprehensive Plan and DCC. While staff has spent significant time coordinating and preparing findings for both, legislative amendments have not yet been initiated. Public hearings are anticipated for this fall. Additionally, long range planning staff continue to provide assistance to the Current Planning Section which is experiencing high volumes of land use applications and open positions.

To create capacity for CDD to initiate Psilocybin TPM amendments, the Board will need to postpone implementing either the Mule Deer Winter Range Inventory Update or SB 391 until winter 2023. Initiating Psilocybin TPM amendments requires significant staff time condensed over a five month period as noted below:

Table 2 - Psilocybin TPM Schedule

Task	Timeline ⁷
1. Present regulatory concepts at a Board work session that leads to a preferred alternative	August 8
2. Draft amendments and findings	August 8 - 24
3. 35-day DLCD Post Acknowledgement Plan Amendment Notice	August 25
4. Planning Commission Work Session	September 8
5. Planning Commission Public Hearing	September 29
6. Planning Commission Deliberation	October 13 and 27 if needed
7. Board Work Session	November 14
8. Board Hearing	November 28
9. Board Deliberation	December 5
10. Consideration of First Reading	December 14
11. Consideration of Second Reading	December 28
12. DLCD Notice of Adoption	December 28

IV. BOARD DIRECTION

Consider directing CDD to:

- Develop Psilocybin TPM amendments for psilocybin manufacturers and psilocybin service centers; and if so,
- Postpone until winter 2023 implementing either the Mule Deer Winter Range Inventory Update or SB 391; or
- Other.

⁶ https://www.deschutes.org/sites/default/files/fileattachments/community_development/page/110/2022-23_work_plan_annual_report_-_final.pdf. Pages 35-38.

⁷ Dates are tentative.